

From: stephenson <[REDACTED]>
Sent: Thursday, August 4, 2022 2:44 PM
To: Benjamin McConchie <bemcconchie@islandstrust.bc.ca>; Laura Patrick <lpatrik@islandstrust.bc.ca>; Deb Morrison <dmorrison@islandstrust.bc.ca>
Cc: Kim Stockdill <kstockdill@islandstrust.bc.ca>
Subject: Proposed bylaw Subsection 3.4.2 and August 11th LTC meeting Agenda package

Hi Trustees and Planner Stockdill.

I just received via email the Agenda package for next week's Aug 11th meeting.

I note that a minimum lot size has been recommended as an amendment to the proposed bylaw for Farm Buildings, (1.2 hectares or 3 acres). That is positive but it doesn't go far enough, in my opinion. It should be a condition that the Lot in question is also a legitimate working farm, not just in an area zoned for Agriculture. Otherwise, "proposals" or "intentions" that never materialize will allow these large overheight buildings in RR zones, without any farming ever taking place. I have been a member of the North Pender Agricultural APC for the last two terms and I don't believe it was anyone's belief that these overheight Accessory buildings without any sq ft max except for the max Lot Coverage, be allowed on single family residential lots. Please at least consider the further requirement that any proposed Lot must also have Farm Status pursuant to the (BC) Assessment Act.

For your easy reference, here is the excerpt from page 83 of next week's Agenda package:

"Height of Agriculture Buildings Proposed Bylaw No. 224 includes the following height regulations for agriculture buildings and structures (Subsection 3.4.2):

Staff have received concerns from community members with regards to the allowing agriculture buildings/structures that are 10 metres in height (or potentially 15 metres in height if located greater than 30 metres from a lot line) on small lot properties in the Rural Residential 1 and 2 (RR1 & RR2) zones. Although the RR1 zone does not permit 'Agriculture' as a principle permitted use, 'Horticulture' is allowed as an accessory use in every zone (except the Ecological zone) as per the General Regulations – Subsection 3.1.1).

In order to limit tall agriculture or horticulture buildings or structures on small RR1 and RR2 lots, the LTC could consider amending proposed Bylaw No. 224 to only allow these 10-15 metres buildings on lots equal to or greater than 1.2 hectares (3 acres) in area:

Draft Motion No. 2 "That the North Pender Island Local Trust Committee proposed Bylaw No. 224, cited as "North Pender Island Land Use Bylaw No. 224, 2022" be amended by only permitting agriculture buildings and structures with a height of 10 metres or more on Rural Residential 1 and Residential 2 zoned lots with an area of 1.2 hectares or greater". "

Thank you.
Ann Stephenson

**To: North Pender Island Local Trust Committee
(Chair Laura Patrick, Trustee Ben McConchie, Trustee Deb Morrison)**

**Islands Trust Executive Committee
(Chair Peter Luckham, Vice-Chair Sue Ellen Fast, Vice-Chair
Dan Rogers)**

**Ministry of Municipal Affairs
(Honourable Nathan Cullen)**

CC: Islands Trust Planner (Kim Stockdill)

RE: Proposed Land Use Bylaw # 224: North Pender Island

We are long time owners of property on North Pender Island and have been permanent residents for the past 15 years. We have been following and commenting on the Island Trust's Draft Policy Statement (Bylaw # 183) and now we must send you our comments on Proposed Land Use Bylaw # 224. After reading the lengthy bylaw that covers numerous zones as well as other land use regulations, we are sending comments that most directly impact us and our property.

Proposed RR2 Zone

What is the rationale for proposing that dwelling units not exceed 232 m² (2,500 sq. ft.) on lots that are less than 0.4 hectares (1 acre) in size? Although the proposed unit size may be suitable for a couple or a small family, we question whether it's adequate for a typical family size or for island homes that often require additional space for home offices, creative activities and visitors. ***We want to see a comprehensive rationale for the maximum floor areas with this information made available to the public prior to a Public Hearing.***

We do not support the addition of "Accessory agri-tourism and agri-tourist accommodation" in the RR2 that essentially consists of residential uses. Accessory agri-tourism related activities should be aligned with properties within the ALR.

W1/W3 Zones

For our first 25 years, our property contained a tiny cabin (17.8 m²/192 sq. ft.) without any driveway or services. We had minimal ecological foot print and shared our waterfront with almost no docks. Since building a house (205 m²/2,200 sq. ft.) and moving into our permanent home on Pender Island, we have chosen not to pursue construction of a dock; however, we have recognized that docks are a permitted use available to us or future owners of our property.

We objected to the prohibition of docks proposed in the Draft Policy Statement and were extremely surprised to see the proposed Bylaw #224 that would create the “have” (W1) and “have not” (W3) approach to managing docks on North Pender Island. **We are completely opposed to this approach which would preclude us from having a dock as well as impact the value of our property.** It also creates a situation that is discriminatory among us and our neighbours.

The Provincial Government has a process for approving docks and the requirements and review process should provide the necessary oversight. The Islands Trust proposal that would require property owners to pursue a rezoning from W3 to W1 would be a costly, time consuming and an unnecessary additional step in the process. It would also be onerous, especially for property owners who are not familiar with the complexity of the rezoning process.

We propose that the bylaw remove the site specific (spot zoning) to W1 and revert back to the previous approach.

Our property is one among 17 waterfront properties in the Razor Point Improvement District. About 2/3 of the properties have docks and a couple of properties do not have a suitable site for a dock. We believe that your approach is discriminatory but if you persist in creating the new W1/W3 zones, then **we propose that W1 apply to all the waterfront lots in cases where docks are a predominant use in contiguous properties.** If a stretch of shoreline is predominantly developed with docks, why would you make it so much more onerous for the few property owners who might be interested in pursuing a future dock?

Structures in the Waterfront Setback

Even people who own waterfront property but don't have a dock, should still be able to access and enjoy the shoreline. Waterfront access is one of the features that attract people to the Gulf Islands and provides an opportunity for residents and visitors to become more informed about our shorelines and their significance.

For many properties, stairs to the water also provide a secondary access/egress in case of emergency situations, such as fire, and this opportunity should continue to be available. When a lightning strike started a fire beyond Harbour Hills, we were fortunate that the Fire Department and BC Forestry Service acted quickly and it didn't spread. Our property is on a dead end road, so water access could be a lifesaving option when fires and other emergency situations arise.

Waterfront property owners should be permitted to install fencing for safety reasons at the top of a slope. Many waterfront properties on North Pender Island have high, steep embankments and appropriate fencing can be necessary for the safety of children and pets.

Public Engagement

Our strongest concern with the Draft Policy Statement has been the inadequate public involvement and consultation. Unfortunately, we have the same concern about the proposed Land Use Bylaw # 224.

Using the proposed W1 and W3 zones as an example, we find that we become aware of these proposals late in the process and even though the topic (dock prohibition) applies to specific property owners, there weren't efforts made to consult directly with the impacted property owners. It seems that Penderites always learn too late for them to be fully involved in the decision-making process. We learned about the proposed land use bylaw by accident and although we have attended numerous community information meetings this topic didn't arise until recently.

As a final comment, we cannot understand why Land Use Bylaw # 224 is being brought forward while the Draft Policy Statement that outlines some of the proposed changes in the land use bylaw hasn't been adopted and continues to see strong opposition from the community. In our experience, the policy statement is normally adopted before any implementation tools, such as a new land use bylaw, are brought forward for discussion with the community. ***We recommend that further action on the proposed Land Use Bylaw be deferred until the Policy Statement is completed.***

We trust that you will give serious consideration to our comments and If you decide to proceed to a Public Hearing for Land Use Bylaw # 224, ***we recommend that you consult immediately with waterfront property owners and ensure that all community members are notified directly.***

Successful policies and plans rely on a strong public process!

Sincerely,

Lynda Challis & Kari Huhtala

Pender Island

TO:

North Pender Island LTC
Trustee Ben McConchie
Trustee Deb Morrison
Chair Laura Patrick
southinfo@islandstrust.bc.ca

Islands Trust Executive Cttee
Chair Peter Luckham
Vice-Chair Laura Patrick
Vice-Chair Sue Ellen Fast
Vice-Chair Dan Rogers
EC@islandstrust.bc.ca

Minister of Municipal Affairs
Honourable Nathan Cullen
nathan.cullen.MLA@leg.bc.ca

DATE: August 6, 2022**FROM:** Mary Beth Rondeau, North Pender Island**RE:** Proposed Downzoning from Water 1 District to Water 3 District on North Pender**REQUESTED NP LTC RECOMMENDATION:**

Postpone the rezoning of W1 zones on North Pender Island until the results of the Provincial review (via the 2 year moratorium) has been completed and further dialogue has taken place with First Nations given differing interests expressed in the Islands2050 Phase 3 Public Engagement by the community and the First Nations.

Background and Rationale:

1. The purpose of the 2 year Provincial Moratorium (August 2021-2023) is to address the cumulative impacts of moorages on marine and shorelines.
2. The recent Trust Policy Statement review showed significant community concerns related to a dock prohibition and in particular concerns with emergency evacuation.
3. Response from First Nations are supportive of dock prohibitions and further dialogue is necessary to find common ground with First Nations interests and the Southern Gulf Islands community interests.
4. At the June 2022 Trust Council meeting, Islands Trust staff recommended altering the policy on docks to respond to the community input and Agency/First Nations referrals.
5. The proposed NP LTC dock rezoning pre-dates the above mentioned and proceeding on this initiative is no longer following more current inputs.

1. THE PURPOSE OF THE 2 YEAR PROVINCIAL MORATORIUM (AUGUST 2021-2023) IS TO ADDRESS THE CUMULATIVE IMPACTS OF MOORAGES ON MARINE AND SHORELINES.

1.1 Provincial Moratorium on Docks in Southern Gulf Islands

<https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/natural-resource-use/land-water-use/crown-land/m329-2021.pdf>

PROVINCE OF BRITISH COLUMBIA

Date Minister of Forests, Lands, Natural Resource Operations and Rural Development (or authorized signatory) Ross McElroy, Director of Authorizations, West Coast, authorized delegate of the Minister of Forests, Lands, Natural Resource Operations and Rural Development (This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made: Act and section: Land Act, section 10.1 Other: page 1 of 2

*ORDER OF THE MINISTER OF FORESTS, LANDS, NATURAL RESOURCE
OPERATIONS AND RURAL DEVELOPMENT Land Act
Ministerial Order No. M329*

I, Katrine Conroy, Minister of Forests, Lands, Natural Resource Operations and Rural Development, pursuant to section 10.1 of the Land Act order that no application for Crown land may be made with respect to private moorage, as specified in the Private Moorage Land Use Operational Policy, within the southern gulf islands and southeastern shoreline of Vancouver Island as shown in the map on the attached schedule, except applications to replace or assign an existing permission, lease or licence for private moorage, or applications for new private moorage where road access to the associated upland property does not exist.

*This order is effective _____ to August 24, 2021 _____
August 23, 2023 .*

1.2 Rationale for Provincial Moratorium

<https://www2.gov.bc.ca/gov/content/industry/crown-land-water/crown-land/land-use-application/section-10-1-closures>

MO M329 August 23, 2021 - The West Coast Region of the Ministry has implemented a two-year prohibition on the acceptance of new private moorage applications within the Southern Gulf Islands and southeast shoreline of Vancouver Island.

Private moorages can have the following impacts:

- Restricted access to foreshore and marine areas*
- Increased turbidity from dock construction and increased boat traffic*
- Contamination from dock materials (e.g., treated timber, corrosion)*
- Increased shading to fish and fish habitat*
- Direct disturbance of marine resources, such as kelp, eelgrass, and clam beds*
- The cumulative impact of the proliferation of private moorage docks on Southern Vancouver Island and the Gulf Islands has not been adequately characterized or measured. This has led to multi-year delays to decisions on private moorage applications.*

The prohibition provides time to assess the cumulative impacts of existing and proposed private moorages on the Southern Vancouver Island and Gulf Islands foreshore and marine environments, providing a pathway to decisions on private moorage applications currently in inventory and on new applications that may be accepted at the conclusion of the prohibition.

The prohibition does not apply to applications for new private moorage where road access to the associated upland property does not exist, nor to applications to replace or assign an existing permission, lease, or licence for private moorage within the existing tenure boundary.

2. THE RECENT TRUST POLICY STATEMENT REVIEW SHOWED SIGNIFICANT COMMUNITY CONCERNS RELATED TO A DOCK PROHIBITION AND IN PARTICULAR CONCERNS WITH EMERGENCY EVACUATION.

2.1 Presentation by ISL Phase 3 Public Engagement Consultant at June 2022 Trust Council

2.1.1 At June 2022 Trust Council <https://islandstrust.bc.ca/event/trust-council-june-2022/>, the consultant stated:

“There is broad embrace of environmental stewardship and respect for island way of life evident in all feedback but there is less consensus on specific policies in the Draft New Trust Policy Statement such as those related to desalination or private docks”

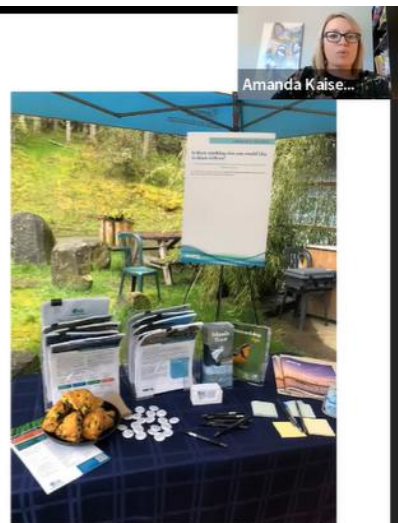
46:00 minutes timestamp in video

https://collaboratevideo.net/MaxPlayer/default.aspx?cid=isthost&pid=vod&v_id=220622A&bw=720p&webcastID=IST-220622A

2.1.2. Slide from Presentation - Private Docks and Seawalls Warrant the Most Attention by Trust Council and Staff

What We Heard Highlights

- Private docks and seawalls
- Desalination
- Tree cutting by individual landowners on private land
- Agriculture as a valued activity
- Agricultural Land Reserve (ALR) advocacy
- Floor area and lot coverage limitations for residential development
- Need for definitions of key terms (Glossary)
- Need for more information about reconciliation
- Need for simpler structure and language in the Policy Statement



See Final Report ISL Phase 3 Public Engagement

https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/01-Islands%202050/Public%20Engagement%20Phase%203/FINAL_2022-06_ISL-Phase-3-Engagement-Summary-Report.pdf

2.2 Examples of Community Response to Phase 3 Public Engagement for Draft Trust Policy Statement

2.2.1. Public Correspondence from Association of Mayne Island Boaters:

Docks serve as more than recreational water access; they can play a critical role in inter Island travel and commerce as well as emergency evacuation. Local marine facilities act as a safeguard should BC Ferries service be interrupted. A major fire could easily isolate residents from the Islands BC Ferry terminal, leaving our dock network as our only point of egress.

https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/01-Islands%202050/Public%20Correspondence/2021-06-20_AssociationOfMayneIslandBoaters_R.pdf

2.2.2. Public Correspondence from Citizen regarding Opposition to Dock Ban:

Please consider:

- 1. All Island Trust Area properties are boat access only by definition. Existing roadways are inadequate and will be easily overwhelmed by large-scale evacuations. Existing evacuation plans for multiple islands within the Islands Trust Area include private boats and private docks by necessity.*
- 2. Docks are not universally harmful to the marine environment. They can be beneficial and offer a convenient mechanism to reduce a major source of marine contamination – abandoned vessels.*
- 3. A rigorous multi-jurisdictional approval process exists, including environmental and archeological assessments.*



Figure 1: "Area of B.C. burned by wildfires at a 56-year high" (CBC) 29 July 2017.^[1]

https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/01-Islands%202050/Public%20Correspondence/2022-02-05_DDunnison-1_R.pdf

3. RESPONSE FROM FIRST NATIONS ARE SUPPORTIVE OF DOCK PROHIBITIONS AND FURTHER DIALOGUE IS NECESSARY TO FIND COMMON GROUND WITH FIRST NATIONS INTERESTS AND THE SOUTHERN GULF ISLANDS COMMUNITY INTERESTS.

3.1 Islands Trust First Nations Engagement Phase 2 Report First Nations Engagement Phase 2 Summary Report Islands 2050

Excerpt from page 6:

-supportive of prohibition of new private docks (Policy 4.5.14) but prefers no private docks; disagrees with any new private docks until there is a Cumulative Effects Impact Assessment (consistent with Blueberry River B.C. Supreme Court decision); careful consideration should be given to approving development on properties that are boat-access only, approving only on a very limited basis

<https://islandstrust.bc.ca/document/first-nations-engagement-phase-2-summary-report/>

Note: Blueberry River Decision June 29, 2021

4. AT THE JUNE 2022 TRUST COUNCIL MEETING, ISLANDS TRUST STAFF RECOMMENDED ALTERING THE POLICY ON DOCKS TO RESPOND TO THE COMMUNITY INPUT AND AGENCY/FIRST NATIONS REFERRALS.

4.1. June 22, 2022 Trust Council Discussion on the Trust Policy Statement

<https://islandstrust.bc.ca/document/trust-council-meeting-agenda-5/>

Excerpt from staff report agenda page 156:

3.9 exploring possible refinements to the draft directive policy to prohibit new private docks that carefully consider and balance the various inputs received from First Nations and the public

5. THE PROPOSED NORTH PENDER LOCAL TRUST COUNCIL DOCK REZONING PRE-DATES THE ABOVE MENTIONED AND PROCEEDING ON THIS INITIATIVE IS NO LONGER FOLLOWING MORE CURRENT INPUTS.

5.1 Marine and Shoreline Discussion Paper July 2020

Excerpt from Marine and Shoreline Discussion Paper page 12:

*“3. Require rezoning for new docks
Currently “private floats, wharves, ramps and walkways accessory to the residential use of an abutting upland lot or lots abutting the sea” are permitted outright in the W1 zone. New docks must comply with the size restrictions in the zone, but otherwise need no discretionary approval. The LTC may wish to consider changes that would make new docks a discretionary use, rather than the current outright use. This would be implemented by restricting the W1 zoning to current private*

moorage tenures and require rezoning to W1 for any future docks. In the process of rezoning, site specific considerations and restrictions could be addressed. This changed approach was implemented last term in South Pender's updated Land Use Bylaw. While there are not a large number of new dock tenures annually, the LTC should consider the impact of processing private moorage rezoning applications."

Marine and Shoreline Discussion Paper July 2020

https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/north-pender/current-projects/Land%20Use%20Bylaw%20Review/6%20-%20Discussion%20Papers/2020-07-21_Marine-Shoreline-Discussion-Paper.pdf

5.2 May 12, 2021 North Pender Local Trust Council Staff Report Suggests Following South Pender

At the May 12, 2021 North Pender Local Trust Council (NP LTC):

NP-2021-053

It was Moved and Seconded, that the North Pender Island Local Trust Committee give direction to staff to draft bylaw amendments based on recommendations for Shoreline and Marine Regulation options as outlined in Table 1 attached to the Staff Report dated May 12, 2021.

CARRIED

Excerpt from page 4:

Water 1 (W1) Zone is the most extensive foreshore zone extending around most of the perimeter of North Pender and is intended to permit private moorage uses. It permits outright: private floats, wharves, ramps and walkways accessory to the residential use of an abutting upland lot or lots abutting the sea; pilings necessary for the establishment or maintenance of the uses; boat launching ramps; and marine navigation, marine navigation aids and marker buoys. The Water 3 (W3) Zone extends to the boundary of the North Pender Island Local Trust Area and permits only marine navigation, marine aides and marker buoys and on other uses.

Excerpt from page 5:

The North Pender LTC should also consider amending the Coastal Areas section of the OCP to provide new policies for dock rezoning applications within the Marine designation, and provide criteria for assessing such rezoning applications.

The following is criteria from the South Pender OCP (Section 4.2b(iv)):

"Docks or wharves are to be allowed in the following circumstances: existing private moorage for docks permitted on a site-specific basis in those areas designated as Marine (M) on Schedule "B".

New applications for private moorage for docks may be considered by site-specific rezoning subject to:

-the proposal demonstrating minimal impacts on the marine environment, including eelgrass, bull kelp, forage fish, or other important habitat;
-the proposal demonstrating minimal impacts on upland sensitive ecosystems or habitat;
-the proposal demonstrating no impacts on archaeological or cultural sites or resources;
-structures being appropriately sited and of a scale to minimize visual impacts;
-structures incorporating current best practices for dock construction;
-consideration being given to providing for shared or common moorage;
and
-consideration being given to the cumulative impacts of private moorage.”

<https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/north-pender/current-projects/Land%20Use%20Bylaw%20Review/2%20-%20Staff%20Reports/Staff%20Report%20-%202021-05-12.pdf>

From: MICHAEL SKETCH <[REDACTED]>

Sent: Monday, August 8, 2022 4:34 PM

To: Laura Patrick <lpatrick@islandstrust.bc.ca>; Deb Morrison <dmorrison@islandstrust.bc.ca>; Benjamin McConchie <bemconchie@islandstrust.bc.ca>; Kim Stockdill <kstockdill@islandstrust.bc.ca>; Robert Kojima <rkojima@islandstrust.bc.ca>

Cc: Stefan Cermak <scermak@islandstrust.bc.ca>; SouthInfo <SouthInfo@islandstrust.bc.ca>

Subject: Port Washington shed and store parcels M Sketch to N Pender LTC for 11Aug2022

North Pender trustees and planning staff - My submission to you for the 11Aug2022 business meeting regarding the proposed rezoning of the Port Washington "shed" and "store" parcels as part of the LUB amendment project, is attached.

Michael Sketch
North Pender Island
[REDACTED]

The Port Washington store and storage shed, built circa 1910, (Exhibit 2) traditionally served North Pender distributed commercial needs. The store and about 10% of the floor area of the shed were built on the same parcel. The natural boundary divides the shed structure. The greater part of the shed floor area rests on the foreshore, below the natural boundary. In the early 1990s, the parcel was subdivided to i) a "sliver" at the natural boundary on which rests 10% of the shed structure and ii) an upland parcel on which rested the store structure. During 1994 to 2013, North Pender residents opposed accessory residential use of the shed structure, alleging both incorrect residential use (Exhibit 7) and sewage disposal on foreshore land (Exhibit 8). In 2014, the courts (N. Pender LTC Corporation the plaintiff) ceased residential use of the shed structure, said use being contrary to the LUB. Subsequently, the store was demolished. The shed remains.

In 2022, there are new owners for the two parcels (Exhibits 3&4).

Surprisingly, staff recommend (Exhibit 1) rezoning both parcels from commercial to residential land use as part of the current LUB review. Staff have drafted changes for the LUB and the OCP map schedule, without application from the landowner and without an explanatory staff report. There has been no meaningful consultation with First Nations on either past, or the potential for future, residential use of foreshore land.

In and of itself, rezoning of land above the natural boundary which 10% of the shed floor area rests on, wouldn't permit residential use of foreshore land. But it may be reasonably assumed that residential rezoning of the "sliver" upland parcel will predispose a North Pender site specific amendment of the W4 water zone and in turn, Provincial lease approval.

Planning staff and North Pender trustees –

Please remove residential rezoning of the Port Washington "store" and 'sliver' (Exhibit 11) "shed" parcels from the current LUB review and meaningfully consult with both residents and the First Nations interest (note the second page of Exhibit 14) before proceeding with land use planning which would predispose residential use of the foreshore.

The Port Washington store and storage shed, built circa 1910, (Exhibit 2) traditionally served North Pender distributed commercial needs. The store and about 10% of the floor area of the shed were built on the same parcel. The natural boundary divides the shed structure. The greater part of the shed floor area rests on the foreshore, below the natural boundary. In the early 1990s, the parcel was subdivided to i) a “sliver” at the natural boundary on which rests 10% of the shed structure and ii) an upland parcel on which rested the store structure. During 1994 to 2013, North Pender residents opposed accessory residential use of the shed structure, alleging both incorrect residential use (Exhibit 7) and sewage disposal on foreshore land (Exhibit 8). In 2014, the courts (N. Pender LTC Corporation the plaintiff) ceased residential use of the shed structure, said use being contrary to the LUB. Subsequently, the store was demolished. The shed remains.

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In and of itself, rezoning of land above the natural boundary which 10% of the shed floor area rests on, wouldn't permit residential use of foreshore land. But it may be reasonably assumed that residential rezoning of the “sliver” upland parcel will predispose a North Pender site specific amendment of the W4 water zone and in turn, Provincial lease approval.

Planning staff and North Pender trustees –

Please remove residential rezoning of the Port Washington “store” and ‘sliver’ (Exhibit 11) “shed” parcels from the current LUB review and meaningfully consult with both residents and the First Nations interest (note the second page of Exhibit 14) before proceeding with land use planning which would predispose residential use of the foreshore.

In particular for these two parcels, i) they are in an area with known freshwater challenges (Exhibit 9) and ii) sewage absorption field placement is limited by both soil structure and small lot areas. The potential for two residences where there had been two commercial uses exacerbates dual residential zoning contraindications.

In recent LTC meetings where LUB review has been on the agenda, a letter (Exhibit 1) from the new owners of the Port Washington “Store” (the store structure now demolished) and “Shed” parcels was acknowledged. Apparently based on a staff recommendation, rezoning from Commercial to Residential (RR2) for each of the two parcels is included in the Land Use Bylaw (LUB) review project and draft OCP Zone mapping has been so amended.

This without a rezoning application from the landowner.

It isn't clear whether the staff rezoning recommendation preceded or followed landowner enquiry.

At face value, amending the LUB to permit residential use of the portion of the “shed” above the natural boundary is the first step in addressing the provincial Supreme Court’s 2014 finding (Exhibit 10) that the LTC is entitled to a declaration that the “Shed” had been converted to a dwelling, contrary to the LUB. Islands Trust may later approve a site specific residential zoning in the water lot which would in turn would predispose¹ a corresponding provincial foreshore lease. At this stage, staff may say that the current LUB and OCP amendments don’t constitute permission for residential use of the foreshore, but the distinction is a technicality.

It is ironic that planning staff oversaw three court actions (Attachments 3&4 and 5) at taxpayer expense which resulted in cessation of residential use of the shed in 2014 because a residential use was contrary to the LUB. Less than a decade later, staff recommend the first stage of residential zoning which the courts decided against. The broader issue of residential use of foreshore land must now be properly deliberated - a substantive policy issue which shouldn’t be sidestepped in an LUB review.

In introducing the LUB amendment for residential use (rezoning from commercial) of the two subject contiguous Port Washington parcels at the (electronic) community information meeting of Thu28Jul2022, Planner Stockdill said that the owners intended to amalgamate the two parcels; despite there being no such undertaking in the letter from the applicants (Exhibit 1). Responding to a question from the public, Planner Stockdill replied that staff had recommended the change from commercial zoning to residential zoning because the parcels had been zoned commercial for a long time and there was no current commercial use. In the staff report for the 11Aug2022 LTC business meeting, Planner Stockdill recommends (draft motion No.6 below) rezoning the two parcels to a site specific rural residential (RR2) Zone that would only permit one dwelling unit within the zone.

¹ See Attachment 2; Staff Report R. Kojima, Island Planner, 19Jun2007 for LTC business meeting 28Jun2007; page 5 of 12. Rezoning application for both the i) ‘sliver’ “shed” parcel at the natural boundary and ii) the contiguous Islands Trust water lot to permit commercial use with accessory residential. File NP-RZ-2006.1. Draft bylaw 136 would amend the LUB and had been sent for agency review. The provincial Integrated Land Management Bureau responsible for granting crown tenure for the portion of the “shed” which rests on the foreshore (title rests with provincial crown) recommended approval “as it would legalize the existing use”. “A tenure application would be required if the rezoning is approved”. The implication is that appropriate Islands Trust zoning is a necessary and probably sufficient condition for the province to grant a foreshore lease.



Excerpts from: STAFF REPORT

File No.: NP_6500_2020_LUB-Review

DATE OF MEETING: August 11, 2022
TO: North Pender Island Local Trust Committee
FROM: Kim Stockdill, Island Planner
Southern Team
COPY: Robert Kojima, Regional Planning Manager
SUBJECT: LUB Review Project – Proposed Bylaw Nos. 223, 224, & 229

RECOMMENDATION

1. That the North Pender Island Local Trust Committee direct staff to schedule a Public Hearing for proposed Bylaw Nos. 223, 224, and 229.

Excerpt - Rezoning of Port Washington "store" and "shed" parcels

1200/1201 Port Washington Road

Proposed Bylaw No. 229 will rezone 1200 & 1201 Port Washington Road from a site specific Commercial 1 C1(a) zone to Rural Residential 2 (RR2). A concern was raised by a community member that since there are two properties, the RR2 zone would allow one dwelling on each lot. To relieve that concern, staff recommend rezoning the two properties to a site specific RR2 zone that would only permit one dwelling within the zone (rather than one dwelling per lot).

Draft Motion No. 6

"That the North Pender Island Local Trust Committee proposed Bylaw No. 229, cited as "North Pender Island Land Use Bylaw No. 229, 2022" be amended to rezone 1200 & 1201 Port Washington Road to a site specific Rural Residential 2 zone that would only permit one dwelling within the zone.

Staff recommends – residential rezoning for the two parcels which would have the effect of one parcel with a residence as a permitted land use; the other without. If the motivation for changing land use is to preclude residential use of the foreshore, then not only is the recommendation counter intuitive, but the apparently the landowner would be free to decide which parcel to place the residence on. There already being part of a structure on the "shed" parcel which has been used as a residence and which B.C. Assessment (Exhibit 6) describes as a basic one story, 1539 sq. ft. house with two bedrooms and a bathroom, it is reasonable to assume the landowner would use the former "shed" structure as the residence.

Further, staff reporting of future landowner intent to amalgamate the two parcels after LTC allows residential use in the LUB, may be difficult because a title search for the two parcels (Exhibits 3&4) shows a company holds title the "store" parcel and two persons for the "shed" parcel.

Once the Islands Trust gives residential zoning for the parcels, the landowners may choose to sell each parcel, with value added by the rezoning.

Current commercial zoning in the public interest - However for the upland “store” 0.22 acre parcel, preservation of commercial zoning has been said to be in the public interest, in time enabling commercial services for local area residents within walking distance.

Drilled well freshwater source and sewage disposal - The “store” parcel (0.22 acre) will be smaller if parking spaces are taken (Exhibit 1) from the parcel area as is proposed (Exhibit 1). Sewage disposal has been a problem for the commercial “store” parcel, due to the lack of suitable soil and setback requirements from drilled well to sewage field. The greater demands of residential land use for freshwater quantity and sewage disposal, as opposed to commercial land use, will exacerbate the problems. Anecdotally, a holding tank was used for sewage disposal at the “store” (the store now demolished).

Even were there suitable soil for a sewage absorption field on the ‘sliver’ (0.021 acre) “shed” parcel at the natural boundary, there is no room for a setback. At times during 1994 to 2013 when there was accessory residential use of the shed, sewage disposal appeared to include disposal to the foreshore (Exhibit 8, with accompanying N Pender resident’s letter and photographs). While the provincial health authority (VIHA; see Exhibit 8) is responsible for regulating sewage disposal, joint jurisdiction for the shed structure appears to have sidestepped effective enforcement.

Staff reports (2006&2007 shed rezoning, Exhibits 12&13) and attachments 3&4 reference a hydrogeology report which indicates adequate quality and quantity of freshwater for the two parcels and an easement (Exhibits 3&4) from drilled well to the “sliver” parcel. Anecdotally, the pump down and recharge tests were done on behalf of the “sliver” parcel owner without the knowledge of the “store” parcel owner. Staff reports give no detail as to the well test methodology and timing. The parcels are in an area (Exhibit 9) known to the Ministry of the Environment and to the Islands Trust where groundwater depletion is a major concern.

2006 to 2014 history. Politics, land use planning and the courts

Earlier in the history of application to rezone for (accessory) residential use of the ‘sliver’ “shed” parcel, one of the local trustees of the LTC Corporation went door to door in the Port Washington area and addressed the Stanley Point Property Owner’s Association, lobbying for residents’ approval of residential foreshore use.

I was a member of the APC asked by the LTC to deliberate (11Oct2006) accessory residential use of the shed (NP-RZ-2001.1 - Elliot). Brian Elliot intended to purchase the Shed parcel, once rezoned. Ted Johnson spoke for Brian Elliot at the APC meeting. Unusually, both locally elected Trustees were at the APC table, each as active participants. In part the Trustees argued that the Islands Trust was facing large legal fees while continuing to challenge accessory residential use of the shed in the courts and that rezoning would be an appropriate alternative. Both Trustees “punched the air” with their fists when the remainder (excluding myself) of the APC resolved to support “NP-RZ-2006.1 (Elliot) in principle, with some reservations concerning parking”.

However in a staff report dated 19Jun2007 for the 28Jun2007 LTC deliberation of first reading for draft bylaw 172, North Pender Planner Robert Kojima advised the LTC against i) accessory residential use for the Shed and ii) giving a site specific accessory residential permitted use for the subject W4 water zoning.

Two court actions were brought by the Islands Trust (2008 & 2009; attachments 3&4 combined) to clarify disputed matters between the LTC and the owners of the “shed” ‘sliver’ parcel.

In a third court action brought by the Islands Trust, the B.C. Supreme Court found (2014, Exhibit 10 and Attachment 5) that the LTC is entitled to a declaration that the Shed has been converted to a dwelling contrary to the LUB and ordered that the defendants remove the kitchen, bedroom, bathroom and other living areas from the Shed within one year. Notwithstanding, the 2022 B.C. Assessment (Exhibit 6) for the “shed” ‘sliver’ parcel describes the shed structure as a basic one story, 1539 sq. ft. house with two bedrooms and a bathroom.

It is ironic that after the staff effort and taxpayer expense of three court actions 2008-2014 to counter wilful landowner residential use of the shed, that in 2022 staff now recommends zoning permission for full (not accessory) residential use (of the small part of the shed above the natural boundary) without the new landowner making formal application.

Full residential use of the smaller part of the shed structure above the natural boundary is proposed; not the accessory residential use (to commercial principle use) applied for in the NP-RZ-2006.1 application.

Again, planning staff and North Pender Trustees, please remove residential rezoning of the Port Washington “store” and ‘sliver’ (Exhibit 11) “shed” parcels from the current LUB review and meaningfully consult with both residents and the First Nations interest (note the second page of Exhibit 14) before proceeding with land use planning which would predispose residential use of the foreshore.

Michael Sketch
North Pender Island



Appendix

Port Washington “Shed”: summary of residential use of land at the natural boundary

About 10% of the Port Washington “shed” (built circa 1910) structure rests on a 0.021 acre ‘sliver’ parcel at the natural boundary, with civic address 1200 Port Washington Road (PID 025 220 420). The remainder of the shed structure rests on foreshore land below the natural boundary; which land is joint Islands Trust and Provincial jurisdiction. Despite prior commercial use for the shed, during about 1994 to 2014, the shed was used as a residence, contrary to zoning. The courts ceased residential use in 2014.

In 2022, the “shed” parcel was purchased in fee simple by two persons, as joint tenants. The upland “store” parcel is owned by a company in which the two persons are said to have an interest.

As part of the North Pender Land Use Bylaw amendment project, Commercial to Residential rezoning is proposed for both the 0.021 acre ‘sliver’ parcel and the contiguous upland 0.22 acre parcel lands; without landowner application and without an explanatory staff report. Residential zoning in current LUB amendment will predispose OCP amendment.

In and of itself, rezoning of land above the natural boundary which 10% of the shed floor area rests on, wouldn’t permit residential use of foreshore land. But residential rezoning of the small upland parcel may predispose a North Pender site specific amendment of the W4 water zone and in turn, provincial lease approval.

Between 1994 and 2014 there was vigorous opposition to residential use of the shed from North Pender residents.

Although access to the foreshore of Trust Area islands is important for First Nations, the First Nations interest wasn’t acknowledged and there was no meaningful consultation evident in Islands Trust 2006 – 2007 staff reports and none since.

Notwithstanding, staff have recommended, as indicated in a letter from the current owners (8 March, 2022 Exhibit 1), that zoning of contiguous parcels:
i) Port Washington “store” (1201 Port Washington Rd., PID 000 585 092; 0.22 acres)
and ii) “shed” (1200 Port Washington Rd., PID 025 220 420, 0.021 acres)
be changed from Commercial to Residential (RR2).

The owners (Exhibit 1) have not undertaken to amalgamate the two parcels.

Prior applications (NP-RZ-2006.1 – Elliot & NP-RZ-2006.1) for accessory residential use of the “shed” structure ended with a 2014 provincial Supreme Court decision (Exhibit 10 - Reasons for Judgement, Supreme Court of B.C., Docket VA S112983, Vancouver registry, cited as North Pender Island Local Trust Committee v. Hunt, 2014 BCSC 1438). The court found that the LTC is entitled to a declaration that the Shed has been converted to a dwelling contrary to the Land Use Bylaw and ordered that the defendants remove the kitchen, bedroom, bathroom and other living areas from the Shed within one year.

List of 14 Exhibits

Exhibit 1 – Letter from current owners of parcels with civic address 1200 and 1201 Port Washington Road, dated 8 March, 2022.

Exhibit 2 – Image from mid 1920s of Port Washington “Store” and adjacent “Shed”. The Store land and land with about 10% of the Shed structure were on the same parcel. The parcel was zoned for commercial use. In the 1990s, the parcel was subdivided; Exhibits 3 & 4.

Exhibit 3 – Excerpt from title search for the upland Port Washington “Store” parcel with civic address 1201 Port Washington Road (0.22 acres, PID 000 585 092)

Exhibit 4 – Excerpt from title search for the “Shed” parcel at the natural boundary with civic address 1200 Port Washington Road (0.021 acres, PID 025 220 420) followed by Part 23, Section 750.1 “Contravention of bylaws – filing in land title office” of the provincial Municipal Act, pertaining to the Bylaw Contravention Notice legal notation shown on title.

