



File No.: SP Minor LUB Amendments Project

DATE OF MEETING: September 13, 2024  
TO: South Pender Island Local Trust Committee  
FROM: Kim Stockdill, Island Planner  
Southern Team  
COPY: Robert Kojima, Regional Planning Manager  
SUBJECT: South Pender Minor LUB Amendments Project – Project Update

## RECOMMENDATION

1. **That the South Pender Island Local Trust Committee request that staff to revise the Minor LUB Amendments Project Charter timeline as shown in the staff report dated September 13, 2024 .**

## REPORT SUMMARY

This report is intended to provide the South Pender Island LTC with an update to the referral sent to the South Pender Advisory Planning Commission (APC).

## BACKGROUND

The Minor Land Use Bylaw (LUB) Project was initiated in November 2023 with the endorsement of the [Project Charter](#). The focus of this project is to review amendments made to the LUB by Bylaw No. 122 and to review other minor and technical LUB amendments. The South Pender LTC phased the early engagement process – the first phase started with trustee-led workshops, and the second phase involved two Community Information Meetings (CIMs) in April 2024. In regards to the timeline of the project, the LTC is still in the information-collecting phase. The third action in this phase was to send a referral to the South Pender APC for comments on specific aspects of this project.

The South Pender LTC identified the following major topics during phase one and two requiring further deliberation by the South Pender APC:

- setback from the natural boundary (NB) of the sea
- interior side lot line setbacks for rural residential zoned dwellings and cottages
- total floor area and maximum floor area for dwellings

The South Pender LTC requested staff to send a referral to the South Pender APC by resolution during the May 10, 2024 regular meeting:

### **SP-2024-007**

#### **It was Moved and Seconded,**

that South Pender Island Local Trust Committee request staff to send a referral to the South Pender Advisory Planning Commission regarding the Minor LUB Amendment Project to evaluate potential land use bylaw amendments and to provide comments and recommendations related to the setback to the

natural boundary of the sea, maximum floor area for dwellings, and setbacks to the interior lot line for dwellings and cottages, and other amendments as discussed at the May 10, 2024 Local Trust Committee meeting. **CARRIED**

The South Pender APC have met twice over the summer months to address the referral sent from the South Pender LTC. The first APC meeting was held on August 8, 2024 and the discussion focused on the setback to the natural boundary of the sea and the setback to the interior lot line. The APC passed the following resolution during this meeting:

**SP-APC-2024-003**

That the South Pender Advisory Planning Commission recommend amending Subsection 3.3(5) in the South Pender Land Use Bylaw by deleting "to submit a certification from an appropriately qualified person" and replacing it with "substantive evidence to establish". **CARRIED**

Discussions continued with the South Pender APC on the August 23, 2024 meeting. The APC passed the following resolutions during the meeting:

**SP-APC-2024-004**

**It was Moved and Seconded,**

that the South Pender Advisory Planning Commission recommends retaining the 50-foot setback from the natural boundary of the sea as written in Bylaw 114.

**CARRIED**

**Donna Spalding Opposed**

**SP-APC-2024-007**

**It was Moved and Seconded,**

that the South Pender Advisory Planning Commission recommends the Local Trust Committee revert the interior and exterior side lot lines to 10-feet.

**CARRIED**

**Paul Petrie Opposed**

The next South Pender APC meeting to discuss maximum floor area is scheduled for October 4, 2024. An updated to the Project Charter is required to reflect the receipt of the final APC minutes at the December 2024 LTC meeting.

## **ANALYSIS**

### **1. Setback from the natural boundary of the sea**

Prior to the adoption of [Bylaw No. 122](#), the LUB included the following regulation regarding the setback to the sea:

*Subsection 3.3(3) - Buildings or other structures, except a fence, pump/utility house, stairway, wharf and dock ramps or their footings, shall not be sited within 7.6 metres (25 feet) of the natural boundary of the sea and, for this purpose only, paved areas of asphalt, concrete or similar material are "structures".*

With the adoption of Bylaw No. 122, the following is the regulation in the current LUB (Section 3.3):

*(3) Buildings or other structures, except a fence, stairway, wharf and dock ramps or their footings, shall not be sited within 15 metres (50 feet) of the natural boundary of the sea and, for this purpose only, paved areas of asphalt, concrete or similar material are "structures".*

(4) Despite Subsection 3.3(3), buildings or structures, except a fence, stairway, wharf and dock ramps or their footings, legally constructed prior to September 15, 2022 shall not be sited within 7.6 metres (25 feet) of the natural boundary of the sea and, for this purpose only, paved areas of asphalt, concrete or similar material are "structures".

