

BOWEN ISLAND MUNICIPALITY

Notes of the **Bowen Island Municipality Public Information Meeting re: proposed Subdivision of Cape Roger Curtis land** held on Wednesday January 10, 2007 at 7:15 p.m. in Cates Hill Chapel, Carter Road, Bowen Island.

IN ATTENDANCE

Isabell Hadford – Approving Officer
Jason Smith – Municipal Planner
Brad Hawthorn – Public Works Superintendent
Michael Rosen – Planning Consultant
Gayle Ferguson – Minute Taker

PUBLIC IN ATTENDANCE

Approximately 108 members of the Public

CALL TO ORDER

CAO Hadford called the meeting to order at 7:27 p.m.

Isabell Hadford, Approving Officer re: Purpose of the Meeting

Approving Officer, Isabell Hadford noted that the Public Information Meeting was called under *Section 86* of the *Land Title Act*. The purpose of the meeting was to provide an opportunity to residents of Bowen Island, who believe they are affected by the proposed subdivision of the Cape Roger Curtis land, to comment on the proposed subdivision and how such a subdivision might affect them.

Michael Rosen, Planning Consultant re: Overview of Subdivision Process and History of Cape Roger Curtis Joint Venture Application

Michael Rosen, Planning Consultant provided an overview of the subdivision process as follows:

- Role of the Deputy Approving Officer to approve subdivisions, operating independently of Council to uphold Municipal bylaws and Provincial regulations. *The Land Title Act* gives discretion for exercising judgment;
- Role of Council is indirect. Council approves bylaws, such as the *Land Use Bylaw* and the *Official Community Plan Bylaw*, and executes legal agreements related to proposed subdivisions;
- When approving subdivisions the Approving Officer considers water supply, sewage disposal, drainage issues, fire protection, roads, compliance with regulations and whether there are any legal encumbrances on title;
- Provincial Law establishes limitations for Parkland Dedication requirement of 5%. If lots are greater than 5 acres no requirement for parkland is necessary;
- Biophysical assessment of the land is considered to protect sensitive lands, determine soil conditions, and determine location of existing buildings;
- Subdivision approval is a technical process. Provincial Law enables the Approving Officer to consider the

public interest. There is no definition of public interest but is a major discretionary power of the Approving Officer.

Five steps in the Subdivision approval process are:

1. Applicant makes an application
2. Deputy Approving Officer reviews the application and writes a letter to the applicant, a preliminary layout review letter (PLR) which identifies likes and concerns, provides a checklist of requirements;
3. Applicant solves issues and submits the final plan, usually prepared by a surveyor;
4. Approving Officer signs the plan or rejects it;
5. Applicant takes the subdivision to the Land Titles Office where it is filed and registered, creating legal lots for sale.

History of Cape Roger Curtis Joint Venture Application

- September 2004 application was received and Municipality was advised by Cape Roger Curtis Joint Venture that the reviewing process should not begin at that time;
- January 2006 - Joint Venture requested the Deputy Approving Officer to begin the process of reviewing the application;
- July 2006 – the Deputy Approving Officer issued the PLR.
- September 2006 – Cape Roger Curtis Joint Ventures responded to the items in the letter;
- October 2006 – The Deputy Approving Officer responded back.

Visual presentation of the 60 lot subdivision

- Subdivision consists of 60, ten acre lots;
- Two accesses one via Whitesails Drive and one via Thomson Road;
- Three beach accesses;
- There is no dedicated parkland in this subdivision (see 4th arrow on page 1);
- Water to be provided by private wells.

Jason Smith, Planner re:
Official Community Plan &
Land Use Bylaw

Jason Smith, Planner commented on the subdivision application in the context of the *Land Use Bylaw* and the *Official Community Plan (OCP)*. He noted the following:

- Land Use Bylaw – subdivision was compliant with the zoning for rural lots;
- *Official Community Plan* – subdivision was inconsistent

- with clustering development and trail dedication sections;
- Environmental Guidelines - construction of roads or lots would require a development permit;
- Planner concluded that the proposed subdivision was not consistent with the OCP.