Exhibit 5 – Excerpt from the B.C. Assessment report for the upland Port Washington “Store” parcel with civic address 1201 Port Washington Road (0.22 acres, PID 000 585 092)

Exhibit 6 – Excerpt from the B.C. Assessment report for the “Shed” parcel at the natural boundary with civic address 1200 Port Washington Road (0.021 acres, PID 025 220 420).

Exhibit 7 – Excerpt from an Islands Trust bylaw enforcement officer’s affidavit dated 12Aug2012 respecting residential use of the “Shed” structure with about 10% of the 1500 sq ft floor area on land above the natural boundary and the greater part of the shed structure supported by foreshore land. The upland part of the shed is on land with civic address 1200 Port Washington Road (0.021 acres, PID 025 220 420). Explanatory text is added below the bylaw enforcement officer’s finding.

Exhibit 8 – This page and the following seven pages (total 8) are i) 20Feb2013 correspondence from Andrew Gage, staff lawyer for West Coast Environmental Law to the Vancouver Health Authority, on behalf of a resident of North Pender Island; followed by ii) 13Feb2013 correspondence from a North Pender resident to Andrew Gage with historical context of sewage disposal beneath the “Shed” structure and corresponding photographic images.

Exhibit 9 – Excerpt from a provincial Dpt. of Lands, Forests and Water Resources watershed map for North Pender Island with (pink shading) areas identified by the Islands Trust where groundwater depletion is a major concern. The adapted watershed map is included with a memorandum prepared by J.C. Foweraker, Ministry of the Environment, “Groundwater and Surface Water Problems, North Pender Island”, 27Jul1979.

Exhibit 9 (continued) – Excerpts from a memorandum prepared by J.C. Foweraker, Ministry of the Environment, “Groundwater and Surface Water Problems, North Pender Island”, 27 July, 1979, respecting the Port Washington area.

Exhibit 10 – This page and the following page (total 2) are excerpts from the Reasons for Judgement, Supreme Court of B.C., Docket VA S112983, Vancouver registry, 28 July, 2014, cited as North Pender Island Local Trust Committee (LTC) v. Hunt, 2014 BCSC 1438.

The court found that the LTC is entitled to a declaration that the Shed has been converted to a dwelling contrary to the Land Use Bylaw and ordered that the defendants remove the kitchen, bedroom, bathroom and other living areas from the Shed within one year.

Exhibit 11 – Survey plan for the parcel with civic address 1200 Port Washington Road (0.021 acres, PID 025 220 420) showing the “Shed” structure, largely located on land below the natural boundary.

Exhibit 12 – Excerpts from staff report 22Nov2006 to advise North Pender LTC on rezoning of i) a parcel (1200 Port Washington Road, PID 025 220 420, 0.021 acres) at the natural boundary and ii) the contiguous water lot, a part of the W4 Zone; to permit accessory (to commercial) residential use.

Exhibit 12 (continued) – “Site Context” excerpt from 22Nov2006 staff report.

Exhibit 13 – Excerpts from staff report 19Jun2007 to advise North Pender LTC on rezoning of i) a parcel (1200 Port Washington Road, PID 025 220 420, 0.021 acres) at the natural boundary and ii) the contiguous water lot, a part of the W4 Zone; to permit accessory (to commercial) residential use.

Exhibit 13 (continued) – Excerpts from “Site Context” and from ‘responses from referral agencies’ in 19Jun2007 staff report.

Exhibit 14 – Draft Official Community Plan (OCP) amending bylaw 223, dated 26May2022, includes a rezoning from Commercial to Residential which, if adopted, will amend the OCP.

The amendment, and others, are part of the current North Pender Land Use Bylaw (LUB) project, in which zoning for lots with civic address i) 1200 Port Washington Rd. (0.021 acres, PID 025 220 420) and ii) 1201 Port Washington Rd. (0.22 acres, PID 000 585 092), is amended from Commercial to Residential.

This draft amendment to the North Pender Island OCP is followed by an image (1 page) of Section 879 of the Local Government Act: “Consultation during OCP development”.

End of list of Exhibits 1 to 14

Exhibit 1 – Letter from current owners of parcels with civic address 1200 and 1201 Port Washington Road, dated 8 March, 2022.

Nathan Hoag and Amber Bourgeois

March 8, 2022

Dear North Pender Island Trustees,

We are writing to provide information for discussion regarding properties that we have purchased on North Pender Island. Possession date is set for March 15, 2022.

This pertains to [REDACTED] which used to be the location of the [REDACTED] [REDACTED] I viewed the Dec. 4, 2021, LTC meeting where the LUB technical zoning amendment was discussed, and the trustees requested more information on potential plans.

When I met with Kim Stockdill and Robert Kojima to review potential options, I was informed that as part of the current Land Use Bylaw Review Project, there was a recommendation from the planners that these properties be rezoned from C1a to RR2. The rationale behind proposing this change was to help protect the rural character of Port Washington.

As a specialist physician based in Victoria, I am planning to hold outreach specialist clinics at the Pender Islands Health Centre. VIHA has agreed to support these clinics with ongoing funding. I believe this would add value for the community by improving access to specialist medical care on Pender Island. If the properties were converted to RR2, as suggested in the LUB review, our plan would be to build a small home in this location. This would afford the ability to serve the patients of Pender Island while having a place for our family to stay. We would also like to preserve and restore “The Shed”, which was built on the property in 1910.

As part of any potential plan to develop these properties, a boundary adjustment would be proposed. This has been surveyed, and would provide a community amenity by moving the lot lines to create permanent access to public parking spaces in Port Washington, which currently lie on the property.

From an environmental standpoint, I believe a small, energy-efficient, residence would have less impact than a commercial enterprise in this location. Previous discussions with neighbouring property owners have demonstrated support for a residential use in this location.

I believe the potential benefits of conversion of these properties from C1a to RR2 would outweigh any potential downsides, and hope that the trustees will agree with the planners’ recommendations outlined in the technical amendments of the LUB Review to change zoning from C1a to RR2.

Sincerely,

Nathan Hoag and Amber Bourgeois

Exhibit 2 – Image from mid 1920s of Port Washington “Store” and adjacent “Shed”. The Store land and land with about 10% of the Shed structure were on the same parcel. The parcel was zoned for commercial use.

The floor area of the Shed was and is about 1500 sq ft, with about 90% of that floor area located on land below the natural boundary. The shed is “split zoned”. The upland 10% is commercial and the portion resting on the foreshore is zoned W4.

The Shed was traditionally used for grain storage.

In about 1994, the small Shed parcel (0.021 acres, PID 025 220 420) was subdivided from the Store parcel and the use of the Shed changed to residential, with neither policy nor zoning bylaw support.

Today, the Store structure has been removed. The Shed structure remains.



Exhibit 3 – Excerpt from title search for the upland Port Washington “Store” parcel with civic address 1201 Port Washington Road (0.22 acres, PID 000 585 092)

TITLE SEARCH PRINT

2022-05-01, 15:21:06

File Reference:

Declared Value \$200000

****CURRENT AND CANCELLED INFORMATION SHOWN****

Land Title District	VICTORIA
Land Title Office	VICTORIA
Title Number	CA9874307
From Title Number	FB142874
Application Received	2022-04-25
Application Entered	2022-04-27
Registered Owner in Fee Simple	
Registered Owner/Mailing Address:	NATHAN ANDREW ALEXIS HOAG, PHYSICIAN AMBER KRISTINE BOURGEOIS, NURSE 629 NIAGARA ST VICTORIA, BC V8V 1J1 AS JOINT TENANTS
Taxation Authority	Capital Assessment Area
Description of Land	
Parcel Identifier:	000-585-092
Legal Description:	LOT 1, SECTION 23, PENDER ISLAND, COWICHAN DISTRICT, PLAN 3658
Legal Notations	NONE
Charges, Liens and Interests	
Nature:	EASEMENT
Registration Number:	EG37971
Registration Date and Time:	1993-03-31 14:40
Remarks:	APPURTENANT TO PARCEL A, LOT 21, PLAN 1377
Nature:	EASEMENT
Registration Number:	EL18235
Registration Date and Time:	1997-02-10 15:01
Remarks:	APPURTENANT TO PARCEL A (DD 39217I) LOT 21, PLAN 1377
Duplicate Indefeasible Title	NONE OUTSTANDING
Transfers	NONE
Pending Applications	NONE
Corrections	NONE

Exhibit 4 – Excerpt from title search for the “Shed” parcel at the natural boundary with civic address 1200 Port Washington Road (0.021 acres, PID 025 220 420) followed by Part 23, Section 750.1 “Contravention of bylaws – filing in land title office” of the provincial Municipal Act, pertaining to the Bylaw Contravention Notice legal notation shown on title.

TITLE SEARCH PRINT

2022-05-01, 11:58:00

File Reference:
Declared Value \$150000

****CURRENT AND CANCELLED INFORMATION SHOWN****

Land Title District	VICTORIA
Land Title Office	VICTORIA
Title Number	CA9874392
From Title Number	CA4607782
Application Received	2022-04-25
Application Entered	2022-04-27
Registered Owner in Fee Simple	
Registered Owner/Mailing Address:	QVH HOLDINGS INC., INC.NO. BC1277199 629 NIAGARA ST VICTORIA, BC V8V 1J1
Taxation Authority	Capital Assessment Area
Description of Land	
Parcel Identifier:	025-220-420
Legal Description:	LOT 1 SECTION 23 PENDER ISLAND COWICHAN DISTRICT PLAN VIP73194
Legal Notations	
	HERETO IS ANNEXED EASEMENT EG37971 OVER LOT 1, PLAN 3658
	BYLAW CONTRAVENTION NOTICE, MUNICIPAL ACT, SECTION 750.1 SEE EH54438
	HERETO IS ANNEXED EASEMENT EL18235 OVER LOT 1, PLAN 3658
Charges, Liens and Interests	NONE
Duplicate Indefeasible Title	NONE OUTSTANDING
Transfers	NONE
Pending Applications	NONE
Corrections	NONE

Exhibit 4 (continued) –Municipal Act

[RSBC 1979] CHAPTER 290

Part 23 — Actions, Suits and Executions

Contravention of bylaws — filing in land title office

750.1 (1) Where, during the course of carrying out his duties, a building inspector

(a) observes a condition, with respect to land or a building or structure, that he considers

(i) results from the contravention of, or is in contravention of a bylaw or regulation under Division (5) of Part 21 or under any other enactment relating to the construction or safety of buildings or structures, and

(ii) as a result of that condition, a building or structure is unsafe or is unlikely to be usable for its expected purpose during its normal lifetime, or

(b) discovers that anything was done with respect to a building or structure or the construction thereof, that required a permit or an inspection under a bylaw, regulation or enactment referred to in paragraph (a) (i), and that the permit was not obtained or the inspection not satisfactorily completed,

the inspector may, in addition to any other action that he is authorized or permitted to take, recommend to council that a resolution under subsection (2) be considered by the council.

(2) A recommendation under subsection (1) shall be given to the clerk of the municipality in writing, and the clerk shall, after notifying the registered owner of the land with respect to which the recommendation relates, place the matter before council which may, after hearing the building inspector and the owner, confirm the recommendations of the building inspector and pass a resolution directing the clerk to file a notice in the land title office stating that

(a) a resolution relating to that land has been made under this section, and

(b) further information respecting it may be inspected at the offices of the municipality and the clerk shall ensure that all records are available for that purpose.

(3) Where the registrar of land titles receives a notice under subsection (2), he shall, on payment of the prescribed fee, make a note of the filing against the title to the land that is affected by the notice.

(4) The clerk shall, on receiving a report from a building inspector that the condition that gave rise to the filing of the notice under subsection (2) has been rectified, file a cancellation notice, and the registrar shall, on receiving the notice, cancel the note against the title to which it is related.

Exhibit 4 (continued) –

(5) In the event of any omission, mistake or misfeasance by the registrar or his employees in relation to the making of a note of the filing under subsection (3) after the notice is received by the land title office,

(a) the registrar is not liable nor is the Crown liable vicariously, and

(b) the assurance fund or the Attorney General as a nominal defendant is not liable under Part 20 of the *Land Title Act*.

(6) An owner of land with respect to which a notice has been filed under this section, may apply to the council for a resolution that the note be cancelled, and the council may, after hearing the applicant, pass a resolution directing the clerk to file a cancellation notice.

(7) Where a resolution has been passed under subsection (6), the clerk shall file a cancellation notice in the land title office and the registrar shall, on receiving the notice, cancel the note against the title to which it is related.

(8) Where the council does not pass a resolution under subsection (6), the owner may apply to the Supreme Court and notify the municipality to attend before the court to show cause why the note should not be cancelled, and the court may, after reviewing any evidence that the owner and the municipality may adduce, make an order directing the registrar to cancel the note made under subsection (3), and the registrar shall, on receiving the order, cancel the note accordingly.

(9) The note of a filing of a notice under this section is extinguished when a new title to the land issues in consequence of the deposit of a plan of subdivision or a strata plan.

(10) Neither the building inspector nor the municipality is liable for damage of any kind for the doing of anything, or the failure to do anything, under this section that would have, but for this subsection, constituted a breach of duty to any person.

(11) This section applies to a regional district as though the board was the council and the secretary was the clerk.

Historical Note(s): 1987-14-6.

End of Exhibit 4

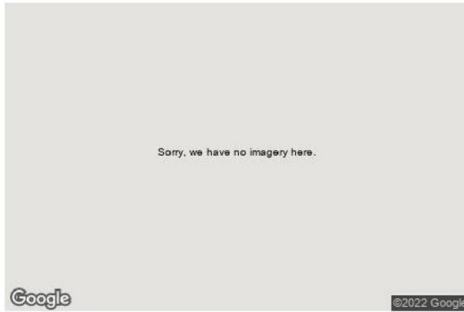
Exhibit 5 – Excerpt from the B.C. Assessment report for the upland Port Washington “Store” parcel with civic address 1201 Port Washington Road (0.22 acres, PID 000 585 092)



The information in this report is provided for your information and convenience. If the information has been altered for any reason from the format in which it was originally received verification may be required by BC Assessment. In any case of doubt, the official BC Assessment records shall prevail.

1201 PORT WASHINGTON RD PENDER ISLAND VON 2M1

Area-Jurisdiction-Roll: 01-764-08616.000



Total value \$266,000

2022 assessment as of July 1, 2021

Land \$266,000

Buildings \$0

Previous year value \$196,000

Land \$196,000

Buildings \$0

Property value history



Property value and Gulf Islands Rural jurisdiction change



Property information

Year built	1910
Description	Retail Store
Bedrooms	
Baths	
Carports	
Garages	
Land size	.22 Acres
First floor area	
Second floor area	
Basement finish area	
Strata area	
Building storeys	
Gross leasable area	
Net leasable area	

Legal description and parcel ID

Lot 1 Plan VIP3658 Section 23 Land District 16 Portion
PENDER ISLAND
PID: 000-585-092

Sales history (last 3 full calendar years)

No sales history for the last 3 full calendar years

Manufactured home

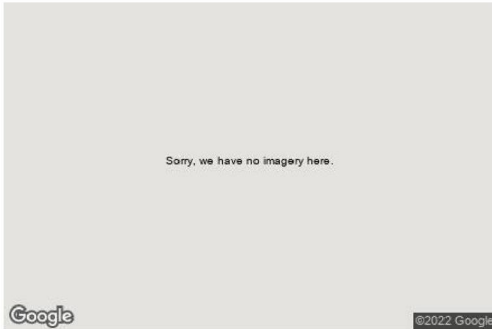
Width
Length

Exhibit 6 – Excerpt from the B.C. Assessment report for the “Shed” parcel at the natural boundary with civic address 1200 Port Washington Road (0.021 acres, PID 025 220 420).



The information in this report is provided for your information and convenience. If the information has been altered for any reason from the format in which it was originally received verification may be required by BC Assessment. In any case of doubt, the official BC Assessment records shall prevail.

1200 PORT WASHINGTON RD PENDER ISLAND VON 2M1
Area-Jurisdiction-Roll: 01-764-08612.010



Total value \$237,900

2022 assessment as of July 1, 2021

Land \$85,900

Buildings \$152,000

Previous year value \$154,300

Land \$67,500

Buildings \$86,800

Property value history



Property value and Gulf Islands Rural jurisdiction change



Property information

Year built	1910
Description	1 STY house - Basic
Bedrooms	2
Baths	1
Carpports	
Garages	
Land size	.021 Acres
First floor area	1,539
Second floor area	
Basement finish area	
Strata area	
Building storeys	
Cross leasable area	
Net leasable area	

Legal description and parcel ID

Lot 1 Plan VIP73194 Section 23 Land District 16 PENDER ISLAND
PID: 025-220-420

Sales history (last 3 full calendar years)

No sales history for the last 3 full calendar years

Manufactured home

Width
Length

Exhibit 7 – Excerpt from an Islands Trust bylaw enforcement officer's affidavit dated 12Aug2012 respecting residential use of the "Shed" structure with about 10% of the 1500 sq ft floor area on land above the natural boundary and the greater part of the shed structure supported by foreshore land. The upland part of the shed is on land with civic address 1200 Port Washington Road (0.021 acres, PID 025 220 420). Explanatory text is added below the bylaw enforcement officer's finding.

The Shed appeared to me to be used as a residence only and I found no separate area set up as a business office. I observed that the interior of the Shed consists of only three separate rooms. In the north-east corner of the Shed is a large room containing bedroom furniture. That room appeared to be currently used as a bedroom with clothing and other personal effects ready for immediate use. In the north-west corner is the only other fully enclosed room, the bathroom. This too contained personal effects and toiletries which appeared to have been recently used. The kitchen is situated on the north side of the Shed between the bedroom and the bathroom; it is open to the large living room area.

Excerpt of supplement to the affidavit of Islands Trust Bylaw Enforcement officer Miles Drew, dated 12 August, 2012 in which the three rooms of the "Shed" structure, civic address 1200 Port Washington Road, are described as bedroom, bathroom and combined i) living room and ii) kitchen.

Exhibit 8 – This page and the following seven pages (total 8) are i) 20Feb2012 correspondence from Andrew Gage, staff lawyer for West Coast Environmental Law to the Vancouver Health Authority, on behalf of a resident of North Pender Island; followed by ii) 13Feb2013 correspondence from a North Pender resident to Andrew Gage with historical context of sewage disposal beneath the “Shed” structure and corresponding photographic images.



200 - 2006 West 10th Avenue
Vancouver, BC V6J 2B3
www.wcel.org

tel: 604.684.7378
fax: 604.684.1312
toll free: 1.800.330.WCEL (in BC)
email: admin@wcel.org

20 February 2013

Vancouver Island Health Authority
Suite 430 - 1900 Richmond Avenue,
Victoria, B.C. V8R 4R2

*** BY EMAIL C/O CAROLLYNE.EVANS@VIHA.CA AND MAIL ***

Attn. Dr. Richard Stanwick, Chief Medical Health Officer

Dear Sirs/Mesdames:

Re: Untreated Sewage at Port Washington, North Pender Island

I write on behalf of [REDACTED] of North Pender Island, BC regarding a violation of the *Public Health Act* and its regulations and a resulting health hazard: a structure attached to a wharf which is dumping untreated sewage onto the foreshore at Port Washington on North Pender Island. I would ask that you please follow up with [REDACTED] directly.

As I understand the situation, there is a structure attached to the wharf at Port Washington, the footprint of which extends off the wharf or the ocean and partly over a narrow strip of adjacent land (the “Structure”). The wharf is apparently owned by the Southern Gulf Islands Harbour Commission, which is a committee of the Capital Regional District (CRD), but the strip of land was purchased some years ago by a Mr. Hunt, and I understand it now owned by his children. The Structure is being used as a residence.

Over time, members of the Hunt family have upgraded this Structure, which was historically a grain storage shed, into a residence, including installing one or more toilets. The toilet(s) are connected to a makeshift series of pipes, but ultimately discharge untreated sewage onto the foreshore below the wharf.

As a result of this *ad hoc* arrangement, I am advised that many members of the local community, including a number of families with young children, feel unable to use the beach and foreshore area due to concerns about public health.

Exhibit 8 (continued) –

Local residents have complained to various government agencies for well over a decade, but have apparently been advised that the jurisdiction of these agencies is limited, since the Structure is partly over land and partly over water,¹ with the result that no government agency has taken responsibility for the overall structure.

I enclose an email with photos and explanation of the current situation from by [REDACTED] [REDACTED] also a concerned resident of North Pender Island.

Untreated Sewage under the Public Health Act

Although I believe that the authority and, indeed, the responsibility of your office to address this situation is clear, given the lack of action by any government agency to date, I will set out below my understanding of the relevant legislation.

The *Public Health Act*² gives Medical Health Officers a wide range of powers to address Health Hazards. Section 1 defines Health Hazard as:

"health hazard" means

(a) a condition, a thing or an activity that

(i) endangers, or is likely to endanger, public health, or

(ii) interferes, or is likely to interfere, with the suppression of infectious agents or hazardous agents, or

(b) a **prescribed condition, thing or activity**, including a prescribed condition, thing or activity that

(i) is associated with injury or illness, or

(ii) fails to meet a prescribed standard in relation to health, injury or illness; [Emphasis added]

The Sewerage Systems Regulation,³ under the *Public Health Act*, specifically prescribes systems that discharge raw sewage as a health hazard:

¹ I pause to note that this advice was almost certainly incorrect. It is well established that provincial laws of general application do apply to federal works: *BC v. Van Gool* (1987), 12 B.C.L.R. (2d) 361 (CA). In recent years the courts have moved in the direction of holding that even laws of direct application may apply to federal works in certain circumstances: *Burrardview Neighbourhood Association v. Vancouver (City)*, 2007 SCC 23. In the current case the wharf is managed by a committee of the Capital Regional District and the discharge is into waters the bed of which are provincially owned.

² [SBC 2008] Chapter 28.

³ B.C. Reg. 326/2004 (the "Regulation").

Exhibit 8 (continued) –

2.1 (1) The following are prescribed as health hazards:

(a) the discharge of domestic sewage or effluent into

(i) a source of drinking water, as defined by the *Drinking Water Protection Act*,

(ii) surface water, or

(iii) tidal waters;

(b) the discharge of domestic sewage or effluent onto land;

(c) the discharge of domestic sewage or effluent into a sewerage system that, in the opinion of a health officer, is not capable of containing or treating domestic sewage;

(d) the proposed construction or maintenance of a sewerage system that, if constructed or maintained in accordance with the plans and specifications filed under section 8 or the maintenance plan filed under section 9, may in the opinion of a health officer cause a health hazard.

(2) The construction and maintenance of a holding tank or sewerage system described in section 2 are prescribed as regulated activities. [Emphasis added]

It is not necessary for those concerned about the discharge of sewage to show that it is actually harming public health – the act of discharging domestic sewage itself constitutes a health hazard under the Act and regulations.

In addition, the Regulation also requires the occupier of a structure to ensure that domestic sewage from that structure is discharged into an appropriate sewerage system **and** (even if appropriately discharged) to ensure that it does not cause a health hazard:

3 (1) The owner of every parcel on which a structure is constructed or located must ensure that all domestic sewage originating from the structure

(a) is discharged into

(i) a public sewer,

(ii) a holding tank that is constructed and maintained in accordance with Part 2 [*Holding tanks*], or

(iii) a sewerage system that is constructed and maintained in accordance with Part 3 [*Sewerage systems*], and

(b) does not cause a health hazard.

Exhibit 8 (continued) –

It seems relatively clear from the above that where an individual is causing raw domestic sewage to be discharged onto foreshore and/or (depending on the tide levels) tidal waters, a health hazard is occurring, and your office has broad powers (including under Part 4 of the Regulation) to investigate and to make an appropriate order.

Conclusion

The residents of North Pender should not have to put up with this untenable – and illegal – situation, which has continued for far too long. Your office, which is responsible for protecting the health of the public, has a duty to intervene as quickly as possible. I trust that your office will inspect and remedy the situation. Please contact Ms. Beverley Bradley at (250) 629-6192 or 3727 Port Road, Pender Island, BC VoN 2M2 immediately.

We will be watching to see that this matter is resolved in a satisfactory manner.

Sincerely,



Andrew Gage,
Staff Lawyer

Enclosure⁴

cc. [REDACTED] (by email)

cc. [REDACTED] (by email)

⁴ Electronic copy of the enclosure is in colour. The mail copy will be in black and white.

Exhibit 8 (continued) –

From: [REDACTED]
Sent: **Wednesday, February 13, 2013 10:01 AM**
To: **Andrew Gage;** [REDACTED]
Subject: **updated photo's of plumbing at the "Shed" in Port Washington**

Hello [REDACTED],

Below are three pictures that were taken yesterday, Feb 12, 2012 when [REDACTED] and I walked under the "Shed" at low tide to see what if anything had changed for the plumbing and direct discharge of black and grey water to the ocean. The only change from October 2010 is that the plastic garbage can is now gone and the sump pump from within the can is resting on the cement foundation block (lower left corner of the photo), apparently rusted out. Now, both grey and black water discharge directly onto the rocky shoreline and the higher tides and ferry wave action are what cleans up the area. The smell was not too bad but it all looked disgusting.

I should have taken photo's to help orient a person new to the issue and I can provide either older photo's or take some new ones of the shed and foreshore for this purpose - however the best one from yesterday is the photo below which shows a 3" black pipe running down from the upper right to left of the picture - this is the outfall from a toilet and the next two pictures show the outfall point. The curved plastic pipe leading to the lower right is the former discharge line from the sump pump. The primary benefit of this picture is to show where the shoreline is under the shed building and that the plumbing outfall is located around the high water mark. The two photo's at the end of this message show the details of the outfall and mess on the beach.

Exhibit 8 (continued) –

If you need more photo's or more description, please call or email,
regards,

[Redacted]

[Redacted]

Pender Island, BC [Redacted]

[Redacted]



Exhibit 8 (continued) –

this picture shows where the 3" toilet outfall pipe is and the resulting mess below on the rocks. The end of the 3" black pipe is just about where the circle of green rope is. To the left of this are two 1.5" or 2" black pvc pipes coming together into a short vertical piece that also discharges directly onto the beach. These pvc pipes run along the floor joists and have goosenecks, very typical of grey water connections to sinks and tubs/showers. This water would be defined as "grey" water and would be soapy. The black water discharge from the 3" pipe is simply raw sewage from the toilet.

Also in the picture is an old rusty propane tank, this was there before and I don't know its purpose. As in the picture above, you can see the rusty sump pump sitting in the concrete foundation block - my guess is this is the pump that formerly was in the plastic garbage can that was located on the other side of the 2x4 in the picture below. You can see from the maze of pipes and wires under the shed floor that these were not installed by a professional and of course were never inspected by the CRD building department, even though approximately 1/4 of the building is over dry land.



Exhibit 8 (continued) –

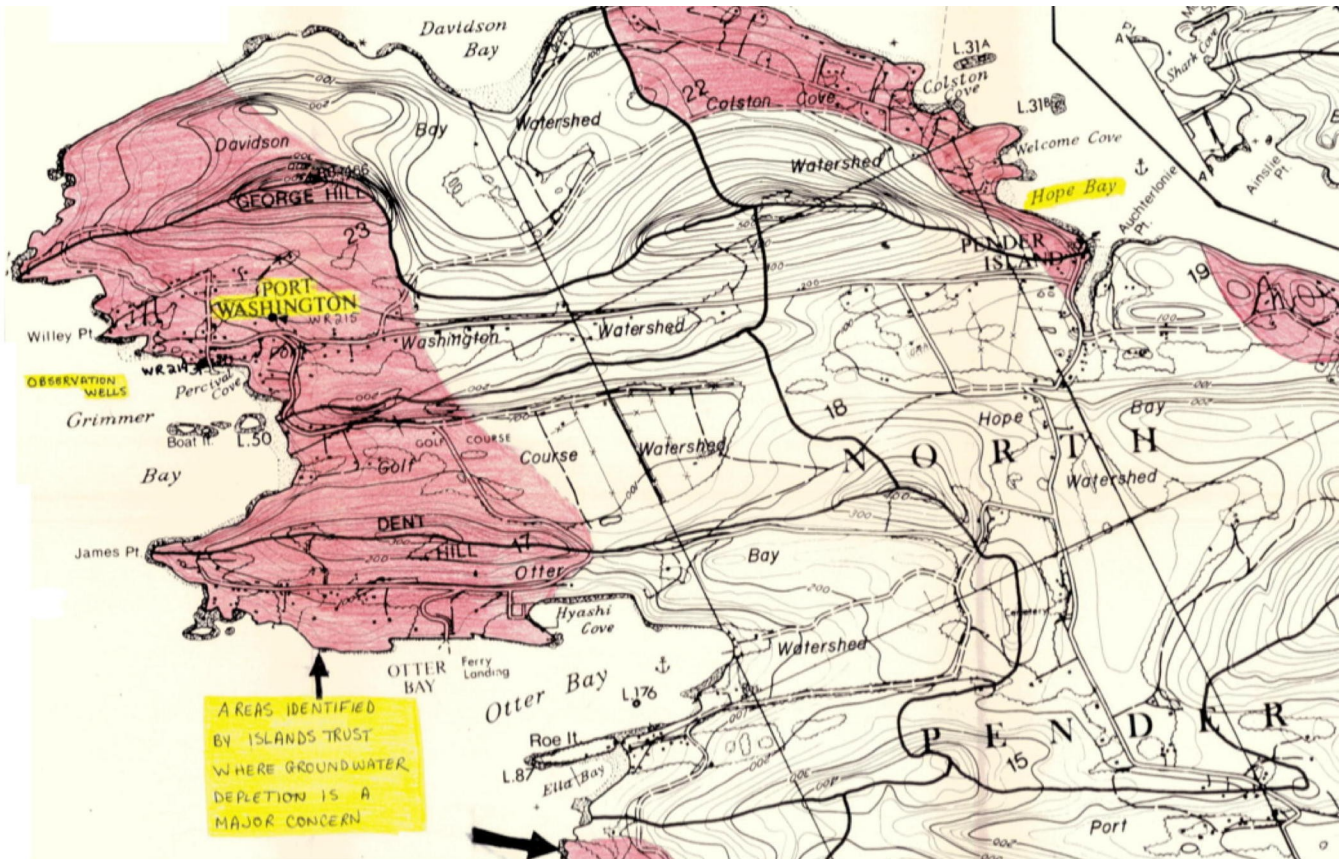
This last picture shows more detail of the residue on the rocks from the outfall of the two pipe sections. Presumably the white stuff is partially dissolved toilet paper but we had no sanitary means of verifying this. This rocky area would be under water during high tides and wave action from the ferries which pass by in Swanson channel on the half hour. Swanson channel is the main route between Swartz Bay and Tswassen with hourly sailings, the north bound ferry goes by Port Washington about 1/2 hour after the hour and the southbound ferry usually goes by Port Washington on the hour.



End of Exhibit 8

Exhibit 9 – Excerpt from a provincial Dpt. of Lands, Forests and Water Resources watershed map for North Pender Island with (pink shading) areas identified by the Islands Trust where groundwater depletion is a major concern. The adapted watershed map is included with a memorandum prepared by J.C. Foweraker, Ministry of the Environment, “Groundwater and Surface Water Problems, North Pender Island”, 27 July, 1979. See Exhibit 9 continued.

The civic address for the “Shed” parcel is 1200 Port Washington Road, at the natural boundary and known by the Islands Trust to be in an area with groundwater problems.



N.W. of N. Pender Island. Excerpt from N.&S. Pender watershed map, B.C. Dpt. of Lands, Forests and Water Resources, File 0231913, with areas identified by Islands Trust where groundwater depletion is a major concern. Map is Appendix 2 of memorandum; J.C. Foweraker, Water Investigation Branch, Ministry of the Environment. File 92/B14, 27 July, 1979 Re: Groundwater and Surface Water Problems, N. Pender Island

<small>Photogrammetric Mapping was carried out by the Survey & Mapping Branch, Lands Service, this sheet being the mapping as on Sheet _____ Drawing No. M.235</small>	LEGEND		<small>BRITISH COLUMBIA DEPARTMENT OF LANDS, FORESTS AND WATER RESOURCES WATER RESOURCES SERVICE WATER INVESTIGATIONS BRANCH GROUNDWATER DIVISION</small>		<small>FILE No. 0231913</small>
	 WATERSHED BOUNDARIES		<small>DESIGNED DRAWN TRACED CHECKED DATE</small>	NORTH & SOUTH PENDER ISLAND WATERSHED MAP	
			<small>ENGINEER</small>	<small>APPROVED DIV. CHIEF</small>	<small>DWG. No. FIGURE 5</small>
					<small>SHEET OF</small>

Exhibit 9 (continued) – Excerpts from a memorandum prepared by J.C. Foweraker, Ministry of the Environment, “Groundwater and Surface Water Problems, North Pender Island”, 27 July, 1979, respecting the Port Washington area.



Province of
British Columbia

MEMORANDUM

To: J.C. Foweraker, Head
Groundwater Section
Hydrology Division
Water Investigations Branch

Date: July 27, 1979

File: 92 B/14

Re: Groundwater and Surface Water Problems,
North Pender Island

As requested I have briefly reviewed the status of groundwater and surface water studies completed and presently being undertaken by our Branch on North Pender Island. Information on these studies has been obtained from C.H. Coulson, Head of the Surface Water Section, R.N. Nordin and B.J. Kangasniemi of the Environmental Studies Division and from files of the Groundwater Section. Mr. R. Pollard of the Community Water Supply Division was also contacted regarding analyses carried out by the Water Rights Branch on water supply and sewerage systems on Pender Island. Background information on proposed island by-laws etc., was obtained from T. Roberts of the Islands Trust. This memorandum summarizes this information and provides some recommendations on possible future groundwater and surface water studies which might be considered for the island.

Excerpt from page 7

C. Port Washington - Hope Bay Area

- March 17, 1976 - Hilary Brown, Chairman of the Islands Trust in a letter to Mr. Brady requested to know, "how much further development the groundwater reserves of the northern parts of the island can sustain without degrading the resource or causing existing of future users to drill deeper and deeper wells."
- June 30, 1976 - A report completed by G. Harris of the Groundwater Section entitled, "Preliminary Groundwater Investigation of North Pender Island," was forwarded along with a covering memorandum by A. Kohut to the Islands Trust by Mr. Brady in response to the March 17 request. This report indicated from the preliminary model analysis that groundwater withdrawal rates in the Port Washington area and the Hope Bay area appear to be exceeding the natural annual recharge and groundwater mining may be occurring in these areas. It was recommended that observation wells should be established to verify this situation before any future development is planned in the watersheds. Other watersheds in the northern portion of the island showed potential for additional groundwater development.

End of Exhibit 9

Exhibit 10 – This page and the following page (total 2) are excerpts from the Reasons for Judgement, Supreme Court of B.C., Docket VA S112983, Vancouver registry, 28 July, 2014, cited as North Pender Island Local Trust Committee (LTC) v. Hunt, 2014 BCSC 1438.

The court found that the LTC is entitled to a declaration that the Shed has been converted to a dwelling contrary to the Land Use Bylaw and ordered that the defendants remove the kitchen, bedroom, bathroom and other living areas from the Shed within one year.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *North Pender Island Local Trust
Committee v. Hunt,*
2014 BCSC 1438

Date: 20140728
Docket: VA S112983
Registry: Vancouver

Between:

North Pender Island Local Trust Committee

Plaintiff

And:

**Travis Ethan Hunt, Amanda Rachael Marie Hunt,
Tracy Lynne Mundy, and James Webster Baron Mundy**

Defendants

Before: The Honourable Mr. Justice G.R.J. Gaul

Reasons for Judgment

Counsel for the Plaintiff: M. Moll

Counsel for the Defendants: A. Berns

Place and Date of Trial/Hearing: Victoria, B.C.
September 12 - 13, 2012

Place and Date of Judgment: Victoria, B.C.
July 28, 2014

Exhibit 10 (continued) –

Order

[68] For all of the foregoing reasons, the order sought at paragraphs 1 to 4 in Local Trust's Notice of Application filed 29 June 2012 is granted. Specifically, the Local Trust is entitled to:

- a) a declaration that the Shed has been converted to a dwelling contrary to the *Land Use Bylaw*,
- b) a declaration that the defendants are using the Shed for a residential purpose contrary to the *Land Use Bylaw*,
- c) a permanent injunction requiring the defendants to cease all residential use of the Shed; and
- d) a permanent injunction requiring the defendants to remove the kitchen, bedroom, bathroom and other living areas from the Shed, in accordance with all applicable enactments.