(5) Despite Subsection 3.3(3), on a lot that contains a legal dwelling, cottage, or accessory building constructed prior to September 15, 2022, a replacement dwelling, cottage, or accessory building may be constructed, or the existing dwelling, cottage, or accessory building re-constructed or altered, provided the distance from the natural boundary of the sea to the replacement, re-constructed or altered dwelling, cottage, or accessory building is not less than the distance from the natural boundary of the sea to the dwelling, cottage, or accessory building on the lot on September 15, 2022 and for this purpose the Local Trust Committee may require an owner to submit a certification from an appropriately qualified person as to the siting of the dwelling, cottage, or accessory building at the time of the adoption of this bylaw.

Outcome due to Bylaw No. 122 amendments:

- Fence, stairway, wharf and dock ramps or their footings are still exempt from the setback from the NB of the sea
- Buildings and structures legally constructed prior to September 15, 2022 retain the setback from the NB of the sea of 7.6 metres
- New buildings and structures must meet the setback from the NB of the sea of 15 metres
- Dwellings, cottages or access buildings constructed prior to September 15, 2022 may be rebuilt or altered as long as the distance from the NB of the sea is the same as it was on September 15, 2022 or greater (further away from the NB of the sea)

APC Recommendation:

The South Pender APC recommended that the LTC retain the 15 metre setback from the natural boundary of the sea as currently regulated in the South Pender Land Use Bylaw (LUB) No. 114. In addition, the South Pender APC recommended changing the wording of the clause in Subsection 3.3(5) by removing the reference to “an appropriately qualified person” when a property owner is required to submit certification for the siting of their building. If the LTC agrees, Subsection 3.3(5) would be changed to read:

*“...and for this purpose the Local Trust Committee may require an owner to submit **substantive evidence to establish** the siting of the dwelling, cottage, or accessory building at the time of the adoption of this bylaw.”*

**2. Interior side lot line setbacks for rural residential zoned dwellings and cottages**

Prior to the adoption of [Bylaw No. 122](#), the LUB included the following regulation regarding the setback from the interior side lot line for rural residential zoned dwellings and cottages:

Subsection 5.1(6) – *The maximum setback for any building or structure, except a fence or pump/utility house, shall be 3.0 metres (10 ft.) from any interior side lot line*

With the adoption of Bylaw No. 122, the following are the regulations in the current LUB (Section 5.1):

(8) *The minimum setback for any building or structure, except a fence or pump/utility house, shall be:*

- |     |  |   |   |   |
|-----|--|---|---|---|
| (a) | 7.6 metres (25 ft.) from any front or rear lot line; | ✓ | ✓ | ✓ |
| (b) | 3.0 metres (10 ft.) from any interior side lot line; | ✓ | ✓ | ✓ |

- |      |   |   |   |   |
|------|---|---|---|---|
| (c)  | <i>4.5 metres (15 ft.) from any exterior side lot line.</i>   | ✓ | ✓ | ✓ |
| (9)  | <i>Despite Subsection 5.1(8), the setback for a dwelling or cottage shall be 6.0 metres (20 ft.) from any interior or exterior side lot line.”</i>  | ✓ | ✓ | ✓ |
| (10) | <i>Despite Subsection 5.1(9), on a lot that contains a legal dwelling or cottage constructed prior to September 15, 2022, a replacement dwelling or cottage may be constructed, or the existing dwelling or cottage re-constructed or altered, provided the distance from the interior or exterior side lot line to the replacement, re-constructed or altered dwelling or cottage is not less than the distance from the interior or exterior side lot line to the dwelling or cottage on the lot on September 15, 2022 and for this purpose the Local Trust Committee may require an owner to submit a certification from an appropriately qualified person as to the floor area of the dwelling at the time of the adoption of this bylaw.</i> |   |   |   |

Outcome due to Bylaw No. 122 amendments:

- New dwellings and cottages must meet the new interior lot line setback of 6.0 metres (20 ft.)
- A dwelling or cottage legally constructed prior to September 15, 2022 may be rebuilt or altered as long as the distance from the interior lot line is the same as it was on September 15, 2022 or greater (further away from the interior side lot line)

APC Recommendation:

The South Pender APC recommended that the LTC revert the setback from the interior and exterior lot lines to 3.0 metres (10 feet) as stated in the South Pender LUB No. 114 prior to adoption of Bylaw No. 122. In order to achieve this, a new LUB amending bylaw would be required to delete Subsections 5.1(9) and 5.1(10).

**Project Charter**

The Project Charter must be amended to show the updated timeline as follows (edits in red to be deleted):

Workplan Overview	
Deliverable/Milestone	Target Date
<i>Project Charter endorsement</i>	<i>Nov 2023</i>
<i>LTC review of background material and consideration of public engagement options</i>	<i>Nov 2023</i>
<i>Public engagement to identify issues – Trustee-led workshops and CIMs</i>	<i>Jan-April 2024</i>
<i>APC referral</i>	<i>May – July 2024</i>
<i>Review of APC &amp; engagement comments/LTC direction to draft bylaw</i>	<del>Sept 2024</del> Dec 2024
<i>Review draft bylaw</i>	<del>Nov 2024</del> Feb 2025
<i>First opportunity for First Reading of draft bylaw, referrals</i>	<del>Feb 2025</del> Spring 2025

<i>Community Information Meeting(s) to gather comments on proposed bylaw</i>	<i>Spring 2025</i>
<i>Amendments to bylaw based on CIM comments/Opportunity of First and/or Second Reading of bylaw</i>	<i>Spring Summer 2025</i>
<i>Public Hearing (if necessary), Third reading &amp; EC referral</i>	<i>Summer Sept 2025</i>
<i>Bylaw adoption</i>	<i>Fall 2025</i>

### Rationale for Recommendation

Staff recommends amending the Project Charter to reflect a new timeline for South Pender LTC’s direction to draft bylaws. Shifting the timeline provides sufficient time to receive final minutes on the maximum floor area topic and other topics related to Bylaw No. 122 from the South Pender APC.

### ALTERNATIVES

#### 1. Request further information

The LTC may request further information prior to making a decision. Staff advise that the implications of this alternative are potential delays to commencing and completing the project. If selecting this alternative, the LTC should describe the specific information needed and the rationale for this request. Recommended wording for the resolution is as follows:

*That the South Pender Island Local Trust Committee request that the staff provide further information regarding...*

#### 2. Receive for information

The LTC may receive the report for information.

### NEXT STEPS

Next steps include:

- Staff to continue to attend South Pender APC meetings
- Staff to report back with recommendations on bylaw amendments at the December 2024 South Pender LTC meeting

Submitted By:	Kim Stockdill, Island Planner	September 4, 2024
Concurrence:	Robert Kojima, Regional Planning Manager	September 5, 2024

Attachments:

1. SP APC Minutes – dated August 9, 2024
2. SP APC Draft Minutes – dated August 23, 2024
3. SP APC Member P. Petrie Correspondence – dated September 4, 2024

# ADOPTED

## South Pender Island Advisory Planning Commission Meeting Minutes

**Date:** August 9, 2024  
**Location:** Electronic

**Members Present:** Gordie Duncan, Chair  
Rodney Kirkwood, Vice-Chair  
Audrey Green, Member  
Paul Petrie, Member  
Donna Spalding, Member

**Staff Present:** Kim Stockdill, Island Planner  
Carly Bilney, APC Secretary

There were 2 members of the public present.

### 1. Call to Order

The Advisory Planning Commission Secretary called the meeting to order at 10:00 a.m. Introductions were made. Rod Kirkwood noted he has not yet received an official notice regarding his participation on the Commission.

### 2. Approval of Agenda

A request was made for clarification about meeting notification. Notification of Advisory Planning Commission meetings is to be posted to a public bulletin board at least five calendar days prior to the meeting. Commission members may share the meeting notification online.

By general consent, the agenda was approved as presented.

