

BOWEN ISLAND MUNICIPALITY

Minutes of the **Public Hearing** of the Municipal Council for Bowen Island Municipality held on Monday, August 27, 2001 at 6:30 p.m. at the Municipal Hall, 981 Artisan Lane, Bowen Island, B.C.

COUNCIL IN ATTENDANCE	Mayor Lisa Barrett Councillor Ross Carter Councillor Peter Frinton Councillor Alison Morse Councillor Bob Turner Councillor Richard Underhill
REGRETS	Councillor Alan Leigh
STAFF IN ATTENDANCE	Isabell Hadford, Chief Administrative Officer Michael Rosen, Planning Consultant
OTHERS IN ATTENDANCE	Gayle Ferguson – Minute Taker
CALL TO ORDER	Mayor Barrett called the meeting to order at 6:40 p.m.
OPENING REMARKS BY CHAIR	<p>Mayor Barrett opened the meeting with an explanation that the Public Hearing is being convened pursuant to Section 890 of the <i>Local Government Act</i> in order to consider proposed Bylaw No. 36, 2001 cited as “Bowen Island Municipality Bylaw No. 36, 2001 - Bowen Island Zoning Bylaw No. 36, 1984 Amendment No. 1, 2001 and Bylaw No. 37, 2001 cited as “Bowen Island Municipality Bylaw No. 37, 2001 – Bowen Island Subdivision Bylaw No. 270, 1977, Amendment No. 3, 2001 –McLeod Property Amendment.</p> <p>Mayor Barrett noted that any persons who believed that their interest in property is affected by the proposed bylaw would be afforded an opportunity to be heard or to present written submissions.</p>
BYLAW FOR CONSIDERATION Parking Bylaw No. 36, 2001	Michael Rosen, Planning Consultant provided Council with a summary of Parking Bylaw No. 36, 2001. He noted certain elements of Bylaw No. 36, 2001 and that the purpose of these changes were to facilitate parking for customers in the Snug Cove area.
WRITTEN PUBLIC SUBMISSIONS	Mayor Barrett observed that no written submissions had been received for the proposed Parking Bylaw No.36, 2001.
VERBAL PUBLIC	Mayor Barrett called three times for comments from the Public

SUBMISSIONS

regarding Bylaw No. 36, 2001 and no comments were forthcoming.

Mayor Barrett declared the public hearing closed for Bylaw 36

**BYLAW FOR
CONSIDERATION**

Bylaw No. 37, 2001

Michael Rosen, Planning Consultant noted that the Official Community Plan has a designation on the McLeod property that accommodates five- acre average lot sizes or seven lots. However there is an existing covenant that limits the amount of development to one lot and part of the amendment to Bylaw No. 37, 2001 is to discharge this covenant, provided the amenity being offered to the Bowen Island Community is deemed acceptable.

Mr. Rosen provided Council with a summary of the following key elements and related issues regarding Bylaw No. 37, 2001:

- Change of Subdivision District X from an average size of 5 acres and a minimum size of 5 acres to Subdivision District W with an average parcel size of 5 acres and a minimum parcel size of 2.5 acres;
- Elimination of the requirement that 50% of lots in the subdivision not be less than five acres;
- Inclusion of the park area in the calculation of average parcel size.

Related Issues to be satisfied by the developer before Bylaw No. 37 is adopted:

- A covenant to Municipality from the Developer to ensure Municipality receives 20 acres when the land is subdivided;
- Conditions regarding the remediation order from the Ministry of Water, Land and Air Protection will be satisfied;
- Non-disturbance Protection Covenant for portions of the rock outcroppings and environmentally sensitive areas on the development side of the project;
- Trails to be part of a legal agreement providing a perimeter trail and accommodation of the trail within a portion of the development area in order to access viewpoints.

Mr. Rosen observed that the study prepared by Pacific Hydrology Consultants concluded that an adequate source of water can be developed for the seven lots for the proposed subdivision.

**WRITTEN PUBLIC
SUBMISSIONS**

Michael Rosen, Planning Consultant provided Council with a synopsis of the written submissions received from the Public.

**VERBAL PUBLIC
SUBMISSIONS**

Julian Dunster, Environmental Consultant provided Council with a verbal report on the biophysical assessment of the McLeod property. He observed that the applicant's proposal would dedicate 54% of the McLeod property to the community where the legal requirement is only 5%. He reported on the following items:

- the amenity being offered provides a crucial link to the proposed trails on Cowan Point Development Lot One;
- there would be a Covenant placed on the septic field area;
- the headwaters of Bowen Brook would be protected by the designated Parkland area;
- the amount of water recharge area covered by the seven proposed 2,000 square foot houses would not make a significant difference to the overall recharge capacity of the land.