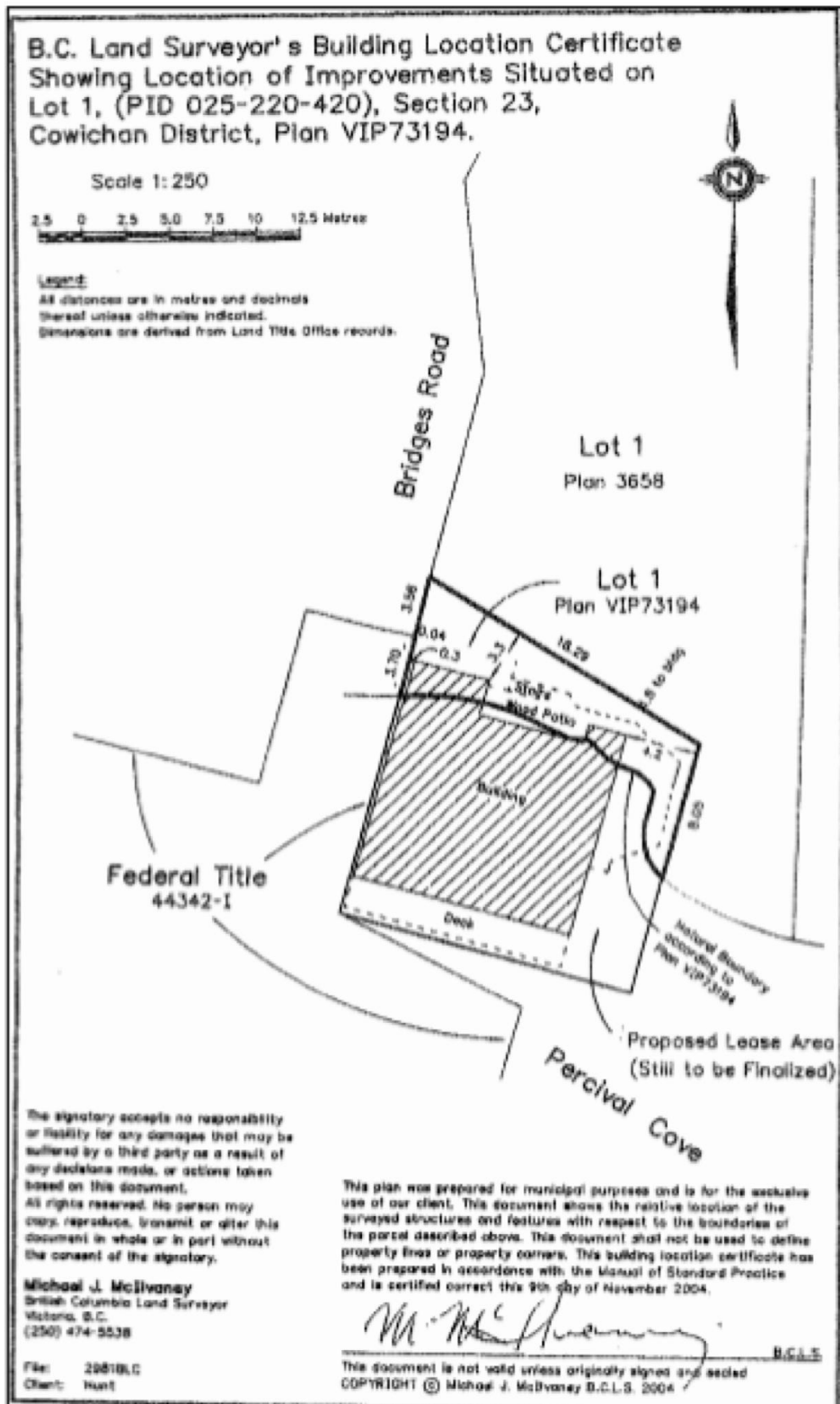
[69] The defendants will need time to comply with the injunctions. At the hearing of this summary trial, counsel agreed that in the event the injunctions were granted, a 12-month grace period from the date of these reasons would be a reasonable amount of time for the defendants to commence and complete the required renovations to the Shed and take whatever further steps are necessary to ensure its use complies with the *Land Use Bylaw*. I will therefore make that provision a further term of my order.

[70] The Local Trust has been successful on this summary trial. Consequently, they are entitled to their ordinary costs.

“G. R. J. Gaul J.”

End of Exhibit 10

Exhibit 11 – Survey plan for the parcel with civic address 1200 Port Washington Rd. (0.021 acres, PID 025 220 420) showing the “Shed” structure, largely located on land below the natural boundary.



Survey Plan

Exhibit 12 – Excerpts from staff report 22Nov2006 to advise North Pender LTC on rezoning of i) a parcel (1200 Port Washington Road, PID 025 220 420, 0.021 acres) at the natural boundary and ii) the contiguous water lot, a part of the W4 Zone; to permit accessory (to commercial) residential use.



STAFF REPORT

November 22, 2006

File No.: NP-RZ-2006.1

For Meeting of November 30, 2006

To: North Pender Island Local Trust Committee

From: Robert Kojima
Island Planner
Local Planning Services

CC: Brodie Porter, RPM

Re: **Rezoning Application - Lot 1, Section 23, Pender Island, Cowichan District, Plan VIP73194 and adjacent water lot (Port Washington Shed)**

Owner: Ronald B. Hunt
Applicant: Brian Elliott
Location: Port Washington

THE PROPOSAL: the application is to rezone the site of the Port Washington shed, consisting of Lot 1, Plan VIP73194 and the adjacent water. The draft zoning would permit use of the shed for retail sales, office, boat and marine equipment rental, limited services and as an accessory dwelling unit. The draft zoning would also permit the use of the dock for marine charters and tours. The application has been reviewed by the APC and a community information meeting has been held. The purpose of this report is to provide the Local Trust Committee (LTC) with an update on the status of the application and to provide the LTC with an opportunity to direct changes to the draft zoning, or decide to proceed no further, prior to referring the application to agencies for comment

Exhibit 12 (continued) – “Site Context” excerpt from 22Nov2006 staff report.

SITE CONTEXT: the subject site is located adjacent to the Port Washington dock and includes three separate components (please see site survey below):

1. A small upland parcel (Lot 1) which is 86m² (926 ft²) in area. Title to this parcel is held in fee simple by the Mr. Hunt. The applicant has stated that he has an option to purchase title to this lot.
2. The building (the 'shed'), which dates from the early part of the last century and was originally used as a storage building in conjunction with the Port Washington store. The shed is sited predominantly over the adjacent foreshore. It has been modified by the current occupant for residential use and contains approximately 1500 square feet of floor area, along with several areas of exterior deck.
3. The foreshore, title to which rests with the provincial crown. In order to occupy and use the portion of the shed over the foreshore, a user would be expected to seek and obtain tenure from province. The provincial agency responsible for granting crown tenure will only do so if the proposed use is consistent with local government zoning.

End of Exhibit 12

Exhibit 13 – Excerpts from staff report 19Jun2007 to advise North Pender LTC on rezoning of i) a parcel (1200 Port Washington Road, PID 025 220 420, 0.021 acres) at the natural boundary and ii) the contiguous water lot, a part of the W4 Zone; to permit accessory (to commercial) residential use.



STAFF REPORT

June 19, 2007

File No.: NP-RZ-2006.1

For Meeting of June 28, 2007

To: North Pender Island Local Trust Committee

From: Robert Kojima
Island Planner
Local Planning Services

CC: Brodie Porter, RPM

Re: Rezoning Application - Lot 1, Section 23, Pender Island, Cowichan District, Plan VIP73194 and adjacent water lot (Port Washington Shed)

Owner: Ronald B. Hunt
Applicant: same
Location: Port Washington

THE PROPOSAL: the application is to rezone the site of the Port Washington shed, consisting of Lot 1, Plan VIP73194 and the adjacent water. The draft zoning would permit use of the shed for retail sales, office, boat and marine equipment rental, limited services and as an accessory dwelling unit. The draft zoning would also permit the use of the dock for marine charters and tours. The application has been reviewed by the LTC, has referred to and reviewed by the APC, a community information meeting has been held and the application has been referred to agencies for comment. In May 2007, the owner stated that the applicant – Brian Elliott – was unable to complete the purchase of the property. Consequently, he (Ron Hunt) will be continuing with the application to rezone the property and the adjacent water. The purpose of this report is to provide the Local Trust Committee (LTC) with a summary of agency comment; and to provide the LTC with an opportunity to consider First Reading of the bylaw, with or without changes to the draft zoning, or decide to proceed no further with the application.

Exhibit 13 (continued) – Excerpts from “Site Context” and from ‘responses from referral agencies’ in 19Jun2007 staff report.

SITE CONTEXT: the subject site is located adjacent to the Port Washington dock and includes three separate elements (please also see the site survey below):

1. A small upland parcel (Lot 1) which is 86m² (926 ft²) in area. Title to this parcel is held in fee simple by the Mr. Hunt.
2. The building (the ‘shed’), which dates from the early part of the last century and was purportedly originally used as a storage building in conjunction with the Port Washington store. The shed is sited predominantly over the adjacent foreshore. It has been modified by the current occupant for residential use and contains approximately 1500 square feet of floor area, along with several areas of exterior deck.
3. The foreshore, title to which rests with the provincial crown. In order to occupy and use the portion of the shed over the foreshore, a user would be expected to seek and obtain tenure from province. The provincial agency responsible for granting crown tenure (ILMB) has stated that tenure would be required and if the proposed use is consistent with local government zoning.

Referral agencies have responded as follows:

- Fisheries and Oceans Canada: no response received.
- Integrated Land Management Bureau: approval recommended as it would legalize the existing use. A tenure application would be required if the rezoning is approved.
- Ministry of Environment: this ministry has stated that staff no longer review site specific referrals and refers local governments to its best management documents.

End of Exhibit 13

Exhibit 14 (continued) –

Local Government Act

[RSBC 1996] CHAPTER 323

Part 26 — Planning and Land Use Management

Consultation during OCP development

879 (1) During the development of an official community plan, or the repeal or amendment of an official community plan, the proposing local government must provide one or more opportunities it considers appropriate for consultation with persons, organizations and authorities it considers will be affected.

(2) For the purposes of subsection (1), the local government must

(a) consider whether the opportunities for consultation with one or more of the persons, organizations and authorities should be early and ongoing, and

(b) specifically consider whether consultation is required with

(i) the board of the regional district in which the area covered by the plan is located, in the case of a municipal official community plan,

(ii) the board of any regional district that is adjacent to the area covered by the plan,

(iii) the council of any municipality that is adjacent to the area covered by the plan,

(iv) first nations,

(v) school district boards, greater boards and improvement district boards, and

(vi) the Provincial and federal governments and their agencies.

(3) Consultation under this section is in addition to the public hearing required under section 882 (3) (d).

End of Exhibit 14

Content

1)

**IN THE SUPREME COURT OF BRITISH COLUMBIA
MBIA**

Citation: ***North Pender Island Trust
Committee v. Hunt,*** Date: 20080401
2008 BCSC 391 Docket: 96-0053
Registry: Victoria

Between:
North Pender Island Trust Committee
Plaintiff

And:
Ronald Blaine Hunt and Patrick John Mummery
Defendants

Before: The Honourable Mr. Justice Bracken

Reasons for Judgment

Counsel for the Plaintiff: F. V. Marzari
Counsel for the Defendant
Ronald Blaine Hunt: L. J. Alexander
Dates and Place of Trial/Hearing: November 5 - 6, 2007
Victoria, B.C.

2)

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***North Pender Island Trust Committee v. Hunt,*** Date: 20090407
2009 BCCA 164 Docket: CA036027

Between:
North Pender Island Trust Committee
Appellant
(Plaintiff)

And
Ronald Blaine Hunt and Patrick John Mummery
Respondents
(Defendants)

Before: The Honourable Madam Justice Huddart
The Honourable Mr. Justice Tysoe
The Honourable Mr. Justice Groberman

Oral Reasons for Judgment

F. V. Marzari Counsel for the Appellant
L. J. Alexander Counsel for the Respondent,
Ronald Blaine Hunt
No one appearing for the Respondent,
Patrick John Mummery

Place and Date: Victoria, British Columbia
7 April 2009

IN THE SUPREME COURT OF BRITISH COLUMBIA

MBIA

Citation: ***North Pender Island Trust
Committee v. Hunt,***

2008 BCSC 391

Date: 20080401

Docket: 96-0053

Registry: Victoria

Between:

North Pender Island Trust Committee

Plaintiff

And:

Ronald Blaine Hunt and Patrick John Mummery

Defendants

Before: The Honourable Mr. Justice Bracken

Reasons for Judgment

Counsel for the Plaintiff:

F. V. Marzari

Counsel for the Defendant
Ronald Blaine Hunt:

L. J. Alexander

Dates and Place of Trial/Hearing:

November 5 - 6, 2007

Victoria, B.C.

Introduction

[1] This is an application under Rule 18A for the determination of certain matters relating to a by-law dispute between the plaintiff, North Pender Island Trust Committee ("Pender Island") and the defendants Ronald Blaine Hunt ("Hunt"), and Patrick John Mummery ("Mummery"). Hunt is the owner of a waterfront parcel on North Pender Island that fronts on Percival Cove, and is currently legally described as: Lot 1, Section 23, Pender Island, Cowichan District, Plan VIP73194 (the "Hunt Property"). Mummery holds a Right to Purchase the Hunt Property and took no part in the trial. At issue is the bylaw compliance of a structure known as the "Shed".

[2] On this application, Pender Island seeks the following declaratory relief:

- (i) A declaration that the current land use bylaw and its predecessors have applied to the Shed since 1972;
- (ii) In the alternative, if the Land Use Bylaw did not apply to the Shed prior to 2001 when the federal reserve was cancelled, a declaration that the cancellation of the federal reserve does not give rise to lawful non-conforming use rights pursuant to s. 911 of the *Local Government Act*.
- (iii) A declaration that the portion of the Shed on the foreshore and lying above the waters of Percival Cove are, and have been at all material times, in a Water Zone pursuant to the Land Use Bylaw.

The parties advise that the Court's ruling on this application may not fully resolve the issues between them and that further negotiations or applications to resolve the zoning issues may be required, in particular as they relate to the question of non-conforming uses under s. 911 of the ***Local Government Act***, R.S.B.C. 1996, c. 323.

[3] In determining whether Pender Island is entitled to the declaratory relief sought, I will first set out the Background Facts, and then consider the following questions which I believe to be the questions that the Court must answer in this case:

1. Where is the natural boundary relative to the Shed?
2. Where are the zoning boundaries relative to the Shed?
3. If the Shed is partly or entirely above the foreshore, did the Shed receive any immunity from municipal bylaws on account of s. 91(1A) of the **Constitution Act, 1867**?
4. What is the triggering date for the non-conforming use provisions in s. 911 of the **Local Government Act**?
5. If the zoning boundary runs through the Shed, how should the bylaws be applied?

Background Facts

[4] The affidavit material indicates that sometime around the year 1910, the government of British Columbia built a wharf at Port Washington on North Pender Island. Around the same time a general store was built on the parcel of land north of what is now the Hunt Property and the Shed was built to the south of the store, adjacent to the provincial wharf and partly on the Hunt Property. The Shed was initially used for the storage of goods that arrived by boat at the wharf and as an ancillary storage area for the general store.

[5] It is not completely clear to what use the buildings were put after 1910, but the evidence indicates that the store and a freight service were operated along with some other commercial activities between 1921 and 1956. Between 1956 and 1965, the store was operated as a general store and between 1965 and 1977, the store was in operation along with the sale of marine supplies, fuel and other petroleum products and a freight trans-shipment service. It is not known how the Shed was used in connection with those activities. Similar uses were made of the Shed and the store over the ensuing years until at least 1991. Hunt alleges that the Shed was used as a dive shop, office and a residence after 1991.

[6] Hunt's company purchased the Shed and the Hunt Property in 1993 and has used it as an office, for storage and as a residence. In 2002, Hunt advertised the Shed for rent as a vacation property and it was rented to guests on a weekly or nightly basis between July 8th and September 4th of that year.

Jurisdiction over the Foreshore

[7] In 1921, the Province of British Columbia turned over the operation of the wharf adjacent to the Shed to the Dominion Government so that responsibility for the operation and maintenance of the wharf became the responsibility of the Government of Canada. In 1958, the federal Department of Public Works, Harbours and Rivers Engineering Branch, noticed that the Shed encroached on the foreshore property that was under the administration of the federal government. It was noted then that Shed measured 45 by 36 feet and that an area calculated as 45 by 25 feet of the Shed encroached on the foreshore. The government's suggestion for resolution was to assess and collect rent for the portion of the Shed that was over the foreshore. No challenge was made to any use that was being made of the Shed at that time. It appears that rent was charged over the ensuing years.

[8] In 2001, the federal government gave up administration and control of the dock, wharf and water lot at Port Washington and transferred those functions back to the provincial government.

[9] The plaintiff says that zoning for Pender Island was first introduced in 1972 by the Capital Regional District which at that time was the appropriate governing authority. At that time the land under the Shed was zoned C-1 and the water lot under the Shed was zoned Water A. That bylaw was repealed in 1978 and replaced with new but essentially identical zoning under the authority of the plaintiff. Under the Water zone the permitted uses were restricted to "public works and services, private floats, wharves, piers and walkways, seawalls, breakwaters, ramps, dolphins, and pilings." No buildings except what might be included in the above list were permitted and no commercial or industrial activity was permitted. It is clear that there was no residential use allowed.

[10] The commercial C-1 zone allowed various commercial uses as well as a "... residential use combined in the same building with any of the uses permitted, provided that the residential use shall be confined to one self-contained dwelling unit of not less than 37 sq. m. (400 sq. ft.) and shall have a separate entrance from the outside."

[11] Amid all of the changes of control and administration that took place over the years, the Shed was more or less ignored other than the charge levied for rent or access over the foreshore. When Hunt purchased the Shed in 1993 and began using it as a residence and perhaps more importantly, as a vacation rental, one of the neighbours complained about the change of use. As a result of the complaints a "stop work order" was placed on the property by the CRD

and some renovations that were then underway were halted. Eventually, that order was withdrawn apparently as a result of Hunt convincing the CRD that it had no jurisdiction over the federal Crown water lot. The complaints did not abate and were referred from the plaintiff to the federal authorities.

[12] The federal government brought proceedings by way of a prosecution against Hunt. Those proceedings ended in a stay or a dismissal of the majority of the charges except for guilty pleas to what I understood to be two parking violations related to the parking of vehicles on the wharf. The federal government did not abandon its interest in the Shed and it subsequently took steps to dismantle parts of the Shed or a deck that had been added to it. After discussion, the federal government was persuaded to pay \$25,000 in damages to Hunt by way of compensation. That appears to have ended the federal government's interest in the matter and these proceedings were then commenced in 1996 and have slowly proceeded to this hearing.

Natural Boundary Relative to Shed

[13] It is common ground that the Shed straddles the high water mark. That is, the parties agree that while part of the Shed is situated above the Hunt Property, the other part of the Shed is situated above Crown foreshore.

[14] The earliest evidence presented to me of the boundaries of the Hunt Property is a Certificate of Indefeasible Title dated July 15, 1920, and bearing number 39217-I. It describes the land as: "COMMENCING at a point at High Water Mark", then north ten feet, then south 58° 13', east for sixty feet, then south approximately ten feet to the high water mark, then "Westerly along High Water Mark to the point of commencement".

[15] It is clear that the high water mark was and is the legal boundary of the Hunt Property. In keeping with common law principles, any gradual change in the location of the high water mark due to accretion or erosion, or other cause, would effectively change the boundary of the Hunt Property.

[16] As stated earlier, due to gradual changes in the location of the high water mark, Hunt obtained a boundary adjustment of the Hunt Property pursuant to s. 100(1)(a) of the **Land Title Act**, R.S.B.C. 1996, c. 250 by filing reference plan VIP73194 in the Victoria Land Title Office on January 9, 2002. The parties agree that the high water mark is the mutual boundary between the Hunt Property and Lot 376.

[17] I note that exhibits B-D to the affidavit of Michael J. McIlvaney, tendered by Hunt, show the same relationship between the Shed and the boundaries of the Hunt Property as does the survey tendered by Pender Island as Exhibit A to the affidavit of Brian G. Wolfe-Milner, B.C.L.S. The only disagreement between Pender Island and Hunt about those exhibits is the way in which the zoning maps are scaled and overlaid over the survey, as discussed later in these reasons.

[18] Finally, I note that one of the arguments advanced by Hunt is that the foreshore portion of the Shed was immune from the bylaws due to being located in a federal water lot. This argument is itself premised on a portion of the Shed being located seaward of the high water mark.

[19] I make the following findings of fact:

- Lot 376 and the Hunt Property are divided by a single legal lot line which is the high water mark.
- The survey at Exhibit E of Hunt Affidavit #1 is an accurate depiction of the then-current location of the high water mark relative to the Shed as it stood in 1953. At that time, the majority of the Shed was in Lot 376.
- The survey of Brian G. Wolfe-Milner, B.C.L.S., certified October 16, 2003, and attached as Exhibit A to his affidavit sworn October 17, 2003, is an accurate depiction of the then-current location of the high water mark relative to the Shed. At that time, the Shed was located almost entirely within Lot 376; however, a small portion of the shed was still located within the Hunt Property.

[20] Since October 2003, the high water mark, and therefore the boundary of the Hunt Property, may have gradually moved relative to the Shed; however, any such change has most likely been insignificant. I will therefore assume for the purposes of my analysis that the relative location of the high water mark (and therefore the Hunt Property) relative to the Shed are currently the same as in October 2003.

Zoning Boundaries Relative to Shed

[21] The next task is to determine in which one or two bylaw zones the Shed is located.

[22] Having reviewed all of the materials before me, I have concluded that the disagreement on this issue results from an irregularity in the various zoning maps.

[23] The various zoning maps clearly show that the C-1 zone in which the Hunt Property is located extends only as far as the edge of Pender Island at the high water mark. At least some of the various zoning maps include annotations that all bodies of water are zoned "Water A" unless otherwise designated on the zoning map.

[24] The irregularity to which I referred is the following: at least in the case of the 1978 and 1999 zoning maps, the maps do not show the Hunt Property extending all the way to the high water mark; rather, they show a band of unidentified land approximately 50 feet wide separating the high water mark (which the zoning map correctly shows to be the Northern boundary of Lot 376) from the Hunt Property. This is easiest to see on the enlarged portion of the zoning map at Exhibit M (p. 125) of the affidavit of Kathy Jones, but is also visible on the full zoning map at Exhibit U.

[25] Similar strips appear at other locations around the coastline; it appears to me that these may be due to a failure to reconcile the overall coastline of the island with the particular surveys of waterfront lots. It might also be due, at least in part, to the gradual movement of the high water mark over time, or to some other cause.

[26] I mention this irregularity because it accounts for the opinion expressed in the affidavit of Michael J. McIlvaney -- as depicted in exhibits B-D -- that the Hunt Property is entirely located with the C-1 zone. When Mr. McIlvaney scaled the Shed/Hunt Property survey onto the zoning map to produce those exhibits, the Shed naturally falls within the strip of land which, being landward of the high water mark, is included in the C-1 zone.

[27] Hunt argued that any ambiguity in this matter should be resolved in his favour. The Court of Appeal wrestled with the tension between the liberal approach to the interpretation of bylaws (due to them being remedial), and the strict approach to their interpretation (due to their impact on property rights) in ***Neilson v. Langley (District)*** (1982), 134 D.L.R. (3d) 550 (B.C.C.A.), where it rejected both extremes and adopted a middle course at para. 18:

It is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the Municipal Council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.

[28] Although made in a somewhat different context (the determination of whether a bylaw is void for vagueness), I also find some guidance in the following quotation from Oppal J. (as he then was) in ***Dhillon v. Richmond (Municipality)*** (1987), 37 M.P.L.R. 243 (B.C.S.C.) at 250:

[To be void, the bylaw's] vagueness must be so pronounced that a reasonably intelligent person would be unable to determine the meaning ... A mere difficulty in interpretation will not be sufficient.

[29] Giving effect to the intention of Pender Island as expressed in the bylaws upon a reasonable basis that will accomplish that purposes, an intention that in my view could be determined by a "reasonably intelligent person", is that the high water mark is the mutual boundary between the commercial and water zones applicable to the Shed. The interpretation of the bylaws sought by Hunt produced by lining up the ostensible Hunt Property boundaries rather than the high water marks as depicted on the survey and zoning maps clearly produces a result that a reasonable person would recognize as wrong, because it places the Shed on land, and entirely North of the Northern boundary of Lot 376. This is inconsistent with the evidence tendered by Hunt in Mr. McIlvaney's affidavit at para. 11(d) that "District Lot 376 and Lot 1 share a common boundary, most accurately shows as 'present natural boundary' on Plan VIP73194. It is my conclusion that there is no unsurveyed land between District Lot 376 and Lot 1."

[30] The interpretation sought by Hunt is also inconsistent with my findings of fact that the Shed straddles the high water mark, which clearly was one of the boundary lines of the land, and that the majority of its area is located in Lot 376, as illustrated by the Wolfe-Milner survey that I accepted as accurate above.

[31] More fundamentally, I have concluded that it is not necessary to resort to scaling at all to determine which zones are applicable in this case. The bylaws themselves have provided that the applicable zoning boundaries will be determined by scaling only where the zoning boundaries do not follow a legal lot line (e.g. s. 3.6 of the 1978 bylaws, s. 7.2.2 of the 1999 bylaws). Even with the irregularity that shows on the zoning maps, at least one legal lot line has always been collinear with the zoning boundary, and that is the northern boundary of Lot 376 that the same zoning maps correctly show as following the high water mark.

[32] The scaling and superimposition of the zoning maps and surveys in Exhibits B-D of the McIlvaney affidavit, and the argument by counsel for Hunt based upon them, do not fit with the other evidence, including the other evidence tendered by Hunt. Given all the facts before me, and the positions of the parties that are in agreement about most of the primary facts and in disagreement only about the secondary facts to be inferred from the primary facts, I have no difficulty in rejecting the scaling approach used in Exhibits B-D of the McIlvaney affidavit and making the following findings of fact:

- Since 1972, the commercial zone has continuously extended as far South as the mutual boundary between the Hunt Property and Lot 376 -- that is, the high water mark.
- Since 1972, Lot 376 has been continuously located above the water zone. Since 1972, the portion of the Shed located South of the high water mark has been continuously located within this water zone, which was originally zoned Water A, subsequently Water D, and finally Water 4.
- Since 1972, the Hunt Property has been entirely and continuously located within the commercial zone. Since 1972, the portion of the Shed located North of the high water mark has continuously been located within this commercial zone, which was originally zoned C-1, and subsequently C-1A.

[33] I have found that a zoning boundary runs through the Shed. The next question is whether the water zone has always been constitutionally applicable to the portion of the Shed south of the high water mark.

Federal Immunity

[34] Lot 376 is a federal water lot. Hunt argues that Pender Island's bylaws are inapplicable to the portion of the Shed that falls within Lot 376 by virtue of s. 91(1A) of the **Constitution Act, 1867**, which gives the federal Parliament exclusive legislative authority over "The Public Debt and Property." The relevant case is **Canadian Occidental Petroleum Ltd. v. North Vancouver (District)** (1986), 13 B.C.L.R. (2d) 34 (C.A.), where our Court of Appeal ruled that municipal bylaws (enacted pursuant to provincial legislation) cannot apply to lands owned by the federal Crown, and that this immunity extends to a lessee or other user of the federal Crown land. The principle that federal Crown immunity extends to a private user of the federal Crown lands lies in contrast to the equivalent principle in respect of provincial Crown lands that provincial Crown lands enjoy such immunity under s. 14(2) of the **Interpretation Act**, R.S.B.C. 1996, c. 238 only when they are used by the provincial Crown, and that such immunity does not extend to a private user or lessee of the provincial Crown lands.

[35] In **Burrardview Neighbourhood Assn. v. Vancouver (City)**, 2007 SCC 23, ("**LaFarge**"), the Supreme Court of Canada was dealing with a similar argument to that advanced here by Hunt. It articulated the law as follows at para. 56-57:

[56] The appellant submits that, "absent an agency relationship, 'public property' must encompass some element of ownership by Canada in order to receive constitutional immunity from provincial land use regulations" (AF, para. 42). We think this proposition is correct. Section 91(1A) creates an immunity based on a *proprietary* interest ... Interjurisdictional immunity does not, in our view, extend to all federally *controlled* property.

[57] For s. 91(1A) purposes, the property can be held directly by the Crown, or indirectly by an agent ...

[emphasis in original]

[36] By default, the provincial Crown owns all foreshore within the Strait of Georgia: **Reference re: Ownership of the bed of the Strait of Georgia and related areas**, [1984] 1 S.C.R. 388. If Lot 376 is to receive s. 91(1A) immunity, it must be on the basis that the provincial Crown gave the federal Crown a proprietary interest in that land.

[37] Lot 376 was created by B.C. Order In Council 2219/53 which reads as follows:

The undersigned has the honour to report:

THAT an application has been received from the Department of Public Works, Canada, for the reservation of certain foreshore situated at Port Washington, North Pender Island, as the site for a public wharf.

THAT the foreshore applied for has been surveyed at the expense of the Department of Public Works, Canada, as Lot 376, Cowichan District, containing 1.05 acres.

AND TO RECOMMEND that under the provisions of Section 93 of the "Land Act", being Chapter 175, Revised Statutes of British Columbia 1948, Lot 376, Cowichan District be reserved and set apart for the use of the Department of Public Works, Canada, as the site for a public wharf, for so long as required for such purpose.

AND TO FURTHER RECOMMEND that a copy of this Minute, if approved, be forwarded to the District Engineer, Department of Public Works, Canada, New Westminster, British Columbia.

DATED this 29th day of September A.D. 1953

"R.E. Sommers"

Minister of Lands and Forests

APPROVED this 29th day of September A.D. 1953

"W.A.C. Bennett"

Presiding Member of the Executive Council

[38] Section 93 of the **Land Act**, R.S.B.C. 1948, c. 175, is the first section of Part V of that Act, titled "RESERVES". Subsection 93(1) reads as follows:

The Lieutenant-Governor in Council may at any time, by notice signed by the Minister and published in the Gazette, reserve any Crown lands not lawfully held by pre-emption, purchase, lease, or Crown grant, or under timber licence, for railway purposes or for such other purpose as may be deemed advisable.

The rest of Part V contains various other provisions respecting reserves. Section 2 of the 1948 Act states that "'Reserved lands' means Crown lands that have been withdrawn from alienation under the provisions of this or any other Act".

[39] The reserves regime in the 1948 Act serves to take designated lands out of the pool of Crown lands that are generally available for pre-emption, sale, grant, lease. There is no transferee or grantee under a reserve; all title and benefit to the land is still held by the provincial Crown.

[40] Amendments to the **Land Act** since 1948 have greatly simplified the reserves regime. The current Act, being the **Land Act**, R.S.B.C. 1996, c. 245, does not have a Part entitled "reserves". Rather, there is a single provision in s. 15(2) of the Act that permits cabinet to "reserve Crown land from disposition under this Act for any purpose that the Lieutenant Governor in Council considers advisable in the public interest, including for the use of a government body." The definition of "reserved land" in what is now s. 1 has barely changed since 1948; the current definition is "Crown land that has been withdrawn from disposition under this or any other Act". The effect of a reserve is still the same as in 1948; the land in question is withdrawn from the general pool of Crown lands and is thus unavailable for most purposes until the reservation is cancelled. For example, under s. 10(3)(b), the Minister may refuse to receive an application for Crown land if "the land is reserved from disposition under section 15". As in 1948, there is no transferee or grantee under a reserve pursuant to the current Act -- all title and benefit to the land is still held by the provincial Crown.

[41] I note that the reserve over Water Lot 376 lies in clear contrast to a number of other mechanisms available for dealing with Crown land in these circumstances. Firstly, the reserve over Lot 376 is in contrast to the 1921 transfer and conveyance of a smaller portion of sea bed for the site of what is the main section of the government wharf near the Shed. That transfer resulted in the issuance of a Certificate of Title for property registered as Plan 44342-I, the boundaries of which are shown on the 1953 Plan tendered as Exhibit E to Hunt Affidavit #1. The Order in Council that authorized this transfer is OIC 1030/21 reads in part:

As a result of such practice the Provincial Department of Public Works had under its control a number of wharves the maintenance of which entailed considerable expense upon the Provincial revenue, and as a result of representations to the Dominion Authorities, it was arranged that the Province should transfer certain wharves and the approaches and sites thereof to the Dominion Government which should thereafter administer the same at their own charges ...

AND TO RECOMMEND that the administration of the wharf in Port Washington, British Columbia, the site thereof, and the approach thereto, be transferred to the Dominion Government.

AND TO RECOMMEND that certified copies of this Minute, if approved, be transmitted to the Registrar of Titles of the District in which Port Washington Wharf lies, to the intent that such copy be accepted by him as a conveyance of the said lands to His Majesty in right of the dominion of Canada without further formal instrument of transfer...

[emphasis added]

[42] Secondly, the reserve over Lot 376 is in contrast to a transfer under what is now s. 31 of the **Land Act** to the federal Crown of the Administration, Control, and Benefit of Lot 365 (located in Hope Bay, also on Pender Island) on conditions for 60 years for an administrative fee of \$400 by OIC 2147/85.

[43] It is clear that the federal Crown has a proprietary interest in the land described by Plan 44342-I, and possibly also over Lot 365. By contrast to both of those lots, Lot 376, over which a portion of the Shed is located, was only reserved under the **Land Act** and never transferred.

[44] The defendants presented me with numerous documents showing that the federal Crown has exercised management over Lot 376 by such activities as charging rent of Hunt's predecessors in title for licenses to occupy the portion of the foreshore over which part of the Shed extends. That may be, but the question I am required to decide is different. The fact that the federal and provincial governments apparently had an understanding amongst themselves that the federal government would manage Lot 376 does not derogate from the applicability to that land of municipal bylaws enacted pursuant to provincial legislation. Bylaw applicability is determined by the Constitutional law of federalism; the control of land is not thus restricted. As stated in **LaFarge**, exercising management over land does not translate into legislative jurisdiction over that land.

[45] Although I have not relied upon it to come to the conclusion stated above, I note that this conclusion -- that the creation of a reserve over Lot 376 has never granted the federal Crown a proprietary interest in that land -- appears to be consistent with the Affidavit of Keith Anderson tendered by Hunt in the federal trespass action.

[46] For completeness, I will note here that s. 91(1A) is the only basis upon which federal immunity could arise here. In **Salt Spring Island Local Trust Committee v. B & B Ganges Marina Ltd.**, 2007 BCSC 892 at paras. 54-92, Tysoe J. gave very careful consideration to the argument that municipal bylaws must be read down or declared inapplicable or inoperative to harbour waters on account of interjurisdictional immunity or paramountcy as a result of

the exclusive federal jurisdiction over Navigation and Shipping under s. 91(10) of the **Constitution Act, 1867**. Tysoe J. reviewed the cases at great length, and concluded that such municipal bylaws had a merely incidental effect on the federal head of power and did not so impact the core of the federal jurisdiction as to trigger interjurisdictional immunity. On the facts of that case, he also rejected the application of paramountcy. I adopt his reasons on the interjurisdictional immunity question. The defendants did not argue paramountcy before me, preferring to focus their submissions on the s. 91(1A) immunity that I considered and rejected above; in any event, I conclude that paramountcy has no application to the case before me as there is no operational conflict that would prevent the defendants from complying with both the federal management of Lot 376 and the applicable municipal bylaws.

[47] I conclude that the federal Crown has never had a proprietary interest in Lot 376. That being the case, s. 91(1A) of the **Constitution Act, 1867** is not engaged. As a result, municipal bylaws have always applied to Lot 376, as have other relevant provincial laws such as those dealing with building safety, waste management, and the like.

Non-Conforming Use

[48] As I have found that the Shed has never benefited from any constitutional immunity from Pender Island's bylaws, I do not need to consider the arguments of both parties regarding whether **Thomas v. British Columbia** (1996), 139 D.L.R. (4th) 685 (B.C.C.A.) has any application to the question of whether s. 911 of the **Local Government Act** is triggered when federal Crown lands revert into the hands of the provincial Crown.

[49] I therefore conclude that the bylaws have always been applicable to the Shed. The parties will therefore need to consider whether s. 911 had any effect when the first bylaws were enacted in 1972, and each time that the permitted uses (as opposed to zone names) were changed under subsequent bylaws. Each gradual movement of the zoning boundary over time as it tracked the gradual movement of the high water mark would not re-engage s. 911.

[50] The parties were agreed that I was not to make findings of fact about historical uses of the Shed for s. 911 purposes. This was in part to give Mummery the opportunity to adduce evidence. I therefore end my comments on s. 911 here.

Effect of Zoning Boundary running Through Shed

[51] I accept as correct the assertion that Pender Island "has the power to pass zoning bylaws regulating the use of water as well as land": ***Salt Spring Island*** at para. 45. I find that the zoning bylaws at issue in the case before me are valid and are *prima facie* applicable to the portions of the Shed that falls within their boundaries, as per my previous findings of fact.

[52] I consider it appropriate for me to consider, on the facts of this case, whether the Shed ought to be governed by that *prima facie* result -- that is, each portion of the Shed being governed by a different bylaw -- or whether the construction of the bylaws, or the operation of equity, leads to a different result.

[53] A somewhat similar issue arose in ***Genevieve Holdings Ltd., v. Kamloops (City)*** (1989), 38 B.C.L.R. (2d) 83 (C.A.). In that case, a municipal bylaw created a zoning boundary that ran through the petitioner's property, putting it partly within the General Urban Reserve and partly within the Country Residential Zone. The latter portion had no frontage on the road, and would consequently have no permitted use as a separate parcel. The trial judge granted a declaration that the bylaw was invalid insofar as it applied to the petitioner's parcel on the basis that it would have the effect of prohibiting all uses. The Court of Appeal overturned. The Court of Appeal first concluded that the then ***Municipal Act***, R.S.B.C. 1979, c. 290 did not prohibit zoning lines from cutting through parcels of land. It also rejected the trial judge's conclusion that the effect of the bylaw was to prohibit all uses in the following terms at para. 12: To the extent that the reasons [of the trial judge] are founded on the proposition that the land is unusable and that therefore the reasoning in ***Karamanolis v. Port Coquitlam*** (1978), 8 B.C.L.R. 282, 8 M.P.L.R. 215 (C.A.), applies, I would say this. The land can now be used for any uses that are common to the two zones. One of which, of course, is for a residence. Alternatively, those parts of the land within one zone could be put to uses permitted in that zone and the other part put to uses permitted in that other zone. You could not use part of either zone for a purpose not permitted in that zone.

[54] In ***Genevieve Holdings***, the zoning division divided a single parcel of land which was entirely owned by the landowner. In the case at bar, by contrast, there are two parcels, each in a different zone, and a structure that straddles the two. The zoning division divides a single structure that is entirely owned by the defendant but the defendant owns only the land under a portion of the structure, and does not own the water lot over which the other part of the structure is located.

[55] That said, to apply the principle from ***Genevieve Holdings*** to these facts would result in the building being subject to two different zones, would make the Shed effectively unusable respecting that portion of the Shed over the Water zone, and would allow the restricted commercial uses allowed by the C-1 zone for the small portion of the Shed located over the land lot.