### 3. Selection of APC Chair

**SP-APC-2024-001**

**It was Moved and Seconded,**

that the South Pender Island Advisory Planning Commission appoints Gordie Duncan as Chair.

**CARRIED**

### 4. Selection of APC Vice-Chair

**SP-APC-2024-002**

**It was Moved and Seconded,**

that the South Pender Island Advisory Planning Commission appoints Rod Kirkwood as Vice-Chair.

**CARRIED**

## 5. Discussion of Minor LUB Amendments Staff Report

Planner Stockdill reviewed the referral. Discussion ensued and the following comments were made:

- The Advisory Planning Commission may want to separate discussion into two topics – one focused on setbacks and the other on maximum floor area
- The scope of the referral has been narrowed to prioritize discussions on major topics; however, if Commission members have time and wish to discuss other topics, such as house height, they may do so
- The following questions were raised: What was the objective of moving the setback to the natural boundary of the sea from 25 to 50 feet? How does the change accord with objectives of the Official Community Plan? Does the change cause hardship?
- The Official Community Plan has not been reviewed in a long time and it is important to consider the views of those who currently live on the island
- Much of South Pender already restricts building within 50 feet of the natural boundary of the sea

The Advisory Planning Commission agreed to address the topic of setbacks first.

### **Discussion on Setbacks to the Natural Boundary of the Sea**

The following comments were made:

- Support was expressed for the change to 50-foot based on the following views: One of the most sensitive ecosystems on the island is the area adjacent to the sea, and the change from 25 to 50 feet supports greater protection for that sensitive ecosystem; the change is in accordance with Official Community Plan goals; there was a clear objective from former Trustees in making the change, and it does not appear to create any great hardship to anybody
- There is need for more careful consideration in the future for the varying conditions around the shoreline; 50 feet may not be enough of a setback in some cases and compromising the 50-foot setback may be necessary
- We are seeking a one-size-fits all approach to lots that vary greatly in size, geography and topography

Discussion continued about the section of the bylaw that says if something happens to your home it can be built back to where it was even if it does not comply with current rules. The clause says an owner may have to submit certification from an appropriately qualified person as to the siting of the dwelling, cottage, or accessory building at the time of the adoption of the bylaw. Some felt the clause was not onerous for property owners while others did. The following comments were made:

- Support was expressed for removing the clause with regards to the 50-foot setback from the natural boundary of the sea and elsewhere, as it creates additional unnecessary work
- Opposition was expressed to removing the clause with regards to the 50-foot setback from the natural boundary of the sea as it has a clear purpose
- The clause is included based on recommendation received from legal support; its purpose is to ensure it is the property owner's responsibility to provide documentation to prove their house was built at a specific location and size rather than the responsibility of the Local Trust Committee

- There is need to better define what records would be acceptable to prove the siting and size of a house where building plans and surveys do not exist (e.g. Would a photo of a measuring tape on the ground suffice?)
- Support was expressed for a simple, straightforward way to document a measurement that would serve as evidence to prove house siting and size
- The clause includes the word “may” to avoid being overly onerous on the property owner, and the owner would probably only have to submit certification in instances where it is not obvious where the house had been

A motion was suggested that the wording in Section 3.3(5) is adjusted to reflect that the obligation on the homeowner to establish the pre-existing location of the distance to the natural boundary of the sea provides substantial evidence to support the value. Discussion on the motion was held and the following comments were made:

- The word “substantial” should be changed to “substantive” as not a lot of evidence is required
- There is definition in law of the word “substantive”
- A question was raised about whether the amending wording should not only be added to Section 3.3(5) but to all other sections in which it applies; comments were made that other bylaws have varying degrees of complexity and would require individual consideration
- The original clause would add potential cost to already prohibitively expensive housing
- The original clause could remove “from an appropriate qualified person”

A motion was made and seconded: *that the South Pender Advisory Planning Commission recommend amending Subsection 3.3(5) in the South Pender Land Use Bylaw by deleting “to submit a certification from an appropriately qualified person” and replacing it with “substantive evidence to establish the location of the dwelling.”*

Discussion on the motion was held.

**SP-APC-2024-003**

**It was Moved and Seconded,**

That the South Pender Advisory Planning Commission recommend amending Subsection 3.3(5) in the South Pender Land Use Bylaw by deleting "to submit a certification from an appropriately qualified person" and replacing it with "substantive evidence to establish".