Michael Rosen, Planning Consultant noted the draft covenant on environmentally sensitive areas will maintain the area in its natural state and prohibit any type of structure to be built on the covenanted area. Mr. Rosen observed that the covenanted areas are on private property with no public access to the pinnacle but that public access is provided to the Southern viewpoint.

Wolfgang Duntz felt that the recharge area will not be diminished by the addition of six or seven houses.

Anne Chollard observed that recharge applies to the whole area not just the houses. She noted that the development of houses on the west side can affect the Tunstall Bay water supply where every summer adequate water supply has been a problem.

Michael Rosen, Planning Consultant noted that the covenant was originally put on the property due to the rural character of the land and the bylaws in place at the time. He speculated that this large lot would have further subdivision potential and perhaps the Islands Trust deemed further subdivision not to be appropriate.

John Reid noted that his understanding of the covenant on the property was that when Sunset Estates was created the existing bylaws had a minimum parcel size of ten acres but the owner wanted some flexibility to have five acres lots. He noted that the Advisory Planning Commission had agreed that if the Official Community Plan densities are applied, allowable densities have not been depleted.

Wolfgang Duntz noted that the Islands Trust insisted on having a covenant even though there was no legal right to ask for such

a covenant. The owner at the time was not aware that the Official Community Plan densities would have allowed double the number of lots that were actually created. Mr. Duntz felt that this covenant could legally be easily challenged and that it would not be wise to rely on the covenant's validity.

Alan Whitehead, Environmental Consultant for the owner provided Council with an ecological overview of plans for the McLeod property. He noted that the restoration order issued by Ministry of Water, Land and Air Protection requires that the dams separating the ponds be removed. The applicant has submitted an application to the Ministry of Water, Land and Air Protection for the necessary studies to plan the removal of those dams in an environmentally acceptable manner and these plans have now been completed. Mr. Whitehead noted that the second phase of decommissioning the dams has been approved by the Ministry of Water, Land and Air Protection. The Inspector of dams and a Fish and Wildlife Officer have visited the site and the applicant has until September 15, 2001 to comply with the remediation order.

Mr. Whitehead provided Council with details of the MWLAP requirements for decommissioning of the dams. He noted that the requirements from MWLAP would need the water to be drawn down in the ponds by approximately five feet and a spillway to be built so that fish can migrate back up into the lake.

Mr. Whitehead observed that ecologically the area will evolve into a more diverse and stable area with a third of the lower pond becoming marsh and the lower half staying as open water providing fish habitat and wildlife habitat. The upper pond will likely become a nesting habitat for water fowl.

Alan Whitehead, environmental consultant noted with regards to the \$5,000 dedication to reclamation sum, that the land has already healed naturally and felt that any involvement now to reclaim the aquatic or riparian portion would not be advisable.

Eric Sherlock observed that the amendment to Bylaw No. 37, 2001 is in many ways a model of open space planning and public dedication. He noted that approximately 50% of the land is to become public lands and the other half is for a clustered development, which he felt follows the best land use patterns and planning models. He further noted that it is the existence of the restrictive covenant that has allowed for 50% of the land being offered to the public in exchange for limited potential development on the other piece of the land.

Mr. Sherlock felt that Bylaw No. 37, 2001 would be advantageous for the following reasons:

- the headwaters of Bowen Brook are on the land being offered as an amenity;
- public access to environmentally sensitive areas for education;
- the potential for wildlife habitat;
- the enhancement of Bowen Island's mandate in the Islands Trust, showing residents and the people of British Columbia the value of protecting Bowen Island as a provincial asset;
- the development is within the Official Community Plan density levels.

Mr. Sherlock noted that Council needs to consider what precedent it would be setting for the rest of Bowen Island by accepting the proposal being offered. He noted that the two areas where this could have the greatest potential as a precedent would be Lot One of Cowan Point, which is also under a Conservation Covenant restricting further division, and perhaps Fairweather. He observed that in either case if the proponent was willing to come forward offering 50% of the land to the public and building only up to the Official Community Plan levels, the proponents would be making a very positive case.

Mr. Sherlock noted that the condition of the amenity the public will be receiving is somewhat unclear because the necessary remedial work has not yet taken place, which could mean that the public will end up having to pay for some of that work.

Mr. Sherlock expressed his disappointment regarding the lack of public access to the pinnacle as he felt that environmentally sensitive areas in general should have public access to them so that people can see what it is that they are protecting.

Mr. Sherlock concluded by expressing his approval of Bylaw No. 37, 2001.

John Reid noted there is no access to the absolute pinnacle but there are three rock croppings at the top of the mountain that were identified: two are being protected by the non disturbance covenant and one is being given to the public. He further noted that public access to the absolute pinnacle would involve too much mixing between private and public lands.

