

From: Anthony Ho <anthony@tollefsonlaw.ca>
Sent: Monday, January 22, 2024 12:32 PM
To: Timothy Peterson; Laura Patrick; Jamie Harris; Chris Hutton; SSIInfo
Cc: 'R Wright'; 'Ian Moore'; 'Chris Tollefson'
Subject: Letter to Salt Spring LTC re Proposed Bylaw No. 537
Attachments: 2024 01 22 - Letter re Proposed Bylaw No. 537.pdf

Good afternoon,

We are counsel to Keep Salt Spring Sustainable (KSSS).
Please find attached a letter regarding Proposed Bylaw No. 537 and kindly confirm receipt.
Thank you.

Best regards,

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I acknowledge with respect the Lekwungen peoples on whose traditional territory we are based, and the Songhees, Esquimalt and WSÁNEĆ peoples whose historical relationships with the land continue to this day.

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January 22, 2024

Our file: 2022-08-0039

VIA EMAIL

Salt Spring Local Trust Committee

1 – 500 Lower Ganges Road
Salt Spring Island, B.C.
V8K 2N8

Attn: Trustee Timothy Peterson
Trustee James Harris
Trustee Laura Patrick
Chris Hutton, Regional Planning Manager

Dear Trustees Peterson, Harris, and Patrick, and Mr. Hutton:

RE: Salt Spring Proposed Bylaw No. 537

We are counsel to Keep Salt Spring Sustainable (“KSSS”), a group of Salt Spring Island residents formed to uphold the island’s environmental sustainability and rural character, as protected by Salt Spring Island’s Official Community Plan and the mandate of the Islands Trust. Please forward this letter to the Salt Spring Local Trust Committee (“SS LTC”).

We have previously provided a written submission to the SS LTC on August 16, 2022 in relation to our client’s concerns about Bylaw No. 530—cited as “Salt Spring Island Land Use Bylaw No. 355, 1999, Amendment No. 1, 2022.” We sent further letters to the Islands Trust Executive Committee on August 31, 2022 and September 16, 2022 regarding the same matter.

KSSS has continuing and serious concerns about the most-recent version of this bylaw—Bylaw No. 537, cited as “Salt Spring Island Land Use Bylaw No. 355, 1999, Amendment No. 2, 2023.” We understand that a special SS LTC meeting has been scheduled for January 22, 2024. At that time, we are advised that Bylaw No. 537 will receive all three readings. We write to express our grave concerns about this plan, and respectfully ask you to reconsider.

Lack of Public Hearing

An initial priority is to correct the public record about the requirement for a public hearing on Bylaw No. 537. Any suggestion that a public hearing on this bylaw is prohibited is wholly erroneous and must be corrected forthwith.

The staff report from the December 14, 2023 SS LTC meeting and the staff report for the upcoming January 22, 2024 special meeting contain the following erroneous statement:

In fact, in this case, the adoption of *Bill 44 – Housing Statutes (Residential Development) Amendment Act, 2023*¹ stipulates that a public hearing *is prohibited* from being held on this bylaw.² (emphasis added)

While Bill 44 prohibits public hearings for some local governments in certain circumstances, these prohibitions do not extend to the SS LTC.³ Notably, the same conclusion was also recently communicated directly to the SS LTC by BC’s Minister of Housing.⁴

Inconsistency with the Official Community Plan

Bylaw No. 537 continues to have serious inconsistencies with the island’s Official Community Plan. In light of these inconsistencies, the SS LTC cannot lawfully waive the requirement for a public hearing on Bylaw No. 537 under section 464 of the *Local Government Act*.