**CARRIED**

**Discussion on Interior Lot Setbacks**

The following comments were made:

- Concern was expressed about a universal setback from the natural boundary of the sea, as well as a universal setback for interior lot lines (e.g. setbacks may mean something different on Gowlland Point Road compared to elsewhere on the island)
- Interior lot setbacks are much more complex than setbacks from the natural boundary of the sea
- Support was expressed for reverting interior lot setbacks to 10-feet as approximately 30 homes were deemed non-conforming with 20-foot setbacks



- The following questions were raised: “What was the objective in increasing the side lot setback and how does it accord with our Official Community Plan goals and objectives and with the Trust Policy statement?” and “Are there specific hardships or exceptional circumstances where a straightforward variance would not address?”
- Variances should not be a land use planning solution; they add cost that can be significant and continually using variances means the bylaw does not reflect community needs
- The value of variances should be considered to avoid a one-size-fits-all approach
- The issue is about the setback footage and variance is not necessarily a part of that at this point
- Both a 10-foot or a 20-foot interior lot line setback will comply with the Official Community Plan
- The bylaws allow an accessory building to be built at 10-feet from the interior lot line; with the majority of properties on the island already developed the sight lines, noise and environment have already been impacted and moving interior setbacks to 20-feet will make a lot of houses legal non-conforming
- This is more complex than just reverting to previous rules or keeping the current ones
- It seems that no lots remain undeveloped in the Gowlland Point subdivision
- John Kuharchuk could be invited to provide analysis to the Advisory Planning Commission

Discussion ensued about the use of landscape screening in the bylaw and whether it could be broadened to apply to all lots. The following comments were made:

- The bylaw has a provision for a “landscape screen” that only applies to home businesses; this could be broadened to protect the privacy of islanders, which is an important concern to many
- There should be a guideline or clear statement that the goal of the interior lot setbacks is to maintain as much privacy as possible
- The Local Government Act (Section 527) permits a Local Trust Committee to include screening and landscaping for three reasons: masking or separating uses; preserving, protecting, restoring and enhancing the natural environment; and preventing hazardous conditions
- The Commission might consider the type of buffering (vegetative or otherwise) used between lots
- Support was expressed to use a landscape screening clause to limit clear-cutting of a lot

Planner Stockdill read the relevant section of the South Pender Land Use Bylaw, Section 3.9(1), and noted this regulation could be tweaked to accord with the wording in the Local Government Act.

The Advisory Planning Commission agreed:

- 1) to request that Planner Stockdill provide more information to the Commission about interior lot screening options discussed today, taking into account related provisions in the Local Government Act, and
- 2) to continue discussion with relevant information before making a recommendation to the Local Trust Committee.

## 6. Next Meeting

Friday August 23 at 10am, in person at the Community Hall

## 7. Adjournment

**By general consent** the meeting was adjourned at 11:35 a.m.

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Gordie Duncan, Chair

Certified Correct:

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Carly Bilney, Recorder

# DRAFT

## South Pender Island Advisory Planning Commission MINUTES

**Date:** August 23, 2024  
**Location:** In-person at the South Pender Fire Hall

**Members Present:** Gordie Duncan  
Audrey Green  
Rodney Kirkwood  
Paul Petrie  
Donna Spalding

**Staff Present:** Kim Stockdill, Island Planner  
Carly Bilney, APC Secretary

**There were 5 members of the public present.**

### 1. CALL TO ORDER

Chair Duncan called the meeting to order at 10:02 a.m. He encouraged Commission members to introduce topics in the form of a motion.

### 2. APPROVAL OF AGENDA

Changes to the Agenda as follows:

- Add item under Section 4 to discuss the 50-foot distance of the setback from the natural boundary of the sea

**By general consent**, the agenda was approved as amended.

### 3. ADVISORY PLANNING COMMISSION MEETING MINUTES DATED AUGUST 9, 2024 (FOR ADOPTION)

**By general consent**, the Advisory Planning Commission meeting minutes of August 9, 2024 were adopted.

## 4. DISCUSSION OF SOUTH PENDER MINOR LAND USE BYLAW AMENDMENTS PROJECT

### 4.1 Setbacks from the natural boundary of the sea

Discussion was held about making an official recommendation to the Local Trust Committee to express support for a 50-foot setback from the natural boundary of the sea. Comments were made that a one-size-fits-all approach to setbacks from the natural boundary of the sea does not work for properties that have different topographies, and the Local Trust Committee should consider the various conditions.