[56] It seems to me that zoning effectively makes the Shed unusable. It appears on the evidence that what is now the Shed was originally built adjacent to and connected to the wharf and that over time it became used for commercial and eventually residential purposes. On the affidavit material, I find that the uses to which the Shed has been put over the years relate more to the land zone than the water zone. If my interpretation of the uses permitted in the water zone is correct, the portion of structure built on top of the piling wharf would have no allowable use, except possibly that the underlying structure could be used once again as a wharf. In my view, that would make the entire structure unusable.

[57] While the Water zone now clearly applies to the water lot it does not appear that the Shed was ever used for a water based purpose during any relevant time. I have considered whether this Court should use some kind of "dominant purpose" or "dominant connection" approach in the unusual context of this case. That is, whether I should declare that the entire Shed is so connected to the Hunt Property that the Shed should be governed solely by the zoning that applies to the Hunt Property. Making a dominant connection determination is difficult in this case, because it appears on the evidence that the Shed was originally built adjacent to and effectively part of the wharf. There appears to have been no appropriate restrictions over the water lot in place at the time it was constructed and its use was for all or almost all of its history associated with land based commercial activity.

[58] Over time it appears to have become increasingly tied to the Hunt Property as a retail office and finally, at least after 1993, as a residence. Furthermore, as the bylaw declarations sought here are statutory, there is minimal room for the common law or equity to intervene.

[59] In ***Genevieve Holdings***, the Court referred to ***Karamanolis v. Port Coquitlam*** for the principle that to the extent that a bylaw has the effect of making land unusable, it is invalid. The situation here is similar but the application is to a building and not land. My conclusion is that the application of the water zone to the Shed would place restrictions on the Shed that would effectively make it unusable except for the very restrictive marine uses permitted in that zone. The water zone is clearly intended to regulate the uses that are available on the water and not on land. The permitted uses are all water related. The historical uses of the Shed have all been connected to land, not to water. The only arguable water use has been for the storage of goods arriving on Pender Island by water for trans-shipment to destinations on the Island or for the sale of goods that might be used on the water, such as fuel.

[60] I conclude that the Shed has always had a dominant connection to the Hunt Property and to the land generally, rather than to Lot 376 and the water generally, and that in the unique circumstances of this case the appropriate zoning bylaw for the entire Shed is the C-1 commercial zone.

[61] There will remain issues as to what use the Shed has been put to over the years, specifically whether it has ever had a lawful use as a residence. The defendant relies on ***Nanaimo (Regional District) v. Salapura*** (1994), 94 B.C.L.R. (2d) 213 (S.C.). In that case an extension was built on to a building that had been designated as a legal non-conforming use. In concluding that the altered building remained a legal non-conforming use, the court commented that the purpose of the legal non-conforming use provision, contained in what was then s. 970 of the ***Municipal Act***, is to allow lawfully established uses to continue when the zoning amendments are made which would otherwise prohibit those uses.

[62] In my view it follows from that principle that the continued dominant use of the Shed over the years of its existence should in some way be protected at least insofar as its historic land based commercial purpose is concerned. By treating the Shed as being governed by the C-1 commercial zone as to its entirety achieves that purpose without removing the plaintiff's ability to challenge the residential and vacation rental use as being uses that are not allowed within the C-1 zone. Therefore, even though a large portion of the Shed is directly above the water lot I decline to grant the declaration that the provisions of the Water zones have been applicable to the Shed. Instead, I declare that the C-1 zone governs the entire Shed.

[63] In ***Capital Regional District v. Smith*** (1998), 61 B.C.L.R. (3d) 217 (C.A.), the municipality sought a restraining order to prohibit the respondent from using a cabin that was a legal non-conforming use prior to its destruction by fire. The respondent rebuilt the cabin and the municipality argued that it had lost its non-conforming status. The court found that the rebuilt structure lost its non-conforming use and technically it was in violation of the zoning laws. The court noted the limited discretion of the court but declined to grant the order to remove the new cabin in the unique circumstances of that case. This case stands as some authority for a limited discretion of the court to decline relief to a municipality in certain circumstances.

Conclusion

[64] I make the following declarations:

- A. The North Pender Island Land Use Bylaw 103, 1996 and its predecessor land use bylaw (the Land Use Bylaw) are valid and have been in force since 1972.
- B. That Lot 376 and the Hunt Property are divided by a single legal lot line that follows the high water mark of Port Washington as it touches upon the Hunt Property.
- C. That the high water mark divides the Shed with the largest portion of the Shed lying directly above Lot 376 and the remainder directly above the Hunt Property.
- D. That due to its historic use and the impracticality of dividing one building into two different zones the entire Shed should be governed by the C-1 Commercial zone that applies to the Hunt Property.

[65] As agreed between counsel, it will now be up to the parties to negotiate or bring a further application to resolve the outstanding issues which will require, in part, determining the uses of the Shed over time as that relates to any non-conforming use issue related to the C-1 zone.

[66] If the parties cannot agree costs may be spoken to.

"J. K. Bracken, J."

The Honourable Mr. Justice Bracken

End of 2008 BCSC 391, Docket 96-0053

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: ***North Pender Island Trust Committee v. Hunt,***
2009 BCCA 164

Date: 20090407

Docket: CA036027

Between:

North Pender Island Trust Committee

Appellant
(Plaintiff)

And

Ronald Blaine Hunt and Patrick John Mummery

Respondents
(Defendants)

Before: The Honourable Madam Justice Huddart
The Honourable Mr. Justice Tysoe
The Honourable Mr. Justice Groberman

Oral Reasons for Judgment

F. V. Marzari

Counsel for the Appellant

L. J. Alexander

Counsel for the Respondent,
Ronald Blaine Hunt

No one appearing for the Respondent,
Patrick John Mummery

Place and Date:

Victoria, British Columbia
7 April 2009

[1] HUDDART, J.A.: The focus of this appeal is on one issue, whether the trial judge erred when he declared that the provisions of a C1A zone (“the land lot”) apply to a building, the major portion of which is located above a Water 4 zone (“the water lot”), after a summary trial of some of the issues raised in the appellant’s action to enforce its zoning bylaws. The neutral citation for the judgment is 2008 BCSC 391. This was an order neither party sought at the summary trial.

[2] At issue then was whether and when water zoning first applied to the building the parties refer to as “the shed”. The respondent seeks dismissal of the appeal because the order is interlocutory and leave has not been obtained, or, if final, a reasonable application of the authorities to a split zoned building. The appellant insists the order is final because it finally determines an issue in the case. In my view, the order appealed determines a legal issue that “would have formed a substantial part of the final trial” and is thus treated as final, for the purposes of appeal under the test laid down by this Court in *Radke v. M.S. (guardian ad litem of)* 2006 BCCA 12. It is also final because all declarations are binding on the parties to the proceedings in which they are made.

[3] The relevant background facts are few. [4] The respondent, Ronald Hunt, is the registered owner of a waterfront parcel of land on North Pender Island at Port Washington, for which the co-respondent has a registered right to purchase. The appellant is a local trust committee under the Islands Trust Act, R.S.B.C. 1996, c. 239, who holds regulatory and zoning powers with respect to North Pender Island.

[5] Around 1910, the provincial government built a wharf at Port Washington. Around the same time, a shed was built adjacent to the wharf for storage of goods that arrived by boat and for storage ancillary to the general store constructed around that time. In October 2003, the shed, including decks, occupied 1559 square feet on the water lot and 113 square feet on the land lot.

[6] Mr. Hunt purchased the land lot in 1993 and thereafter used the shed as an office, a storage place and a residence as, he claims, had the previous owner since 1991.

When neighbours complained about the residential use as being contrary to the zoning of both the water and land lots, the federal government sought to have him removed. With provincial agreement, it had operated Port Washington since 1921 and from 1958 to 1992 charged rent for the portion of the water lot under the shed. In 1993 and subsequent years, the federal government refused to permit Mr. Hunt to occupy the shed and sought to have him removed.

[7] In 1996, the appellant instituted this action. It has since amended its pleadings twice, in part because it changed its zoning bylaws in 1999 and in part because the water lot was released from federal control in 2002. That year, Land and Water British Columbia Inc. gave Mr. Hunt what the parties call a temporary licence to occupy the shed pending the outcome of this litigation.

[8] The parties agree the dividing line between Mr. Hunt's property and the Crown foreshore is the high water mark. For the purposes of his reasons, the trial judge assumed the high water mark and hence the boundary between the water and land lots to be the same as it was in October 2003. He concluded the zoning boundaries also follow the high water mark. Thus, since 1972, the land lot has been located within the C-1 commercial zone (now C1A), while the water lot was within the Water A zone (now Water 4). He also concluded the zoning bylaws were "valid and prima facie applicable to the portions of the shed that fall within their boundaries." Then he made the declaration that is the subject of this appeal:

That due to its historic use and the impracticality of dividing one building into two different zones the entire Shed should be governed by the C-1 Commercial Zone that applies to the Hunt Property.

He explained that the shed's "dominant connection" had always been with the land lot and that the entire structure would be unusable, if the portion of the shed built over the water zone were to be governed by the water zoning. It would be "unusable" because under that zoning, both commercial and residential uses are prohibited.

[9] The appellant's primary point is that the trial judge entered the domain of the body with legislative power when he effectively re-zoned the water lot. Its second point is that he did so in an unnecessary pursuit of equity; the Legislature has ensured the property's continued historical use by the provisions permitting non-conforming uses in the Local Government Act, R.S.B.C. 1996, c. 323, s. 911. In other words, the land and the building are still usable. The only question, one the parties agreed would be tried on evidence at a subsequent hearing, is what those non-conforming uses were and whether those uses would be enforced.

[10] The importance of the issue to the respondents and their neighbours, is that the permitted commercial use of the land lot includes a related residential use of a minimum 400 square feet. While Mr. Hunt proposes to lead evidence that his present use of the land comes within its non-conforming use established in 1991, the trial judge's order would require him to prove only that his present use comes within the permitted commercial zoning.

Discussion

[11] It is important to note that this appeal is not from the refusal to enjoin the use of the shed for residential purposes. The appellant did not seek an injunction or any other remedy at this stage of its action.

[12] Nor is it about the validity of the zoning bylaws that apply to the shed. Neither party disputes the primary finding of the trial judge at para. 51 of his reasons that “the zoning bylaws at issue in the case before me are valid and are prima facie applicable to the portions of the Shed that fall within their boundaries.”

[13] It is about a declaration of law, that C1A zoning applies to a portion of a building extending over land zoned Water 4 because that is the zone on which the other portion of that building sits.

[14] The issue is whether the trial judge erred when, having first decided the building would be unusable if it straddled the two zones, he concluded at para. 60:

[60] I conclude that the Shed has always had a dominant connection to the Hunt Property and to the land generally, rather than to Lot 376 and the water generally, and that in the unique circumstances of this case the appropriate zoning bylaw for the entire Shed is the C-1 commercial zone.

[15] In making the declaration under appeal, the trial judge looked to two authorities: *Karamanolis v. Port Coquitlam* (1978), 97 D.L.R. (3d) 289 (B.C.C.A.) and *Genevieve Holdings Ltd. v. Kamloops (City)* (1989), 38 B.C.L.R. (2d) 83 (C.A.). In *Karamanolis*, this Court upheld a trial judge’s order quashing a zoning bylaw insofar as it created a “holding zone” precluding any development of the plaintiff’s property, because the municipality did not have the power to prohibit all uses of land. This Court distinguished *Karamanolis* on its facts in *Genevieve*, but did not disagree with the sterilization principle it expounded. However, that proposition was qualified by this Court in *Canada Mortgage and Housing Corp. v. North Vancouver (District)*, 2000 BCCA 142, 77 B.C.L.R. (3d) 14, where Esson J. noted *Karamanolis* was based on a provision of the Municipal Act no longer in effect. And at para. 59, he continued:

I do not suggest that the rule for which *Karamanolis* has been so often cited no longer exists. It may well be, despite the changes in the legislation, that a municipality would generally be found to exceed its powers by rezoning to effectively preclude the owner from using the land. To treat an individual owner of a lot in that way might well be so unreasonable as to be beyond the powers of the municipality. ... [16] The essence of the respondent’s submission, on this analysis, is that the trial judge’s order can be upheld because the water zoning effectively precludes Mr. Hunt from using the building and is thus “so unreasonable as to be beyond the powers of the municipality.” This suggests a finding by the trial judge that the water zoning bylaw is invalid as it applies to the portion of the building over the water lot, despite his earlier finding that the bylaws were valid, thereby implying they had a legitimate and valid planning purpose. The trial judge does not suggest the water zoning was an abuse of process or patently unreasonable, but this must have been the test he applied to reach the result he did.

[17] This reasoning is flawed. Both the water lot and the land lot have legal uses. Owners, tenants and licensees of property may not like changes to zoning, but a municipality is permitted to change zoning in what it perceives to be the public interest. As Wilson J. Wrote in *Hartel Holdings Co. v. Calgary (City)*, [1984] 1 S.C.R. 337 at 354, where a bylaw is enacted for legitimate and valid planning purposes, the resulting detriment to an owner is one that “must be endured in the public interest.” It is a risk of ownership and a not uncommon situation. The Local Government Act, like its predecessors, addresses that detriment by permitting the continued use of land, buildings and structures indefinitely. While you cannot build in contravention of a zoning bylaw, a building in use before a zoning bylaw is enacted can continue to be used for legal nonconforming uses. In my view, the situation in which the respondent finds himself is little different than that of the developer in *Crest Construction Ltd. v. North Vancouver (District)*, (30 April 1970), Vancouver 158/70 (B.C.C.A.).

[18] The second line of authorities on which the respondent relies to support the declaration concerns injunctive relief. In such cases, the considerations are different. In *Island Trusts v. Pinchin Holdings Ltd.* (1981), 32 B.C.L.R. (3d) 69, this Court granted an injunction against a hotel’s proposed construction of a wharf, floats and breakwater for the use of its guests, ruling that the use was not for the permitted “private access” but for the prohibited “commercial” use. The improvements took their character from the commercial enterprise they were to serve. In *Capital Regional District v. Smith* (1998), 61 B.C.L.R. (3d) 217 (C.A.), this Court refused to order the destruction of a cabin newly built in contravention of the zoning bylaw while granting an order requiring that the same cabin comply with flood-plain set back requirements. As those cases and others cited in them illustrate, the remedy stage is the appropriate time for the equities between private and public interests to be balanced. In this case, that stage has not been reached. It may be a rare case where the public interest in having laws obeyed will be outweighed by the hardship an injunction would impose, but equity does not permit a court to change the law to avoid the need for that assessment to be made at the remedy stage.

[19] It follows from this reasoning that I would allow the appeal and set aside the order declaring the C1A zoning applies to the portion of the building which extends over the water lot. Thus, since the Capital Regional District zoning bylaw made 27 June 1972, the portion of the shed extending over the water lot has been within the zone now known as Water 4. Of course, that zoning is subject to such lawful non-conforming use as Mr. Hunt may be able to establish under s. 911 of the Local Government Act. The successful appellant is entitled to its costs in this appeal and I would leave the issue of costs of the Supreme Court to the Supreme Court.

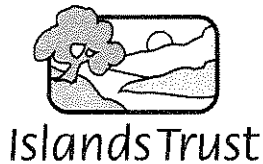
[20] TYSOE, J.A.:

I agree.

[21] GROBERMAN, J.A.: I agree.

“The Honourable Madam Justice Huddart”

End of 2009 BCCA 164, Docket 036027



STAFF REPORT

10.2

November 22, 2006

File No.: NP-RZ-2006.1

For Meeting of November 30, 2006

To: North Pender Island Local Trust Committee

From: Robert Kojima
Island Planner
Local Planning Services

CC: Brodie Porter, RPM

Re: **Rezoning Application - Lot 1, Section 23, Pender Island, Cowichan District, Plan VIP73194 and adjacent water lot (Port Washington Shed)**

Owner: Ronald B. Hunt
Applicant: Brian Elliott
Location: Port Washington

THE PROPOSAL: the application is to rezone the site of the Port Washington shed, consisting of Lot 1, Plan VIP73194 and the adjacent water. The draft zoning would permit use of the shed for retail sales, office, boat and marine equipment rental, limited services and as an accessory dwelling unit. The draft zoning would also permit the use of the dock for marine charters and tours. The application has been reviewed by the APC and a community information meeting has been held. The purpose of this report is to provide the Local Trust Committee (LTC) with an update on the status of the application and to provide the LTC with an opportunity to direct changes to the draft zoning, or decide to proceed no further, prior to referring the application to agencies for comment

CURRENT PLANNING STATUS OF SUBJECT LANDS:

Trust Policy Statement: there are two directive policies that may have some relevance to consideration of the application:

- 4.5.10 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the location of buildings and structures so as to protect public access to, from and along the marine shoreline and minimize impacts on sensitive coastal environments.

- 4.5.11 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address opportunities for the sharing of facilities such as docks, wharves, floats, jetties, boat houses, board walks and causeways.

Official Community Plan: the OCP designates the upland parcel as “Commercial.” The existing public dock is designated as “public Moorage”. The following commercial objectives and policies have some application to this proposal:

Objectives:

- 2) *to provide opportunity for a variety of small scale commercial operations that will not degrade the environment.*
- 3) *to ensure that commercial development does not adversely affect rural character and lifestyle.*
- 4) *to protect the character and integrity of quiet residential and rural neighbourhoods.*
- 6) *to ensure that commercial establishments provide adequate parking facilities.*
- 8) *to preserve heritage commercial buildings.*

Policies:

- 2.6.1 *Commercial development shall be small scale, low density business enterprise designed to meet the needs of residents and visitors;*
- 2.6.2 *Priority will be given to new or additional commercial ventures in the following locations:*
 - a) *behind and to the south of the Driftwood Centre;*
 - b) *encompassing the remainder of the lot on which P.J.'s General Store is located;*
 - c) *the vicinity of Southridge Farm General Store and Pender Lumber on Port Washington Road;*
- 2.6.4 *Tourist oriented or commercial recreational activity shall not be permitted on lands suitable for agriculture or in hazardous or environmentally sensitive areas;*
- 2.6.5 *Applications for commercial rezoning must prove adequate water supply and waste disposal capability for both present and projected needs;*
- 2.6.6 *Commercial proposals which would have significant deleterious effects on adjacent land uses will not be permitted;*
- 2.6.8 *Parking and storage areas should be suitably screened to maintain the rural character of the area;*
- 2.6.9 *Preservation of the store at Port Washington and the store at Hope Bay will be encouraged because of their heritage status;*

Land Use / Zoning Bylaw: the site is split-zoned C1(a) and W4. The uses permitted in the C1(a) portion are ‘retail sales’, ‘offices, including banks’, and ‘cafes’. The uses permitted in the W4 zone are:

'Marine navigation, marine navigation aids, marker buoys, ferry dock, public port facilities, and seawalls, breakwaters, ships, docks, piers, dolphins, and pilings necessary for the establishment or maintenance of such port facilities are permitted in the Water 4 (W4) Zone and all other uses are prohibited.'

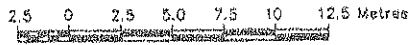
SITE CONTEXT: the subject site is located adjacent to the Port Washington dock and includes three separate components (please see site survey below):

1. A small upland parcel (Lot 1) which is 86m² (926 ft²) in area. Title to this parcel is held in fee simple by the Mr. Hunt. The applicant has stated that he has an option to purchase title to this lot.
2. The building (the 'shed'), which dates from the early part of the last century and was originally used as a storage building in conjunction with the Port Washington store. The shed is sited predominantly over the adjacent foreshore. It has been modified by the current occupant for residential use and contains approximately 1500 square feet of floor area, along with several areas of exterior deck.
3. The foreshore, title to which rests with the provincial crown. In order to occupy and use the portion of the shed over the foreshore, a user would be expected to seek and obtain tenure from province. The provincial agency responsible for granting crown tenure will only do so if the proposed use is consistent with local government zoning.

The subject property is bounded to the north and the east by Lot 1 of Plan 3658, which currently is designated and zoned commercial and is the location of the Port Washington store. This lot also contains the well and parking for the subject lot (granted by way of easements). The subject site is bounded to the south by the water and to the west by the Port Washington public dock, which is controlled by the Capital Regional District. The shed, the adjacent store building, the dock and a number of residences in the immediate area have historic character as an area of early settlement on the island and an important historical transportation and service hub.

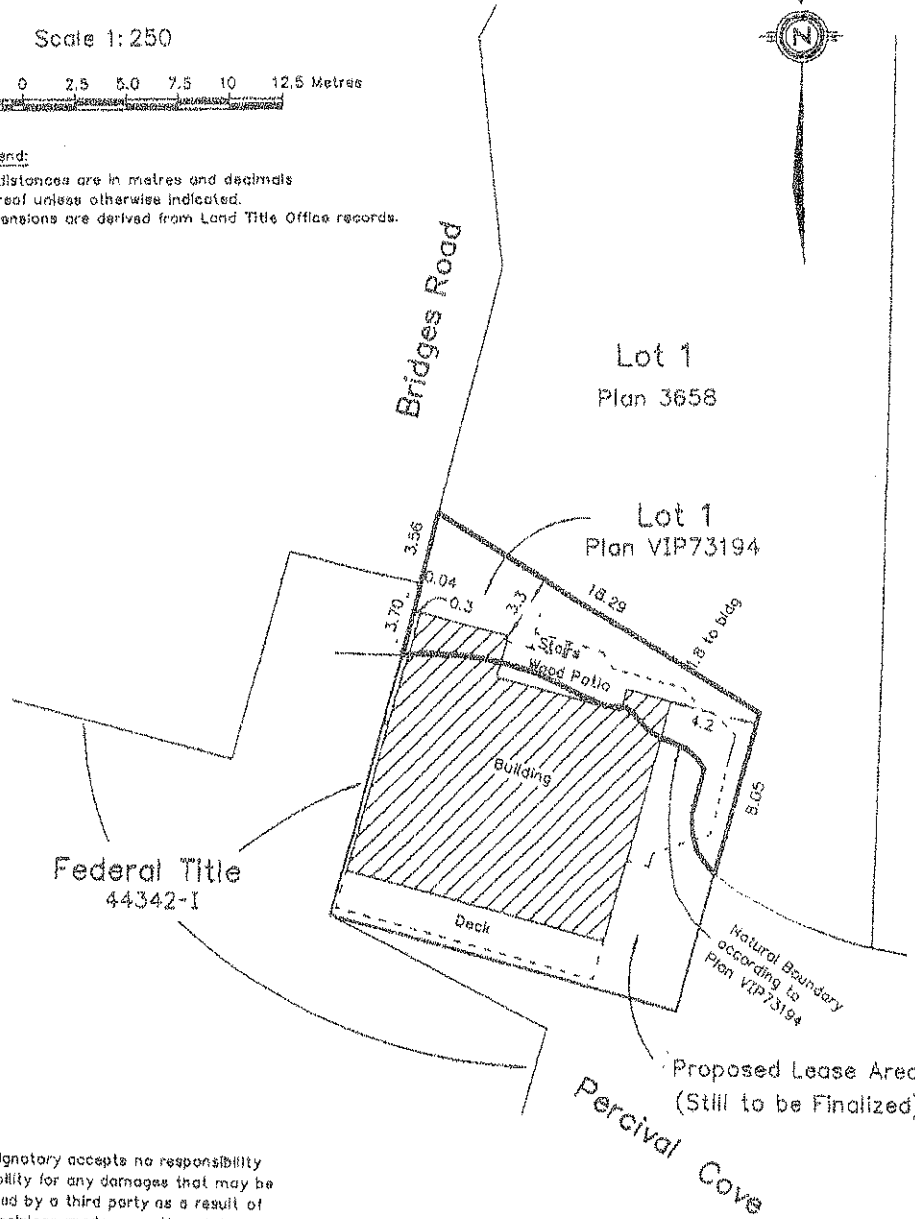
B.C. Land Surveyor's Building Location Certificate
 Showing Location of Improvements Situated on
 Lot 1, (PID 025-220-420), Section 23,
 Cowichan District, Plan VIP73194.

Scale 1:250



Legend:

All distances are in metres and decimals thereof unless otherwise indicated.
 Dimensions are derived from Land Title Office records.



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Michael J. McIlvaney
 British Columbia Land Surveyor
 Victoria, B.C.
 (250) 474-8836

File: 29818LC
 Client: Hunt

This plan was prepared for municipal purposes and is for the exclusive use of our client. This document shows the relative location of the surveyed structures and features with respect to the boundaries of the parcel described above. This document shall not be used to define property lines or property corners. This building location certificate has been prepared in accordance with the Manual of Standard Practice and is certified correct this 9th day of November 2004.

B.C.L.S.

This document is not valid unless originally signed and sealed
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Survey Plan

COMMUNITY INFORMATION MEETING(S): a community information meeting was held on October 21st. The meeting was attended by number of area residents, who voiced concerns with the proposal, which can be summarized as follows:

- Parking: there is on-going parking demand in the area, primarily generated by the dock, and the concern is that the use of the shed would result in more traffic and parking problems.
- On-going use of the shed: the owner has been occupying the shed for some time as a residence and that the LTC should proceed with litigation before considering rezoning the site.
- The historic character of shed: that the shed not be permitted to have any increase in height and the historic character be protected.
- Water: the quality of the water that would provided to the shed and the availability of water at all times of the year was questioned.
- Sewage: there were concerns expressed about septic disposal, particularly given the history of the site.
- Residential use: the potential that the shed will simply be used as a waterfront residence in the future.

RESULTS OF CIRCULATION: the LTC has referred the application to the APC for comment in draft form. If the LTC decides to proceed with consideration of the application, the draft bylaw will be circulated to agencies for comment prior to first reading.

ISSUES SUMMARY: In preliminary discussions with the applicant, a number of issues were identified:

1. Uses: the applicant is proposing that the shed and the adjacent public dock be used for:
 - a. Commercial Uses: retail sales, offices, boat and marine rentals, limited services; and an
 - b. Accessory Dwelling unit

The draft bylaw provisions have been prepared based on the applicant's statement of intended uses. The commercial uses appear reasonable given the building's location adjacent to a public dock, the existing upland zoning (which permits 'retail sales', 'offices' and 'cafes') and the current marine zoning. The proposed accessory dwelling unit is a more problematic issue: while it is fundamental to the applicant's proposal, the use of the shed as a residence over the last few years has been the basis of the on-going enforcement action by the LTC. There would also be administrative issues associated with permitting an

accessory dwelling use in a building such as the shed: it would be inherently difficult to differentiate the residential use from the commercial use. Any residential use would have to meet the three tests for accessory uses:

- Secondary to the principal use: the proposed floor area limit of 56m² would theoretically ensure that less than half the building is used as a residence.
- Incidental to the principal use: this means that the accessory use would have to be casual, or not essential to the principal use.
- Exclusively devoted to the principal use: in other words, the residential use must be tied to the commercial use and not exist independently of it. For accessory dwellings, this typically means that the occupancy of the dwelling unit is limited to owners, operators or employees of a principal use.

In practical terms, it may be difficult to determine if a future residential use is truly accessory to a commercial use and to enforce on that basis.

2. Septic disposal: the shed has reportedly had less than adequate septic disposal facilities in the past. The owner has provided a letter by a registered professional engineer stating that a sewage treatment system and marine outfall disposal system can be installed that would meet applicable requirements and that the discharge would have no impact on the natural environment. If the application proceeds, I would recommend that a covenant be granted requiring installation of such a system prior to issuance of any occupancy of the building.
3. Potable Water: Lot 1 is the beneficiary of an easement registered on title to the adjacent lot (Lot 1 of Plan 3658) to provide water from the well on the adjacent lot and the pipes necessary to provide the water "at such daily rate of flow as may be required by the occupiers of and the improvements upon [Lot 1] from time to time provided that an equivalent daily rate of flow is available to [Lot 1, Plan 3658]." The owner has had a report prepared by a hydrogeologist which tested the well quantity and quality. The report states that the well can conservatively provide 4715 litres per day. All quality parameters were within the guidelines for Canadian Drinking Water Quality, and the recovery of the well following pumping indicates that it receives continuous recharge.
4. Parking: the subject lot has the benefit of an easement registered on title to the adjacent lot (Lot 1 of Plan 3658) which provides for two separate parking areas on the adjacent lot. There is also a separate area providing for foot access to the subject lot. The easement area which is specified for parking would only accommodate two - three parking spaces. Three parking spaces would, however, likely be adequate to meet the minimal bylaw requirements for parking for the shed (one for the accessory dwelling unit and two for the commercial uses). The applicant would need to ensure there is adequate parking prior to proceeding. The parking issues in the area seem to extend beyond parking relating to any future use of the shed, and involve the use of the dock and fact that there is no dedicated parking for the dock.

LEGAL AND ENFORCEMENT ISSUES: the use of the portion of the shed that is over the foreshore (i.e. 80-90% of the floor area of the building) has been subject to bylaw enforcement action and litigation by the LTC and the CRD over a number of years. It is the position of the LTC that the use of the shed is contrary to zoning. Litigation is currently in abeyance pending the outcome of a case argued in front of the Supreme Court of Canada last year, which has related issues, and the outcome of this rezoning application. The applicant has made the application for rezoning with the understanding that if successful, he would take possession of Lot 1 and obtain tenure over the portion of the foreshore under the shed.

STAFF COMMENTS: the application has been submitted in order to bring the use of the shed into compliance with zoning. The applicant has stated that it is his intention to use the shed as both a residence and a place of business. A number of issues have been identified above (and in the previous staff report), many of the same issues were also raised at the community information meeting. The next step in the rezoning process is referral of the draft bylaw to agencies for comment. However, before undertaking that step, the LTC should consider the key issue of the proposed accessory residential use of the building. Accessory residential use is common in commercial zones and seems a fundamental part of this particular application. On the other hand, as discussed above, there may be challenges in administering such zoning for this building, where there is no clear delineation between residential and commercial parts of the building, where there is obvious value to the owner in using building as a residence and where there is a history of occupying the building as a residence.

If the LTC is not prepared to consider an accessory residential use in the zoning, then the draft zoning should be altered (if the applicant is amendable) or the application should proceed no further.

Respectfully submitted by:



Robert Kojima

Nov 22/06
Date

Enclosures:

Draft zoning provisions

DRAFT – SEPTEMBER 2006

Comprehensive Development Two (CD2) Zone

8.24.1 Subdivision Requirements

- (1) No lot having an area less than 0.4 hectares (1 acre) may be created by subdivision in the Comprehensive Development Two (CD2) Zone.

8.24.2 Permitted Uses

- (1) In addition to uses permitted in Section 3.1 of this Bylaw, the following uses and no others are permitted in the Comprehensive Development Two (CD2) Zone:
 - (a) retail sales;
 - (b) offices;
 - (c) rental of boats and marine-related sporting equipment, except personal watercraft;
 - (d) services, limited to the provision of visitor information, storage within a building, courier services, and services accessory to the operations of public wharf;
 - (e) accessory dwelling unit.

8.24.3 Accessory Dwellings

- (1) The number of accessory dwelling units is limited to one.
- (2) The accessory dwelling unit must be located in the same building as a principal commercial use and have a separate outside entrance.
- (3) The maximum floor area of an accessory dwelling unit is 56m² (603 ft²).
- (4) The occupancy of an accessory dwelling unit is restricted to owners, operators or employees of a permitted principal use.

8.24.4 Lot Coverage

- (1) Lot coverage on the upland lot shall not exceed that shown on Plan CD2(a)

8.24.5 Setbacks

- (1) The setbacks from all lot lines and the natural boundary of the sea for the building shown on Plan CD2(a) of Schedule E shall be those shown on Plan CD2(a) of Schedule E.

8.24.6 Height

- (1) No building or structure may exceed 9.7 metres (32 feet) in height.

8.24.7 Landscape Screening

- (1) Every external storage area on the upland lot must be screened from view by a landscape screen complying with article 3.13.1(1).
- (2) Every commercial building must be screened from view from adjacent residential lots. The screening must be provided along lot lines abutting

DRAFT – SEPTEMBER 2006

parcels zoned Rural Residential and Rural, complying with article 3.13.1(2).

8.24.8 Parking

- (1) The minimum number of parking spaces required in the CD2 zone for the accessory dwelling unit permitted in 8.24.2(1)(e) above is one.
- (2) Despite Subsection 6.4.2 (Off-street Parking), required parking may be provided on a contiguous lot within the C1 zone.
- (3) In addition to the parking spaces provided, a minimum of 5 bicycle parking spaces must be provided in the form of a fixed structure that supports the bicycle frame and permits the bicycle wheels to be locked to the frame.
- (3) Despite Section 6.2 (Size of Spaces and Aisles) and Section 6.3 (Access to Spaces) the required off-street parking spaces may be accessed directly from a highway.
- (4) Despite Subsections 6.6.1 (Development and Maintenance Requirements for Parking Areas) and 3.7.1, a parking area may be located a required setback.

DRAFT – SEPTEMBER 2006

Water 4 (W4) Zone

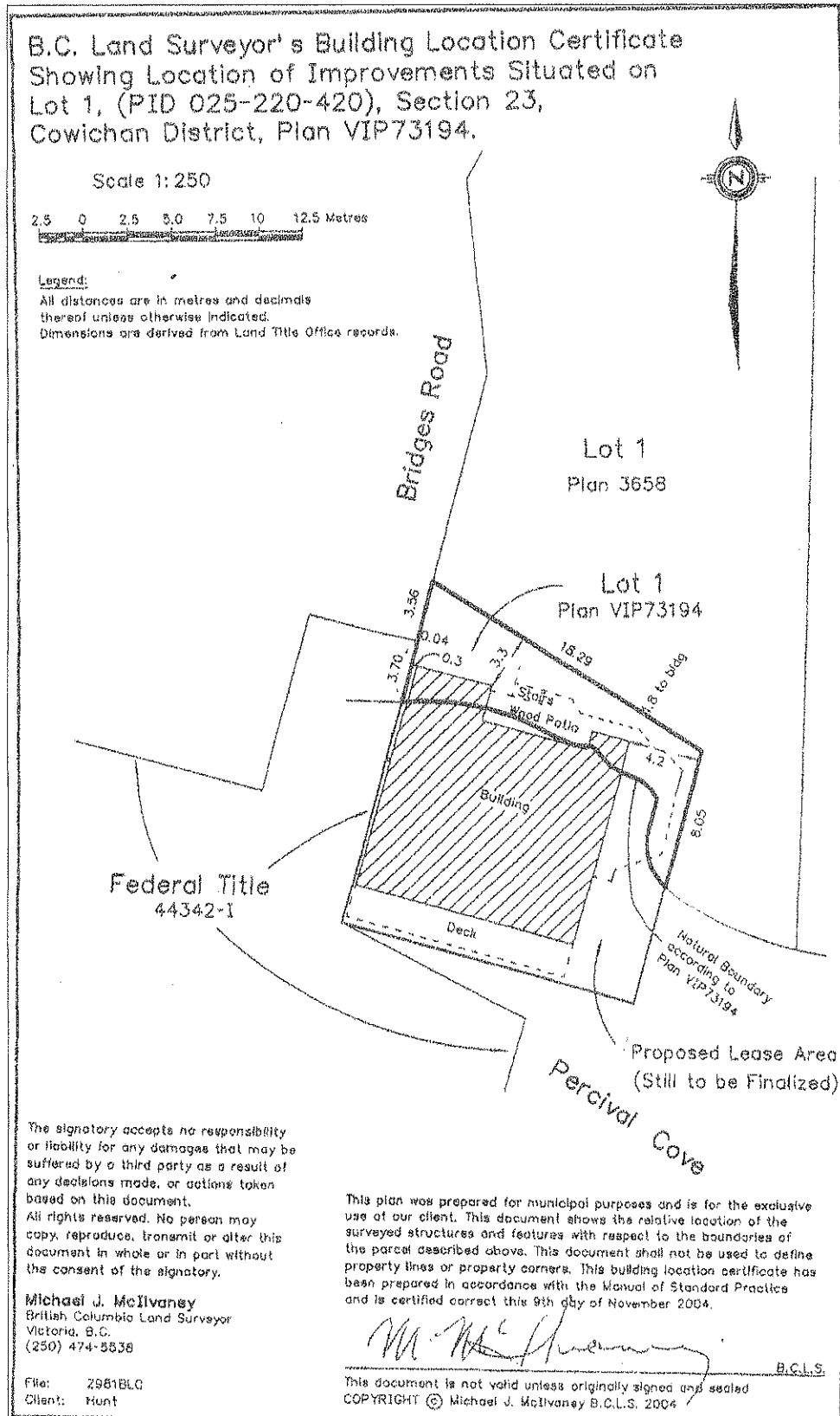
8.22.1 Permitted Uses

- (1) Marine navigation, marine navigation aids, marker buoys, ferry dock, public port facilities, and seawalls, breakwaters, ships, docks, piers, dolphins, and pilings necessary for the establishment or maintenance of such port facilities are permitted in the Water 4(W4) Zone and all other uses are prohibited.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Site-Specific Zone Reference	Legal Description	Site Specific Regulations
W4(a)	That part of the bed of the sea shown on plan deposited under No. 44342I (PID 009-691-979) and District Lot 2022.	(1) In addition to the uses permitted in 8.22.1(1), the following uses are permitted in this location: (a) marine charters and tours;

DRAFT – SEPTEMBER 2006

Plan CD2(a)



IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *North Pender Island Local Trust
Committee v. Hunt*,
2014 BCSC 1438

Date: 20140728
Docket: VA S112983
Registry: Vancouver

Between:

North Pender Island Local Trust Committee

Plaintiff

And:

**Travis Ethan Hunt, Amanda Rachael Marie Hunt,
Tracy Lynne Mundy, and James Webster Baron Mundy**

Defendants

Before: The Honourable Mr. Justice G.R.J. Gaul

Reasons for Judgment

Counsel for the Plaintiff:

M. Moll

Counsel for the Defendants:

A. Berns

Place and Date of Trial/Hearing:

Victoria, B.C.
September 12 - 13, 2012

Place and Date of Judgment:

Victoria, B.C.
July 28, 2014

Introduction

[1] The plaintiff in this action, the North Pender Island Local Trust Committee (the “Local Trust”) is the governing body under the *Islands Trust Act*, R.S.B.C., 1996, c. 239 that has the regulatory and zoning authority over North Pender Island.

