

April 19, 2024

Trustees,

We would like to commend the trustees for requesting the March 2024 staff report on “Bylaw No. 122 & Legal Non-Conforming FAQ” and thank the staff for clarification of this central issue in our community discussion around review of the bylaw changes enacted in Bylaw 122.

legally conforming

The staff report established definitively that the 2022 amendments to the Land Use Bylaw (LUB) did not create any dwellings/houses that are legally non-conforming regarding maximum floor area including houses that are larger than the current house size limits. The staff report confirms that all houses that were legally constructed prior to September 15, 2022, are now deemed “legally conforming” as a result of the enactment of Bylaw item 5.1(5) on September 2022.

This clarification is important because the ongoing debate around house size limits has been driven largely by concerns regarding the designation of “legally non-conforming” for houses that exceed the permitted house size limits.

The community discussion on house size limits in 2015-16 was animated by concerns by some members that the house size limits recommended by the Advisory Planning Commission would create a significant number of properties with houses that would become legally non-conforming. At the time there was a lack of a clear definition of the long-term effect of houses that became legally non-conforming under the provisions of the Local Government Act. The trustees in 2015-16 established large house size limits to avoid having a large number of houses designated legally non-conforming.

Since 2016 there has been rapid construction growth in our rural community and many of the new houses are significantly larger than the existing housing stock. If this accelerating growth continues it will have a major impact on the rural character of South Pender contrary to several of the community goals in our Official Community Plan including the goal: “To ensure land use, development, and associated servicing are compatible with the rural island character and that their growth is gradual and sustainable.”

Former trustees Wright and Thorn addressed this unintended result of our 2016 large house size limits by bringing house size limits more in keeping with the preserve and protect mandate of the Trust, our OCP goals and our Community Vision Statement: “Our South Pender community is committed to preserve the rural nature and natural diversity of our island environment for future generations.”

The opposition to the reduced house size limits in 2021-22 was once again driven in part by the apprehensions and misapprehensions about the impact of properties becoming labeled as “legally non-conforming”.

Trustees Thorn and Wright addressed these concerns by enacting Bylaw item # 5.1(5) which ensured that properties with houses above the new house size limits could be replaced to their original size if destroyed by fire, etc. This was a creative solution that in our opinion should have put to rest concerns over “legal non-conforming”, but it didn’t. These concerns persisted into the present LTC term.

The current community discussion about the reduced house size limits now established in our LUB is once again being driven in part by “legal non-conforming” concerns. The staff report on “Legal Non-Conforming” establishes the fact that as of September 15, 2022, all existing houses are deemed “legally conforming” in accordance with the exemption in item 5.1(6) of our LUB. Simply put, all houses, including those that exceed the current house size limits are legally conforming with our current bylaw.

We find it difficult to understand the suggestion by some that houses larger than the current house size limits somehow are diminished in value because of the new limits. While I am not a real estate expert, it seems to me that a house that is larger than the current house size limits would have enhanced value, at least to potential buyers who place value on larger houses.

## Variances

It is important to recognize that the Bylaw establishing the current house size limits is a policy of general application. Legislation allows any property owner to apply for a variance to those limits where there are exceptional circumstances that merit a different limit. Variances provide flexibility in the application of the house size limits where the trustees consider that a different house size limit is warranted. A variance is a well-established public policy tool to address a bylaw provision that may cause undue hardship.

For example, a three-generation family may require a house larger than the bylaw limits currently allow. A variance application would provide an opportunity for trustees to consider the merits of that application. Or on a property with unusual topography a property owner may be able to show that to build a garage separate from the house would negatively impact sensitive ecosystems on the property. A variance in that case would allow trustees to consider increasing the house size limit to incorporate the garage as part of the dwelling.

Before granting a variance, the LTC must provide adjacent property owners an opportunity to comment on the variance application and trustees must consider those comments before deciding to grant or deny the variance application. This provides

some protection for adjacent property owners whose interests may be affected by the application. Two variance applications have been considered and allowed to date by the LTC. The changes enacted through Bylaw 122 are working.

Some have argued that the \$1.976 fee to file a variance application is too high. This fee is required to cover, in part, staff time to process the application. Given the cost to build a new house, it is difficult to see how the application fee could amount to more than 1/3 of 1% of the building cost. If trustees feel that this relatively small fee is too high, they have the authority to reduce the application fee by amending Bylaw No.124.

A variance is a sound public policy tool that provides for some flexibility in the application of the current house size bylaws. Item 5.1(5) of our LUB ensures that all houses are deemed legally conforming as of September 15, 2022. The new house size limits duly enacted in 2022 are more consistent with the Trust preserve and protect mandate, with our OCP goals and with the existing rural character of our community.

The question that our current trustees must answer is - why are they expending our tax dollars and valuable staff time on “fixing” a system that isn’t broken?

Sound public policy would indicate the 2022 house size limits should be given a chance to work, particularly since there has been clarification of the “legal non-conforming” misapprehensions. At the November LTC meeting chair Elliott suggested trustees consider a less divisive issue such as “reconciliation” as a minor project and give the current house size limits an opportunity to work. Trustees rejected that approach.

Given the staff report on “Legal Non-Conforming,” we encourage trustees to reconsider the current focus on house size and setback issues and focus on issues that are more in keeping with the Trust preserve and protect mandate and the goals in our OCP. We are particularly interested in advancing reconciliation with the W̱SÁNEĆ First Nation and addressing the loss of the reconciliation initiative when the current trustees abandoned Bylaw No. 123. We are especially concerned about the impacts of climate change particularly damage from storm surges and drought and the impacts on our ground water supply and the increased threat of fire. We are also concerned about the impact of blasting on the sensitive ecosystems that require protection.

However, we appreciate that trustees are now knee deep in the current review of the 2022 bylaw changes and we will continue to participate in this discussion based on our combined 110 years of experience as active South Pender community members and our strong support for the goals in our OCP which guide Trust decision making.

Thank you for considering our views.

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