

BOWEN ISLAND MUNICIPALITY
REPORT

Date: 28 August 2009

To: Mayor and Council

From: Hendrik Slegtenhorst, Chief Administrative Officer

Re: CAO Objective #1, Cape Roger Curtis
Monthly Report for August, 2009

This file is of long standing and complex, and now subject to severe deadlines. There are significant polarizations on the topic within the community and within Council. As indicated by Mayor and Council during the determination of the 90 days' objectives, this report is also to be made available to the public; hence, I am posting it to the municipal website.

The subdivision application was filed on 3 June 2009, and the statutory requirement for the Approving Officer's decision was 3 August 2009. The former CAO received a two weeks' extension to this to 17 August 2009.

My own appointment with the Municipality commenced 13 July 2009, thus providing a mere 35 calendar days, and, in practical terms, 25 calendar days, to familiarize myself and respond to the subdivision application, while nonetheless managing all other responsibilities of the appointment, including several Council sessions, the creation and facilitation of a Council strategic retreat, the vacancy or absence of four senior staff appointments, a second contentious project in the form of the artificial turf field, a mediation process relating to the Hood Point water system, and overall management of municipal staff and operations.

On the first day of my appointment, at the regular session of Council of 13 July, Council had before it consideration by second and third reading of a delegation bylaw that would have removed development permit approval from staff and placed it with Council. Notwithstanding any intrinsic merits to such a consideration, the perception forced itself forward that this could be construed as a deliberate intent to obstruct development at Cape Roger Curtis, and hence to impede statutory and operational processes. However, a motion of deferral of these two readings was placed on the floor, and carried, with Mayor Turner, and Councillors Poole and Hooper, in opposition.

On 15 July, the Approving Officer convened a lengthy briefing, for his purposes, on the file by departing CAO Bryan Kirk, resigning planner Jason Smith, and legal counsel Chris Murdy. This included review of the pertinent legislation, the Neighbourhood Plan, the subdivision application, and the development permit process.

On 18 July, discussions were conducted with Mayor Turner, and Councillors Poole and Hooper, on Council's consideration of the development permit delegation by-law. It was agreed that allocation of the authority to issue development permits would be assigned to the CAO, pending Council's approval at a forthcoming Council session.

On 20 July, a further discussion was conducted by the Approving Officer with Jason Smith.

At the special Council meeting of 20 July, Council considered and passed a motion to defer further readings of the development permit delegation by-law.

On 23 July, the CAO (*not* the Approving Officer) and legal counsel Chris Murdy met with Council in closed session to receive individual councillors' perspectives not on the subdivision process but on the Cape Roger Curtis matter as a whole.

In consultation with Jason Smith, Michael Rosen, and Chris Murdy, the first draft of an Approving Officer decision letter was created on 23 and 24 July. Mr. Smith's schedule thereafter precluded any further work with the Approving Officer, and the latter date essentially represented his departure from work on this file.

On 25 July, the CAO visited Cape Roger Curtis for several hours to familiarize himself with the site.

At the regular Council meeting of 27 July, the delegation of development permits was assigned by resolution to the Chief Administrative Officer, and further consideration of delegation in general was postponed by resolution to the future. A minority of Council preferred this further consideration in the fall, but this deadline was not specified by resolution.

On 28 July, the Approving Officer convened a meeting in West Vancouver with representatives of the developer and with Michael Rosen and Jason Smith. Discussions were substantive and progressive.

As a consequence of that session, the Approving Officer wrote to Mr. Eanson Ho that,

"[a]s discussed, I am suggesting that an extension to the time for response to the subdivision application be considered, the extent of which will need to be the subject of further discussions between myself and you and your clients. Were an extension agreeable, I will have provided to you a comprehensive letter of technical concerns on or about August 31st ... to facilitate process and to work through a preliminary schedule for resolution of the concerns. I believe such a process removes the adversarial component implicit in a rejection of the request, as currently legally required by August 17th, and enables us to work together collaboratively and regularly to achieve more promptly any necessary result.

"I have also advised that from my own professional perspective I need to ... to fulfill my perceived obligation to the community to hear its views through a citizen engagement process....

"I also look forward to being able to meet Messrs. Ho and Lee on August 4th."

At the Council meeting of 28 July, Council affirmed that the CAO's primary objective through 31 October 2009 is Cape Roger Curtis. As had been undertaken by the Approving Officer, Council's decision was communicated to Mr. Ho.

The draft environment report was received from Dr. Diane Urban on 29 July.

The Approving Officer conducted further review of the file on 31 July.

On 4 August, the Approving Officer met at some length, in Vancouver, with the proponents, Mr. Don Ho and Mr. Edwin Lee. Mr. Eanson Ho also participated in the discussions, which were cordial, substantive, and progressive.

Later on 4 August, Mr. Eanson Ho communicated to the Approving Officer that the proponents had agreed to an extension of decision to 9 September 2009, and confirming the latter's suggestion that a bilateral meeting be convened on 2 September to review the comprehensive concerns to be communicated by letter from the Approving Officer on or about 31 August. The 9 September date was subsequently adjusted to 11 September to permit the incorporation of the advice of the Municipality's legal counsel upon his return from a vacation scheduled for 24 August to 8 September.

Statutory and regulatory contexts were reviewed by the Approving Officer on 6 August.

The Approving Officer was out-of-country from 7 to 16 August for an engagement already planned for several years and that Council had long been aware of.

On 11 August, Councillor Poole stated to the CAO a preference for rapid resumption of review of the development permit delegation by-law. This was 14 days after Council had dealt the matter.

Mr. Jason Smith's employment with the Municipality concluded on 14 August.

A first draft of the comprehensive concerns letter was created by Michael Rosen, Chris Murdy, and the Approving Officer on 17 August.

The final version of the environmental assessment was received from Dr. Urban on 17 August.

Mr. Rosen was out-of-province from 18 to 24 August.

On 18 August, the Approving Officer reviewed the public comments received until 10 July by former CAO Bryan Kirk.

Further review of the "public interest" and related matters, with particular reference to case law, was conducted by the Approving Officer with legal counsel Chris Murdy on 18 and 19 August.

On 21 August, the Approving Officer announced the holding of a meeting to invite public commentary, to be held on 3 September. Further preparation for this meeting was conducted on 24 and 25 August.

On 26 August, the Approving Officer met in West Vancouver with Michael Rosen to complete the comprehensive concerns letter. Further review was conducted by the Approving Officer on 27 August; this was inclusive of a substantive briefing for Mayor Turner.

On 27 August, Councillor Hooper stated to Council and the CAO a preference for rapid resumption of review of the development permit delegation by-law. This was 30 days after Council had dealt with the matter.

On 28 August, the Approving Officer released to the proponents, Council, and the public, the letter of comprehensive concerns, with eight supporting reports. The proponents will be responding no later than 4 September. The Approving Officer continues to prepare his final decision letter for potential release on or about 11 September, should the proponents prefer and elect, as is their right, to adhere to that date.