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To: Gabriola Island Local Trust Committee

From: Patricia Maloney, MCIP

Re: Communication Towers and Antennae

In April 2009 community members brought the issue of communication towers and antennae to the attention of the Local Trust Committee (LTC). While the primary concern raised at that time was the potential health impacts of communication towers and their radiation emissions, there were also previous concerns raised regarding the aesthetics of communication towers.

This staff report provides a history and research on the issue of communication towers on Gabriola as well as providing options for LTC consideration.

BACKGROUND

At the April 16, 2009 LTC meeting there was a delegation from Gabriolans for Environmental Awareness. The delegation asked for:

- A community consultation policy for both new and existing communication towers,
- A bylaw giving the Islands Trust power to protect the community from further communication towers, and
- In the interim – an immediate resolution from the Gabriola Island Local Trust Committee that the LTC will not consider any further rezoning applications regarding any telecommunication tower or antennae, until such time as we can be assured that the safety of Gabriolans is protected.

As a result of this delegation, the Gabriola Island Local Trust Committee passed the following resolution:

GB-049-2009 It was moved and seconded that the GBLTC request staff advice on the recommendations presented by Gabriolans for Environmental Awareness in its April 16, 2009 presentation.

Subsequently, at the May 14, 2009 Gabriola Island Local Trust Committee meeting the following resolution was made:

GB-064-2009 It was moved and seconded that the Gabriola Island Local Trust Committee request that staff draft a standing resolution on communication towers for Local Trust Committee consideration.

Due to staffing issues, this resolution was not pursued until November 2009 when Planner Maloney met with representatives from Gabriolans for Environmental Awareness, contacted Industry Canada and researched other jurisdictions.

DISCUSSION

Previous Staff Response

As a follow up to the May resolution and in response to additional communication from Teresa Beers, staff reviewed the position of the Local Trust Committee and the Islands Trust (IT) regarding telecommunication towers. This response looked at the Industry Canada regulations, the current Official Community Plan and Land Use Bylaw and what could and could not be regulated by the community.

Summary of Industry Canada Regulations

While Industry Canada (IC) information seems to imply that the local jurisdiction has significant control over the location of communication towers, it is very specific as to what they can and cannot control. In their article called *Canadian Municipalities and the Regulation of Radio Antennae and their Support Structures* (found on the web site <http://www.ic.gc.ca/eic/site/smt-gst.nsf/eng/sf09388.html>) they address specifically what local land use authorities (referred to as municipalities) can and cannot do. Within this context the Gabriola Island Local Trust Committee must follow the same rules as a municipality. The following is a summary of the regulations:

Items Municipalities cannot control:

1. Municipalities cannot manage the use of the radio spectrum. Therefore, bylaws that contain interference rules have no force or effect.
2. Despite the issues of local safety involved, municipal by-laws may not lawfully set or police limits on the nature or duration of worker or citizen exposure to radio frequency energy.
3. Local land use bylaws cannot prohibit the siting of either a licensed or unlicensed antenna. Nor can they require that the antenna be co-located on an antenna farm or other manner.
4. Municipal rules may not expressly control or limit the type or height of an antenna system or support structure, for aesthetic or any other purposes.
5. Local administrations have no lawful jurisdiction over the structural integrity or adequacy of an antenna or its support structure.

Items Municipality may regulate:

1. Local governments have full control over land in which legal title is vested with the corporation of the municipality, including designating such lands as antenna farms; refusal to approve building permits for any other structures lawfully within their jurisdiction and control access to the site by such leases.
2. When an antenna or antenna support structure is to be affixed to or mounted upon a building or structure, which is subject to municipal land use control, a local building permit must be secured in advance of construction or affixation. The municipality can then control structural issues but not as a means of preventing or discouraging the particular choice of site.
3. When structural features are incorporated into or added onto, or co-sited with an antenna and support structure, which are not a natural and necessary part of the