[2] The defendants are the registered owners of waterfront property at Port Washington on North Pender Island (the “Land Lot”).

[3] The dispute in this litigation surrounds the defendants’ use of a shed that is associated with the Land Lot (the “Shed”).

[4] On this summary trial, the Local Trust seeks:

- a) A declaration that the Shed has been converted to a dwelling, contrary to the applicable bylaw;
- b) A declaration that the defendants are using the Shed for residential use contrary to the applicable bylaw;
- c) A permanent injunction requiring the defendants to cease all residential use of the Shed;
- d) A permanent injunction requiring the defendants to remove the kitchen, bedroom, bathroom, and other living areas from the Shed;
- e) Costs.

Issues

[5] There are four principal issues to be addressed on this summary trial:

- a) Does the defendants’ use of the Shed as a residence contravene the applicable zoning bylaw?
- b) Is the defendants’ residential use of the Shed exempt from the applicable zoning bylaw because of the Shed’s prior lawful non-conforming use?

- c) If the defendants' past use of the Shed as a residence was a lawful non-conforming use, was that status lost because such use was discontinued for six months or more?
- d) If the defendants' present residential use of the Shed contravenes the applicable bylaw and that use is not exempt from the bylaw because of its prior lawful non-conforming use, then what is the appropriate remedy?

Facts

The Land Lot

[6] The Land Lot is an irregularly shaped parcel of waterfront property legally described as Lot 1, Section 23, Pender Island, Cowichan District, Plan VIP73194, located at Port Washington, on North Pender Island.

The Shed

[7] In or around 1910, the Government of British Columbia built a wharf at Port Washington. At around the same time, the Shed was built adjacent to the wharf. The Shed is located partially on the Land Lot and partially over the waters of Percival Cove in what was formerly District Water Lot 376 (the "Water Lot"). The Water Lot is owned by the Province of British Columbia.

[8] Historically, the Shed was associated with the general store at Port Washington (the "General Store") and used for the storage of goods arriving by boat and for the storage of items for the General Store.

[9] In or around the early 1990s, renovations were made to the Shed that allowed it to be used as a residence. From that time until the present, the Shed has been used as a personal residence or temporary rental accommodation.

The Zoning By-Laws

[10] For a significant period of time after its construction, the Shed was not subject to any zoning regulation. That situation changed in 1972 when the Capital Regional

District (North Pender Island’s governing authority at the time), passed a zoning bylaw for all of Pender Island (the “*CRD Bylaw*”). Under the *CRD Bylaw*, the Land Lot was zoned “C1” for commercial use and the Water Lot under the Shed was zoned “Water A”.

[11] In 1978, the Local Trust, having assumed responsibility for the enactment of zoning regulations for North Pender Island, replaced the *CRD Bylaw* with the *Zoning Bylaw, North Pender Island, 1978* (“*Bylaw No. 5*”). Notwithstanding the change in bylaws, under *Bylaw No. 5* the Land Lot and Water Lot were subject to essentially the same zoning regulations as they were under the former *CRD Bylaw*.

[12] Section 4.1 of *Bylaw No. 5* set out the general provisions regarding the permitted uses of property, irrespective of its zoning:

Uses permitted in any zone

Except where specifically excluded the following uses shall be permitted in any zone:

- (1) public service uses;
- (2) uses, structures and buildings which are accessory to the principal use, and to any dwelling unit, including a pump house;
- (3) Public utility poles, electric and transmission towers, wires, traffic control devices, and underground or submarine utility systems;
- (4) hiking, horse riding trails and bicycle paths;
- (5) Road-side Produce stands, not exceeding 5 square metres in area, for the sale of farm products grown or reared on the land upon which the stand is located.

[13] Section 4.1 was amended in 1986 to add subsection (5) and further amended in 1993 to delete subsection (3).

[14] Pursuant to *Bylaw No. 5*, the Land Lot remained zoned as “C1”. Section 10.1 described the permitted uses of property zoned C1, the majority of which were commercial in nature. However, section 10.1(6) permitted:

a residential use combined in the same building with any of the uses permitted, provided that the residential use shall be confined to one self-

contained dwelling unit of not less than 37 square metres (400 sq. ft.) and shall have a separate entrance from outside. [Emphasis added]

[15] Under *Bylaw No. 5* the Water Lot was zoned as “Water A”. Section 15 set out the permitted and prohibited uses of property zoned Water A:

15.1 Uses permitted

In addition to uses permitted in Section 4.1 of this bylaw, the following uses and no others shall be permitted in the Water A zone:

(1) private floats including mooring buoys, wharves, piers, and walkways accessory to residential use providing access to property immediately abutting the foreshore;

(2) sea walls, breakwaters, ramps, dolphins and pilings necessary for the establishment or maintenance of the use permitted in this Section.

15.3 Buildings Prohibited

No building shall be erected on any private float or wharf.

15.4 Commercial and industrial activity prohibited

Private floats and wharves shall be used for private access only and no commercial or industrial activity or use shall be permitted.

15.5 Residential Use prohibited

No person shall reside on any boat or vessel moored or wharfed in this Zone.

[16] Subsection (1) of section 15.1 was amended in 1986 to include the words “including mooring buoys”.

[17] In 1999, the Local Trust adopted the *North Pender Island Land Use Bylaw No. 103, 1996* (the “*Land Use Bylaw*”). This is the zoning bylaw that presently governs the Land Lot and the Water Lot. Section 2.2.1 of the *Land Use Bylaw* requires that:

2.2 Requirement for Compliance

2.2.1 Land or the surface of water in the North Pender Island Local Trust Area shall not be used, land shall not be subdivided, buildings and structures on land or on the surface of water shall not be constructed, altered, located or

used, and signs shall not be erected or located on any land except as specifically permitted by this Bylaw.

[18] Under the *Land Use Bylaw*, the Land Lot is zoned “Commercial C1”, with a site specific designation of “C1(a)” which further limits its potential uses to “retail sales, offices, including banks, and cafes” (see: s. 8.4.2 and s. 8.4.8(1)). The Water Lot is zoned “Water 4”. Section 8.22.1 of the *Land Use Bylaw* describes the following permitted uses for areas zoned Water 4:

8.22 Water 4 (W4) Zone

8.22.1 Permitted Uses

(1) Marine navigation, marine navigation aids, marker buoys, ferry dock, public port facilities, and seawalls, breakwaters, ships, docks, piers, dolphins, and pilings necessary for the establishment or maintenance of such port facilities are permitted in the Water 4(W4) Zone and all other uses are prohibited.

Previous Litigation

[19] In 1996, the Local Trust began legal proceedings against the Land Lot’s previous owner, Mr. Ronald Hunt, to enforce the zoning regulations of *Bylaw No. 5* (the “First Action”). Mr. Hunt is the father of Travis Hunt, one of the defendants in the current action. The pleadings in the First Action were amended a number of times to reflect changes in circumstances, including the Local Trust’s enactment in 1999 of the *Land Use Bylaw*. The key issues in dispute in the First Action were the determination of the boundary line between the Land Lot and the Water Lot, what portion of the Shed was on the Land Lot and what portion was over the Water Lot and what were the lawfully permitted uses of the Shed.

[20] The parties in the First Action proceeded to a summary trial in the fall of 2007. At para. 19 of his reasons for judgment indexed as *North Pender Island Trust Committee v. Hunt*, 2008 BCSC 391, Mr. Justice Bracken made the following crucial findings of fact that are relevant to the present summary trial:

- The [Water Lot and the Land Lot] are divided by a single lot line which is the high water mark.

- The survey at Exhibit “E” of affidavit #1 of Ronald Hunt filed in the First Action is an accurate depiction of the then current location of the high water mark relative to the Shed as it stood in 1953. At that time, the majority of the Shed was in the [Water Lot].
- The survey of Brian G. Wolfe-Milner, B.C.L.S., certified October 16, 2003, and attached as Exhibit “A” to Mr. Wolfe-Milner’s affidavit sworn October 17, 2003 and filed in the First Action, is an accurate depiction of the then current location of the high water mark relative to the Shed. At that time, the Shed was located almost entirely within the [Water Lot]; however a small portion of the Shed was still located within the [Land Lot].

[21] Having found that the zoning boundary between the Land Lot and the Water Lot ran through the Shed, Justice Bracken concluded at para. 64 of his reasons:

[64] ***

- D. That due to its historic use and the impracticality of dividing one building into two different zones the entire Shed should be governed by the C-1 Commercial zone that applies to the [Land Lot].

[22] The Local Trust successfully appealed from Justice Bracken’s declaration that the Shed’s use was governed solely by the C-1 commercial zoning that applied to the Land Lot. In its reasons for judgment indexed as 2009 BCCA 164, the Court of Appeal concluded:

[5] ...In October 2003, the shed, including decks, occupied 1559 square feet on the water lot and 113 square feet on the land lot.

[17] ...Both the water lot and the land lot have legal uses. Owners, tenants and licensees of property may not like changes to zoning, but a municipality is permitted to change zoning in what it perceives to be the public interest. As Wilson, J. wrote in *Hartel Holdings Co. v. Calgary (City)*, [1984] 1 S.C.R. 337 at 354, where a bylaw is engaged for legitimate and valid planning purposes, the resulting detriment to an owner is one that “must be endured in the public interest.” It is a risk of ownership and a not uncommon situation. The *Local Government Act*, like its predecessors, addresses that detriment by permitting the continued use of land, buildings and structures indefinitely. While you cannot build a contravention of a zoning bylaw, a building in use before a zoning bylaw is enacted can continue to be used for legal non-conforming uses. In my view, the situation in which the respondent finds himself is little different from that of the developer in *Crest Construction Ltd. v. North Vancouver (District)*, [1970] B.C.J. No. 666 (C.A.).

[19] ...I would allow the appeal and set aside the order declaring the C1A zoning applies to the portion of the building which extends over the water lot. Thus, since the Capital Regional District zoning bylaw made 27 June 1972, the portion of the shed extending over the water lot has been within the zone now known as Water 4. Of course, that zoning is subject to such lawful non-conforming use as Mr. Hunt may be able to establish under s. 911 of the *Local Government Act*.

[23] The resulting order from the Court of Appeal included the following provision:

AND THIS COURT FURTHER ORDERS that the Appellant is entitled to a declaration that, since 27 June 1972, the portion of the Shed extending over the Water Lot has been within the zone now known as Water 4.

[24] The defendants purchased the Land Lot from Ronald Hunt in 2009, after the Court of Appeal had rendered its decision in the First Action. As best I can determine, no further steps have been taken in First Action and presently it remains essentially dormant.

[25] In March 2011, the Local Trust informed the defendants of its position on the permitted uses of the Shed and that those uses did not include it being used as a residence. Two months later, with the defendants continuing to use the Shed as a residence, the Local Trust stated the present action.

Discussion

[26] Before examining the issues in dispute, I should note that all of the parties have expressed their desire to address this matter by summary trial and are in agreement that it can properly be resolved in that manner.

Issue #1: Does the defendants' use of the Shed contravene
the *Land Use Bylaw*?

[27] There is no dispute between the parties that the Shed is currently being used as a residence. Moreover, the parties agree that the *Land Use Bylaw* prohibits the Shed from being used in this manner. The answer to the first issue is therefore clear: the defendants' current use of the Shed contravenes the *Land Use Bylaw*.

Issue #2: Have the defendants shown a prior lawful non-conforming use of the Shed?

[28] Where a particular use of property runs afoul of a bylaw that is passed, its continued use in the prohibited manner may be permitted if the property's owner can show, on a balance of probabilities, that the use was lawful prior to the enactment of the bylaw [See: *Duke v. Nanaimo (Regional District)*, [1998] B.C.J. No. 3048 (S.C.)]. In this regard, section 911 of the *Local Government Act*, R.S.B.C. 1996, c. 323 (the "LGA") provides:

Non-conforming uses and siting

911 (1) If, at the time a bylaw under this Division is adopted,

- (a) land, or a building or other structure, is lawfully used, and
- (b) the use does not conform to the bylaw,

the use may be continued as a non-conforming use, but if the non-conforming use is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the bylaw.

(5) A structural alteration or addition, except one that is required by an enactment or permitted by a board of variance under section 901(2), must not be made in or to a building or other structure while the non-conforming use is continued in all or any part of it.

Evidence of the Shed's Prior Uses

[29] Ms. Beverly Bradley lives on Pender Island and her family has a long history with North Pender Island, dating back to the 1920s. Ms. Bradley's great-aunt built a home on North Pender Island in the early 1930s and later in that decade Ms. Bradley's grandmother built a home there as well, known as "The Cottage". Both homes are located a few minutes' walk from the wharf, General Store, and Shed at Port Washington. After her grandmother's death, Ms. Bradley's mother lived in the Cottage. In her affidavit #1, sworn 7 June 2012 and filed by the Local Trust, Ms. Bradley describes her recollection of Port Washington as follows:

[5] I was born in 1940 and as a child, my family and I visited the island during every school break. As an adult I visited most weekends during my

mother's life and during vacations, I eventually retired and lived in the Cottage myself until my marriage six years ago, when I moved to another part of Pender Island. I still own the Cottage and visit it regularly for upkeep, especially when it is used by friends and family.

[6] I am very familiar with the wharf and the Shed. In the summers from the 1940's to the 1960's we tied our rowboats to the float and we rowed off the wharf almost daily. The area by the Shed was a meeting place for locals in the evening; they would often walk down to see the motorboats coming back from fishing or just to visit.

[8] Based on my own memories alone, from the 1940's to the 1980's, the wharf at Port Washington was the centre of activity and entertainment. At that time the Shed was used by the operators of the "General Store" adjacent to the Shed at Port Washington...

[9] During the 1940's and 50's, I would go into the Shed to buy feed for my grandmother's chickens. My siblings and I would weigh ourselves on the big scales used for the grain; or we would just chat with whoever happened to be working in there filling an order for seed or grain of farm supplies. From the 1960's on I would stop and say hello to whomever happened to be getting something out of the Shed for the Store.

[10] I recall that the large door to the Shed opened onto the wharf and was not always open during store hours. The population on the island was very small for many years and the need for constant access to the Shed seemed to me to be fairly minimal. I usually saw that the Shed was shut up tight unless someone was getting something for the Store. The Shed did not have a toilet in it that I ever saw and I was in the entire Shed at one time or another during the time it was used by the owners of the General Store.

[11] By the 1960's the storage in the Shed appeared to me to be used increasingly for storage of general items sold at the General Store and much less so for grain.

[12] I recall a brief time in the 1980's when the Shed was used other than for storage, prior to [Ronald] Hunt's ownership. Someone put a window in the front of the far end of the Shed closest to the General Store and a woman tried to sell handicrafts there for a short period of time. She only had a small area for display of local handicrafts but that venture did not last long. I went inside the Shed several times to look at the knitted items and other items for sale. I do not remember the woman's name or where she lived, but she was definitely not living in the Shed and the rest of the Shed appeared to be still used for storage.

[13] The use of the Shed changed dramatically when Ron Hunt took over it and the wharf. When Mr. Hunt moved into the Shed in 1993 or 1994, it was the first time that I had seen it used as a residence.

[30] Mr. George Ross-Smith has lived, worked and farmed on North Pender Island since 1947. Mr. Ross-Smith became a permanent resident of Pender Island in 1965. In his affidavit sworn 9 November 2004 and filed by the defendants, Mr. Ross-Smith states:

[2] I was at Port Washington on a regular basis since 1947 and I am familiar with the use of the properties at and around the general store, and the Port Washington Government dock.

[3] Until the early 80s when the B.C. Ferry service took over servicing of the Island, Port Washington was both a Ferry Terminal and the location of the general store in the area.

[4] As long as I have known, there has been a shed behind the store which opened out onto a portion of the wharf. The shed has always been used for commercial purposes and has from time to time been a part of, and used by, the general store as a marine fueling station and for the retail sale of feed grains, seeds, petroleum products and agricultural supplies.

[5] During the 1970s Imperial Oil had a fueling station at the wharf and used the shed for some of its activities. It was during this time that residents used the shed as a freight transit depot for packages coming and going on the Ferry.

[6] In my experience the shed has never been limited to storage uses only. It has been used for active commercial purposes for as long as I can remember.

[31] Mr. William Logan is a resident Pender Island. Like Ms. Bradley, Mr. Logan's family has a long history with the island. In his affidavit sworn 24 May 2012 and filed by the Local Trust, Mr. Logan indicates:

[4] I have been a resident homeowner on North Pender Island since 2002. I live at...which has been in my family since 1945. Both my parents' families were long-time residents of Pender Island. I grew up on Pender Island from 1959 to 1973. In 2002, I moved back to Pender Island and now live here full time.

[5] I am familiar with the operation of the General Store...and the building defined as the "Shed"...My house is about half a kilometre from the Shed.

[6] I went to the Shed many times over the years growing up on Pender Island as it was a local hangout for teens at the time. From 1975 to 2002 my family and I came to Pender Island each summer...Throughout these years I observed that the Shed was only used for storage purposes and at no time prior to the 1990's did I ever see the Shed used for residential purposes.

[32] Ms. Karen Amies-Horbas lives on North Pender Island and her home is in close proximity to Port Washington. Ms. Amies-Horbas' family has been associated with Pender Island for four generations. From 1977 to 1980 Ms. Amies-Horbas worked as a clerk at the General Store. In her affidavit sworn 19 June 2012, and filed by the Local Trust, Ms. Amies-Horbas states:

[3] The general store...used the nearby shed building (the "Shed") that was located almost entirely over the water for storage.

[4] When I worked at the general store, the other employees and I would go into the Shed 2 or 3 times to pick up animal feed for customers. We also stored soft drinks there.

[5] There were no windows in the Shed when I worked at the general store. An attached toilet/outhouse served the General Store. The Shed did not have a toilet in it until the 1990's. I understand Ron Hunt bought the Shed in the 1990's and it was at this time that I saw significant alterations to the Shed.

[33] From 1984 to 1988, Mr. Russell Searle and his wife operated the General Store at Port Washington. They owned the property upon which the General Store was located as well as the Land Lot which was situate immediately to the south of the store. In his affidavit sworn 16 October 2003 and filed by the Local Trust, Mr. Searle states:

[6] During the time that I operated the general store I made use of a shed (the "Shed") located on the wharf which extends from the south end of Port Washington Road. I stored kerosene, varsol and grain feeds in the Shed. I had a lock on the Shed and it was only used as storage space from 1984 to 1988, except that in approximately 1986 we allowed Pender Crafts to renovate and use a portion of the shed as a crafts store.

[7] In recent years I have observed that the appearance of the Shed has been altered and its use converted to residential accommodation.

[34] In or around 1990, the Searles sold their two parcels of land at Port Washington to Mr. Jim Lane, who in turn sold them to Mr. Frank Batchelor.

[35] Ms. Jane Morley and her family have owned property at Port Washington since 1977. In the late summer of 2008, Ms. Morley became a regular resident of Port Washington. In her affidavit sworn 25 April 2012 and filed by the Local Trust, Ms. Morley attests to the following:

[3] I am the owner of a waterfront property... (the "Morley Family Property"). I reside in a two-storey house...located approximately 60 feet to the north-east of the structure defined as the "Shed"...My house is higher than the Shed, and I can see the Shed clearly, looking down on it from my deck.

[5] I have observed the Shed and its uses over many years. I regularly look down at it from my deck, and over the years I have walked by the Shed hundreds of times on my way down to the government dock adjacent to the Shed.

[6] My family members and I first purchased the Morley Family Property in 1977. At that time the general store...was a going concern and the Shed was used for storage by the General Store's owners...

[7] The General Store stopped functioning as a store in or around the early 1990s. At some point in or around 1993, I believe, based on records I saw at the time, that the then owner of the General Store, Frank Batchelor, sold the small piece of land under the portion of the Shed that is not over water (the "Small Lot") to Ron Hunt and gave him a right of way so he could park his vehicle near the Shed.

[8] Shortly after Ron Hunt became the owner of the Small Lot, I observed construction work being performed on the Shed. From the nature of the work done, it appeared to me that the Shed was being turned into a residence. He also constructed a deck on the water-side of the Shed and an outside area on the side of the Shed where he put a barbecue.

[9] When the construction was completed, I observed Mr. Hunt and others living in the Shed. It came to my attention that sewage from the Shed was being flushed from under the Shed into the water. I could hear the flushing sound from my deck, and I directly observed, more than once, from the vantage point of the dock, water coming from under the Shed and going directly onto the rocks below (under the high water mark) and then into the sea. On those occasions, I could hear the flushing noise I heard frequently from my deck.

[10] In the 1990's, I saw on average of two weekends per month, a camper parked in the parking spot by the Shed. I saw Ron Hunt driving the camper, and I assumed it was his. It was obvious to me that he and others were living in the Shed.

[36] In his affidavit #1 sworn 22 August 2012 and filed by the defendants, Ronald Hunt explains how he purchased the Land Lot from Mr. Batchelor and how he used the Shed until he sold the Land Lot to the defendants in this action:

[5] Around Christmas 1991, I met Frank Batchelor (now deceased), who owned two adjacent parcels of property at Port Washington, Pender Island -

one was the Property and the other was on higher ground. This Property had a building on it... the Structure [the Shed]...and the higher-ground property had a building on it that was known as the “General Store”.

[6] In 1992, Mr. Batchelor told me that both properties and buildings were for commercial use and the last had left the Structure. Mr. Batchelor offered to sell me the Property.

[7] I had interest in Mr. Batchelor’s offer and viewed the Property. The Structure had a residential suite within it and a large open space on the waterfront side. There were a number of household and commercial [items] strewn about the Shed which led me to believe the Structure had been used both as a residence and for commercial purposes. Although the Structure was in a state of disrepair, it had heritage charm and lots of potential.

[13] Commencing in March, 1992 and prior to purchasing the Property, I leased the Property from Mr. Batchelor and immediately used the Structure as a business office and residence while Mr. Batchelor carried on with restoration of the Structure.

[15] Relying on the advice from my lawyer, the communications from the Islands Trust, my review of the 1978 Bylaw, the fact that the Structure was located partly upon the Property and partly in the Water Lot and had co-existed with operation of the wharf for almost 100 years, the restoration work completed by the previous owner, the existence of the residential suite and the fact that I needed a business office and residential suite I purchased the Property in March of 1993. I did not purchase the property which contained the General Store.

[25] After the purchase of the Property, I cleaned, painted and repaired the building. I then arranged for the phone, fax, cable and internet lines to be hooked up. I lived in the residential suite, furnished the office and used an area of the Structure to store my car and my motorcycles.

[29] Beginning with my lease of the Property in 1992 and until I sold in 2009, I continued to use the Structure, in the two zones, as a residence and business office and as described in the 1978 Bylaw and did not discontinue those uses for a period exceeding 6 months.

[37] Ms. Laura Morgan has lived on Pender Island since 1990. In her affidavit sworn 15 August 2012 and filed by the defendants, Ms. Morgan indicates she was “aware” that prior to the Property being sold to Ronald Hunt, Frank Batchelor had

rented the Shed to an individual who used it, amongst other things, as a residence. How Ms. Morgan became “aware” of this is unknown to me. Ms. Morgan also attests to the fact that Mr. Batchelor permitted Mr. Hunt to operate a business and reside in the Shed prior to Mr. Hunt purchasing the Land Lot. Like my earlier observation of Ms. Morgan’s evidence, it is unclear to me how she knew of any arrangement between Mr. Batchelor and Mr. Hunt. Given the unclear nature of these parts of Ms. Morgan’s evidence, I have given them little weight. Ms. Morgan does however provide the following first-hand evidence of her observations of the Shed in 1995:

[5] In or about 1995 I had, for a period of one year, a contract to pick-up and drop off the mail with the mail boat that arrived at the Port Washington dock each morning. Consequently, six days a week I would attend at the Port Washington dock.

[6] I came to know Ron Hunt as I was frequently on the Port Washington dock. We became friends and Mr. Hunt invited me into his residence within the dock building [the Shed]. It was commonplace for me to have morning coffee with Mr. Hunt after I had retrieved the morning mail. I had numerous opportunities to observe Mr. Hunt’s use of the dock building.

[7] While Mr. Hunt was residing in the dock building, the interior of the building has a living area with beds, a kitchen and bathroom. During my visits with Mr. Hunt it was apparent that he was conducting his business from the dock building.

[38] Mr. Walter Kowalski has been a resident of Pender Island since 1991. In his affidavit sworn 16 August 2012 and filed by the defendants, Mr. Kowalski indicates:

[5] Mr. Hunt informed me that he was going to conduct maintenance work to fix the place up and I offered him my construction services. Since 1992 and up until the present I have performed work on the dock building [the Shed] at Port Washington. During this time I have been in the interior of the building many times. During those times I have always observed [it] to be a residence as well as commercial activity. The commercial activity has mostly been as a business office.

[39] In an affidavit sworn on 20 August 2012 and filed by the defendants, the defendant Travis Hunt describes his use of the Shed, during both the time his father owned the Land Lot and since he and the other defendants purchased the Land Lot in 2009:

[6] Soon after my father purchased the Property [the Land Lot] he began to operate his business from the Property. During the entire time my father

owned the Property I, along with my mother and wife would stay in the Structure [the Shed] on the Property. Most often these stays would be for a short duration, from one night to several nights. However, in approximately spring of 1996 I did reside on the property full-time for approximately six years.

[8] After my purchase of the Property, the other Defendants and I have allowed my father to reside and operate a business from the Structure on the Property. My father's personal and business belongings are still present within the Structure.

[9] Since September, 2011 the other Defendants and I have allowed Emil Chervatin to use the Structure on the Property for his real estate business and a residence.

[40] The defendants have also filed the affidavit of Barbara St. Germain, Ronald Hunt's former spouse, sworn 20 August 2012. Ms. St. Germain describes her observations of the Shed as follows:

[3] I had [the] opportunity to observe the condition of the Structure [the Shed] shortly after Ron Hunt purchased the Property. The interior of the Structure contained a living quarters with living area, beds, a kitchen and a bathroom. The seaward part of the Structure contained a large open space which had a number of items in it, including work bench, storage cabinets and other sundry items. I made these observations in 1993.

[4] On subsequent visits to the Property I observed that Ron Hunt created an office space within the Structure for his professional and business needs. I made these observations between 1993 and 2009.

[6] During my last visit to the Property in May 2012, the condition of the Structure was similar to the other visits since 2009. I observed that another person is occupying the Structure...

[41] Mr. Miles Drew is the Bylaw Enforcement Manager for the Islands Trust and as such is employed by the Local Trust. In his affidavit #1, sworn 26 June 2012 and filed by the Local Trust, Mr. Drew states:

[10] Over the past twenty years the Local Trust Committee and the Islands Trust have received complaints regarding the conversion and the use of the Shed as a residence. The Islands Trust has no record of a building permit for such conversion issued by the Capital Regional District. The Islands Trust

has no record of a form of approval for residential use of the Shed over the Water Lot from the Provincial Government.

[14] On April 26, 2012, I inspected the Shed at 9:30 a.m. after making arrangements with Travis Hunt. Geoff Kinnear, a bylaw enforcement officer with the Islands Trust joined me. The Shed was set up as a residence with bedroom, bathroom, and a kitchen-living-dining area on the ground floor. The Shed also had a loft area. The Shed appeared to me as if it was currently occupied. I saw recently used dishes in the sink.

[42] In his affidavit sworn 16 August 2012 and filed by the defendants, Emil Hrvatin, also known as Emil Chervatin, explains his association with the Shed:

[2] I met Ron Hunt, father of the current owners of the dock building [the Shed] at Port Washington, in early 2011.

[3] Mr. Hunt invited me into the dock building where I had the opportunity to observe the interior. It was clear to me that the dock building was being used as a residence as well as a business office for Mr. Hunt.

[4] Since September 2011 I have been residing in the dock building at Port Washington and am also using the residential suite for my real estate business.

[43] Responding to Mr. Drew's affidavit #1, Mr. Hrvatin further explains:

[6] ...While Mr. Drew is correct that the dock building was currently occupied on April 26th, 2012 he has failed to provide additional information about the commercial use of the building. On April 26th, 2012, as with most other days, I have at various places within the dock building documents related to the listing and sale of properties and other materials necessary for me to conduct my business as a real estate agent. These documents are plainly obvious when inside the building.

[44] Mr. Drew swore his affidavit #2 dated 30 August 2012, in response to Mr. Hrvatin's affidavit. In his supplemental affidavit, Mr. Drew notes:

[4] During my inspections of the Shed on April 26, 2012, I did not see documents related to a real estate business as described in paragraph 6 of Emil Hrvatin's affidavit...I did not see any brochures, promotional displays, or any area to receive customers in the Shed.

[5] The Shed appeared to me to be used as a residence only and I found no separate area set up as a business office. I observed that the interior of the Shed consists of only three separate rooms. In the north-east corner of the Shed is a large room containing bedroom furniture. That room appeared

to be currently used as a bedroom with clothing and other personal effects ready for immediate use. In the north-west corner is the only other fully enclosed room, the bathroom. This too contained personal effects and toiletries which appeared to have been recently used. The kitchen is situated on the north side of the Shed between the bedroom and the bathroom; it is open to the large living room area.

[6] The living room area occupies the entire south side of the main floor of the Shed. This room contained a grand piano, living room furniture, and a TV. Above the living room on its east end I saw a loft with a bed in it. Other than the walls for the bathroom and the main bedroom, there were no other dividing walls within the Shed.

[7] During my inspection, only one door served the entire Shed since I found the vestibule for the second door used for storage.

[45] On the evidence before me, I am not satisfied the Shed had an established residential use prior to Mr. Hunt's occupancy in the early 1990s. I find that the Shed was renovated to include a residential suite in the early 1990s, at or around the time Mr. Hunt purchased the Property. I also find that no permits were issued by the appropriate governing authority of the day allowing for the Shed to be converted into a residence.

Lawful non-conforming use of the Shed

[46] The Local Trust accepts that given the Shed's long history, it is a structure that has non-conforming status under s. 911 of the LGA. However, the Local Trust submits that status does not include using the Shed as a residence.

[47] The Local Trust contends that the renovations that were made to the Shed in the 1990s that converted it into a residence were contrary to the bylaw in force at the time (i.e., *Bylaw No. 5*) and that the Shed's residential use since that time has consequently never been a lawful non-confirming use. As such, the Local Trust submits the defendants cannot resort to s. 911 of the LGA to have the continued use of the Shed as a residence exempted from the provisions of the current *Land Use Bylaw*.

[48] The defendants do claim a legal non-conforming use of the Shed from at least 1992, arguing that since that time the Shed has been used as a residence and a

business office. The defendants acknowledge that on account of *Bylaw No. 5*, the Shed was “split-zoned” with a portion of it zoned commercial C1 while the remainder was zoned Water A. The defendants argue that when *Bylaw No. 5* was enacted in 1978, approximately 35% of the Shed was in zone C1 which permitted residential use so long as the residential unit occupied a minimum of 37 square feet (see: s. 10.1(6)). The defendants allege that the portion of the Shed that was used as a residence and a business at the time *Bylaw No. 5* was passed exceeded the required 37 square feet. The defendants also point out that *Bylaw No. 5* provided no definition of “residential dwelling”. Finally, they argue the Local Trust has failed to offer any evidence in support of its contention that the renovations to the Shed in the 1990s were performed without the appropriate approvals or permits.

[49] Having considered all of the evidence, in my opinion the defendants have failed to show the Shed was ever used as a residence in compliance with the prevailing bylaw of the day.

[50] The Court of Appeal concluded in the First Action that since the adoption of the *CRD Bylaw* in 1972, the Shed has been subject to two zoning regulations and that the portion of the Shed extending over the waters of Percival Cove fell within what is now, under the *Land Use Bylaw*, called the Water 4 zone. The survey evidence that was before Justice Bracken on the First Action was presented to me on this summary trial. In my view, Justice Bracken’s findings of fact are correct and I adopt them. Specifically, I am satisfied that approximately 90% of the Shed is located over the Water Lot, while the remaining 10% of the Shed is situate on the Land Lot.

[51] In my view, the Local Trust is correct when it submits that as of the passing of the *CRD Bylaw* in 1972 and the resulting “split zoning” of the Shed, the owner and occupier of the Shed could either:

- a) continue any lawful non-conforming use of the Shed that had begun prior to 1972; or

- b) use that part of the Shed that was on the Land Lot for uses permitted in the C1 zone, now the C1(a) zone; and
- c) use that part of the Shed that was over the Water Lot for uses permitted in the Water A zone, now the Water 4 zone.

[52] The evidence on this summary trial convinces me that the Shed was not used as a residence until Ronald Hunt began occupying it for that purpose in the early 1990s. For reasons that I will explain, I find neither the C1 zoning nor the Water A zoning in *Bylaw No. 5* permitted Mr. Hunt or any subsequent owner of the Land Lot to use the Shed as a residence.

[53] The defendants are correct when they point out that s. 10.1(6) of *Bylaw No. 5* permitted a limited combined commercial / residential use of property zoned C1. However, in my view, the use of the portion of the Shed that is located on the Land Lot never complied with that regulation. That portion of the Shed does not contain a “self-contained dwelling unit” separate from a commercial-use area. Ronald Hunt’s evidence and Emil Hrvatin’s evidence is clear on this point. At para. 28 of his affidavit #1, Mr. Hunt explains that from 1992 until 2009 he continued to use the Shed “in the two zones, as a residence and a business office”. At para. 4 of his affidavit, Mr. Hrvatin describes how he is “using the residential suite for [his] real estate business”. At para. 6, Mr. Hrvatin further describes his work materials being “at various places within the [Shed]”. Mr. Hunt swore his affidavit #2 on 7 September 2012. The Local Trust agreed to have the affidavit admitted as evidence on the summary trial, notwithstanding the fact that it contained hearsay evidence. In his affidavit #2, Mr. Hunt states:

[6] I am further advised by Mr. Chervatin, ... that he conducts the majority of the office component of his real estate business from the [Shed]...

[7] I am further advised by Mr. Chervatin, ... that the majority of the office component of his real estate business is conducted by fax, phone, and computer, and that this is done almost exclusively from the [Shed].

[54] Nowhere in their evidence do Mr. Hunt or Mr. Hrvatin attempt to distinguish the residential area of the Shed from the area they designated or specifically used

for their business purposes. In my opinion, the evidence indicates that since the early 1990s the Shed has been used principally as a residence from which some business has been conducted. In other words, there is no business office in the Shed, distinct from the residential portion of the Shed.

[55] It is also noteworthy that there is no separate entrance to any self-contained dwelling unit in the Shed that is distinct from the one used to access the commercial-use portion of the Shed. On a clear reading of *Bylaw No. 5*, to be compliant with the C1 zoning, a dual-purpose property must have two distinct entrances: one for the residence and one for the business. The evidence before me indicates that although Ronald Hunt and more recently Mr. Hrvatin have used the Shed as a residence and they may have conducted some business from the Shed, there was and is only one entrance regularly used to gain access to the Shed. A dwelling unit that shares an entrance with another unit is not a “self-contained dwelling unit” [See: *Bell v. Ontario (Human Rights Commission)*, [1971 S.C.R. 756]. As for the “business office” that Mr. Hunt maintains he had in the Shed, I accept the submission of the Local Trust that the evidence regarding Mr. Hunt’s business use of the Shed is imprecise and insufficient to found a conclusion that it was a legitimate commercial use permitted in a C1 zone. I also accept the Local Trust’s argument that although “business office” is a broad term, for the purposes of *Bylaw No. 5* it should be interpreted as a distinct commercial office, as opposed to a dwelling unit that serves concurrently as a home office. Again, Mr. Hrvatin’s evidence persuades me that he has used the entire Shed for business as well as residential purposes and has not performed his work in any specifically designated commercial area within the Shed. Finally, I am unconvinced that the alleged business office and self-contained dwelling unit were located in that part of the Shed that was exclusively on the Land Lot zoned C1. As I have previously stated, the evidence is clear that since the 1990s the entire Shed has been used principally as a residence from which some business work has been performed.

[56] As for the portion of the Shed that is situate over the Water Lot, I find the provisions of the Water A zoning of *Bylaw No. 5* were even more definitive in

prohibiting any residential use. In my opinion, nothing in ss. 15.1(1), 15.3 or 15.5 could be interpreted as permitting property zoned Water A to be used as a residence. In my respectful view, the Local Trust is correct when it submits that under s. 15.1(1) the “residential use” referenced in the section is only permitted on an adjacent, onshore property. Moreover, s. 15.3 clearly prohibits the building of any structure on private floats or wharfs. To my mind, this prohibition included the construction of a private residence. Finally, s. 15.5 specifically forbids anyone from residing on a boat or vessel moored or wharfed in the Water A zone. While the section only references boats or vessels and not structures such as the Shed, in my opinion the clear intention and meaning of the provision is to prohibit any residential use of property zoned Water A.

[57] In summary, I find the Local Trust is correct that every renovation to the Shed made after 1978 that did not comply with *Bylaw No. 5* or the *Land Use Bylaw*, was a prohibited alteration and forbidden under s. 911(5) of the *LGA*. The Shed was allowed to remain as a structure over the Water Lot because it was built prior to the enactment of the *CRD Bylaw* in 1972. However, the Shed was not used as a residence until long after *Bylaw No. 5* was adopted in 1978. After *Bylaw No. 5* was passed, but before the Shed was renovated and began being used for residential purposes, the Shed was subject to two zoning provisions (i.e., C1 and Water A). In my view, if the Shed was going to be used as a residence after *Bylaw No. 5* was enacted, then such use had to comply with the C1 zoning and the Water A zoning regulation. In my opinion, Ronald Hunt’s use of the Shed did not comply with the provisions of *Bylaw No. 5* or the *Land Use Bylaw*. The same applies to the defendants’ use the Shed after they purchased the Land Lot from Mr. Hunt in 2009. As such, I find there is no legitimate basis to conclude the Shed’s current residential use should be exempted under s. 911 of the *LGA* from the provisions of *Bylaw No. 5* and its successor the *Land Use Bylaw*.