Michael Rosen, Planning Consultant re: PLR requests by the Municipality

Michael Rosen, Planning Consultant commented on the following items requested of the applicant in the Preliminary Layout Review (PLR) Letter:

- Roads - all roads have to be constructed to Municipal standards. Roads also pertain to off site roads. The extension of Thomson Road and build out of Whitesails Drive are obligations for the developer to meet. Existing public roads have to be maintained in their original state and inconvenience on the neighbourhood needs to be minimized. The Municipality would monitor construction debris on the road and the developer would need to engage a Construction Inspector;
- Prior to construction, the Municipality expects Cape Roger Curtis Joint Venture to consult with the affected neighbourhood about plans for the lands and construction timeline;
- Thomson Road Extension - two access points into this area would be required for the dispersement of traffic and emergency vehicles. The applicant has to obtain consent from the Crown to build a section of the road through Crown Land;
- Whitesails Neighbourhood traffic impacts – Cape Roger Curtis Joint Venture would be required to provide traffic calming mechanisms;
- Access Points to the Sea would be required every 400 meters;
- Creeks require riparian area protection;
- Coastal Bluff Habitat – Environmental study has to be completed and a legal mechanism for coastal bluff protection established;
- Public Interest – February 2006 Council adopted a statement of public interest to indicate to property owners what was important to Council. The Approving Officer will have to decide if the application is contrary to public interest. Public Interest as defined by Council would include the following:
 - a. how the majority of the ecosystem coastline would be protected,
 - b. where there are no adverse ecological impacts, develop public walking trails connecting to the Cross Island Greenway trail system,

- c. initiate studies on how sensitive ecosystems and rare species would be protected,
 - d. cluster homes to reduce land disturbance and maximize green space,
 - e. mitigate any negative impacts on adjacent neighborhoods and Bowen Island as a whole. Obvious negative impacts would be the increase in traffic flow and the impact on the water supply of adjacent neighborhoods;
- Cape Roger Curtis Joint Venture responded in December, 2006 with a new plan, which included:
1. Lots reduced by two to 58;
 2. Intent is to proceed with the development of the first ten lots;
 3. Application to the Crown had been initiated for the Thomson Road extension;
 4. Land has been dedicated for access to lands beyond Cape Roger Curtis;
 5. Seven access points provided to the sea every 400 meters;
 6. The applicant has committed to draft environmental covenants;
 7. The applicant has raised concerns regarding public interest statements;
 8. The applicant has committed to enter into coastal bluff covenants and to incorporate a trail network, which is essentially the road allowance with some off road trails;
- The Municipality responded by thanking Cape Roger Curtis Joint Ventures for the information.

Public Comments

Ross Mc Donald, Eagle Cliff area resident noted that the Approving Officer could turn down the subdivision application for public interest or technical reasons. The power for development rests with the Municipality and a decision could be made to rezone the property permitting only a single lot so that there would be room to negotiate a new plan.

Richard Osler noted he had left his residence on Whitesails Drive because of worry over the proposed subdivision. The *Official Community Plan* had not been reviewed and would be the document to reflect social consciousness. The *Land Use Bylaw* revised in 2002 did not reflect public interest at that time or now. He suggested that as a first step the Municipality should turn down the application and propose a new development for Cape Roger Curtis.

Gordon Reid, 17 year resident with a background in real estate thanked the Planner for rejecting the application as it was not in the public interest. He noted that generally 30% of land is put aside for parks. Covenants would protect riparian and coastal bluff areas but not that of the public interest. He believed that at least one third of the land should be set aside for environmental and public interest reasons.