Julian Dunster noted that allowing public access to the top of

the pinnacle would essentially destroy the trees and the mossy bluffs which are what requires protection.

Maggie Cumming, Bowen Island Parks and Recreation Commission clarified the situation regarding access to the viewpoint. She noted that several commissioners had walked the property with Julian Dunster and others from the Conservancy and Trails Committee and they had accepted the selected pinnacle area as being a satisfactory solution. Ms. Cumming further noted that there will be a large number and variety of trails on the parkland which will be for multi uses such as the perimeter trails for horses. She observed that there is a connection to an existing trail that goes through to Roger Curtis. Ms. Cumming felt the developer has been extremely generous in his offer and the Bowen Island Parks and Recreation Commission are enthusiastically looking forward to seeing the land regenerating.

Ms Cumming noted regarding expenditures for trail use that some parts will require an expenditure for construction but there are many existing trails.

Drew Burgess noted regarding the need for expenditures for trail improvements that there are many contractors willing to donate time and effort to the construction and improvement of the trails.

Michael Rosen, Planning Consultant noted that a letter had been received from Islands Trust stating that they had no objections to the proposed bylaws.

Inga Zimmerman, a twelve year resident felt that the beauty of the McLeod property will generate in prospective buyers of the property a strong sense of stewardship.

Margaret Ollis, a Tunstall Bay resident noted her concerns regarding liability issues that the Municipality may be taking on behalf of Bowen Island taxpayers for a non engineered dam and a lake built without supervision of a water monitor. She noted that the contents of the bottom of the lake are unknown and, if toxic, in time could affect the drinking water source. Ms. Ollis also expressed her concern regarding the properties above Tunstall Bay where wells will be drilled. She felt that Municipality needs to insure that the wells being drilled will not affect the Tunstall Bay water supply.

Ms. Ollis felt that the amenities for density such as trails, a car park, washroom or re-vegetation should be in place before the

Municipality assumes ownership. She noted that she is also concerned regarding the construction of the dam and lake made without permits since Eaglecliff residents who had disobeyed the rules regarding permits were told they had to conform but in this case the rules have been broken but are being rewarded because the responsibility for the dam and lake are being passed on to the community.

John Reid, in response to Ms. Ollis's concerns, noted that the Municipality and the Ministry of Water, Land and Air Protection have recognized that the dam is not safe and a portion of it will be removed so it will not be a dam anymore. He further noted that an environmental inspection is being done to certify the site is clean before the Municipality assumes ownership of the land.

John Reid noted regarding precedent that it is his understanding that removal of the covenant does not imply that there would be legal implications on Council to treat another proposal in a similar fashion. John Reid noted that a small parking lot would be constructed but there will not be construction of trails that do not already exist.

Susan Proctor noted that the bottom of lake is hard pan.

John Reid noted that discharging the covenant does not protect the land environmentally because the covenant applied to subdividing only but it did allow the Municipality to get the lean off the property and the proposal will now have proper environmental covenants with 50% of the land having park status. He further noted that the trail around Josephine Lake will eventually no longer exist and the new amenity at the McLeod property will take its place for walkers and hikers.

Mr. Reid expressed his appreciation for the process now taking place in which Council assesses information from all the various groups and thanked Council for its recognition of the opportunity which two years ago would not have been possible. He also thanked Michael Rosen, Planning Consultant for the speed with which the process had been completed, proving that this Council and staff given a good proposal for Bowen Island, can work quickly to complete the necessary deliberation and planning work.

Susan Proctor noted she has been walking dogs on the property for ten years and is looking forward to the fact that she will be able to continue to do so.

Alan Whitehead commented as a citizen regarding water quantity. He noted the concern expressed by others over the increasing pervious surface area of the south lots being developed. He noted in the future it would be worth considering requiring measures that insure that driveways are not necessarily impervious and that buildings be required to have a cistern incorporated in the design as a desirable and sustainable way of making use of excess water.

Anne Chollard offered her admiration for the project but felt that there is technical loophole which allows lots in this development to be subdivided to 0.5 acres. She felt that the lots right on the gravel deposit should not be subdivided.

Oliver Zimmerman inquired as to whether Council had lifted a covenant in the past. Michael Rosen, Planning Consultant noted that no similar covenants had been lifted in the past.

ADJOURNMENT

The Mayor asked three times if there were any further submissions on the amendments to Bylaws No. 36, and No. 37, 2001. There being none, Mayor Barrett declared the Public Hearing with respect to Bylaws No. 36, and No. 37, 2001 closed at 8:20 p.m.

Certified Correct:

Lisa Barrett
Mayor

Isabell Hadford
Chief Administrative Officer