Issue #3: If the Shed’s residential use was lawfully non-conforming, was that status lost because of six or more months of discontinued use?

[58] If a lawfully non-conforming use has been discontinued for six consecutive months or more, then pursuant to Section 911(1) of the *LGA* that non-conforming status is lost and the subsequent use of the property becomes subject to the applicable bylaw.

[59] Given my finding that the Shed’s use as a residence was never a lawful non-conforming use, the question of whether that use was discontinued for six consecutive months or more is a moot one that I do not need to address.

Issue #4: If the Shed’s residential use is contrary to the *Land Use Bylaw*, is an injunction the appropriate remedy?

[60] The defendants maintain that even if the court is satisfied that their residential use of the Shed is in contravention of the governing bylaw, the court still has a residual discretion to deny the injunctions being sought by the Local Trust. The defendants are correct in this regard, however the discretion is a very limited one. In *North Pender Island Local Trust Committee v. Conconi*, 2009 BCSC 328, aff’d 2010 BCCA 494 (“*Conconi*”), a case with a number of distinct similarities to the one before me, B. Brown J. concluded:

[56] The injunction sought is a statutory injunction pursuant to s. 274 of the *Community Charter*. It is a purely statutory remedy, not based in equity. It is no objection to the granting of the injunction that there has been a failure to enforce the bylaw for many years or that officials have permitted or approved of the breach. The court’s role is to determine whether there has been a breach: *Langley (Township) v. Wood*, 1999 BCCA 260, 173 D.L.R. (4th) 695. Although the court has a very narrow jurisdiction to refuse an injunction where the injunction does not remedy the mischief of the bylaw (*Burnaby (City) v. Pocrnic*, 1999 BCCA 652, 71 B.C.L.R. (3d) 211; *Coquitlam (City) v. Aweryn*, 2001 BCCA 373, 156 B.C.A.C. 218), that does not apply in this case, where an injunction would remedy the mischief.

[61] In upholding Madam Justice Brown’s findings in *Conconi*, the British Columbia Court of Appeal explained:

[38] It is my view that the judge did not err in granting the injunction. The requested injunction is a statutory remedy that engages the public interest.

The discretion of the court to decline an injunction to enforce a bylaw is very narrow and is reserved for rare cases with exceptional circumstances.

[62] The defendants say significant hardship will befall them if the sought after injunctions are granted. They will lose the residential use of the Shed that they say has been maintained for over twenty years and they will also incur significant expenses complying with the injunction compelling them to remove the residential features of the Shed. The essence of the defendants' submission is that the relief sought by the Local Trust will render the Shed practically useless to them. While I accept that the defendants will be impacted to a noticeable degree if the relief sought by the Local Trust is granted, I do not find the circumstances of this case are so exceptional or rare that they call for the exercise of the limited judicial discretion not to grant the statutory injunctions being sought. Zoning regulations governing the permitted uses of the Shed have been in place since 1972. *Bylaw No. 5* had been passed more than ten years before Ronald Hunt purchased the Land Lot and began using the Shed as a residence. Mr. Hunt's use of the Shed did not comply with that bylaw. Nor did it comply with the *Land Use Bylaw* that succeeded *Bylaw No. 5* in 1999. When the defendants purchased the Land Lot in 2009, they were fully aware of the Local Trust's intention to enforce the *Land Use Bylaw* and have the residential use of the Shed terminated.

[63] In my opinion, there is a strong public interest in having zoning bylaws like the *Land Use Bylaw* strictly enforced. Personal residences should not be established in areas where such use is prohibited. On the evidence before me, I reject the defendants' argument that the Local Trust has not shown a public right or interest that needs to be protected.

Summary / Conclusion

[64] The Shed has been used as a residence since the early 1990s. This use was contrary to *Bylaw No. 5* that was passed in 1978 and is contrary to the *Land Use Bylaw* that was enacted in 1999.

Order

[68] For all of the foregoing reasons, the order sought at paragraphs 1 to 4 in Local Trust's Notice of Application filed 29 June 2012 is granted. Specifically, the Local Trust is entitled to:

- a) a declaration that the Shed has been converted to a dwelling contrary to the *Land Use Bylaw*,
- b) a declaration that the defendants are using the Shed for a residential purpose contrary to the *Land Use Bylaw*,

- c) a permanent injunction requiring the defendants to cease all residential use of the Shed; and
- d) a permanent injunction requiring the defendants to remove the kitchen, bedroom, bathroom and other living areas from the Shed, in accordance with all applicable enactments.

[69] The defendants will need time to comply with the injunctions. At the hearing of this summary trial, counsel agreed that in the event the injunctions were granted, a 12-month grace period from the date of these reasons would be a reasonable amount of time for the defendants to commence and complete the required renovations to the Shed and take whatever further steps are necessary to ensure its use complies with the *Land Use Bylaw*. I will therefore make that provision a further term of my order.

[70] The Local Trust has been successful on this summary trial. Consequently, they are entitled to their ordinary costs.



STAFF REPORT

June 19, 2007

File No.: NP-RZ-2006.1

For Meeting of June 28, 2007

To: North Pender Island Local Trust Committee

From: Robert Kojima
Island Planner
Local Planning Services

CC: Brodie Porter, RPM

Re: **Rezoning Application - Lot 1, Section 23, Pender Island, Cowichan District, Plan VIP73194 and adjacent water lot (Port Washington Shed)**

Owner: Ronald B. Hunt
Applicant: same
Location: Port Washington

THE PROPOSAL: the application is to rezone the site of the Port Washington shed, consisting of Lot 1, Plan VIP73194 and the adjacent water. The draft zoning would permit use of the shed for retail sales, office, boat and marine equipment rental, limited services and as an accessory dwelling unit. The draft zoning would also permit the use of the dock for marine charters and tours. The application has been reviewed by the LTC, has referred to and reviewed by the APC, a community information meeting has been held and the application has been referred to agencies for comment. In May 2007, the owned stated that the applicant – Brian Elliott – was unable to complete the purchase of the property. Consequently, he (Ron Hunt) will be continuing with the application to rezone the property and the adjacent water. The purpose of this report is to provide the Local Trust Committee (LTC) with a summary of agency comment; and to provide the LTC with an opportunity to consider First Reading of the bylaw, with or without changes to the draft zoning, or decide to proceed no further with the application.

CURRENT PLANNING STATUS OF SUBJECT LANDS:

Trust Policy Statement: there are two directive policies that may have some relevance to consideration of the application:

4.5.10 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the location of buildings and structures so

as to protect public access to, from and along the marine shoreline and minimize impacts on sensitive coastal environments.

- 4.5.11 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address opportunities for the sharing of facilities such as docks, wharves, floats, jetties, boat houses, board walks and causeways.

Official Community Plan: the OCP designates the upland parcel as “Commercial.” The existing public dock is designated as “public Moorage”. The following commercial objectives and policies have some application to this proposal:

Objectives:

- 2) *to provide opportunity for a variety of small scale commercial operations that will not degrade the environment.*
- 3) *to ensure that commercial development does not adversely affect rural character and lifestyle.*
- 4) *to protect the character and integrity of quiet residential and rural neighbourhoods.*
- 6) *to ensure that commercial establishments provide adequate parking facilities.*
- 8) *to preserve heritage commercial buildings.*

Policies:

- 2.6.1 *Commercial development shall be small scale, low density business enterprise designed to meet the needs of residents and visitors;*
- 2.6.2 *Priority will be given to new or additional commercial ventures in the following locations:*
 - a) *behind and to the south of the Driftwood Centre;*
 - b) *encompassing the remainder of the lot on which P.J.'s General Store is located;*
 - c) *the vicinity of Southridge Farm General Store and Pender Lumber on Port Washington Road;*
- 2.6.4 *Tourist oriented or commercial recreational activity shall not be permitted on lands suitable for agriculture or in hazardous or environmentally sensitive areas;*
- 2.6.5 *Applications for commercial rezoning must prove adequate water supply and waste disposal capability for both present and projected needs;*
- 2.6.6 *Commercial proposals which would have significant deleterious effects on adjacent land uses will not be permitted;*
- 2.6.8 *Parking and storage areas should be suitably screened to maintain the rural character of the area;*
- 2.6.9 *Preservation of the store at Port Washington and the store at Hope Bay will be encouraged because of their heritage status;*

Land Use / Zoning Bylaw: the site is split-zoned C1(a) and W4. The uses permitted in the C1(a) portion are 'retail sales', 'offices, including banks', and 'cafes'. The uses permitted in the W4 zone are:

'Marine navigation, marine navigation aids, marker buoys, ferry dock, public port facilities, and seawalls, breakwaters, ships, docks, piers, dolphins, and pilings necessary for the establishment or maintenance of such port facilities are permitted in the Water 4 (W4) Zone and all other uses are prohibited.'

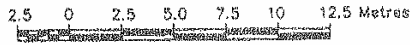
SITE CONTEXT: the subject site is located adjacent to the Port Washington dock and includes three separate elements (please also see the site survey below):

1. A small upland parcel (Lot 1) which is 86m² (926 ft²) in area. Title to this parcel is held in fee simple by the Mr. Hunt.
2. The building (the 'shed'), which dates from the early part of the last century and was purportedly originally used as a storage building in conjunction with the Port Washington store. The shed is sited predominantly over the adjacent foreshore. It has been modified by the current occupant for residential use and contains approximately 1500 square feet of floor area, along with several areas of exterior deck.
3. The foreshore, title to which rests with the provincial crown. In order to occupy and use the portion of the shed over the foreshore, a user would be expected to seek and obtain tenure from province. The provincial agency responsible for granting crown tenure (ILMB) has stated that tenure would be required and if the proposed use is consistent with local government zoning.

The subject property is bounded to the north and the east by Lot 1 of Plan 3658, which currently is designated and zoned for commercial uses and is the location of the Port Washington store (the 'store property'). This lot also contains the well and parking for the subject lot (granted by way of easements). The subject site is bounded to the south by the water and to the west by the Port Washington public dock, which is controlled by the Capital Regional District, and by dedicated highway. The shed, the adjacent store building, the dock and a number of residences in the immediate area have historic character as an area of early settlement on the island and an important historical transportation and service hub.

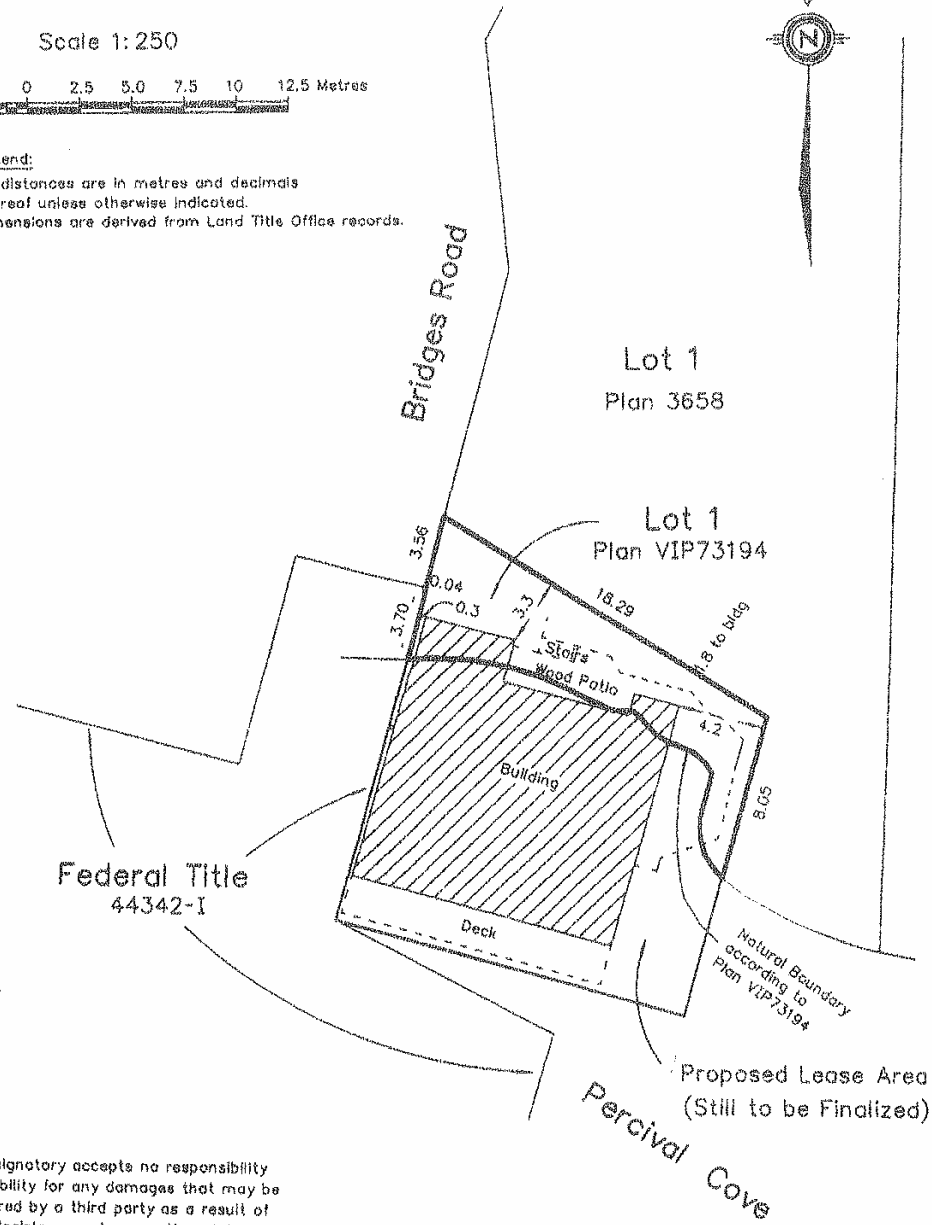
B.C. Land Surveyor's Building Location Certificate
 Showing Location of Improvements Situated on
 Lot 1, (PID 025-220-420), Section 23,
 Cowichan District, Plan VIP73194.

Scale 1:250



Legend:

All distances are in metres and decimals thereof unless otherwise indicated.
 Dimensions are derived from Land Title Office records.



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Michael J. McIlvaney
 British Columbia Land Surveyor
 Victoria, B.C.
 (250) 474-5838

File: 2981BLC
 Client: Hunt

This plan was prepared for municipal purposes and is for the exclusive use of our client. This document shows the relative location of the surveyed structures and features with respect to the boundaries of the parcel described above. This document shall not be used to define property lines or property corners. This building location certificate has been prepared in accordance with the Manual of Standard Practice and is certified correct this 9th day of November 2004.

B.C.L.S.

This document is not valid unless originally signed and sealed
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Survey Plan

COMMUNITY INFORMATION MEETING(S): a community information meeting was held on October 21st, 2006. The meeting was attended by a number of area residents, who voiced concerns with the proposal, which can be summarized as follows:

- **Parking:** there is on-going parking demand in the area, primarily generated by the wharf, and the concern is that the use of the shed would result in more traffic and parking problems.
- **On-going use of the shed:** the owner has been occupying the shed for some time as a residence and the LTC should proceed with litigation before considering rezoning the site.
- **The historic character of shed:** that the shed not be permitted to have any increase in height and the historic character should be protected.
- **Water:** the quality of the water that would provided to the shed and the availability of water at all times of the year was questioned.
- **Sewage:** there were concerns expressed about septic disposal, particularly given the history of the site.
- **Residential use:** the potential that the shed will simply be used as a waterfront residence in the future.

RESULTS OF CIRCULATION: the LTC has referred the application to the APC for comment in draft form. The APC passed a resolution supporting the rezoning in principle, with some reservations concerning parking.

Referral agencies have responded as follows:

- Fisheries and Oceans Canada: no response received.
- Integrated Land Management Bureau: approval recommended as it would legalize the existing use. A tenure application would be required if the rezoning is approved.
- Ministry of Environment: this ministry has stated that staff no longer review site specific referrals and refers local governments to its best management documents.
- Ministry of Transportation: requested that a detailed parking plan be prepared.
- Pender Island Fire Department:
 1. Access for emergency vehicles is restricted by the use of the dock and surrounding areas.
 2. The shed does not currently meet the Fire or Building codes

3. Water supply for fire suppression should be considered.
- Southern Gulf Islands RCMP: approval was not recommended due to lack of parking, emergency access to the dock and narrow roads in the area.
 - CRD Building Inspection: an initial referral response recommended that the application not be approved due to non-compliance of the building with the 2006 building code. The CRD building inspector subsequently provided a letter outlining pre-conditions for issuing of a building permit:
 1. A complete structural review and up-grading to the current BC Building Code.
 2. A complete set of drawings.
 3. Valid sewage system assessment by an approved installer.
 4. Geo-technical engineer's report and letter of assurance.
 - Vancouver Island Health Authority: Approval recommended subject to conditions:
 1. An on-site, in-ground sewage disposal system would not be permitted due to lack of suitable soils.
 2. Potable water would need to be provided by legal easement and would need approval if the water system is shared with other users.
 - Southern Gulf Islands Harbours Commission:
 1. Requested that the existing zoning be retained on the public dock.
 2. With respect to rezoning of the shed, the commission expressed general concern related to vehicle congestion at the dock approach and wharfhead, pollution impacts and any potential impact of dock use on the Commission's facility.
 - Islands Trust Bylaw Enforcement: the Bylaw Enforcement Officer has stated that the inclusion of an accessory dwelling unit as a permitted use is problematic from an enforcement perspective:
 1. Permitting an accessory dwelling unit in a small building creates a temptation to occupy the whole building as a dwelling.
 2. Requiring two separate entrances would not necessarily result in two separate and distinct areas within the building. Requiring two separate and distinct units within the building would facilitate any future enforcement.
 3. Even if the two uses are distinct, there is bound to be spillover with the small size of the building. There would be practical difficulties with a bylaw

enforcement officer determining what is related to a principle commercial use versus what is related to an accessory dwelling use.

ISSUES SUMMARY: As a result of discussions with the applicant, the community information meeting, agency referrals and comments from residents a number of issues have been identified:

1. Uses: the applicant is proposing that the shed and the adjacent public dock be used for:
 - a. Commercial Uses: retail sales, offices, boat and marine rentals, limited services; and an
 - b. Accessory Dwelling unit

The draft bylaw provisions have been prepared based on the applicant's statement of intended uses. The commercial uses appear reasonable given the building's location adjacent to a public wharf, the existing upland zoning (which permits 'retail sales', 'offices' and 'cafes') and the current marine zoning. The proposed accessory dwelling unit is a more problematic issue:

- It was fundamental to original applicant's proposal; however that person has failed to close on the sale of the upland lot and is no longer involved with the application.
 - The use of the shed as a residence over the last few years has been the basis of the on-going enforcement action by the LTC.
 - There would be potential enforcement and administration issues associated with permitting an accessory dwelling use in a building such as the shed. The bylaw enforcement officer has indicated that it would be inherently difficult to differentiate a residential use from a commercial use. In practical terms, it may be difficult to determine if a future residential use is truly accessory to a commercial use and to enforce on that basis.
2. Septic disposal: the shed has reportedly had inadequate septic disposal facilities in the past. The owner has provided a letter by a registered professional engineer stating that a sewage treatment system and marine outfall disposal system can be installed that would meet applicable requirements and that the discharge would have no impact on the natural environment. The building inspector and VIHA have also stated that adequate sewage disposal facilities would need be installed as a condition of occupancy.
 3. Potable Water: Lot 1 is the beneficiary of an easement registered on title to the adjacent lot (Lot 1 of Plan 3658) to provide water from the well on the adjacent lot and the pipes necessary to provide the water "at such daily rate of flow as may be required by the occupiers of and the improvements upon [Lot 1] from time to

time provided that an equivalent daily rate of flow is available to [Lot 1, Plan 3658].” The owner has had a report prepared by a hydrogeologist, who tested the well quantity and quality. The report states that the well can conservatively provide 4715 litres per day. All quality parameters were within the guidelines for Canadian Drinking Water Quality, and the recovery of the well following pumping indicated that it receives continuous recharge.

4. Parking: the issue of parking has been raised extensively by residents and by agencies. There are two aspects to the parking issue: the first is specific to this building, namely the provision of sufficient parking to meet the requirements generated by the potential uses of the building. The second is the general parking issues in the area associated with the use of the public wharf:
 - a. The subject lot has the benefit of an easement registered on title to the adjacent lot (Lot 1 of Plan 3658), which provides for two separate parking areas on the adjacent lot (there is also a separate area identified in the easement providing for foot access to the subject lot). The owner was asked to provide a parking plan delineating the parking areas reserved for the benefit of this property. A sketch plan, a copy of which is attached to this report, indicates the locations of the parking area on the lot and those provided via the easement. The sketch plan indicates that there is one parking area on the lot containing the shed, and two spaces on the adjacent property. However, access to one of the spaces on the adjacent lot is currently denied due to a deck addition on the store constructed within the setback. Thus, there are currently two parking spaces available for use of the shed.
 - b. Parking for the use of the wharf. There is limited parking available for users of the public wharf. There is some parking on the west side of the highway that is typically used by BC Hydro, however many users of the wharf appear to park on the store property. If the use of the store were to resume, this would likely result in wharf parking spilling over from the store property onto nearby roads.
5. Water zoning: the Harbours Commission has stated that it is not in favour of amending the water zoning over its wharf. The proposed amendment was specific to the previous applicant’s proposal and would have permitted marine charters and tours to operate on the wharf. Revising the draft bylaw to remove the proposed W4 amendment would address the Harbour Commission’s concern. However, the overall zoning for this, and other public wharfs, was adopted at a time when these were federal docks and the specific zoning regulating these facilities should be reviewed for all the wharfs to ensure that the zoning is appropriate.

LEGAL AND ENFORCEMENT ISSUES: the use of the portion of the shed that is over the foreshore (i.e. 80-90% of the floor area of the building) has been subject to bylaw enforcement action and litigation by the LTC and the CRD over a number of years. It is the position of the LTC that the use of the shed as a residence is contrary to zoning. Litigation was put in abeyance by the LTC pending the outcome of a case argued in front of the Supreme Court of Canada last year, which has related issues, and the outcome of this rezoning application. The Supreme Court of Canada has now rendered its decision in the related case; however, it is Islands Trust policy to not proceed with litigation while rezoning which would resolve the issue is being considered.

STAFF COMMENTS: the application has been submitted in order to bring the use of the shed into compliance with zoning. The original applicant has stated that it was his intention to use the shed as both a residence and a place of business. The owner has elected to proceed with the rezoning application.

A number of issues have been identified with the application, including parking, the proposed residential use of the shed, the proposed amendment to the water zoning over the wharf, and the provision of septic and water services to the shed.

1. Permitting a residential use of the shed, even if accessory to a commercial use, is clearly problematic. The bylaw enforcement officer has highlighted potential future enforcement and administrative problems with ensuring that the use is truly accessory; successive LTC's have supported bylaw enforcement and litigation around the on-going residential use of the building; and the original applicant, who proposed the accessory residential use in conjunction with his existing marine-based business, did not complete an offer to purchase and is no longer the applicant. Excluding the accessory dwelling use from the draft bylaw would address a number of these concerns.
2. The draft zoning should be revised to remove the amendment to the W4 zone, as requested by the Harbours Commission. The appropriate zoning for all the public wharfs can best be considered as part of the future update to the Land Use Bylaw.
3. The shed would be required to provide a minimum of three parking spaces for commercial uses (based on the LUB provisions of 1 space per 35m²). Parking would be a requirement of commencing a particular use and would be based on the specific parking requirements in the LUB. According to the sketch plan provided by the owner, this lot has access to three parking spaces. Although one is currently blocked by a deck addition constructed off the store, the owner of the shed lot has legal recourse to have this removed if it indeed is contrary to the terms of the easement.
4. The parking issues in the area currently, and future parking problems if the store is put to use, are generated by the use of the wharf. The store appears to have sufficient on-site parking and the shed at least has the potential to provide 3 off-street parking spaces. The LTC cannot force the Southern Gulf Islands Harbours

Commission to provide parking; the optimal solution to parking issues associated with the use of the wharf would be addressed through cooperation of the Harbours Commission and the Ministry of Transportation.

5. The shed property has an easement agreement with the adjacent lot to provide potable water. The owner has provided a hydrogeologist's report indicating that there is sufficient potable water available.
6. The owner has obtained a statement from a professional engineer indicating that a sewage treatment and marine outfall disposal system can be installed that would meet all applicable requirements and have no impact on the natural environment. Both the CRD and VIHA have stated that provision of adequate septic facilities would be requirements of any occupancy.

The LTC has referred the application to agencies and the APC and has had an opportunity to consider agencies comments. The next step would be to consider First Reading of the bylaw and, if given First Reading, schedule a public hearing. The LTC has three options:

1. Consider First Reading as currently drafted.
2. Revise the bylaw and consider First Reading.
3. Defeat the bylaw at First Reading.

Based on the comments above, I would recommend that the LTC alter the draft bylaw to:

1. Remove the provision for the rezoning of the W4 zone to W4(a) for the water lot containing the public wharf, and
2. Remove the accessory dwelling unit as a permitted use.

Recommendations

1. That draft Bylaw 172 be altered by:
 - a. Deleting 8.24.2(1)(e) permitting "accessory dwelling unit" as a use.
 - b. Deleting 8.24.3 (Accessory Dwellings).
 - c. Deleting 8.22.2, which would include a site-specific regulation in the W4 zone.
 - d. Revising Plan 1 to remove reference to rezoning of the W4 zone to W4(a).
2. That draft bylaw 172 be given First Reading, as revised, and that staff be directed to schedule a public hearing.

Respectfully submitted by:

Robert Kojima

Date

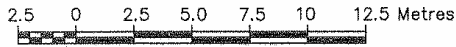
Enclosures:

Parking plan
Draft zoning provisions

- PARKING PLAN - SURVEY DONE NOV. 9/04

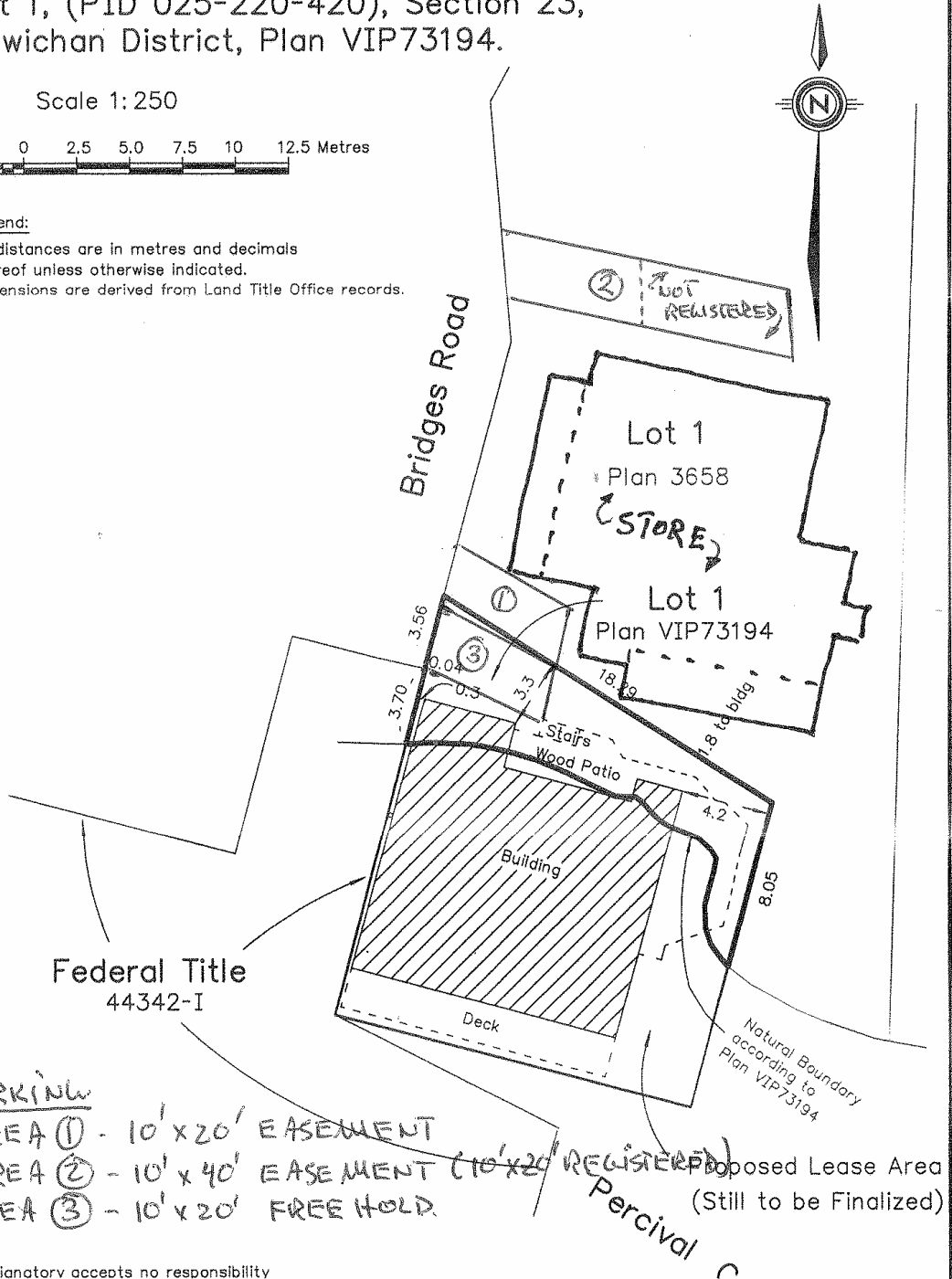
B.C. Land Surveyor's Building Location Certificate
 Showing Location of Improvements Situated on
 Lot 1, (PID 025-220-420), Section 23,
 Cowichan District, Plan VIP73194.

Scale 1:250



Legend:

All distances are in metres and decimals thereof unless otherwise indicated.
 Dimensions are derived from Land Title Office records.



PARKING
 AREA ① - 10' x 20' EASEMENT
 AREA ② - 10' x 40' EASEMENT (10' x 20' REGISTERED)
 AREA ③ - 10' x 20' FREE HOLD.

The signatory accepts no responsibility

Objections to proposed changes to the zoning of Rural Residential lands to include agriculture as a principal use and agri-tourism and agri-tourist accommodation as an accessory use

August 11, 2022

To: **Benjamin McConchie – North Pender Island Trustee**

Email Trustee McConchie

Deb Morrison – North Pender Island Trustee

Email Trustee Morrison

Laura Patrick- Chair North Pender Island Trust Committee

Email Trustee Morrison

This submission is prepared on behalf of full time residents of Pender Island who currently reside on properties zoned Rural Residential. Bylaw 224 includes proposed changes to the RR zoning to split it into RR1 and RR2. We do not object to this proposed change. We understand that the rationale for this change is to recognize that Magic Lake is unique and it is appropriate to rezone this area to reflect this.

However, we object to the new proposed uses in the proposed RR2 area where we reside. These include the addition of agriculture as a principal use and agri-tourism/accommodation as an accessory use. In making these objections we wish it to be clear that we are strong supporters of farming, both large and small scale on Pender Island and are sympathetic to the difficulties farmers may encounter in making their operations viable. The answer is not, however, to rezone RR2 land to include agriculture as a primary purpose or to allow agri-tourism/accommodation in the RR2 zone.

In preparing this submission we have reviewed:

- the *Official Community Plan (OCP) for North Pender Island*,
- *North Pender Island Land Use Bylaw 103*,
- *The North Pender Island Land Use Bylaw Review – Agricultural Land Use Discussion Paper* prepared by staff,
- The latest iteration of Proposed Bylaws 224 and 229,
- The Agricultural Advisory Planning Commission AAPC Report of January 4, 2021,
- *The Agricultural Land Commission Act*,
- *The Farm Protection (Right to Farm Act)*, and the associated *Farm Practice Directives re Odour, Noise and Dust*,
- *The BC Assessment Act*,
- *Assessment Act CLASSIFICATION OF LAND AS A FARM REGULATION*, and
- *Draft Motion No. 1 p. 83 appended to the agenda package for the regular Trust Committee meeting of August 11, 2022.*

Objections to proposed changes to the zoning of Rural Residential lands to include agriculture as a principal use and agri-tourism and agri-tourist accommodation as an accessory use

- **Current Zoning**

The current zoning was put in place decades ago at the time that Islands Trust was created with significant thought and planning. The RR zoning is the only zoning on the islands where for residential use is the principal use. Certain accessory uses to the principal use of residential offers a wide range of activity including horticulture (rearing of plants including trees) and keeping of chickens and rabbits and livestock. These activities are agricultural in nature but are contained to align with residential use.

In the RR2 zone there are market gardens, orchards and livestock. Accessory buildings with height and size restrictions appropriate for this zone are allowed in conjunction with these activities, which are in keeping with the rural residential nature of this zone. Currently properties where these activities take place coexist comfortably with those which are purely residential in nature.

Those of us in this zone established our properties with reliance on it continuing as a residential community/neighbourhood where limited activities such as market gardens, orchards and livestock keeping are allowed. Indeed most property owners in RR2 have a garden and many raise livestock and keep poultry. These activities enhance the rural character of the Island and provide local produce for Islanders during the growing season.

Those wishing to engage in intensive farming have always had the option to locate on rural or agriculturally zoned properties of which there are many on Pender. If there are a few properties which are more appropriately zoned as agricultural in the RR2 zone, then the appropriate remedy is to rezone them as rural or AG if the owners so wish. It is neither necessary nor appropriate to change the current zoning to expand the rights of those who undertake these reasonable activities to given them farm status and allow a myriad of new and potentially intensive farm activities to be conducted in the RR2 zone with few controls.

- **Consequences of Potential Zoning Change to allow Agriculture as a primary purpose in the RR2 zone**

If agriculture is permitted as a primary purpose in RR2 then all of the uses set out in the Agricultural Land Commission Act under the definition of “farm use” apply as well as those set out in the definition of “farm operation” set out in the Farm Practices Protection (Right to Farm) Act. Most of these activities are intensive and clearly inappropriate for the RR2 zone.

In addition the protections for a farm operation provided to a farmer under the Right to Farm Act s.2 (1) provides that the farmer is not liable in nuisance to any person for any odour, noise, dust or other disturbance resulting from the farm operation and s.2 (3) provides exemption from bylaws controlling such basic powers as general animal control, noise control, nuisances and disturbances and fireworks restrictions as long as the farm operation is carried out in accordance with normal farm practices. The Trust will lose the ability to regulate in the areas on RR2 land where the owner claims to be undertaking a farm operation.

The only remedy of a neighbour who has concerns with the manner in which such a farm operation is conducted would be to make a complaint to the Board set up under the Right to Farm Act to adjudicate complaints as the local bylaws do not apply. In making such a complaint the onus would be on the

Objections to proposed changes to the zoning of Rural Residential lands to include agriculture as a principal use and agri-tourism and agri-tourist accommodation as an accessory use

complainant to demonstrate that the manner in which the operation is being conducted is not consistent with “normal farm practices”. This complaint process is time consuming, expensive and seldom successful given the wide latitude accorded to farm operations as set out in the Practice Directives.

Our proposals:

- a) Continue to distinguish between RR1 and RR2 for the purpose of separating highly dense communities on public water/septic systems (Magic Lake and Trinco) from other residential neighbourhoods (Razor Point, Port Washington, Stanley Point, Hope Bay). This distinction might be useful for dealing with other issues such as water management, and emergency evacuation measures.
- b) Owners of land in the RR zone who wish to conduct intensive agriculture and avail themselves of the protections provided by the Right to Farm Act can apply to have their properties rezoned to R or AG.
- c) We understand that there are concerns that vacant land in the RR zone cannot currently be used for the accessory purposes such as horticulture and the keeping of livestock until a residence is constructed. This could be remedied simply by including horticulture as a permitted use in RR2 and removing the word accessory making these activities primary which would allow them to be carried out on empty lots. As primary uses accessory buildings associated with these non-intensive activities could be constructed subject to the same restrictions as any other accessory building in the RR zone. If there are other appropriate non intensive activities (e.g. beekeeping) which are currently not permitted they should be identified and listed in the permitted uses in the RR2 zone.

The following is the wording we propose for the revised bylaw:

Rural Residential 2 (RR2 Zone)

The following uses are permitted, subject to the regulations set out in this Section and the general regulations, and all other uses are prohibited:

1.

- a) Dwelling;
- b) On lots 1.2 hectares in area or larger, one cottage;
- c) Accessory home business;
- d) On lots that do not abut a lake or reservoir used as a source of potable water supply, accessory rabbit and poultry raising;
- e) On lots greater than 0.4 hectares in area that do not abut a lake or reservoir used as a source of water supply, or a wetland, the keeping of livestock;
- f) Horticulture

Objections to proposed changes to the zoning of Rural Residential lands to include agriculture as a principal use and agri-tourism and agri-tourist accommodation as an accessory use

- g) Secondary suites
- h) Pig farming, dog breeding and boarding kennels are not permitted as accessory uses on lots less than 1.2 hectares in size
- i) Accessory uses, buildings and structures.

Summary:

Agriculture should NOT be included as a principal or accessory use as the solution we propose effectively address the current concerns re the conduct of appropriate activities on RR properties and preserves the rights of property owners and the trust to ensure land use is consistent with the preserve and protect mandate.

- The activities currently permitted in the RR zone support and do not inhibit agricultural operations on the Island. Minor modification to the existing wording for the proposed RR2 zone is sufficient to address any problems identified by the agricultural community;
- Intensive farm operations are currently permitted on properties in many other zones including Rural (R) and Agricultural (AG).
- The addition of agriculture as a primary purpose in the proposed RR2 zone would result in an unintended shift in the rights and obligations of current landowners in the RR2 zone and inhibit the ability of the trust to regulate land use in the RR2 zone. Anyone who has a garden or keeps livestock could claim that they are conducting a farm operation and avail themselves of the protections set out in the *Right to Farm Act*.
- Allowing the construction of an accessory building over 4.6 meters in height for any purpose is inappropriate in the RR2 zone. Again anyone who has a garden or keeps livestock could claim that they are a farm operation and avoid the reasonable height restrictions placed on all other accessory buildings. (e.g. 4218 Clam Bay Rd.)