Discussion ensued about whether the bylaw, as it is written, would allow a building that is destroyed (by, for example, a fire) to be rebuilt in the same location as it was previously (even if it is within the setback)

It was moved and seconded, that the Commission recommends retaining the 50-foot setback from the natural boundary of the sea as written in Bylaw 114. An amendment to the motion was suggested to also request that staff initiate a study of waterfront lots to determine what impact a 50-foot setback would have on those lots and to make recommendations with respect to any impacts that require attention.

Discussion on the motion continued and an amendment was suggested that the Commission recommends retaining the 50-foot setback for all new construction, and that staff be directed to undertake a study for undeveloped waterfront lots with consideration for ways to recognize site specific challenges. A suggestion was made to simplify the motion.

#### **SP-APC-2024-004**

#### **It was Moved and Seconded,**

that the South Pender Advisory Planning Commission recommends retaining the 50-foot setback from the natural boundary of the sea as written in Bylaw 114.

**CARRIED**

**Donna Spalding Opposed**

Discussion continued and comments were made that there may be conditions in some properties where a 50-foot setback from the natural boundary of the sea is not enough, and conditions elsewhere where the 50-foot setback is too much.

It was moved and seconded, that the Commission recommends a study of the South Pender Island waterfront be undertaken to better understand the geographic and natural habitat limitations with respect to building setbacks. Discussion continued and the following comments were made:

- The only way to confirm whether a 50-foot setback is appropriate is by studying the waterfront
- A study could be an onerous and expensive task
- Property owners who want to build within a 50-foot setback could apply to do so on an individual basis through a Development Variance Permit or with the Board of Variance
- The setback to the sea could be at 25-feet for existing buildings, and 50-feet for newly developed buildings

**SP-APC-2024-005**

**It was Moved and Seconded,**

that the South Pender Advisory Planning Commission recommends that the Local Trust Committee undertake a study of the South Pender Island waterfront to better understand the geographic and natural habitat limitations with respect to building setbacks.

**DEFEATED**

Planner Stockdill read Section 3.3(5) of Bylaw 114 concerning buildings constructed prior to September 15, 2022. Discussion ensued and the following comments were made:

- Those with existing buildings are permitted to rebuild within the setback if the building is destroyed provided the distance from the natural boundary of the sea to the replacement building is not less than the distance from the natural boundary of the sea to the building on September 15, 2022
- Changing this protection clause would require legislative process including First, Second and Third Reading of the bylaw
- Residents would fight to keep the protection clause
- The boundary of the sea can move and the clause needs to be clarified

**4.2 Interior side lot line setbacks for rural residential zoned dwellings and cottages**

Following up on discussion from the last meeting about how to retain natural screens within interior side lot line setbacks and limit clear-cutting of properties, Planner Stockdill explained that if the Local Trust Committee were to require landscaping as a natural buffer, there would be challenges with bylaw enforcement since the situation on each property is different. (e.g. What if one side of a property is all rock? Who determines what a complete visual screen is?)

It was moved and seconded, that the Commission recommends retaining the current setback of 6.0 meters (20-feet) for a dwelling or cottage from any interior or exterior side lot line as provided in subsection 5.1(9) in the current Land Use Bylaw, and that subsection 5.1(10) be amended by deleting “to submit a certification from an appropriately qualified person” and replacing it with “substantive evidence to establish.”

