

RE- BYLAW AMENDMENT APPLICATION, SS-R3.2013.7 LOT 10

PARK DRIVE

Salt Spring Ventures Inc. (the “Proponent”), under the signature of Eric Booth, has filed a bylaw amendment application (the “Bylaw Amendment Application”) relative to Lot 10 Park Drive (“Lot 10”), seeking the removal of Development Permit Area 4 from Lot 10 by way of an OCP amendment to the DPA 4 mapping.

For the reasons contained in this submission, I submit that the Bylaw Amendment Application ought to be rejected.

The Proponent seeks a density increase yet has previously objected to development on Lot 10 on the basis of traffic concerns

The Proponent, on page 7 of its Bylaw Amendment Application, seeks a bylaw amendment for height and storeys, allowing the construction of up to 3 storeys. In that submission, he asserts that this would allow density transfer into Ganges. However, Mr. Booth himself has objected in the past to the development of Lot 10, expressing a concern that traffic congestion would occur should the development proceed and the density of the area increase.

The RAR is applicable to the subject property in Development Permit Area 4

Contrary to the assertions of the Proponent in the Bylaw Amendment Application, the RAR is applicable to the Development Permit Area 4, as it contains a watercourse that provides water and nutrients to fish habitat. Further, the Riparian Area Regulation report by Balanced Environmental Services Inc. is deeply flawed, was not prepared by a QEP, and accordingly should not be relied upon by the Islands Trust

A Riparian Area Regulation (“RAR”) assessment was conducted on Swanson Creek as it entered Lot 10 on the property line common with the property at 225 Park Drive (“225 Park Drive”) and a protective Streamside Protection and Enhancement Area (“SPEA”) was defined, the result of negotiations between the QEP and the MOE.

The Proponent then placed a dam in this SPEA and excavated the South Park Drive ditch to reverse the flow from its original East to West flow so that run off was diverted from the pond east down the south Park Drive ditch. The latest version of this dam on the creek encroaches on 225 Park Drive. Removal of the encroachment would result in the creek flowing in its old channel into the pond.

In winter, run-off in the south Park Drive ditch still rounds the dam to the east, entering the old Swanson Creek.

The BC Ministry of Environment and DFO have both determined that the RAR was applicable to Swanson's Pond. However, riparian area assessment methodology was never applied in the attempted isolation of Swanson's Pond. The methodology would have required remediation of barriers to fish passage to the pond and the return of the pond to its original fish habitat status.

In its Bylaw Amendment Application under the heading "OCP Development Permit Area 4", the Proponent provides a "lay person" perspective of various reviews of the Proponent's attempted destruction of 4500 square meters of "fish habitat" over time, under the guise that the watercourse in question was not a natural watercourse (and accordingly could be diverted or altered by it).

However, the Islands Trust sponsored the Rescan Environmental Services peer review that stated:

when reconstruction of the topography prior to construction of the pond was drawn, a natural depression or swale feature trending northwest to southeast of the property likely existed. A physical feature such as this would provide a preferential pathway for surface water flow.

Thus, the topography of the area would provide a pathway for water into Swanson's Pond as depicted in the Philip Grange Drainage map provided in a sworn affidavit of the Proponent's principal, Mr. Booth.

The ditch down the south side of Park Drive and Gustaf Road to Kanaka is undoubtedly manmade but it does carry the natural flow from the Swanson watershed. While this ditch may not have existed prior to development of the upper watershed, the majority of the flow in it today results from the damming of its path into Swanson Pond.

In winter months, significant flows still enter the pond from the south Park Drive ditch and exit the pond from the southeast corner of Lot 10. The Gustaf Road right-of-way and ditch contribute in the same manner.

1. Development Permit Area 4 contains Fish Habitat

Point 6 of this part of the Bylaw Amendment Application (on page 9) misrepresents the findings of a 2001 Fish Passage Report by Kathy Reimer (the “Reimer Report”). The Reimer Report was conducted during a time of year when migratory fish would not be present in Swanson’s Pond, and is not therefore definitive in its opinion that there is no fish presence in the pond. In a 2007 report by Balanced Environmental Services Inc. (“Balanced”) prepared for the Proponent’s development application (the “2007 Report”), the authors Mr. Appleton and Mr. Christie of Balanced Environmental have failed to understand this.

Mr. Booth’s statement to Ms. Reimer (referenced in her report) shows his awareness that the pond was fish habitat. His claimed understanding of the RAR indicates that he would also be aware of the RAR requirement to remediate and re-establish the fish habitat in the pond.

The Balanced 2007 Report claims that long culverts and a manhole drop present permanent barriers to fish passage. However, those claims, which are repeated in Point 7 of the Bylaw Amendment Application, have been refuted, as follows:

- Mr. Christie and Mr. Appleton, both then of Balanced, present contradictory statements on the impediment to fish passage “the manhole”. Their claims on the vertical drop in the manhole preventing fish from swimming upstream range from a few feet to 5 feet. However, when the differential between the inlet and outlet inverts of the 24 inch culverts of the manhole are measured, the vertical drop is 18 inches and this is eliminated by winter rains leaving no barrier;
- The claim that the “permanent barriers” have been recognized and confirmed by the Ministry of Environment Habitat Branch in 2007 is contrary to the scientific reality and requires that documentation be provided.

Further, Madrone Environmental Services has documented the habitat in the pond today. Outflow of the pond will provide water and nutrients down stream to fish habitat qualifying it as fish habitat.

2. The Islands Trust should not rely on the RAR reports created by Balanced, and the Proponent must provide a legitimate QEP report

The 2007 Report was presented as a QEP report, but in fact does not meet the requirements of a QEP report. That report was signed by Mr. Appleton, who was then a Biologist in Training and not a Registered Professional Biologist, and no signed stamp of the Association of Professional Biologists of BC is on the document.

Mr. Christie did send a letter to the Proponent stating he supervised Appleton on the project and applied his stamp to the letter. However, this was done after the fact.

On my request, Balanced, on November 20, 2009, issued a report under the name of Warren Appleton, R.P. Bio. reversing the opinion of the report in the Islands Trust application (the “Revised Report”). On January 4, 2010, Balanced confirmed the validity of this revision to me.

In concert with the above confirmation, Warren Appleton sent the Revised Report and an as yet unrevealed draft report to the Islands Trust planners, dated November 27, 2009, which claimed to withdraw the conclusions of the Revised Report (the “Withdrawal Report”).

The Withdrawal Report contradicted Balanced’s confirmation of the Revised Report. Mr. Appleton then wrongly claimed to the Islands Trust planners that he sponsored both the Revised Report and the Withdrawal Report. This, in conjunction with the affirmation of the Revised Report amount to a clear misrepresentation.

The fact that the College of Biology allows this corporation and these two officers of the corporation to continue to practice under the umbrella of the College reflects on the credibility of all College members.

The inaccuracies in conjunction with the history of this claimed QEP report warrant its removal from the Bylaw Amendment Application, which has a requirement of a **credible QEP report**.

The Proponent does not appear to have met its obligation to provide water

On November 27, 2009, the Proponent signed a letter of understanding with the Ministry of Environment to provide 1-2 gallons per minute water flow from the well on the property to the “water course” leaving the SE corner of Lot 10, subject to the availability of excess supply in maintaining the pond’s water level year round.

I do not believe this obligation has been met.

Accordingly, the bylaw amendment application should be rejected and the development application suspended until a legitimate QEP Report is provided and the commitment to supplement the pond outflow with well water is complied with.

All documentation corroborating this submission will be provided to the Islands Trust on request.

Brian Milne