Further the amendments proposed by staff on p.83 of the agenda package of August 11, 2022 are entirely inadequate. It is important to clarify that agricultural building are those located in a zone where agriculture is a principal use use. However, for the reasons set out above, this use should not be extended to RR2 lands. Nor is the proposal that such building be restricted to lots 1.3 hectares in size necessary if agriculture is not permitted as a principal use. In addition, the lot size proposed is entirely inadequate. Such buildings should only be allowed on lots of 16 hectares or greater – the average lot size of farms in the ALR.

Agri-tourism should NOT be included as a principal or accessory use in the proposed RR2 zone as it would allow activities which would circumvent the existing and entirely appropriate zoning restrictions on secondary residences and short-term rental restrictions.

Objections to proposed changes to the zoning of Rural Residential lands to include agriculture as a principal use and agri-tourism and agri-tourist accommodation as an accessory use

- Agri-tourism is intended to be a supplementary income opportunity for those with farm operations that are conducted on larger tracts of land in the ALR subject to the limits and restrictions set out in the Agricultural Land Reserve Act.
- The extension of Agri-tourism to the RR2 zone to anyone who is able to achieve farm status under the provisions of the *BC Assessment Act* would allow them to avoid the current restrictions on the building of a cottage and the restrictions on the short-term rental of accommodation. While such activities may be undertaken with minimal disruption on ALR land they are not appropriate in the RR2 zone.
- The extension of Agri-tourism/accommodation to the RR2 zone is inconsistent with the preserve and protect mandate of the trust and would place further stress on the already limited water resources in the RR2 zone.

Joyce Thayer

Tom and Karen Bell

From: karen [REDACTED] <[REDACTED]>

Sent: Friday, August 12, 2022 1:31 PM

To: SouthInfo <SouthInfo@islandstrust.bc.ca>; Deb Morrison <dmorrison@islandstrust.bc.ca>; Benjamin McConchie <bemconchie@islandstrust.bc.ca>; Laura Patrick <lpatrick@islandstrust.bc.ca>

Cc: Joyce Thayer <[REDACTED]>; stephenson <[REDACTED]>; [REDACTED]

Subject: Motion to add lighting restriction to proposed bylaw 224

Good afternoon Trustees McConchie, Morrison and Patrick and Planners,

One of the challenges that those living proximate to 4218 Clam Bay have been dealing with apart from the building of the Barn is the 'security' lighting that the owner has placed around the dwelling. Not only do these lights shine directly into the adjacent homes but also across Bricky Bay to other homes. Despite requests, the owner has not made the necessary adjustments to address our concerns.

We are not familiar with any provision that offers us protection to which we can fashion a formal complaint. To avoid this invasive and annoying situation as well to help other Penderites in other neighbourhoods who might suffer a similar situation, we propose that a 'lighting restriction' be incorporated into the new bylaw 224 similar to that which most municipalities have in place. We have drafted a motion for your review and convenience as follows:

Moved that the following be added to the conditions of use in s. 5 of proposed bylaw 224 after s. (14) "No exterior artificial lighting may be installed that casts light directly into a neighbour's window or unreasonably disturbs the peace, rest, enjoyment, comfort or convenience of the neighbouring properties and occupants."

We will be attending the CIM tomorrow and can speak to this. In the meantime, we thank you in advance for your consideration of this matter.

Karen Bell on behalf of the delegation who presented concerns re 4218 Clam Bay Road during the Town Hal on August 11th.

From: Howard Cummer <[REDACTED]>

Sent: Monday, August 15, 2022 6:01 PM

To: Benjamin McConchie <bemcconchie@islandstrust.bc.ca>; SouthInfo <SouthInfo@islandstrust.bc.ca>; EC <ec@islandstrust.bc.ca>

Subject: Too Many Bylaws on North Pender! No More Stairs to the Water? No More Private Docks?

North Pender Island LTC southinfo@islandstrust.bc.ca

Trustee Ben McConchie, Trustee Deb Morrison, Chair Laura Patrick

Islands Trust Executive Committee EC@islandstrust.bc.ca

Chair Peter Luckham, Vice-Chair Laura Patrick, Vice-Chair Sue Ellen Fast, Vice-Chair Dan Rogers

I have owned on North Pender Island since 2008. I couldn't afford ocean front when I bought here and I certainly can't afford it now!

The BC Government taxes the Gulf Islands as vacation property, like Whistler, with no speculation tax and I do not support the proposed bylaw amendments which remove stairs from the water setback and are antithetical, in my view, to the idea of North Pender being a vacation destination. (Today, I saw a Rolls Royce and a Lamborghini in the parking lot at the Driftwood!! We are a tourist destination - rapidly moving up market).

But I digress.

Stairs to the water are important to the islands for emergency evacuation in the event of a wildfire or other catastrophic natural events.

These minimal stairs are already controlled for size and configuration in bylaws and really do not need more controls.

Also, I do not support the proposed bylaws to downzone the Water 1 District, which now allows private docks, to Water 3 District, which allows only mooring buoys.

As you all know, there is already a comprehensive Provincial permitting process for docks and the Trust should not repeat these or have additional bylaw controls.

It is premature to proceed given significant opposition by citizens and boating associations to banning private docks in the Policy (TPS) review.

I am also concerned with the negative impact on property values for those fortunate enough to own ocean front. There will be a down market impact on my property too.

Finally I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).

Respectfully,

Howard Cummer

4725 Captain's Cres, North Pender, V0N 2M0

North Pender Island LTC southinfo@islandstrust.bc.ca

Trustee Ben McConchie,

Trustee Deb Morrison,

Chair Laura Patrick

Islands Trust Executive Committee EC@islandstrust.bc.ca

Chair Peter Luckham,

Vice-Chair Laura Patrick,

Vice-Chair Sue Ellen Fast,

Vice-Chair Dan Rogers

Minister of Municipal Affairs Muni.minister@gov.bc.ca

Honourable Nathan Cullen

RE: Non Support for Proposed Bylaws Removing Stairs from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

I have been on North Pender Island since _____ (year).

1. STAIRS IN THE WATERFRONT SETBACK

I do not support the proposed bylaw amendments which remove stairs from the water setback.

In addition:

✓Stairs to the water are important to the islands for emergency evacuation in the event of a wildfire or other catastrophic natural events.

✓These minimal stairs are already controlled for size and configuration in bylaws and do not need more controls.

✓Other: _____

2. DOWNZONING WATER DISTRICT W1 TO W3 TO BAN PRIVATE DOCKS

I do not support the proposed bylaws to downzone the Water 1 District, which now allows private docks, to Water 3 District, which allows only mooring buoys.

In addition:

✓There is already a comprehensive Provincial permitting process for docks and the Trust should not repeat these or have additional bylaw controls.

✓It is premature to proceed given significant opposition by citizens and boating associations to banning private docks in the Policy (TPS) review.

✓I am concerned with the negative impact on property values.

✓I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).

✓Other: _____

Name: _____

Address: _____

From: Juanita <[REDACTED]>
Sent: Monday, August 15, 2022 3:27 PM
To: SouthInfo <SouthInfo@islandstrust.bc.ca>
Subject: North Pender Proposed Bylaws to Downzone Docks and Exclude Stairs to Water

To: North Pender Island LTC

Trustee Ben McConchie

Trustee Deb Morrison

Chair Laura Patrick

RE: Non Support for Proposed Bylaws Removing Stairs from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

I have been on North Pender Island since 2008.

1. STAIRS IN THE WATERFRONT SETBACK

I do not support the proposed bylaw amendments which remove stairs from the water setback.

In addition:

✓ Stairs to the water are important to the islands for emergency evacuation in the event of a wildfire or other catastrophic natural events.

✓ These minimal stairs are already controlled for size and configuration in bylaws and do not need more controls.

2. DOWNZONING WATER DISTRICT W1 TO W3 TO BAN PRIVATE DOCKS

I do not support the proposed bylaws to downzone the Water 1 District, which now allows private docks, to Water 3 District, which allows only mooring buoys.

In addition:

✓ There is already a comprehensive Provincial permitting process for docks and the Trust should not repeat these or have additional bylaw controls.

✓ It is premature to proceed given significant opposition by citizens and boating associations to banning private docks in the Policy (TPS) review.

✓ I am concerned with the negative impact on property values.

✓ I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).

Name: Juanita Evans

Address: [REDACTED]

From: [REDACTED] [REDACTED] >

Sent: Saturday, August 20, 2022 11:12 AM

To: SouthInfo <SouthInfo@islandstrust.bc.ca>; EC <ec@islandstrust.bc.ca>; Muni.minister@gov.bc.ca

Subject: latest proposed bylaw changes

Here again we have erosion of property rights under the rubric of environmental protection. I think you should have the science before you take away peoples' rights.

Dr. Ann Syme, RN, CPHR

North Pender Island LTC
Trustee Ben McConchie
Trustee Deb Morrison
Chair Laura Patrick
southinfo@islandstrust.bc.ca

Islands Trust Executive Cttee
Chair Peter Luckham
Vice-Chair Laura Patrick
Vice-Chair Sue Ellen Fast
Vice-Chair Dan Rogers
EC@islandstrust.bc.ca

Minister of Municipal Affairs
Honourable Nathan Cullen
Muni.minister@gov.bc.ca

RE: Non Support for Proposed Bylaws Removing Stairs and Fencing from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

I have been on North Pender Island since 27 (year).

STAIRS AND FENCES IN THE WATERFRONT SETBACK

I do not support the proposed bylaw amendments which remove stairs and fences.

In addition:

- Stairs to the water are important to the islands for emergency evacuation in the event of a wildfire or other catastrophic natural events.
- These minimal stairs are already controlled for size and configuration in bylaws and do not need more controls.
- Fences in the water setback are important given the high-bank cliffs of many waterfront lots and should not be restricted in the setback.
- Fencing in the setback can provide protection from deer who negatively impact biodiversity and sensitive ecosystems on our islands.
- Other; no science - removing my rights that I purchased

DOWNZONING WATER DISTRICT W1 TO W3 TO BAN PRIVATE DOCKS

I do not support the proposed bylaws to downzone the Water 1 District, which now allows private docks, to Water 3 District, which allows only mooring buoys.

In addition:

- There is already a comprehensive Provincial permitting process for docks and the Trust should not repeat these or have additional bylaw controls.
- It is premature to proceed given significant opposition by citizens and boating associations to banning private docks in the Policy (TPS) review.
- I am concerned with the negative impact on property values. 1/2
- I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).
- Other; as above

Name: C. ANN SYME

Address: 

From: Rob and Sam Burnett [REDACTED]
Sent: Sunday, August 21, 2022 9:03 AM
To: SouthInfo <SouthInfo@islandstrust.bc.ca>
Subject: Objections to Bylaw amendments

I have been on North Pender Island since 2014.

1. STAIRS IN THE WATERFRONT SETBACK

I do not support the proposed bylaw amendments which remove stairs from the water setback.

In addition:

✓ Stairs to the water are important to the islands for emergency evacuation in the event of a wildfire or other catastrophic natural events.

✓ These minimal stairs are already controlled for size and configuration in bylaws and do not need more controls.

2. DOWNZONING WATER DISTRICT W1 TO W3 TO BAN PRIVATE DOCKS

I do not support the proposed bylaws to downzone the Water 1 District, which now allows private docks, to Water 3 District, which allows only mooring buoys.

In addition:

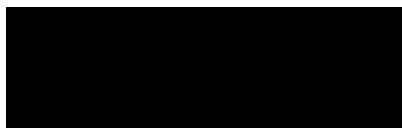
✓ There is already a comprehensive Provincial permitting process for docks and the Trust should not repeat these or have additional bylaw controls.

✓ It is premature to proceed given significant opposition by citizens and boating associations to banning private docks in the Policy (TPS) review.

✓ I am concerned with the negative impact on property values.

✓ I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).

Rob Burnett



From: Roger Proctor <[REDACTED]>
Sent: Sunday, August 21, 2022 1:22 PM
To: SouthInfo <SouthInfo@islandstrust.bc.ca>; EC <ec@islandstrust.bc.ca>; muni.minister@gov.bc.ca
Subject: Non-Support for Proposed Bylaws on North Pender Island

TO: North Pender Island LTC

AND TO: Islands Trust Executive Committee

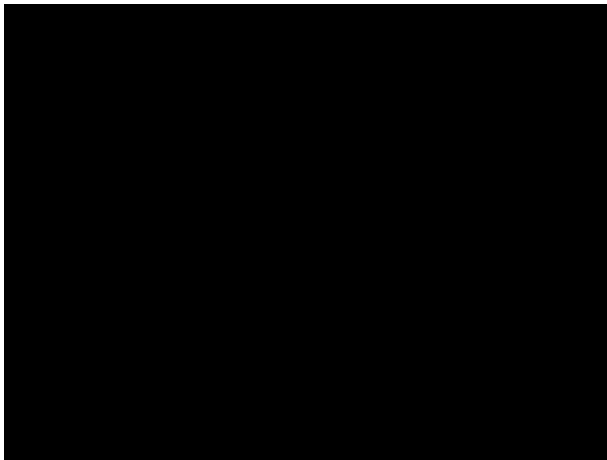
AND TO: The Honourable Nathan Cullen, Minister of Municipal Affairs

Please see attached Letter of Non-Support for Proposed North Pender Island Bylaws regarding stairs and docks.

Thank you for your consideration.

Yours truly,

Dr. Roger Proctor, [REDACTED]



North Pender Island LTC
Trustee Ben McConchie
Trustee Deb Morrison
Chair Laura Patrick
southinfo@islandstrust.bc.ca

Islands Trust Executive Cttee
Chair Peter Luckham
Vice-Chair Laura Patrick
Vice-Chair Sue Ellen Fast
Vice-Chair Dan Rogers
EC@islandstrust.bc.ca

Minister of Municipal Affairs
Honourable Nathan Cullen
Muni.minister@gov.bc.ca

RE: Non Support for Proposed Bylaws Removing Stairs and Fencing from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

I have been on North Pender Island since 2012 (year).

STAIRS AND FENCES IN THE WATERFRONT SETBACK

I do not support the proposed bylaw amendments which remove stairs and fences. In addition:

- Stairs to the water are important to the islands for emergency evacuation in the event of a wildfire or other catastrophic natural events.
- These minimal stairs are already controlled for size and configuration in bylaws and do not need more controls.
- Fences in the water setback are important given the high-bank cliffs of many waterfront lots and should not be restricted in the setback.
- Fencing in the setback can provide protection from deer who negatively impact biodiversity and sensitive ecosystems on our islands.
- Other; The science is not supportive of restrictions.

DOWNZONING WATER DISTRICT W1 TO W3 TO BAN PRIVATE DOCKS

I do not support the proposed bylaws to downzone the Water 1 District, which now allows private docks, to Water 3 District, which allows only mooring buoys.

In addition:

- There is already a comprehensive Provincial permitting process for docks and the Trust should not repeat these or have additional bylaw controls.
- It is premature to proceed given significant opposition by citizens and boating associations to banning private docks in the Policy (TPS) review.
- I am concerned with the negative impact on property values.
- I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).
- Other; I am concerned about access in emergency.

Name: Dr. Roger Pinkerton

Address: 

From: DAN AND TARA HODGINS <[REDACTED]>

Sent: Monday, August 22, 2022 2:59 PM

To: EC <ec@islandstrust.bc.ca>; SouthInfo <SouthInfo@islandstrust.bc.ca>; Muni.minister@gov.bc.ca

Subject: Issues with Proposed bylaws

To Whom it May Concern,

We as long time residents of Pender are very concerned about the trend towards extremely restrictive rules and regulations on ones owns property. While we realize that there was a time and place for the Islands Trust to set important parameters, these new bylaws seem somehow rooted in personal likes and dislikes which is not appropriate when dealing with property owners all over Pender.

We work very long hours during the summer season with very little in terms of time off and are not able to attend meetings to express our concerns so we are grateful for the group that is spearheading the momentum to stop these changes before it is too late.

Thanks for listening,

Tara & Dan Hodgins

[REDACTED]

North Pender Island LTC
 Trustee Ben McConchie
 Trustee Deb Morrison
 Chair Laura Patrick
 southinfo@islandstrust.bc.ca

Islands Trust Executive Ctte
 Chair Peter Luckham
 Vice-Chair Laura Patrick
 Vice-Chair Sue Ellen Fast
 Vice-Chair Dan Rogers
 EC@islandstrust.bc.ca

Minister of Municipal Affairs
 Honourable Nathan Cullen
 Muni.minister@gov.bc.ca

RE: Non Support for Proposed Bylaws Removing Stairs and Fencing from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

I have been on North Pender Island since 2003 (year).

STAIRS AND FENCES IN THE WATERFRONT SETBACK

I do not support the proposed bylaw amendments which remove stairs and fences.

Stairs to the water are important to the islands for emergency evacuation

in the event of a wildfire or other catastrophic natural events.

These minimal stairs are already controlled for size and configuration in

bylaws and do not need more controls.

Fences in the water setback are important given the high-bank cliffs of

many waterfront lots and should not be restricted in the setback.

Fencing in the setback can provide protection from deer who negatively

impact biodiversity and sensitive ecosystems on our islands.

Other;

In addition:

DOWNZONING WATER DISTRICT W1 TO W3 TO BAN PRIVATE DOCKS
 I do not support the proposed bylaws to downzone the Water 1 District, which now allows private docks, to Water 3 District, which allows only mooring buoys.

There is already a comprehensive Provincial permitting process for docks

and the Trust should not repeat these or have additional bylaw controls.

It is premature to proceed given significant opposition by citizens and

boating associations to banning private docks in the Policy (TPS) review.

I am concerned with the negative impact on property values.

I am concerned with the additional 'red-tape' costs and time of rezoning

back to the W1 zone (which is also proposed to become more restrictive).

Other;

Name: TRIST THORNTON

Address: [REDACTED]

I HAVE SERIOUS CONCERNS ABOUT THE RESTRICTIVE NATURE OF THE PROPOSED BYLAWS IN GENERAL. IT SEEMS OVERBENIGN TO CONTINUE TO RESTRICT WITH PROPERTY OWNERS CAN DO ON THEIR OWN LAND.

North Pender Island LTC
 Trustee Ben McConchie
 Trustee Deb Morrison
 Chair Laura Patrick
 southinfo@islandstrust.bc.ca

Islands Trust Executive Ctee
 Chair Peter Luckham
 Vice-Chair Laura Patrick
 Vice-Chair Sue Ellen Fast
 Vice-Chair Dan Rogers
 EC@islandstrust.bc.ca

Minister of Municipal Affairs
 Honourable Nathan Cullen
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RE: Non Support for Proposed Bylaws Removing Stairs and Fencing from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

I have been on North Pender Island since 2003 (year).

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Fencing in the setback can provide protection from deer who negatively impact biodiversity and sensitive ecosystems on our islands.

Other;

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I am concerned with the negative impact on property values.

I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).

Name: DAN HODGINS

Address: 

From: Roland Guenette <[REDACTED]>

Sent: Monday, August 22, 2022 6:19 PM

To: SouthInfo <SouthInfo@islandstrust.bc.ca>; EC <ec@islandstrust.bc.ca>; Muni.minister@gov.bc.ca

Subject: Re: Proposed Bylaws Removing Stairs And Fencing From Water Setbacks - North Pender Island

Trustees, Executive Committee Members and Honourable Minister,

We are writing to express our opposition to the proposed bylaw removing stairs from water setbacks on North Pender Island.

We have been residents on Pender Island for more than 20 years at our waterfront property on Shingle Bay. We had a set of cedar wood stairs built on our property many years ago to provide safer access to the lower part of our property and to replace a very steep and rocky pathway. This permits us proper water access for paddling, swimming and launching a row boat which is kept on shore. The boat is kept available to provide emergency evacuation in the event of fire or other catastrophic natural events. Our location on Shingle Bay is a closed bay which eliminates the possibility of evacuation along the shoreline. There is no other means of egress. This access is, to us and many others, a critical life safety issue.

There does not appear to be any basis in science that would indicate that the stairs pose any environmental or other concerns. Removing the stairs would eliminate safe access to the water and would materially reduce our enjoyment of our property.

In our view, this proposed change is being brought about not in the interests of good governance or a sense of better community, but rather by a very small number of interests who would rather not look at stairs along someone else's shoreline. A very selfish position to say the least.

We would ask that this provision be struck from the wording and intent of the proposed bylaw.

Yours truly,

Patricia and Roland Guenette

[REDACTED]

From: Barney <[REDACTED]>

Sent: Wednesday, August 24, 2022 2:55 PM

To: SouthInfo <SouthInfo@islandstrust.bc.ca>; EC <ec@islandstrust.bc.ca>; muni.minister@gov.bc.ca

Subject: proposed Pender Island Bylaws

North Pender Island LTC
Trustee Ben McConchie
Trustee Deb Morrison
Chair Laura Patrick
southinfo@islandstrust.bc.ca

Islands Trust Executive Cttee
Chair Peter Luckham
Vice-Chair Laura Patrick
Vice-Chair Sue Ellen Fast
Vice-Chair Dan Rogers
EC@islandstrust.bc.ca

Minister of Municipal Affairs
Honourable Nathan Cullen
Muni.minister@gov.bc.ca

RE: Non Support for Proposed Bylaws Removing Stairs and Fencing from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

I have been on North Pender Island since 1996 (year).

STAIRS AND FENCES IN THE WATERFRONT SETBACK

I do not support the proposed bylaw amendments which remove stairs and fences. In addition:

- Stairs to the water are important to the islands for emergency evacuation in the event of a wildfire or other catastrophic natural events.
- These minimal stairs are already controlled for size and configuration in bylaws and do not need more controls.
- Fences in the water setback are important given the high-bank cliffs of many waterfront lots and should not be restricted in the setback.
- Fencing in the setback can provide protection from deer who negatively impact biodiversity and sensitive ecosystems on our islands.
- Other: _____

DOWNZONING WATER DISTRICT W1 TO W3 TO BAN PRIVATE DOCKS

I do not support the proposed bylaws to downzone the Water 1 District, which now allows private docks, to Water 3 District, which allows only mooring buoys. In addition:

- There is already a comprehensive Provincial permitting process for docks and the Trust should not repeat these or have additional bylaw controls.
- It is premature to proceed given significant opposition by citizens and boating associations to banning private docks in the Policy (TPS) review.
- I am concerned with the negative impact on property values.
- I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).
- Other: _____

Name: BERNARD J. KEAR

Address: 

From: Corrie Cole <[REDACTED]>

Sent: Thursday, August 25, 2022 10:33 AM

To: SouthInfo <SouthInfo@islandstrust.bc.ca>; EC <ec@islandstrust.bc.ca>; Muni.minister@gov.bc.ca

Subject: NON SUPPORT re: docks and stair proposed by law

Good day,

We bought our property in 2014 with the intention to put in our own dock...we have paid thousands to do everything the correct way. Our application has been sitting on the Ministries desk for God knows how long. We have done everything we were asked to do. We are frustrated. We want our own dock, we are entitled to this. We pay our taxes, vote, and are law abiding citizens of BC. This is craziness now. Our dock/stairs will not hurt anything. We have reports that say just that. Stop the madness.

Corrie S Cole and Lori Ragan

From: Rob Botterell <[REDACTED]>
Sent: Thursday, August 25, 2022 12:14 PM
To: SouthInfo <SouthInfo@islandstrust.bc.ca>; EC <ec@islandstrust.bc.ca>; muni.minister@gov.bc.ca;
Devin Snider <dsnider@islandstrust.bc.ca>; Kim Stockdill <kstockdill@islandstrust.bc.ca>; Lynda Challis
<[REDACTED]>; Joanne Munroe <[REDACTED]> Kari Huhtala <[REDACTED]>;
IAN MUNROE <[REDACTED]>; shoyland28 <[REDACTED]>
penderislandinfo@gmail.com
Cc: Rob Botterell <[REDACTED]>
Subject: North Pender Proposed Bylaw

August 25, 2022

Good Afternoon

Trustee Ben McConchie
Trustee Deb Morrison
Chair Peter Luckham
Vice Chair Laura Patrick
Vice Chair Dan Rogers

and

Honourable Minister Nathan Cullen

RE Bylaw Changes Proposed for North Pender Island - Removal of Stairs and Fencing from Water Setbacks and Dock Down Zoning from Water 1 to Water 3.

Excuse the informal nature of this communication. I am currently on holiday. Before leaving, I attended the Island Trust Offices in Victoria on August 2nd to inquire about the above-mentioned bylaw changes and the impact on our home. I was advised to contact Kim Stockdill which I did in the attached e-mail. In addition, I copied dsnider@islandstrust.bc.ca so that if Kim was not available another responsible person could contact me.

I have no record of a response to my inquiry. How many other Pender residents have had similar experiences?

As a lawyer and former Islands Trustee, the importance of due process, full information, and timely responses to inquiries cannot be over-emphasized.

Based on the information I have since received from concerned Pender citizens, I understand that the North Pender Trust Committee plans to ban further docks (without a rezoning application), as well as stairs and fences along the North Pender waterfront. I understand that the primary justification for the new bylaw is the anticipated adverse ecological impact of such infrastructure. If that is the case, peer-reviewed scientific supporting evidence should be

released that clearly justifies the need for further restrictions beyond what the province may require as part of an application for a water lot for a dock.

Alternatively, if the issue is visual aesthetics, I think the Pender Island Local Trust Committee made that decision a long time ago by allowing docks and stairs to beaches on North Pender. Where I live [REDACTED] a good number of private docks with stairs line the shale rock shores. To restrict adjacent properties currently without docks is discriminatory and does nothing to improve the aesthetics.

Docks and stairs are important infrastructure, not only for the enjoyment of waterfront properties but also in an emergency as they provide quick egress for property owners. Last year's atmospheric river reduced Razor Point Road to one lane in parts and in a previous year, a forest fire burned in the area on the north side of Harbour Hill which, if not contained, could have burned the forest on Razor Point. These events are mere hints of potential emergencies that may result from extreme weather events due to climate change.

The most disturbing aspect of this proposed bylaw is the apparent rush to enact such a significant change which has the effect of down-zoning property, just before an election. To my knowledge the current trustees never sought or received a clear mandate in the last election to make these changes. Let voters on North Pender have their say in the upcoming election before proceeding further with the proposed bylaw.

I respectfully ask all of the addressees on this e-mail, including Minister Cullen, to advise me of the harm in

**A) maintaining the current moratorium until after the local government elections, and
B) Giving North Pender voters an opportunity, with full consideration of the significant impacts of this proposed bylaw, to vote on whether or not to give their elected representatives a clear mandate to proceed.**

To proceed with passing this bylaw immediately before the election strikes me as very undemocratic. Without a legitimate and valid mandate for making such a major policy change, there is a risk that the bylaw and the process for enacting it will be challenged resulting in greater expense to the Islands Trust.

I look forward to your response. Please confirm receipt of this e-mail.

Respectfully,

Rob Botterell
[REDACTED]

North Pender Island LTC
Trustee Ben McConchie
Trustee Deb Morrison
Chair Laura Patrick
southinfo@islandstrust.bc.ca

Islands Trust Executive Ctte
Chair Peter Luckham
Vice-Chair Laura Patrick
Vice-Chair Sue Ellen Fast
Vice-Chair Dan Rogers
EC@islandstrust.bc.ca

Minister of Municipal Affairs
Honourable Nathan Cullen
Muni.minister@gov.bc.ca

RE: Non Support for Proposed Bylaws Removing Stairs and Fencing from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

I have been on North Pender Island since 8 (year).

STAIRS AND FENCES IN THE WATERFRONT SETBACK

I do not support the proposed bylaw amendments which remove stairs and fences.

In addition:

- Stairs to the water are important to the islands for emergency evacuation in the event of a wildfire or other catastrophic natural events.
- These minimal stairs are already controlled for size and configuration in bylaws and do not need more controls.
- Fences in the water setback are important given the high-bank cliffs of many waterfront lots and should not be restricted in the setback.
- Fencing in the setback can provide protection from deer who negatively impact biodiversity and sensitive ecosystems on our islands.
- Other; _____

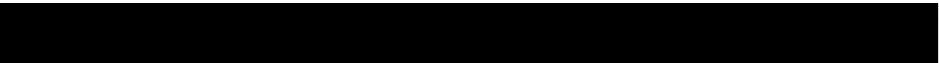
DOWNZONING WATER DISTRICT W1 TO W3 TO BAN PRIVATE DOCKS

I do not support the proposed bylaws to downzone the Water 1 District, which now allows private docks, to Water 3 District, which allows only mooring buoys.

In addition:

- There is already a comprehensive Provincial permitting process for docks and the Trust should not repeat these or have additional bylaw controls.
- It is premature to proceed given significant opposition by citizens and boating associations to banning private docks in the Policy (TPS) review.
- I am concerned with the negative impact on property values.
- I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).
- Other; _____

Name: CORRINE S. COLE

Address: 

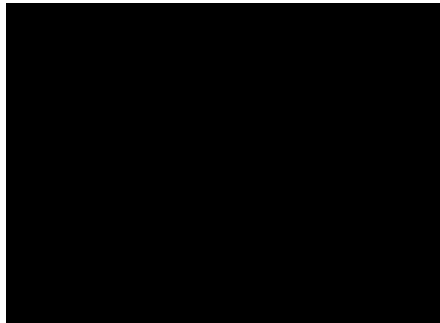
From: Asuka Takahashi <[REDACTED]>
Sent: Friday, August 26, 2022 12:30 PM
To: SouthInfo <SouthInfo@islandstrust.bc.ca>; EC <ec@islandstrust.bc.ca>; Muni.minister@gov.bc.ca
Subject: North Pender Response

Please see attached response from Dr. Bloomenthal.

Thank you,
Asuka

--

Asuka Takahashi



TOO MANY BYLAWS ON NORTH PENDER!

VISIT FACEBOOK GROUP: PENDER ISLAND INFO - FOR MORE DETAILED INFORMATION

NO MORE STAIRS TO THE WATER?

NO MORE PRIVATE DOCKS?

Really?

Please email back

DID YOU KNOW our North Pender Local Trust Council are proposing to:

■ Ban stairs from your property to access the waterfront and ban fences in the 15m setback?

Stairs down to the waterfront and fences in the 15m sea setback are proposed to be REMOVED from the North Pender Bylaw

Why? *"Mayne has too many stairs, we don't want to look like Mayne"*

There is no scientific evidence that these few, minimal stairs impact the ecology of our islands!

■ Downzone the Water 1 District (that now allows private docks) to Water 3 (allows only mooring buoys)?

If you want a NEW private dock, in addition to the comprehensive permit process with the Province, you will also have to beg for a REZONING BACK TO W1 ZONE

Why? *"We don't want to look like Piers Island or Sidney Island"*

The science does NOT back this up! These small docks have negligible impacts on the environment AND repeats many of the already complex Provincial approval processes.

What about the EMERGENCY EVACUATION these stairs and docks provide for our islands?

Have a Say!

Write or Email (see next page) your Local Trust Council, the Islands Trust Executive Committee and the Minister in charge: Hon Nathan Cullen to say **NO!**



For more detailed information go to Facebook Group: Pender Island Info

PENDER ISLAND INFO

Or Contact: penderislandinfo@gmail.com
Mary Beth Rondeau

North Pender Island LTC
Trustee Ben McConchie
Trustee Deb Morrison
Chair Laura Patrick
southinfo@islandstrust.bc.ca

Islands Trust Executive Cttee
Chair Peter Luckham
Vice-Chair Laura Patrick
Vice-Chair Sue Ellen East
Vice-Chair Dan Rogers
EC@islandstrust.bc.ca

Minister of Municipal Affairs
Honourable Nathan Cullen
Muni.minister@gov.bc.ca

RE: Non Support for Proposed Bylaws Removing Stairs and Fencing from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

I have been on North Pender Island since 2020 (year).

STAIRS AND FENCES IN THE WATERFRONT SETBACK

I do not support the proposed bylaw amendments which remove stairs and fences.

In addition:

- Stairs to the water are important to the islands for emergency evacuation in the event of a wildfire or other catastrophic natural events.
- These minimal stairs are already controlled for size and configuration in bylaws and do not need more controls.
- Fences in the water setback are important given the high-bank cliffs of many waterfront lots and should not be restricted in the setback.
- Fencing in the setback can provide protection from deer who negatively impact biodiversity and sensitive ecosystems on our islands.

Other: We should be able to access the water from our own property

DOWNZONING WATER DISTRICT W1 TO W3 TO BAN PRIVATE DOCKS

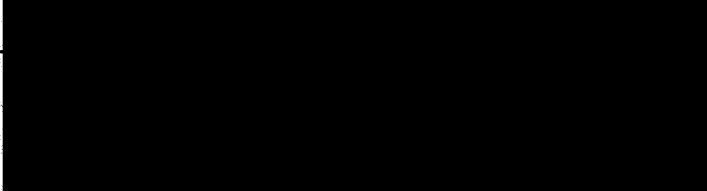
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- There is already a comprehensive Provincial permitting process for docks and the Trust should not repeat these or have additional bylaw controls.
- It is premature to proceed given significant opposition by citizens and boating associations to banning private docks in the Policy (TPS) review.
- I am concerned with the negative impact on property values.
- I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).

Other: After Bay marina has DOUBLED

Name: Dr Deha Kloomentz

Address: 

* * *
price in the last one year, making it a challenge to use local marinas

From: Murray V <[REDACTED]>

Sent: Friday, August 26, 2022 8:42 AM

To: SouthInfo <SouthInfo@islandstrust.bc.ca>

Cc: EC <ec@islandstrust.bc.ca>; MUNI.Minister@gov.bc.ca

Subject: Non Support for ADDITIONAL Bylaws restricting and changing Water Setbacks for North Pender Island

Dear Trustees,

Myself with so many other Islanders are so against your latest initiatives to add further restrictions to waterfront properties on North Pender. These areas are currently adequately regulated.

You hold meetings and what little input is allowed is simply not listened to.

You are completely destroying our faith in the Island Trust.

Regards,

Murray and Sharon Vasilev

North Pender Island LTC
Trustee Ben McConchie
Trustee Deb Morrison
Chair Laura Patrick
southinfo@islandtrust.bc.ca

Islands Trust Executive Cttee
Chair Peter Luckham
Vice-Chair Laura Patrick
Vice-Chair Sue Ellen Fast
Vice-Chair Dan Rogers
EC@islandtrust.bc.ca

Minister of Municipal Affairs
Honourable Nathan Cullen
MuniMinister@gov.bc.ca

RE: Non Support for Proposed Bylaws Removing Stairs and Fencing from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

I have been on North Pender Island since 1968 (year).

STAIRS AND FENCES IN THE WATERFRONT SETBACK

I do not support the proposed bylaw amendments which remove stairs and fences.
In addition:

- Stairs to the water are important to the islands for emergency evacuation in the event of a wildfire or other catastrophic natural events.
- These minimal stairs are already controlled for size and configuration in bylaws and do not need more controls.
- Fences in the water setback are important given the high-bank cliffs of many waterfront lots and should not be restricted in the setback.

Fencing in the setback can provide protection from deer who negatively impact biodiversity and sensitive ecosystems on our islands.

Other: FENCES CAN PREVENT STRANGERS AND INTERFERERS FROM ACCESSING YOUR PRIVATE PROPERTY. SAFETY SHOULD BE A SERIOUS CONSIDERATION.

DOWNZONING WATER DISTRICT W1 TO W3 TO BAN PRIVATE DOCKS

I do not support the proposed bylaws to downzone the Water 1 District, which now allows private docks, to Water 3 District, which allows only mooring buoys.
In addition:

- There is already a comprehensive Provincial permitting process for docks and the Trust should not repeat these or have additional bylaw controls.
- It is premature to proceed given significant opposition by citizens and boating associations to banning private docks in the Policy (TPS) review.

I am concerned with the negative impact on property values.

I am concerned with the additional 'red-tape' costs and time of rezoning back to the W1 zone (which is also proposed to become more restrictive).

Other: I HAVE A DOCK AND MANY OF MY NEIGHBOURS HAVE ASKED TO ACCESS IN THE EVENT OF AN EMERGENCY.

Name: MURRAY VASILEV

Address: 

From: MICHAEL SKETCH <[REDACTED]>

Sent: Monday, August 29, 2022 4:59 PM

To: Deb Morrison <dmorrison@islandstrust.bc.ca>; Benjamin McConchie <bemconchie@islandstrust.bc.ca>; Laura Patrick <lpattick@islandstrust.bc.ca>

Cc: Kim Stockdill <kstockdill@islandstrust.bc.ca>; Robert Kojima <rkojima@islandstrust.bc.ca>; Stefan Cermak <scermak@islandstrust.bc.ca>; SouthInfo <SouthInfo@islandstrust.bc.ca>

Subject: M Sketch - Port Washington shed submission to LTC for 01Sep2022

Trustees and staff - Attached my submission to the North Pender LTC respecting removal of all reference to residential zoning for the parcels with civic address 1200 & 1201 Port Washington Rd. in the OCP, as has been done for the LUB.

This submission necessarily follows my submission to you, with reasons, submitted to the LTC for the 12Aug2022 (see public correspondence for N Pender LUB Project for 08Aug2022) LTC meeting.

Michael Sketch
[REDACTED]

**Submission from Michael Sketch to the North Pender LTC
for the 1 September, 2022 special electronic meeting**

Please cease residential permitted use for parcels
at 1200 & 1201 Port Washington Road, in the OCP map schedule
and encourage i) amalgamation of the two parcels and ii) removal of the shed
before considering a landowner application for residential use of the amalgamated parcels

Trustees and planning staff – An abstract from my ‘Port Washington Shed’ submission to you for your 12Aug2022 meeting follows at the end of the submission. As per that submission, please remove all reference to permitted residential use for each of the parcels with civic addresses 1200 & 1201 Port Washington Rd. That is, remove all reference to permitted residential use in each of the regulatory Land Use Bylaw (LUB) and policy OCP bylaw.