- antenna installation (production studios, scenic look-offs and restaurants, offices, warehouse structures, etc.), those features are subject to local regulation irrespective of the radio station. If such features would be contrary to existing municipal planning, permission to add them can be denied.
4. If an antenna is proximate enough for an antenna fall, or falling ice or other debris to cause property damage to neighbouring land holders, third party liability insurance, commensurate to the risk realistically posed, may be required.
 5. When an antenna (and support structure) is to be sited within, or immediately adjacent to, an area where a strong and compelling local interest exists in the aesthetic character of the area (ie: residential, heritage or developed recreational area), a local government may require reasonable accommodations to the siting, painting or screening of the antenna and support structure. The orientation of an antenna on its site can be controlled to minimize the visual impact, antennae and support structures can be painted to blend with their background, and natural and man-made screening can be used to screen a view from a particular perspective.

Letter of Understanding between IC and IT

A letter of understanding exists between Industry Canada and the Islands Trust Council. This understanding only applies to towers over 25 metres in height. It appears concerns expressed by the community include towers or antennae of less than 25 metres in height.

The letter of understanding states that:

- Industry Canada will use best efforts to advise applicants that they are required to consult with the local trust committee
- The LTC has 60 days to make their views known to both the applicant and Industry Canada or the application is deemed to be acceptable.
- If the LTC objects to the application, Industry Canada will provide an additional 60 days for the LTC and the applicant to come to an agreement.
- Industry Canada will meet with a LTC and discuss the application before finally approving it if there are still concerns

Other jurisdictions have gone further to provide residents with “peace of mind” and ensure there are input opportunities. For example, Salt Spring Island Local Trust Committee has adopted a Procedural Guideline for Cellular Phone Antenna Proposals (2001).

Official Community Plan

Currently the Official Community Plan (OCP) has no policies regarding telecommunication towers or antennae. Since adoption of the existing OCP, many local governments have worked with Industry Canada to develop their own guidelines and regulations. The Federal government has demonstrated a commitment to working within them, with the overriding codicil that the federal government retains total jurisdiction and can choose to approve any tower/antenna anywhere without local community endorsement.

Land Use Bylaw

The Gabriola Island Land Use Bylaw (LUB) implicitly allows public utilities and their buildings and structures as permitted uses in all zones with the exception of parks and ecological reserves. Therefore, any application that is submitted, is automatically conforming to the bylaw.

Section B.1.1	Uses, Buildings and Structures Permitted in Any Zone
Section B.1.1.1.a.ii	public utilities, except in public parks and ecological reserves
Section F.1 Definitions	public utilities means a use providing for facilities for water, sewer, electricity, telephone and broadcast transmission provided such as use or facility does not have or require on-site staff to operate the utility, and is established by one of the levels of government, a corporation or company regulated by a government commission, but excludes radio or television broadcast towers and energy generation or production for sale off the lot on which it is produced.
Section B.1.1.2.b.iv	buildings and structures to accommodate public utilities serving the Gabriola Island Trust Committee area except in public parks and ecological reserves

Building Permit

The Regional District of Nanaimo issues building permits for Gabriola Island. Without relevant OCP policies to guide development of communication towers, they have no direction on how to manage these applications. In addition, as long as the tower/antenna is not proposed in a park or an ecological reserve, the tower/antenna conforms to all land use regulations.

Other Jurisdictions

The impacts of antennae installation and output are becoming more widely acknowledged and the need for appropriate community process and discussion is increasing. The following provides three examples of local governments that adopted guidelines and policies in order to have more influence regarding the establishment of communication towers and antennae.

Salt Spring Island

The Salt Spring Island Local Trust Committee developed a Cellular Antennae Proposal Form and Procedural Guidelines for communication towers on Salt Spring Island.

The Proposal Form requests information in three areas:

1. Predicted EMR Power Density – no telecommunication antenna or facility emitting Electromagnetic Radiation (EMR) should be installed within 500 metres of any use, building or structure where there is continuous human activity.
2. Aesthetic Impacts – aesthetic/visual impacts of antenna towers to be mitigated – attach to existing is preferred over new and colour, height, views, and other design considerations must be clearly outlined
3. Natural Environment Impacts – impacts to environment should be mitigated and alternative sites may be required, and cannot be constructed in wetlands, environmentally sensitive eco systems, areas of high bio-diversity, environmentally sensitive habitat, Garry Oak habitat and on shorelines.