John Rich long time resident involved with development issues in the past, urged the Approving Officer not to approve the subdivision. He made the following points:

- Cape Roger Curtis is the largest undeveloped property between Powell River and the Mainland. Approval of this subdivision application would forever foreclose a comprehensive plan;
- *Official Community Plan (OCP)* policies of clustering and trails have not been met.
- Also does not meet OCP statements for careful planning of large tracts of lands have not been met, nor has the Islands Trust mandate to preserve and protect for residents of the entire Province;
- Public Interest - there is a clash with recreation namely the enjoyment of the wild coast, which will be gone;
- Both proposed accesses are inappropriate;
- Impact on entire Island road system has not been considered. Roads are being wrecked and will be taxpayers who pay;
- The handout prepared by Cape Roger Curtis Joint Ventures provides further reason to reject the subdivision. It is inappropriate to accommodate strategic objectives of the developer.

Asha Rehnberg, Lenora Avenue resident, speaking as a Board Member of Bowen Island Conservancy noted the following:

- The Conservancy has been looking to protect the ecological value of Cape Roger Curtis since 2000;
- Biophysical Summary has been prepared by Conservancy Board members. Request the Municipality not to rely solely on developer's environmental assessment. More work is needed to be done regarding location of some of the rare species along the coastline;
- The Conservancy has been working with the Municipality and the Islands Trust to secure permanent protection for Fairy Fen. There is concern that the Thomson Road extension would have substantial impacts on Fairy Fen namely sedimentation and run off from the roads. The Conservancy urges the Municipality not to

- approve an extension to Thomson Road;
- The concept of a Cape to Cove Greenway will cement the quality of life for generations to come. The Cape is a very important end point for humans and animals;
- Request that the Municipality find a way to connect the Cape property with rest of the Island in a meaningful way.

Ian Thomson, Tunstall Bay resident, spoke against the approval of the proposed subdivision and agreed with Mr. McDonald's suggestion that the Municipality should take back the planning process. He noted the following:

- Public Interest is clear - Cape Roger Curtis is the last of its kind;
- The Neighbourhood Concept Plan - in the Spring and Summer of 2004 pulled together people. In 2005 the group was reconvened and developed initial terms of reference for the development of Cape Roger Curtis, gave some recommendations and defined the public interest. The group requested that no substantial disturbance of land be undertaken during the planning process. The applicant withdrew from the process as the group was deemed to be unrepresentative of community interest;
- Council's definition of public interest with specific conditions is much aligned with that group's interests;
- The property was sold under market price with the understanding that a large percentage of the land would be set aside for protected area. The Municipality should uphold the public interest of the residents of Bowen Island, which has been previously defined.

Rory MacIntosh, 12 year resident believed that the community should say no to the development of Cape Roger Curtis. Impacts on Islanders would be numerous such as higher taxes and longer ferry line ups.

A resident of Creek Road reminded the Municipality that the Environmental report prepared by the consultant hired by Cape Roger Curtis Joint Venture was only a preliminary report. Where are the follow-up studies?

Berni Claus, Woods Road resident noted that he shared the sentiments of previous speakers. He inquired regarding opportunities for the Public to comment and whether the proposed subdivision could at a later date be subdivided again. The Planning Consultant responded that zoning could change and covenants on title could be removed.

Inke Zimmerman believed that discussion with the developer should take place regarding the issue of developer's rights versus public rights.

Kim De Sante, Whitesails Drive resident advocated the preservation of Tunstall Bay/ Whitesails neighbourhood. He believed it was important to preserve the present communities. He inquired regarding the rationale to make a new development if it would wreck an existing community. He noted the following:

- An expanded Whitesails Drive would mean that houses would be sitting almost on the sidewalk;
- Traffic impacts - a subdivision of 20 lots would mean 40 cars but in five years there could be further subdivision with a risk of making the situation exponentially worse;
- Such a large development requires a comprehensive plan. Otherwise it would be an injustice to such a beautiful piece of land.