I attended the 12Aug2022 LTC meeting and understood the locally elected trustees to so request, although the trustees did not give specific direction to correct each of OCP and LUB separately. I think that should have been understood.

If the OCP (map Schedule and other reference if made) as amended by staff to give residential use for both parcels remains to the next trustee term, the next LTC may well be advised by staff to bring the LUB into compliance with the OCP; in this case to give LUB residential permissions for both parcels – without an application from the landowner.

Ironically, that was the first purpose of the current LUB Amendment Project; to bring LUB regulation “cart” into agreement with the OCP “horse”. Today’s (01Sep2022) staff report and draft bylaws amends the LUB cart but leaves the OCP horse with residential zoning.

I spent some time on the phone with one of the landowners (Dr. Nathan Hoag), at Nathan’s request. Nathan’s preference appears to be a single residence on the two parcels and he had no objection to amalgamating the parcels. I pointed out that a future owner may see things differently and that one day the shed may reappear as a residence.

I suggested a three step process which should ensure that there be no future residential use of the ‘shed’ (resting largely on the foreshore), as follows:

- 1) Landowner application to amalgamate the two commercially zoned parcels.
- 2) Landowner to remove the ‘shed’ structure from the upland and foreshore position, either fully to the upland lot for improvement to a residence (with setbacks) or removal from the site and sale to a willing buyer.
- 3) Landowner application to rezone the single (amalgamated) parcel at the natural boundary for (single) residential use, with setbacks as per the LUB of the day.

Mr Hoag’s objection was that should he do steps 1) & 2), but fail in his 3) application for residential use, his own needs wouldn’t be met. I don’t think that either staff or trustees would deny residential use on the single waterfront lot as the neighbours now enjoy.

Thank you for your attention to this important matter.

Michael Sketch

ph: 250-629-8393

An abstract from my submission to you for your 12Aug2022 meeting follows:

The Port Washington store and storage shed, built circa 1910, (Exhibit 2) traditionally served North Pender distributed commercial needs. The store and about 10% of the floor area of the shed were built on the same parcel. The natural boundary divides the shed structure. The greater part of the shed floor area rests on the foreshore, below the natural boundary. In the early 1990s, the parcel was subdivided to i) a “sliver” at the natural boundary on which rests 10% of the shed structure and ii) an upland parcel on which rested the store structure. During 1994 to 2013, North Pender residents opposed accessory residential use of the shed structure, alleging both incorrect residential use (Exhibit 7) and sewage disposal on foreshore land (Exhibit 8). In 2014, the courts (N. Pender LTC Corporation the plaintiff) ceased residential use of the shed structure, said use being contrary to the LUB. Subsequently, the store was demolished. The shed remains.

In 2022, there are new owners for the two parcels (Exhibits 3&4).

Surprisingly, staff recommend (Exhibit 1) rezoning both parcels from commercial to residential land use as part of the current LUB review. Staff have drafted changes for the LUB and the OCP map schedule, without application from the landowner and without an explanatory staff report. There has been no meaningful consultation with First Nations on either past, or the potential for future, residential use of foreshore land.

In and of itself, rezoning of land above the natural boundary which 10% of the shed floor area rests on, wouldn't permit residential use of foreshore land. But it may be reasonably assumed that residential rezoning of the “sliver” upland parcel will predispose a North Pender site specific amendment of the W4 water zone and in turn, Provincial lease approval.

It is ironic that after the staff effort and taxpayer expense of three court actions 2008-2014 to counter wilful landowner residential use of the shed, that in 2022 staff now recommends zoning permission for full (not accessory) residential use (of the small part of the shed above the natural boundary) without the new landowner making formal application.

From: BRIAN FORBES [REDACTED]
Sent: Monday, August 29, 2022 2:57 PM
To: Muni.minister@gov.bc.ca
Cc: SouthInfo <SouthInfo@islandstrust.bc.ca>; EC <ec@islandstrust.bc.ca>
Subject: Non-Support For Proposed Bylaws

To: Honourable Nathan Cullen, Minister of Municipal Affairs
cc: North Pender Island LTC Ben McConchie, Deb Morrison, Laura Patrick; Islands Trust Executive Committee Peter Luckham, Laura Patrick, Sue Ellen Fast, Dan Rogers

RE: Non-support for Proposed Bylaws Removing Stairs and Fencing from Water Setbacks and Dock Downzoning from Water 1 to Water 3 for North Pender Island

Dear Sir:

I have had my property on North Pender Island for over 30 years and a dock plus the stairs necessary to access the dock for over 25 years. These two structures are directly tied to one another by a landing at the bottom of the stairs and a gangplank to the dock. The stairs are located on steep bank terrain that would be virtually impossible for me to traverse without the stairs. When we originally bought the property, a rope had been strung from the top of the bank down to the bottom to provide water access. This was a high risk way of getting to the water and basically an accident waiting to happen. Obviously, we need the stairs and related facilities to access the dock and I suspect a lot of other dock owners are in the same situation. If the trustees are dealing in good faith with respect to the right for owners to retain existing docks, then these structures must be grandfathered along with the docks.

The stairs and dock have been used extensively over the years by my family and friends as well as by my neighbours who have asked several times for permission to use the dock for short-term purposes when the need arose. We have never refused a request and have only asked that they respect the facilities as they would their own. We have never had a problem with this. In short, it is not just us that lose if they facilities are removed - our neighbours and friends lose as well. This is particularly significant in the event of a natural disaster such as a forest fire or earthquake and this possibility should not be taken lightly. The climate is heating up and the forests including those on North Pender are getting drier. Major earthquakes occur in this area every 400-450 years or so and we are roughly in the middle of this range since the last one. These events could take out all road access to our area with the water being the only remaining route out. When my neighbour pointed out these facts to me many years ago, I told him all our neighbours would be welcome to use our facilities under these circumstances if they needed to as their safety and security is of paramount importance. In short, we all win with these facilities in place.

When we installed our dock and stairs, the cost (as I recall) was in the order of \$40,000 - \$50,000. They have been maintained regularly ever since and are in like-new condition both structurally as well as aesthetically due to inspection and painting we do on a regular basis. However, it is not just the investment in these facilities that we lose if the stairs are removed. Obviously, the value of our property will depreciate significantly as well. In addition, government revenue will also fall as we have been paying significantly higher taxes based on the value added by these facilities since the day they were installed. When we installed our dock and stairs, we did so in good faith. We broke no laws and there were no objections at the time (or since up to now) concerning their development. We have no pilings - just a small dock with cables from the dock to the foreshore. The sea otters have accepted it and use it regularly. Now we pay provincial taxes for the property on land as well as a federal tax for property on the water. It would seem the governments have no problem with these developments. Based on the above, I feel that we've earned the right to retain these facilities.

Unfortunately, now, it appears that a small group of trustees are attempting to turn the clock back on many decades of North Pender waterfront development to meet their own vision of what the island should look like in the 21st century. I find it difficult to believe that a small group of trustees have the authority to essentially dictate to North Penderites that all stairs constructed since day one by private landowners

must now be removed to meet their vision of the future for North Pender and I certainly don't think their justifications are adequate considering the potential impacts on so many land owners, their neighbours and potentially the general public in areas where they are installed. This situation seems completely absurd to me.

It is time to put an end to this. At a minimum, the existing infrastructure development (i.e., docks and stairs) must be permanently grandfathered to protect the investment of those that installed them as well as the safety and security of the public living in the vicinity of these facilities. In regards to future development, there is already a comprehensive Provincial permitting process for docks and other bylaws are in place for stairs. There is no need for the trustees to create additional bylaws in regard to these facilities.

From a broader perspective, it appears that the North Pender trustees had a secret agenda before being voted into office and, as we have seen, it goes far beyond the subject of this e-mail. Had they presented this agenda as part of their platform when running for office, they very well may not have been elected. The fact is, they were never given a mandate by the voters to implement the bylaws they are now proposing that they were in such a rush to pass once they were tabled. Fortunately, the public outcry that occurred when they were tabled stopped this from happening, or at least slowed it down. Unfortunately, I don't know if meaningful consultation can be achieved with the trustees due to their rigidity and entrenchment in their own idealistic philosophy. In regards to waterfront development, it means turning the clock back to an era when there was little or no man-made development on the waterfront by land owners despite an overwhelming abundance of natural waterfront in the area. Personally, I think waterfront development if well thought out and constructed accordingly can co-exist with the natural environment very well. Further, I think that the variety enhances the overall waterfront experience. The presence of stairs, docks and boats that use them can be a beautiful sight. Trying to keep it like it was before development began shouldn't be an issue here.

Generally, the trustee's agenda has been opposed by a large and vocal portion of the SGI population ever since it was tabled and the process followed as a means of consultation appears to me to have been largely ineffective and dysfunctional. This includes the waterfront issues, i.e., docks and stairs. It appears to me that this has gone on long enough and it is now time to stop it.

Sincerely,

Brian Forbes

From: Joyce Thayer [REDACTED] >
Sent: Monday, August 29, 2022 10:11 AM
To: SouthInfo <SouthInfo@islandstrust.bc.ca>
Subject: Bylaw 224

Please see the attached letter regarding requests for further amendments to Bylaw 224 to clarify the zone where agri-tourism/agri-tourist accommodation is allowed. Also see our suggestions regarding amendments to the definitions of agriculture and the addition of a "Farm" to make it absolutely clear the zones where agricultural operations and farming take place for zoning purposes.

Joyce Thayer

Tom and Karen Bell

Ann Stephenson

September 29, 2022

To: Ben McConchie – North Pender Island Trustee
Deb Morrisom – North Pender Island Trustee
Laura Patrick – North Pender Island Trustee
Via email: southinfo@islandstrust.ca

Re: Proposed Bylaw 224 – Further Amendments

We wish to thank the trustees for their consideration of and implementation of most of our suggestions for changes to proposed bylaws 224 and 229 to make it absolutely clear that agriculture and agri-tourism/agri-tourist accommodation are not permitted uses in the RR2 zone, at the meeting of August 13, 2022. However, as the bylaw is currently written there remains the possibility that agri-tourism/agri-tourist accommodation may be allowed in the RR1 and RR2 zones unless section 3.13 (3) is deleted from s.13 setting out the Agri-tourism and Agri-tourist Accommodation Regulations.

Farm status is defined in the proposed bylaw as "land classified as a farm pursuant to the (BC) Assessment Act". If s. 3.13 (3) which states that "Agri-tourism and Agri-tourist accommodation uses are only permitted on a lot with *Farm Status*." remains in the bylaw, any land owner, who owns land including land in RR1 or RR2 zones might apply for and achieve this status and attempt to conduct agri-tourism and build agri-tourist accommodation when is clearly the intent of the bylaw that such activities

not take place in these zones. Simply put Farm Status for taxation purposes should not be a criteria for determining if Agri-tourism and Agri-tourist Accommodation uses are allowed.

Further s. 3.13 (3) is inconsistent with section 3.13(4) which states that agri-tourism can only take place on ALR land. Section 3.13 (4) is also inconsistent with sections 5.3 (1) (h); 5.4 (1) (h) and s. 5.5 (1) (e) of Bylaw 224 as currently drafted as the proposed bylaw also zones R, RC1, and RC2 land for accessory agri-tourism and agri-tourist accommodation.

If, as we understood it from the meeting of August 13, 2022, the intent of the trustees was to confine agri-tourism and agri-tourist accommodations to ALR lands as set out in s. 3.13 (4) then we propose the following amendment to the bylaw at the meeting of September 1st.

Moved that:

1. Section 3.13 (3) be deleted from s. 3.13 of proposed bylaw 224.
2. Section 5.3 (1) h be deleted from s. 5.3 of proposed bylaw 224.
3. Section 5.4 (1) (h) be deleted from s. 5.4 of proposed bylaw 224; and
4. Section 5.5 (1) (e) be deleted from s. 5.5 of proposed bylaw 224.

Also as confusion appears to remain as to the distinction between farm status for taxation purposes pursuant to the provisions of the *BC Assessment Act* and a farm operation for bylaw zoning purposes it is important to include the following changes to the definition section 1.1. to make it absolutely clear the zones where agriculture operations and farming for zoning purposes take place.

We suggest the following:

Moved that:

1. The following words be added to the definition of agriculture in s.1.1 of proposed bylaw 224 “in a zone where agriculture is a principle permitted use.”; and
2. The following definition of farm be added to the definition section s.1.1 “Farm” means a farm operation conducted on a lot that is zoned for agriculture as a principal permitted use.

Thank you for your consideration of our requests and suggestions.

Joyce Thayer

Karen and Tom Bell

Ann Stephenson

From: Ron Underhill <[REDACTED]>
Date: August 29, 2022 at 3:03:37 PM PDT
To: Deb Morrison <dmorrison@islandstrust.bc.ca>, Benjamin McConchie <bemcconchie@islandstrust.bc.ca>
Cc: Laura Patrick <lpatrick@islandstrust.bc.ca>
Subject: NP-2022-79 re: Commercial zoning changes at 1200 & 1201 Port Washington Road.

Hello Trustees,

I likely will not be able to attend the September 1st Trust meeting via Zoom so here is some input about the proposed changes for the two commercial properties at the end of Port Washington road.

Several years ago the former owner of these two properties stated his intent to combine the two properties into one and apply for re-zoning to RR1. This idea appeared to receive consensus approval amongst the neighbourhood. However my understanding is he has since sold the two properties (one to a numbered company and the other to an individual) and new changes appear to be under discussion or application. Following the internal Island Trust paperwork trail is confusing for me but it seems some potential exists for the new owner(s) to try and create two RR1 properties if the water lease could be renewed for such a purpose.

I still support one combined RR1 zoned property by merging 1200 and 1201 Port Washington Road but oppose the idea of creating residential use of the shed located on 1200 Port Washington Road. The community went through a lot of angst, expense and trouble to enforce the zoning of these properties as an off-island owner from the 1990's turned the old storage shed for the general store into a residence and part time B&B facility without permitting or approval of the Trust. You may recall that he discharged raw sewage for years onto the beach below the shed.

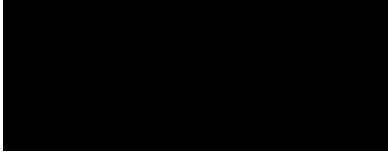
Having one RR1 property at this location will be difficult due to the site lacking adequate area for septic and an existing poor quality well that may actually be located on the road allowance (old timers didn't worry too much about things like this). However with proper planning I think it can be accomplished with the goal of providing another residence in the bay consistent with the character of the area. Two residences with one projected out over the water is not.

Historically the General store and the storage shed that supported it were one property with the purpose of providing a vital mercantile service for goods and food to the Community. This store was run by many owners during its history from 1910 to sometime in the 1980's. In particular I remember with fondness the period when my grandfather ran the store from 1921-1956. However the store gradually became non-competitive with the more central Driftwood Centre which better serves the island. It seems appropriate that the property now become another residence in Grimmer Bay, hopefully consistent with the character of the existing water front homes.

Would the Islands Trust staff and Trustees please be transparent about what is proposed for these two properties so that the neighbourhood can be informed and hopefully be in approval of upcoming changes,

Thank you,

Ron Underhill



From: Peter Pare <[REDACTED]>

Sent: Wednesday, August 31, 2022 1:09 PM

To: Benjamin McConchie <bemconchie@islandstrust.bc.ca>; Deb Morrison <dmorrison@islandstrust.bc.ca>; Laura Patrick <lpatrik@islandstrust.bc.ca>

Cc: Kim Stockdill <kstockdill@islandstrust.bc.ca>; Robert Kojima <rkojima@islandstrust.bc.ca>; Stefan Cermak <scermak@islandstrust.bc.ca>; SouthInfo <SouthInfo@islandstrust.bc.ca>

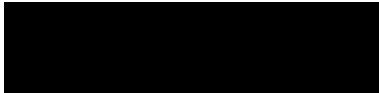
Subject: Re: North Pender Island Bylaw amendment project

Dear Trustees

Attached is my submission to the North Pender LTC for the 1 September, 2022 meeting with respect to the Land Use Bylaw amendment project.

I hope to be able to address these issues briefly on the Zoom call

Peter D Pare



I am a full time resident of Pender Island and have owned property on North Pender since 1980.

I want to express my support for many of the proposed bylaw amendments being considered. As well as my concerns about others.

5.1 Rural Residential 1 (RR1) Zone

Siting and size

- I support the amendments to bylaw concerning house size and boundary setbacks. The rationale for the proposed changes is clear and compelling and is related both to the environment and to the character of the Gulf Islands.
- My specific interest in the proposed bylaw amendment related to house size relates to climate change and environmental degradation.
- As you know we are in the midst of a catastrophic triple threat involving massive loss of biodiversity, widespread pollution of the natural systems on which all life depends and run-away climate change with all its negative impacts. All based on excessive consumption of the earth's resources.
- The Island Trust has recognized this with its declaration of a Climate Emergency and the Right to a Health Environment, and it is heartening that the North Pender Island Trust is beginning to take positive action to address this emergency.
- As the recent comprehensive Ecological Footprint study on Galiano Island showed, even frugal Southern Gulf Islanders are living well beyond the carrying capacity of the earth and of our islands. The Galiano Residents' annual per capita contribution of 8.4 tons of CO2 is twice the global average and 4.5 times what is sustainable. It would take 4.5 earths to maintain the lifestyle of Galianians and presumably Penderites!

See: <https://galianoconservancy.ca/oneisland/>

- In their study they found that housing, its construction and maintenance, contributes about 20% of the footprint. Only transportation and food make bigger contributions. The larger the dwellings the larger the footprint.

- I think the new proposed limitations on house size are reasonable and easily defensible in this context.
- The other component of the rationale is also persuasive. The rural nature and natural diversity of our island environment are critical components that the Trust was mandated to preserve and protect for future generations. Large structures degrade this rural character.

3.3 Siting and Setback Regulations

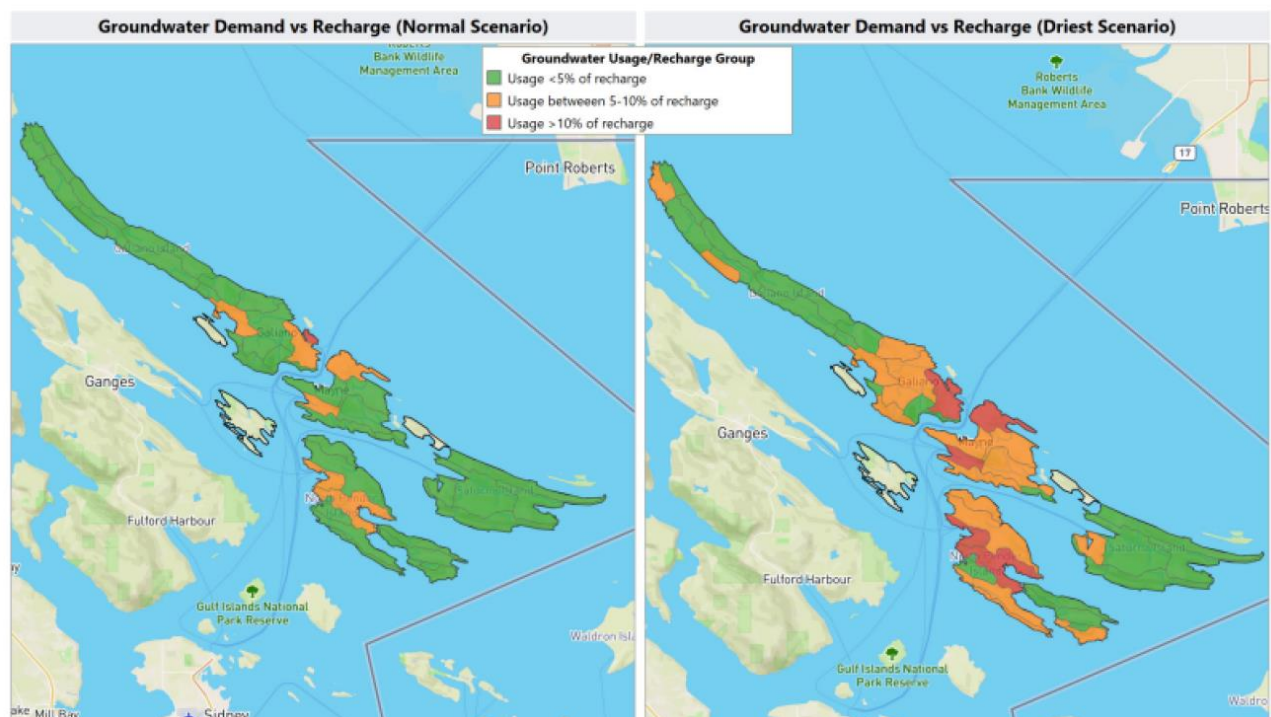
- I support the proposed 15 meter setback of buildings from the natural boundary of the sea. The environmental rationale for this setback is solid and a similar 15 meter setback of buildings should be applied to wetlands lakes and streams for the same reasons. The proposal now is only 7.5 meters.
- I note that some Pender residents have pointed out the proscription of fencing within this setback entails a health risk for those whose property is high bank bordering the ocean and I think this reasonable exception should be accommodated.
- It is noted that there are proposed 60 and 30 meter setbacks of septic fields and pits used for agricultural, commercial or industrial purposes from the natural boundary of the sea and wetlands lakes and streams respectively, but no mention of setbacks for residential septic fields. The health and environmental rationale for the setbacks applies equally irrespective of whether it is commercial or residential. In addition the W̱SÁNEĆ First Nations have expressed concern regarding the impact of structures and septic instillations on their ability to harvest shellfish in their original territories. I suggest setback of residential septic instillations be added to the amendment.

North Pender Land Use Bylaw No 229 plan to rezone on McKinnon Rd

- I have major concerns regarding the proposed development of tourism units on the MacKinnon Road properties. My concern primarily relates to

the subsequent increase in density and the impact that would have on the islands' groundwater.

- Most visitors come to islands during the summer months when demand for fresh water is highest and water supplies are lowest, placing pressure on limited water supplies.
- There is compelling evidence that in many areas of the islands aquifer discharge is greater than recharge and that this trend is increasing due to climate and development.
- In coastal areas, local groundwater deficits can result in a potentially irreversible salt-water intrusion into aquifers.
- The Islands Trust in its 2021 study (see: <https://islandstrust.bc.ca/document/southern-gulf-islands-groundwater-availability-assessment-report-ver-2021/>) determined that in many areas of the Gulf Islands grown water usage is more than 10% of the amount that can be recharged, which they propose as an unacceptable threshold. A map of such areas is shown in that report and reproduced here.



From: SouthInfo <SouthInfo@islandstrust.bc.ca>
Sent: Wednesday, August 31, 2022 4:16 PM
To: Robin Ellchuk <rellchuk@islandstrust.bc.ca>
Subject: FW: North Pender Island By-Law amendments

From: Lisa Baile <[REDACTED]>
Sent: Wednesday, August 31, 2022 3:36 PM
To: Benjamin McConchie <bemconchie@islandstrust.bc.ca>; Deb Morrison <dmorrison@islandstrust.bc.ca>; Laura Patrick <lpatrick@islandstrust.bc.ca>; Robert Kojima <rkojima@islandstrust.bc.ca>; Stefan Cermak <scermak@islandstrust.bc.ca>; SouthInfo <SouthInfo@islandstrust.bc.ca>
Subject: North Pender Island By-Law amendments

Dear Trustees

Attached is my submission to the North Pender LTC for the 1 September, 2022 meeting with respect to the Land Use Bylaw amendment project.

Lisa Baile
[REDACTED]

I am privileged to live full-time on Pender Island and have owned property on North Pender since 1980.

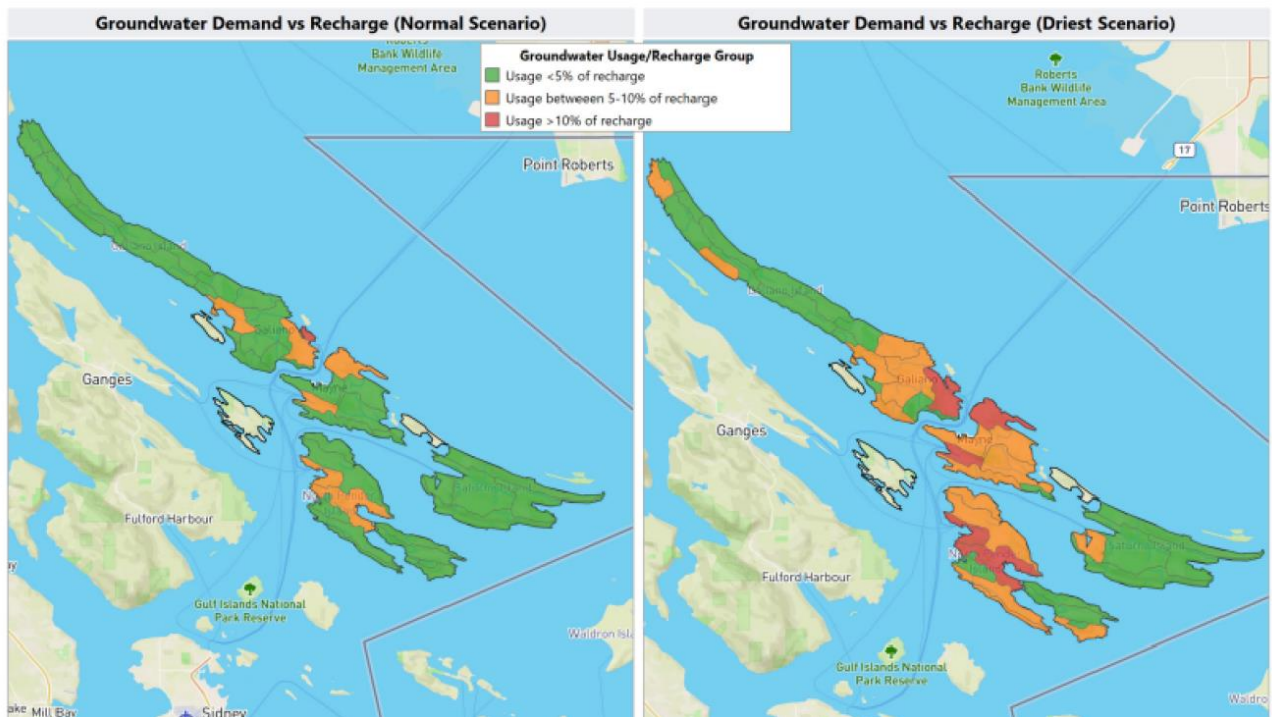
I am supportive of several of the proposed amendments to the bylaws, but have concerns about other amendments - particularly with regard to Land Use Bylaw No 229 plan to rezone on McKinnon Rd on N Pender Island and the impact that the proposed development of tourism units on the MacKinnon Road properties will have on the islands' groundwater.

As we are all aware, with the effects of climate change and summer droughts and an influx of tourists in summer months the demand for fresh water is highest when water supplies are lowest, placing huge demands on limited water supplies.

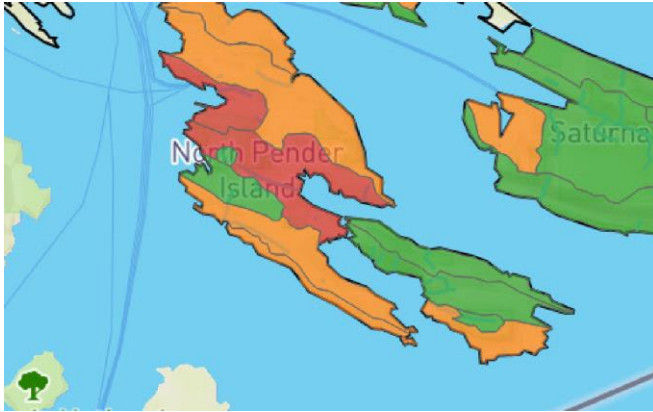
The Islands Trust study in 2021 [<https://islandstrust.bc.ca/document/southern-gulf-islands-groundwater-availability-assessment-report-ver-2021/>]

showed that in many areas of the Gulf Islands more than 10% of groundwater is being used than can be recharged, which they propose as an unacceptable threshold. A map of such areas is shown in that report and reproduced here.

The areas beyond the threshold are illustrated in red on the right hand image and it is



apparent that the MacKinnon road properties are included.



Enlarged view of Pender Island

The Trustees will be aware of these data given the approved amendment on August 11 which stated:

NP-2022-80 It was moved and seconded, that the North Pender Island Local Trust Committee request that the proposed bylaw 229 be amended cited “North Pender Land Use Bylaw No 229” plan to rezone 1349 McKinnon Rd reduced from 8 units to 3 units and 1329 McKinnon Rd reduce from 15 units to 7 units.

However, on August 13th this amendment was overturned:

NP-2022-85 It was Moved and Seconded, that the North Pender Island Local Trust Committee rescind the resolution made at the North Pender Island Local Trust Committee August 11, 2022 regular meeting that reads: “That the North Pender Island Local Trust Committee proposed Bylaw No. 224, cited as “North Pender Island Land Use Bylaw No. 224, 2022” be amended to reduce the number of tourist accommodation units from 8 to 3 for 1349 MacKinnon Road and from 15 to 7 for 1329 MacKinnon Road”.

It is the requirement of the Local Trust to protect groundwater resources. The Islands Trust Council Bylaw No. 17 states:

Commitment of Trust Council

4.4.1 It is the Trust Council’s policy that islands in the Trust Area should be self-sufficient in regard to their supply of freshwater.

Directive Policies

4.4.2 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address measures that ensure:

- neither the density nor intensity of land use is increased in areas which are known to have a problem with the quality or quantity of the supply of freshwater,
- water quality is maintained, and
- existing, anticipated and seasonal demands for water are considered and allowed for

5.1 Rural Residential 1 (RR1) Zone

Siting and size

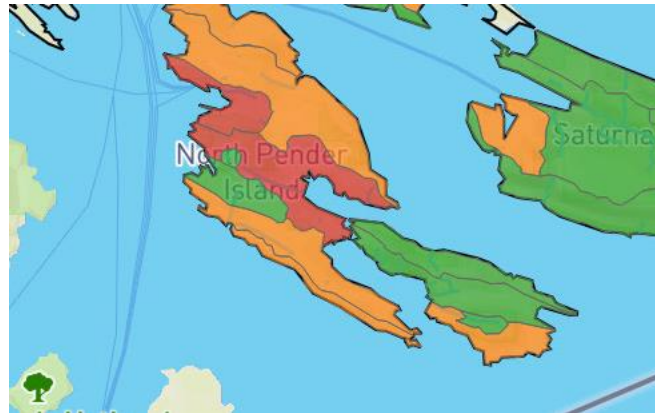
I am supportive of the amendments to the bylaw re house size and boundary setbacks which aim to preserve the rural character of the Islands and the biodiversity which we all depend on.

As the recent study of Islanders' Ecological Footprint on Galiano Island has shown so persuasively [See: <https://galianoconservancy.ca/oneisland/>] it is housing and its construction and maintenance which contributes about 20% of the footprint. Only transportation and food make bigger contributions. The larger the dwellings the larger the footprint! It's no-brainer that we need smaller dwellings and we have to decrease our outsized footprints on the one and only planet we have!

3.3 Siting and Setback Regulations

I support the proposed 15 meter setback of buildings from the natural boundary of the sea, and the environmental rationale for this setback is justified and, likewise, a 15 meter setback of buildings should be applied to all wetlands, lakes and streams for the same reasons. Therefore the proposed 7.5 meters should be increased to 15 m.

- The areas beyond the threshold are illustrated in red on the right hand image and it is apparent that the MacKinnon road properties are included.



Enlarged view of Pender Island

I noted that the Trustees must be aware of these data given the amendment they approved August 11 which stated:

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4.4 Freshwater Resources

Commitment of Trust Council

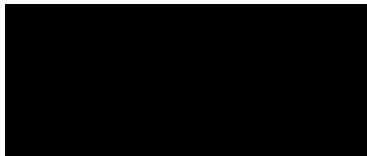
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- water quality is maintained, and
- existing, anticipated and seasonal demands for water are considered and allowed for

Peter Paré



From: **Misty MacDuffee** [REDACTED]
Date: Wed, Aug 31, 2022 at 1:16 PM
Subject: Port Washington shed zoning
To: <benmconchie@gmail.com>, <2debmorrison@gmail.com>

Dear Deb and Ben

I plan to make a statement tomorrow at the meeting, but I want to send a quick note on the Port Washington shed issue, as it does not seem to have been satisfactorily resolved by the staff's actions. The residential zoning needs to be moved back to commercial within the OCP map schedule. It wasn't enough for staff to just return the LUB to commercial zoning for both lots. The OCP guides the LUB and they must be consistent.

Misty

From: MICHAEL SKETCH <[REDACTED]>

Sent: Wednesday, August 31, 2022 6:40 PM

To: Laura Patrick <lpatrick@islandstrust.bc.ca>; Deb Morrison <dmorrison@islandstrust.bc.ca>; Benjamin McConchie <bemcconchie@islandstrust.bc.ca>

Cc: Kim Stockdill <kstockdill@islandstrust.bc.ca>; Robert Kojima <rkojima@islandstrust.bc.ca>; Stefan Cermak <scermak@islandstrust.bc.ca>; SouthInfo <SouthInfo@islandstrust.bc.ca>

Subject: M Sketch LUB amendment - C2 density submission to the LTC for 01Sep2022

Trustees and staff - Attached my submission to the North Pender LTC for the 1 September, 2022 electronic meeting beginning at 3 P.M.; respecting the LUB amendment Project and the permissible density in C2 Zones, particularly where available on-parcel groundwater or surface water is inadequate or can be reasonably anticipated to be inadequate in the future.

Michael Sketch
[REDACTED]

**Submission from Michael Sketch to the North Pender LTC
for the 1 September, 2022 special electronic meeting
respecting amendments to the Land Use Bylaw (LUB)
and, as needed, to the Official Community Plan (OCP)**

For North Pender tourist commercial (C2) zones which have traditionally been given island-wide 600 sq ft accommodation unit density (units per acre):

please reconsider density for all C2 zones based on proven groundwater (drilled well) or surface water sources which are on the subject parcel and which will give the necessary quantity and quality of potable water to sustain the zoned density for present and reasonably anticipated future needs.

Prove on-site water first, then determine appropriate density.

Trustees and staff – For decades, a uniform density (600 sq ft cottages per acre) was used to calculate the permitted use in each C2 Zone. The ‘initial condition’ density may have been made sufficiently high that landowners would have an acceptable income return on their capital investment.

Whether or not there was sufficient suitable soil for sewage percolation fields and whether the drilled well or surface water source of potable water on the parcel was sufficient for that density was left to a later date. Available potable water was felt to be an intrinsic limitation to the number of tourist accommodation units that would actually be built.

The zoning was in place and it was up to the landowner to build sensibly and sustainably.

“Currents” built to zoned density

Then the old Otter Bay Marina site was developed and the C2 density allowed was the density built; arguably with one cottage unit over limit. A registered professional hydrogeologist found there to be adequate potable water from a well which was close to the natural boundary. Sufficiently close to the sea that the level of water in the well is strongly correlated with the sea tides. The tide goes up and down, so does the well level. The hydrogeology report doesn’t disclose whether or not there was a ‘tidal assist’ during the recharge phase of a pump down well test which may have resulted in overestimating the well capacity. Anecdotally, concrete storage tanks were installed at Currents.

With storage tanks installed, there may indeed be sufficient potable water to serve the needs of ever increasing summer visitors. But where will the water come from to fill the tanks?

Storing winter rainwater is sensible for a summer supply of non-potable water.

But for a business with sufficient tourist accommodation units, importation of potable water from Victoria may be viable. Until, that is, Victoria is short of summer water.

It is a Trust Council policy that each island shall be self sufficient in freshwater. Does that guide North Pender advice givers and decision makers?

The water haulage company that delivers 14,000 litres of water per load from Victoria to Pender may not be aware of Trust policy. Anecdotally, one or more C2 Zones were supplied daily last summer.

The “C2 Zone” is part of the current land use bylaw amendment project.

While there was a good argument for the LTC to address the density in all C2 Zones, the project has examined the MacKinnon Rd. C2 parcels and the Driftwood parcel C2 portion.

The Driftwood C2 will be zoned for campground use which should lessen groundwater use.

The “Woods” C2 Zone hasn’t been discussed at an LTC meeting.

The availability of groundwater to sustain C2 density hasn’t been used in the trustee reasons for interim decisions on the MacKinnon Rd. C2 density discussions, despite there being a reduction in density planned for the amended LUB. It is apparently understood that the zoned density is too high for MacKinnon Rd. For decades the density has never been realized and landowners were certainly aware of groundwater limitations.

On one parcel, the well was hydrofractured, but still one of the five available cottages wasn’t restored for tourist use. Neighbouring wells were compromised. It is said that new owners have restored the fifth cottage and added a sixth unit under the house. The new owners plan to increase the number of units – although well within the current LUB limit. Anecdotally, last summer the subject parcel’s well was augmented with a hose from a neighbour’s well.

A requirement for cisterns on the C2 parcels has been spoken of at LTC meetings. Does the LTC intend that increased density be accommodated by water delivery from Victoria? Or perhaps that regulating for sufficient potable water is the job of another jurisdiction. The problem comes once density is determined in a land use bylaw. Once set, downzoning is politically unpopular.

The south side of MacKinnon Rd. is an area known for limited groundwater. Trust Area policy requires that density not be increased in areas where the supply of groundwater is limited. In this case the density increase which property owners plan for is permissible under the current LUB. Does the LUB trump Trust Area policy?

As part of this LUB amendment project, it would be prudent for the LTC Corporation to downzone the density in all C2 Zones to that already built and to be effective in requiring meaningful on-parcel proof of groundwater or surface water sources sufficient for present and reasonably anticipated future needs before considering applications to rezone to a higher density.

The action would be consistent with the Trust Object which, under S.4 of the Act, is binding upon the LTC.

There are important policy considerations which should be part of an OCP review, rather than adding to an “omnibus” land use bylaw amendment project.

Michael Sketch
North Pender Island