In addition, the Procedural Guidelines requires public consultation and sets out a framework for timing and advertising in local newspapers. It will be the LTC that considers public input and determines if any changes are required to the proposal.

City of Colwood

The City of Colwood developed a policy regarding antenna structures:

The City of Colwood does not support the installation of devices in areas where people live, work or attend school. Further, the City's intention is to work towards having the power output and power density of the existing devices reduced to a level recommended by current studies by independent scientists.

However, the City of Colwood is obliged to consider proposals for devices. In doing so it requires proponents planning to install, replace, modify (which includes increasing the height of existing towers) or activate any device whatsoever to adhere to the following criteria: (upon which the City outlines a significant number of items that generally fall into the categories of proposed new installations subject to review; description of proposed new site/device; requirements for existing and newly installed infrastructure; design and location; provisional emergency use priority; land use zoning; and community consultation)

Community of Chatham Kent

The introduction to the Chatham Kent Communication Towers web site states:

As demand increases for mobile phones and new telecommunication services, additional towers are required to maintain and improve the quality of this service. Industry Canada is the Federal Department responsible for licensing and approving telecommunication equipment and facilities in Canada. Local zoning by-laws cannot prevent a telecommunication tower from being built as the Federal Government has the final authority under the Radiocommunication Act. Industry Canada however, recognizes the importance of considering the potential impact of communication towers on their surroundings and that the local community should have input on the location of new towers. As a result, they require proponents to consult with the Municipality and they encourage property owners to make their concerns known to the local municipal officials.

The document goes on to provide guidelines for when consultation is required (towers over 16.6 metres in height) and requirements for public meetings and information provided to the municipality.

OPTIONS

The Local Trust Committee, while not being able to prohibit the installation of communication tower, can influence the location, power output, appearance and other concerns of these antennae/towers.

While the OCP/LUB Review will provide a public forum for the discussion of this issue, the adoption of these documents is anticipated for the late summer of 2011. As an interim measure the LTC could consider a standing resolution that provides some guidance and direction to other government agencies and the proponents.

RECOMMENDATION

Staff recommends that the Gabriola Island Local Trust Committee:

1. Adopts the following standing resolution:
 - Proposals for any new or expanded communication towers and antennae require an application to the Gabriola Islands Local Trust Committee;
 - The application process shall comprise a public consultation component, which includes at least one notification to neighbours, one public meeting and one advertisement in both local newspapers;
 - The public consultation process shall be determined by the Local Trust Committee after initial review of the proposal, however, as a minimum, the proponent shall give written notice to Islands Trust Northern Office staff, all owners and residents of properties within a 500 metre radius of the subject property where the facility is proposed and the Snuneymuxw First Nation. The required notice shall include the following information:
 - The proposed location of the tower on the subject site,
 - A description of the predicted power density level of the antenna/tower,
 - Methods to mitigate any aesthetic or visual impact,
 - Description of the natural environment, any sensitive eco systems or other important habitat areas within 120 metres of the subject property and mitigation of impacts to such areas,
 - Physical details and example illustrations of the tower including its height, colour, type and design,
 - The time and location of a public meeting and advertising,
 - The name and contact information of the contact person employed by the proponent,

- The name and all contact information of the Islands Trust planning staff available for public comments and questions regarding the proposal.
 - The proponent may be required to enter into a cost recovery agreement with the Islands Trust in order to offset application processing costs incurred;
2. Instructs staff to circulate the adopted standing resolution to Industry Canada, the Regional District of Nanaimo, the Ministry of Transportation and the Vancouver Island Health Authority, Gabriola Fire Department and the Snuneymuxw First Nation.
 3. Instructs staff to post the adopted standing resolution on the Islands Trust web site.
 4. Instructs staff to include this topic in the OCP Review, through public consultation, and consider additional policies to regulate and direct new communication towers on Gabriola Island.
 5. Directs the Land Use Bylaw review to, through public consultation, add definitions for communications towers in the land use bylaw.

Respectfully submitted by:

Patricia Maloney, Island Planner

Date