



File No.: SS-RZ-2013.9

DATE OF MEETING: December 21, 2017

TO: Salt Spring Island Local Trust Committee

FROM: Stefan Cermak, Regional Planning Manager
Salt Spring Island Team

COPY: Paul Kitson, Manager, Capital Projects, Capital Regional District

SUBJECT: Cost Recovery Agreement for Legal Services Request
Applicant: Paul Kitson, Capital Regional District
Subject Property: 161 Drake Road, Salt Spring Island

RECOMMENDATION

That the Salt Spring Island Local Trust Committee endorse staff entering into a Cost Recovery Agreement with the Capital Regional District for Islands Trust legal review for issues as generally identified in the staff report dated December 21, 2017 (SS-RZ-2013.9).

REPORT SUMMARY

This report seeks the Salt Spring Island Local Trust Committee's endorsement of a Cost Recovery Agreement in order to legally review the applicant's request to consider placing a restrictive covenant on title of the subject property. The applicant proposes a restrictive covenant that would ensure no building be erected or used without satisfactory evidence of water supply. Before such a covenant can be considered for drafting, staff recommend a legal review to answer the following:

Can/should a restrictive use "no-build" covenant be used to advance a bylaw at variance to Salt Spring Island Official Community Plan policies?

Can/should a restrictive use "no-build" covenant be used to advance a bylaw at variance to the Islands Trust Policy Statement; would such a covenant lead to the evaluation that the application is NOT at variance with Islands Trust Policy Statement 4.4.2 and by extension to Islands Trust Act S. 15(4)?

What are the legal risks of approving zoning amendments based on such a covenant?

The recommended legal review is an extraordinary processing service as per Islands Trust Policy 5.6.i and as such, the cost of the review is to be borne by the applicant, subject to a cost recovery agreement endorsed by the Salt Spring Island Local Trust Committee (LTC).

BACKGROUND

On September 11, 2013, the Capital Regional District (the “applicant”) submitted an application to rezone 161 Drake Road, Salt Spring Island, in order to develop a multi-family affordable housing complex. The proposal is for “up to 80 units” and is much needed in the community.

The subject property is within the North Salt Spring Waterworks District (NSSWD), the community water system supplying the majority of Ganges and nearly 1/3 of Salt Spring Island residents. The NSSWD issued a letter dated May 14, 2013 which stated that the District will provide water service when all applicable charges and fees are paid including possible extensive improvements to the distribution system. However, on November 26, 2014, after preliminary bylaw referral review, the NSSWD recommended **not** approving the rezoning as they had now implemented a moratorium on new connections. This moratorium is still in place today.

The lack of water supply means that the proposal is at variance to Salt Spring Island Official Community Plan (OCP) policies and the Islands Trust Policy Statement ensuring that neither the density nor intensity of land use is increased in areas of known water scarcity. The applicant encouraged the LTC to continue processing the application while seeking alternative solutions. In response, on April 16, 2015, the LTC gave first reading to bylaw 478 but also passed the following motion:

SS-2015-92. It was MOVED and SECONDED, that the Salt Spring Island Local Trust Committee has reviewed the Directives Only Policies and determines that Bylaw No. 478 **is at variance** with the Islands Trust Policy Statement Directive 4.4.2 (SS-RZ-2013.9, 161 Drake Road). CARRIED

The applicant subsequently commissioned works to drill wells. Drilling results were poor and cannot meet proposed demand. Now, the applicant would like to advance the project to second reading and beyond by placing a restrictive use covenant on title. The applicant proposes that the restrictive covenant would ensure that no building would be erected (or used) without satisfactory evidence of water supply. The applicant proposes that such a covenant could lead to the interpretation that Bylaw 478 would not be at variance to Islands Trust Policy Statement Directive 4.4.2. Islands Trust staff have recommended a legal review to which the applicant has agreed pending LTC endorsement.

ANALYSIS

Islands Trust Policy Statement:

Islands Trust Policy Directive 4.4.2 states the following: 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.

Official Community Plan and Land Use Bylaw:

For detailed Official Community Plan and Land Use Bylaw analysis, please see Staff Reports considered by the SSI LTC at the [April 16, 2015](#) regular business meeting and the [March 20, 2014](#) regular business meeting.

Issues and Opportunities

The LTC have an opportunity to receive legal feedback regarding the proposed use of restrictive covenants to ensure development does not occur without sufficient evidence of water supply. Receipt of this information will help inform the LTC and not fetter the LTC’s decision making authority.

Rationale for Recommendation

The LTC would benefit from legal review of how the applicant’s proposal may affect risk and/or other legal issues.

ALTERNATIVES

The LTC may not endorse staff entering into a cost recovery agreement, proceed no further with the application, hold the application in abeyance or simply receive this report for information.

Submitted By:	Stefan Cermak, Regional Planning Manager	December 12, 2017
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