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Subject: Draft Bylaw 129 Comments

Trustees Evans, Falk, Elliott

I would like to offer my perspective on non-conforming and how Draft Bylaw 129 could resolve this contentious issue. As a member of the APC clearly, I believe the APC recommendations and suggestions offered reasonable solutions to resolving the issue of non-conforming yet at the same time retained many of the objectives of Bylaw 122.

It is important to understand:

- that the OCP does not, in any way, mandate that large numbers of legally developed properties on South Pender should be of non-conforming status and should remain in that state for perpetuity.
- Further, the OCP does not mandate that the LUB should include bylaw regulations supporting such an objective.
- The OCP, which is often referenced to as the basis for the requirement of Bylaw 122 regulation changes, is precisely the same OCP that had been in effect for many years prior to 122 and has overseen the orderly development of dwellings until then.
- How can it be suggested that now many of these legally built dwellings developed under the same OCP should suddenly be relegated to a non-conforming status, recognizing that the developmental (clearing, roads, septic, foundations etc.) environmental impact has already taken place?

With the adoption of Bylaw 122:

- over 40% of the legally developed properties (80%) were rendered to a non-conforming status. There were approximately 3% prior to Bylaw 122.
- Non-conforming means that these properties are no longer compliant with the current bylaw.
- While NC properties which are often described as “legally non-conforming” have the protection of LGA 529 and Bylaw 122 exception clauses with respect to future development and replacement, the fact is that they are still non-conforming, in the sense that their size or siting would not be allowed under today's bylaw.

Sections such as 3.1(6) and 5.1(6) are often cited as the authority for the proposition that Bylaw 122 does not make any pre-122 properties “non-conforming”. While the clauses do give those properties the express authority to renovate or replace their homes if required, they say nothing whatsoever about the status of the properties and whether they are conforming or non-conforming.

While the “exception” or “saving” clauses of Bylaw 122 make it clear that pre-122 dwellings can be rebuilt or renovated to their original size, many of the affected property owners still worry about the potential downside of owning a non-conforming dwelling. Concerns that are related to insurance coverage, re-mortgaging, market value and the intangible stigma of being “non-conforming.” Whether or not any or all of these worries are justified, they are legitimately held concerns, especially considering that so many properties are affected.

I believe the LTC has an opportunity to dispel these worries and advance community cohesion by adopting the two-table (dual regulation) solution for siting and size as recommended by the APC.

The APC Recommendations eliminated nearly all of the “non-conforming” status created by Bylaw 122 for Maximum Dwelling Size and Interior Setbacks. The solution for Maximum Dwelling Size is to have the current bylaw (LUB 114) recognize legally built dwellings pre-122 by having dual size (tables) regulations with an effective before and after date (September 15, 2022) included in the bylaw.

- This ensures that pre-122 dwellings sizes have their specific regulation(s) (before date) which is included as part of the current bylaw and so they conform.
- This would be the case despite the new more restrictive regulations (after date) introduced with Bylaw 122.
- This solution was an option offered to the former Trustees in a Staff Report in September 2021.
- The same solution, of having a 25-foot setback regulation prior to September 15, 2022, and 50-foot setback regulation after that date included in the bylaw, along with the appropriate exception clauses applied to the Setback to the Sea regulation would further eliminate a substantial number (approximately 22) homes from a non-conforming status.

The APC recommendations also included modified exception clauses such as 3.1(6) and 5.1(6):

- that would assure the same protection against the proliferation of future large “ostentatious” homes, as was one of the stated goals of Bylaw 122.
- Existing legally built dwellings whose size exceeds the current more restrictive bylaw could not rebuild or expand beyond their size effective on September 15, 2022, without a Development Variance Permit.
- Smaller sized pre-122 dwellings could expand only to the new more restrictive size regulation.
- These clauses offer the same protections offered with the Bylaw 122 exception clauses.
- Please note that Option 3 (Agenda P.46) of the Staff Report recommendations is significantly different from the APC’s recommendation.
 - o Option 3 does not reflect the recommended table as shown in Option 1 for Maximum Dwelling size.
 - o Option 3 also suggests that exception clauses may not be required.
- Further to the above Option 3 point(s) - Without an exception clause, similar to what the APC recommended, how would Staff Option 3 protect against a pre-122 dwellings from expanding beyond Table 4 dwelling sizes, by using Table 3. As an example – could a 1.1 acre - 1800 ft² pre-122 dwelling expand to 4500 ft² (Table3) as opposed to 3000 ft² (Table 4). The express intent of both the Bylaw 122 and APC exception clauses was to ensure that the dwelling, in this case, must adhere to Table 4 or 3000 ft².

Concerns about Non-Conforming or Legal Non-Conforming (See appendix A)

- Is it reasonable for those of us, particularly those of us who are not affected by the Bylaw 122 regulation changes to insist that those who are affected should have no concerns about their properties becoming non-conforming?
- This is especially so considering that the OCP remains unchanged from when many of those properties were legally developed?
- For the record, my property conforms to all of the Bylaw 122 regulations.

In summary, if indeed we must have these unprecedented restrictive regulations introduced with Bylaw 122, I believe that if many if not all of the APC recommendations were included in Bylaw 129, they would provide a path that offers a reasonable compromise for the community. Bylaw 129 would still achieve many of the objectives desired in Bylaw 122.

Thank you for your consideration.

Gordie Duncan
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Appendix A)

Why is there concern about a non-conforming status?

- a. The non-conforming property is often referred to as “*Legal Non-Conforming, lawfully conforming.*”
- b. Is my dwelling non-conforming?
 - If your dwelling exceeds the maximum dwelling size, the interior setback, the setback from the sea or the height regulations in the current bylaw then it is not compliant, so it is non-conforming.
 - o Ask these simple questions. - do the following scenarios conform to the current bylaw?
 - o Example 1: Existing dwelling located at a 15 ft interior setback – current bylaw = 20 ft interior setback.
 - o Example 2: Existing dwelling located 40 ft from sea - current bylaw = 50 ft from Setback to the Sea.
 - o Example 3: Existing 3200 ft² dwelling resides on 1.75-acre lot – current bylaw = max dwelling = 3000 ft² on lot 1 to 2 acres.
 - Note: Cottage’s siting must be included for consideration for interior setback and setback from the sea regulations.
 - In all these examples the homes are now “non-conforming,” although they may be upgraded or rebuilt as is.
- c. There are few specific instances demonstrating the need to render so many properties non-conforming.
- d. The non-conforming status remains with the property and transfers with the title.
- e. The property title, however, will not carry or indicate the non-conforming status.
- f. The onus is on the owner to prove non-conforming status, therefore is the owner obliged to inform the mortgage holder and/or the insurer of the non-conforming status?
- g. Is there greater potential for not qualifying for a conventional mortgage?
- h. Is there greater potential for higher insurance premiums?
- i. Since the adoption of Bylaw 122 is the non-conforming status of properties for sale included with the property listings?
- j. Are “bylaw riders” required in the home insurance policy to insure non-conforming protection?
- k. Development Variance Permit (DVP) are a requirement for pre-122 non-conforming dwellings wishing to expand their size after September 15, 2022.
- l. DVPs are discretionary therefore issuance can be denied.