Barbara Waller noted her agreement with preserving Cape Roger Curtis for public interest reasons. However the land is privately owned and the owners have rights. She inquired regarding the rights of landowners if the subdivision was rejected. In response to Ms. Waller's query, the Planning Consultant noted that if the plan was rejected it could result in two possible actions. The owner could revise the proposal and find common interests. The other alternative would be not to agree with the Municipality's rationale for rejection and seek legal recourse.

Jean Jamieson reviewed various reports beginning in 1970 and including the *Official Community Plan* that acknowledged the need for special protection of Cape Roger Curtis lands. She also noted the mandate of the Islands Trust to preserve and protect the unique environment of the Trust area for all British Columbians now and in the future. If this application was accepted, the development would destroy that which is irreplaceable, which would be heart breaking.

Steven Foster, three year resident, noted that the owners of the property had previously admitted the present plan is the least imaginative plan for the land and had indicated they would be open to a comprehensive rezoning if a PLR was granted. The community wants something else. Why not attempt to come up with a plan that would satisfy the owners and the public. In response to Mr. Foster, Dan Grimble a representative of Cape Roger Curtis Joint Venture noted that the Municipality's PLR letter was too vague and too subjective to be relied upon.

Rob Cairns, a mediator and three year resident posed the following questions:

1. If the subdivision plan is turned down on the basis of not being in the public interest, what kind of legal challenge might be brought;
2. The nature of the exploration of other planning options mentioned in the handout provided by Cape Roger Curtis Joint Venture

The Planning Consultant noted not being a lawyer, he could not respond to the legal implications. As to other planning options, the Municipality had made attempts to encourage the owners to consider a comprehensive plan.

Andrea Kaufman, Ocean View resident, commented that her desire to reside on Bowen Island was based on her perception of Bowen Island as a community which embodied social consciousness, fair play and democracy. This community has heart. It seems the voice of the people is not being heard. What makes Bowen precious is what happens in the community and its relation with the Municipality. What will the children learn?

Bud Long, Bowen Bay resident of 14 years, commented on the rights of existing owners. He noted the following:

- The owners' expectations in a rezoning process were to be as well off financially as with the existing zoning. Had the Municipality provided such a commitment? The Planning Consultant responded that no commitment had been made;
- The present owners purchased on the basis of existing zoning, which had been approved by the Islands Trust years ago and reaffirmed by Council. So it was reasonable for owners to expect certain rights;

- Zoning is an important device where anything that happens (such as public interest) should be subject to condition that the owners be no worse off financially than when they purchased the land.

Nerys Poole, Eagle Cliff resident and retired lawyer who worked as an administrative lawyer in the Office of the Attorney General, defending decisions government people make, commented as follows:

- Discretionary decisions are the most easy to defend;
- A judge of the Supreme Court would not look at all the reasons and second guess as to whether the subdivision should be approved, rather a judge would look at the law and whether the law had been correctly applied. The Judge would look at reasons provided by the Approving Officer. Discretionary decisions do allow for a lot of deference from the courts;
- Issue of Public Interest, *Section 85.3* of the *Land Title Act* - the Approving Officer may refuse a subdivision plan if it is against the public interest;
- *Section 86* – lists reasons to support the refusal of a subdivision plan – Some of them applicable to this plan would be: “*If the anticipated development would adversely affect the natural environment*”. Then one would look at the OCP and the development permit area guidelines where the reference is found to the sensitive areas, the wildlife and the natural environment;
- Another section the Approving Officer would consider and another basis for refusing the subdivision application, would be “if the development would injuriously affect established amenities of adjoining properties”;
- Or, if the land is subject to, or could reasonably be expected to be subject to, flooding, erosion or land slides and there is clearly a problem on that land;
- *Section 87* provides further support for the Approving Officer to refuse a subdivision plan – “if the plan does not conform to all applicable Municipal, Regional Districts or Improvement District bylaws.” The *Official Community Plan (OCP)* is a bylaw. The Municipal Planner in his referral report on the 60 lot subdivision recommended rejecting the 60 lot proposal stating the proposed plan does not conform to the OCP. Sufficient reason for refusing;
- Also if the Development Permit area is a consideration, the Approving Officer must look at that also. Michael Rosen, Deputy Approving Officer in his PLR letter

stated that *“the Approving Officer would have to ultimately make the determination as to whether a final plan of the proposed subdivision is contrary to the public interest”*

