South Pender Island LTC members,

The most common complaint submitted last term opposing the limiting of house size, and increasing setbacks as laid out in Bylaw 122, was that it would make several properties ‘legally non-conforming’. In spite of continuous assurances by trustees and staff that this would not be the case, many residents stubbornly refused to accept their word and persisted in repeating the rumor to misinform other property owners. Now that current trustees have their own legal opinion which advises that no properties will be ‘legally non-conforming’, this should also remove unsubstantiated concerns about how a ‘legal non-conforming’ status would affect home insurance. In fact, 5.1(6) has removed non-conforming status from homes that are larger than what was permitted under the 2016 bylaw. This being the case, it begs the question: exactly what is the objection to the current bylaw that requires further consideration?

Community members have presented a number of scientific reports which support the rationale for reducing house size and broadening setbacks, and we have received none which contradict that data. We have yet to hear how trustees believe the amendments are ‘contrary to or at variance with’ current policies within the Trust Policy Statement or our OCP. What we have heard from trustees in describing their reason for this project is that “this is what we were elected to do”. At the beginning of this term, trustees showed their commitment by passing a motion ‘to repeal Bylaw 122”. While that effort was ill informed and carried no force, it did however indicate trustees’ intentions before they began a public review of the Bylaw 122 amendment; a decision, possibly based on the mistaken belief about non-conformity, in which the absence of neutrality was obvious.

Having public discussions within the community are commendable as long as residents know the purpose, are well informed, and are clear about the topics being put forward. Pertinent, unbiased, and truthful information is key to a successful outcome regardless of any potential disagreement. In this particular project, I am unsure of what that purpose is now that the primary reason for objecting to Bylaw 122 has been shown to be invalid. If these discussions continue, I’d suggest they would be better framed around policy rather than about regulations supporting existing policies. At the moment, it appears the discussion is more about whether non-existent property rights should overrule the Trust Act, a conversation trustees may not wish to entertain.

We have also heard that the provision to apply for a ‘variance’ assumes the bylaw is weak or ineffective. Were that the case then land use bylaws in all jurisdictions across Canada would be faulty. Given the topography of the island, the different lot sizes and configurations, it would require a bylaw for each property if a ‘variance’ was not available to respond to those differences. A ‘variance’ application also has the benefit of allowing adjacent property owners to be notified should a change be requested. Complaints about the length of time to process the application and/or the costs, are administrative matters that are within the trustees ability to manage and have nothing to do with the benefits of allowing ‘variance’ applications.

It would be very helpful if trustees could inform the community what their position is with the legal opinion now in hand regarding the ‘legal non-conforming’ of properties and any rationale they may have in continuing this project. Establishing the parameters of the discussion might also be of some benefit.

Steve Wright,
Pender Island