Discussion on the motion ensued and the following comments were made:

- This complies with Official Community Plan policies
- Support was expressed to build the notion of privacy directly into the bylaw to restrict what can be done inside a setback
- Support was expressed for a 10-foot interior side lot setback for the following reasons: they are common through the Gulf Islands; 20-foot setbacks do not significantly reduce noise or assure privacy, particularly when utility buildings are permitted to be built at 10-feet from neighbouring lots; the election results demonstrate that people were not in support of the new bylaws; the 10-foot setbacks were established in accordance with the goals of the Official Community Plan; increasing the setbacks to 20-feet will not address concerns expressed about existing buildings

- Support was expressed for a 20-foot interior side lot setback for the following reasons: the majority of residents who submitted written correspondence to the Local Trust Committee supported a 20-foot setback; prior to the election there was a view that all properties would be legal non-conforming and this has since been clarified by staff
- A one-size-fits-all measurement for side lot setbacks is challenging
- Perhaps a special zone may be made for Gowlland Point Road if there is a desire there to achieve more privacy
- Residents on Gowlland Point Road set up their own screening because nobody wants to see their neighbours
- Landscape screening is defined in the bylaw and applies to home-based businesses; if it exists within the bylaw then it should be enforceable

**SP-APC-2024-006**

**It was Moved and Seconded,**

that the South Pender Advisory Planning Commission recommends the Local Trust Committee retain the current setback of 6.0 meters (20-feet) for a dwelling or cottage from any interior or exterior side lot line as provided in subsection 5.1(9) in the current Land Use Bylaw, and that subsection 5.1(10) be amended by deleting “to submit a certification from an appropriately qualified person” and replacing it with “substantive evidence to establish.”

**DEFEATED**

**Paul Petrie in Favour**

It was moved and seconded, that the South Pender Advisory Planning Commission recommends the Local Trust Committee revert the interior side lot lines to 10-feet. Discussion on the motion ensued and a suggestion was made to add a recommendation that the Local Trust Committee consider options to require the area within the 10-foot setback be protected to reflect the goals of the Official Community Plan including preserve and protect, rural character, and privacy.

Discussion on the motion ensued about how specific the recommendation should be with regards to what constitutes a natural buffer and what can and cannot be done within a setback. The following comments were made:

- Protecting the area within the setback addresses concerns about privacy and rural character, and would only apply to the lots that have not yet been built on
- A lot may be constrained in size and a septic field or driveway may have to be within the setback
- Considering options to protect the natural area within the setback is a big task for the Local Trust Committee

The amendment to the motion was withdrawn.

**SP-APC-2024-007**

**It was Moved and Seconded,**

that the South Pender Advisory Planning Commission recommends the Local Trust Committee revert the interior and exterior side lot lines to 10-feet.

**CARRIED**

**Paul Petrie Opposed**

## 5. NEXT MEETING

Planner Stockdill explained that Islands Trust Advisory Planning Commissions are legislatively mandated to meet in person, and members of the public must attend in person if they wish to do so (staff can attend electronically). She added that the Islands Trust is working to amend this.

Next meeting tentatively scheduled for September 20 at 10:30 a.m. at the fire hall

## 6. ADJOURNMENT

**By general consent** the meeting was adjourned at 12:00 p.m.

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Gordie Duncan, Chair

Certified Correct:

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Carly Bilney, Recorder

Trustees:

The following is my dissenting opinion as an APC member for consideration at the September 10, 2024, LTC meeting.

**Issue 1:** At the Aug. 23 APC meeting I made the following motion that was carried with four in favour, one opposed.

**SP-APC-2024-004**

**It was Moved and Seconded,**

that the South Pender Advisory Planning Commission recommends retaining the 50-foot setback from the natural boundary of the sea as written in Bylaw 114.

**CARRIED**

**Donna Spalding Opposed**

I strongly support this recommendation and join with a majority of my APC colleagues in urging the LTC to retain this provision in the current Land Use Bylaw with the minor wording modification to allow more flexibility in determining the location of a dwelling for replacement purposes. Most of the residential construction is along our island shoreline, which contains sensitive ecosystems and at-risk species.

Protection of the sensitive shoreline ecosystems is consistent with the Trust mandate to: "...preserve and protect the Trust Area and its unique amenities and environment for the benefit of the residents of the Trust Area and of British Columbia generally". This current Bylaw provision 3.3.3 also supports our OCP goal 2.2.2 To protect the natural features and biological diversity of the island and its immediate surrounding; and OCP objective 2.4.1[c] To protect the natural features and biological diversity of the island and its immediate surroundings.