- Ms. Poole believed now was the time to make that statement. Everything heard tonight indicates the public interest and that the public is strongly opposed to this 58-lot proposal. The public in addition to its elected officials has provided the Approving Officer with more than enough reasons for rejecting it. She requested Ms. Hadford as the Approving Officer to consider all the comments heard and to say no to this proposal as it does not meet the public interest.

Brian Hodgins, Eagle Cliff resident noted his agreement for rejecting the present subdivision on the grounds that it does not conform to the OCP. But where do we go from here? It will be necessary to have processes in place. When everyone is at the table all have something to lose. The human impact needs consideration.

Paul Milborn, architect for 25 years, noted that the jewel of Cape Roger Curtis with its south facing bluffs had a unique and fragile system that had taken ten thousand years to develop. In 50 years time when a house comes down there will be nothing left. But this subdivision will have wiped out a ten thousand year ecology with 35 year fences and roads. The public is not interested in a land grab but rather the public objects to the proposed plan for developing the land.

Dave Van Berckel, Cates Hill Road resident felt insulted and manipulated by the process of a response to a PLR that did not address the issues. He believed that the Municipality should reject the 58 lot proposal and challenged Council to take back the process.

Andre Chollat landscape developer for 20 years expressed his surprise with a plan that did not represent the landowners desire to come into the argument presented by the community. He believed the landowners were just interested in pushing the process. Owners have their rights but what would remain for future generations requires consideration.

Sylvaine Zimmerman, Deep Bay resident commented on her past involvement with the review of the OCP and trying at that time to find ways to mitigate potential problems and retain Cape Roger Curtis land for the public interest. She

believed it was more than just preserving the ecological areas but it was also about the use of this property for recreation - to enjoy nature and feel you are in nature. She expressed her gratitude to Ms. Poole for informing those present regarding what the options were for the community. If public interest is not expressed by numerous meetings what is? Are not social justice and long term planning important? How many times does the public have to say the same thing? She requested that Council take back the process and rezone/ down zone the land.

A resident believed that it was a situation where a few people would make a profit against the entire community including the children benefiting.

Sara a 17 year resident who had explored the Cape when she was very young, inquired regarding whether there was a process of envisioning going on. It is clear what the public interest is. Houses built on ten acre lots would be expensive at a time when affordable housing is needed so that young working adults could expect to live here. Then there is the impact on the roads to be considered.

Chris Wilson, Whitesails Drive resident urged people present to submit their comments in writing to the Approving Officer as it was most important in any legal matter to show to the Court that the Approving Officer's decision was made in good faith.

Two residents provided the following comments:

- The present application - It is easy to make a case for not being in the public interest. Council's request for a comprehensive planning process, that is in the public interest. This application does not come anywhere near meeting that;
- Council's statement represents the public interest for trails, parks and clustered homes;
- Cape Roger Curtis Joint Venture is urged to develop a comprehensive zoning. Wolfgang Duntz in the past had provided such an option in plans A, B and C.
- The present application is the choice of the Cape Roger Curtis Joint Venture but they have another choice to make by engaging in a more comprehensive plan. The Approving Officer is urged to reject this plan in the interest of the public;

- Younger generations and raising a family on Bowen – concern regarding people coming with money and building monster homes;
- Mr. Duntz’s promise to the Cape Roger Curtis Society to dedicate parkland.

CAO Hadford thanked people for coming and requested that any written comments be submitted to the Municipality by January 31, 2007.

ADJOURNMENT

The meeting adjourned at 9:55 p.m.