For example, Bylaw No. 537 is inconsistent with the following objectives and policies for Residential Land Use set out in the islands Official Community Plan:

B.2.1.2.1 Zoning changes should be avoided if they would likely result in a larger island population than is expected under the development potential zoned in 2008. Exceptions to this policy are to be few and minor and only to achieve affordable housing and other objectives of this Plan. (emphasis added)

Secondary Suites

B.2.2.2.15 m. The Local Trust Committee will make zoning changes incrementally and monitor changes in order to have the effect of limiting the overall number of suites on the island. (emphasis added)⁵

The population increase that is likely to occur due to the adoption of this bylaw does not fall within the “few and minor” exception to the requirement of maintaining island population as expected in 2008 development levels. Furthermore, the proliferation of accessory dwelling units contemplated by Bylaw No. 537—even if it is less than the amount contemplated by Bylaw No. 530—is not an “incremental” change. Furthermore, the spot-zoning pilot program referenced in staff reports in connection with Bylaw No. 537 underscores the fact that impacts of this bylaw are unlikely to be limited to the immediate changes the amendments would bring into force. Indeed, depending on

¹ See Bill 44: <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/4th-session/bills/progress-of-bills> (accessed on Jan 21, 2023).

² See: <https://islandstrust.bc.ca/document/salt-spring-ltc-special-meeting-agenda-8/> (accessed on Jan 21, 2023).

³ See clause 47 of Bill 44: <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/4th-session/bills/progress-of-bills> (accessed on Jan 21, 2023).

⁴ See Jan 8, 2024 letter from Minister of Housing Ravi Kahlon to Chair Timothy Peterson: <https://islandstrust.bc.ca/document/response-from-minister-of-housing-regarding-bill-44/> (accessed on Jan 21, 2023).

⁵ See: <https://islandstrust.bc.ca/document/salt-spring-island-ocp-bylaw-no-434-2023/> (accessed on Jan 21, 2023).

how the spot-zoning program is administered, this bylaw could potentially bring about profound changes in development patterns on Salt Spring.

Requirement for Good Governance and Good Faith

As the individuals elected to make decisions on behalf of the residents of Salt Spring Island, you are required to act in a manner that reflects the principles of good governance and good faith.

The substance of Bylaws No. 530 and 537 has generated significant public interest as well as concern from some of the First Nations to whom Bylaw No. 530 was referred. In view of this significant interest, Bylaw No. 537 must only be considered in a manner that provides the public with a proper opportunity—at minimum, a public hearing on the bylaw—to understand and communicate its views. This perspective appears to have been shared by staff in its December 14, 2023 report:

Given the amount and range of input received on this application through referral responses and public engagement, SS LTC may wish to consider the value of hearing input from the community directly in a public hearing, prior to consideration of third reading.⁶

We strongly urge the SS LTC to consider the implications of proceeding with its current approach on Salt Spring Island’s relationship with First Nations whose territory and rights are impacted by decisions of the SS LTC.

Although the Crown’s “duty to consult” is not directly binding on the SS LTC, the SS LTC’s legislative obligations—including those set out in the Official Community Plan—must be interpreted in a manner that upholds the rights set out the United Nations Declaration on the Rights of Indigenous Peoples (“**UNDRIP**”), including the right to be consulted in good faith in order to obtain their free, prior, and informed consent.⁷

As such, we urge you to, at minimum, re-refer Bylaw No. 537 to impacted First Nations after giving first reading and before a public hearing is held.

Conclusion

To summarize, Bylaw No. 537 does not address the concerns our client has previously expressed in relation to its predecessor, Bylaw No. 530. We urge the SS LTC not to proceed with three readings at its January 22, 2024 special meeting. Instead:

1. Bylaw No. 537 must be referred to affected First Nations following first reading; and

⁶ See: <https://islandstrust.bc.ca/document/salt-spring-ltc-regular-meeting-agenda-addendum/> (accessed on Jan 21, 2023).

⁷ See *Gitxaala v British Columbia (Chief Gold Commissioner)*, 2023 BCSC 1680 at paras 407-418, section 8.1 of the *Interpretation Act*, and the preamble and Article 19 of UNDRIP.

2. if the response received to the above referral justifies moving forward with the Bylaw, ensure that a public hearing on the Bylaw is duly advertised and held.

Yours truly,

TOLLEFSON LAW CORPORATION
Counsel for Keep Salt Spring Sustainable

Per: 

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