There was a proposal considered by the APC at the August 23rd meeting to recommend that staff initiate a study of waterfront lots to determine what impact a 50 ft. setback from the sea would have on those lots and to make recommendations with respect to any impacts that would require attention of trustees. I did not support this proposal on grounds that the 50 ft. set back has not yet been given time to work, to date there have been no issues where a variance has been requested with respect to Bylaw s. 3.3(3), and such a study would be expensive and not a good use of limited Trust finances.

All existing dwellings that are currently located within the 50 foot setback are now legally conforming under s. 3.3 (5) of our LUB. As pointed out by planner Stockdill, an application to build within the 50 foot setback would be available through the Board of Variance for a minor variance where a hardship exists. She also pointed out trustees have the discretion to grant a Development Variance Permit and are not limited to considering hardship or only minor variances. The trustees' decision on a development variance permit would be considered on the particular circumstances of the application, on the relevant OCP policies, the impact on the neighbouring lots and on the island generally.



In my view there are sufficient protections in place to address issues relating to the 50 foot setback that may arise. To date there have been none that I am aware of.

**Issue 2:** At the same meeting I made the following motion that was defeated with four opposed and one in favour.

**SP-APC-2024-006**

**It was Moved and Seconded,**

that the South Pender Advisory Planning Commission recommends the Local Trust Committee retain the current setback of 6.0 meters (20-feet) for a dwelling or cottage from any interior or exterior side lot line as provided in subsection 5.1(9) in the current Land Use Bylaw, and that subsection 5.1(10) be amended by deleting “to submit a certification from an appropriately qualified person” and replacing it with “substantive evidence to establish.”

**DEFEATED**

**Paul Petrie in Favour**

While I respect the views of my APC colleagues, I must register my dissent from the recommendation to revert to the previous 10 ft. side lot setback for the following reasons.

1. The adoption of the 20 ft. side lot setback in 2022 provides improved support for our OCP goals and objectives including:
  - it supports OCP goal 2.2.1 to maintain and reinforce “a sense of tranquility, privacy and freedom from disruption” as an important element of our island’s rural character.
  - It complies with OCP Policy 2.4.3 that the LTC ensure that building and structure setbacks retain our rural Island character, the protection of natural views and the maintenance of residential privacy, and
  - it meets the OCP Residential Objective 3.1.1(a) To maintain a rural island living environment that is safe, visually attractive, and free from disturbance and the sense of overcrowding.
2. All current dwellings and cottages within the 20ft. setback are protected as “legally conforming” with Bylaw subsection 5.1(10). The current 20 ft setback will only apply to newly constructed dwellings and cottages after September 15, 2022. There are NO legally non-conforming properties resulting from the enactment of the 20 ft. setback in 2022. As planner Stockdill stated at the meeting: We shouldn’t use the term “legal non-conforming” with current Bylaw setbacks.
  - There were 46 letters set to the LTC under the bylaw review project
    - 34 were in favour of retaining the current bylaw provisions,
    - 12 were in favour of reverting to 2016 bylaw
    - 13 letters were from a previous respondents (9) in support (4) for reverting.
    - These are thoughtful letters, many containing careful reasons for supporting the current bylaws, many urging trustees to give the 2022 changes time to work. These letters must be given weight in the trustees’ consideration of this issue.

- One of the arguments for reverting to the 2016 bylaw was a majority of islanders were opposed to the changes and voted in the new trustees to revert to the 2016 bylaw. That was apparent at the June 3, 2023 LTC meeting when the trustees attempted unsuccessfully to repeal the 2022 Bylaw amendments.
- Opposition to the 2022 changes was largely driven by the misleading contention that it would render a number of properties “legally non-conforming” which was incorrect. Section 5.1(9) made all dwellings “legally conforming” as of September 2022. This was not clarified until after the election. Planner Stockdill stated: “We shouldn’t use the the term “legal non-conforming.”

For all the foregoing reasons, I urge the trustees to support the applicable goals and objectives in our OCP and retain the 20 foot side lot setback in our current LUB

Our OCP states: “The quiet, freedom from disturbance, and sense of privacy within what is a relatively undisturbed and visually attractive settings are key qualities valued by South Pender Islanders, who expect these qualities to be maintained.” P. 3

I request that this dissenting opinion be included with the staff report for the September 10 LTC meeting along with the APC minutes in accordance with section 7(d) of Bylaw 98.

Thank you for considering my views.

Paul Petrie