



# STAFF REPORT

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May 28, 2010

File No.: SP-04

**To:** South Pender Island Local Trust Committee

**From:** Robert Kojima  
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**Re: Zoning and Density Review – Preliminary Report**

## **BACKGROUND:**

The Local Trust Committee (LTC) has requested that staff provide a report identifying issues associated with the current subdivision potential in the Rural Residential, Agriculture and Forestry zones.

## **SUMMARY OF ISSUES:**

In 2009, the LTC requested that staff prepare a community profile and build-out summary. That analysis indicated that, based on current zoning, there were a significant number of additional lots could potentially be created: approximately 200 additional lots, primarily in the RR zone or split-zoned lots, and over half of the potential new lots in what was termed the Gowlland Point area (lots along Gowlland Pt Road – east of Poet's Cove). In addition, the analysis indicated that approximately 20 of those additional lots could be created in each of the Agriculture and Forestry zones. This analysis was based on lot area only, with no consideration of site-specific constraints or ability to configure lots in an actual subdivision layout; however, it provided an indication of the relative extent and general location of future development.

At the meeting of May 4, 2009, the LTC revised its Work Program to make 'Zoning and Density Review' its top priority. Specifically the LTC requested that staff provide a report identifying issues with the current subdivision potential in the RR, AG and F zones.

1. Rural Residential Zone: there are a number of issues associated with the current subdivision potential in the RR zone. First, in terms of overall subdivision potential, the majority of the potential additional lots permitted by the current zoning would be wholly or partially within the RR zone. If the LTC is concerned

generally about the impacts of the overall number of potential future lots, addressing future subdivision in the RR zone is crucial.

Second is the location of potential new development: as noted above the majority of the development potential would be off Gowlland Point Road, the area of South Pender that is furthest from where current services are located on North Pender.

Third, the current bylaw establishes different minimum and average lot area requirements for lots having ocean frontage from those without ocean frontage. The current regulation reads:

- (8) Subject to subsection 5.1(10), the minimum lot and the average lot area requirements for lots having ocean frontage are 0.4 hectares (1.0 acre).
- (9) Subject to subsection 5.1(10), the minimum lot and the average lot area requirements for lots without ocean frontage are 0.8 hectare (2.0 acres).

This regulation as currently drafted raises several concerns:

- a. The current wording is lacking in clarity. It has been interpreted, based a conservative reading and on past practice and versions, as meaning that the 1 acre minimum average applies only to new lots having an ocean frontage created by a subdivision and those new lots without ocean frontage in a subdivision must meet a 2 acre minimum average. However, the wording could be read as inviting an interpretation that the 1 acre average refers to a parent parcel having ocean frontage, with a 2 acre average applying to parent parcels without ocean frontage. This does not appear to be the intent and would not make sense in the context, but the OCP does not provide clear guidance either. At a minimum, the LTC should consider amending the LUB to provide certainty in the wording in order to reduce the risk of challenge.
- b. The current regulation, by establishing a smaller lot area for new ocean front parcels, encourages 'creative' subdivision lot layout in order ensure that the maximum number of parcels have ocean frontage so as to increase the number of lots. It also creates an incentive for a subdivision applicant to apply for speculative variances to provisions such as depth to width ratios, where the result of a successful variance would be additional lots. In terms of calculating development potential, we have had to assume that future subdivisions will attempt to maximize the number of lots and thus assumed that all lots with current ocean front would be subdivided in a manner that results in all new lots being ocean frontage (obviously this will not be the case with all, but the level of analysis precluded any site specific considerations).
- c. I would assume that at the time the provision was adopted (it dates from the earliest subdivision bylaw in the 1970s), the rationale was to:

- Replicate the existing development pattern in new subdivisions.
- Encourage the retention of the larger lots inland for resource, environmental or aesthetic reasons.
- Allow landowners to retain the anticipated future development value of properties despite the introduction of subdivision regulations.

This is a provision that was common in some other subdivision bylaws at the time, but has largely, if not entirely, been removed in current land use bylaws. There is no obvious good planning rationale for encouraging smaller lots along the waterfront. Replicating the existing development pattern is not a sound rationale: the current pattern is not sustainable, encouraging automobile dependence, small-lot rural sprawl, and a single use development pattern. Nor would it provide any greater protection to sensitive ecosystems, groundwater or habitat; on the contrary, increasing the intensity of development near the ocean would be expected to have greater impacts on sensitive shoreline and foreshore ecosystems and to facilitate groundwater issues such as saline intrusion, particularly in the absence of development management tools such as development permit areas.

Options: there are four options that the LTC can consider in amending the minimum average lot area alone:

- a. Status quo: retain the zoning as is, but revise the wording to clarify any uncertainty as to the interpretation. This would not affect development potential.
- b. Amend zoning so that all lots in the RR zone have the higher minimum average lot area of 2.0 acres. This would result in a significant reduction in overall development potential.
- c. Amend zoning so that all lots in the RR zone have the lower minimum average lot area of 1.0 acres. This would not result in a significantly higher development potential than that calculated in the build-out, as it was assumed that all waterfront lots would maximize the number of new parcels with ocean frontage and there are few non-waterfront RR-zoned lots with subdivision potential.
- d. Create two separate RR zones (e.g. RR1 and RR2), one with a minimum average lot area of 1.0 acre and one with a minimum average lot area of 2.0 acres. In order to implement this, criteria would need to be established so that lots could be objectively zoned into one or the other zone. Any such criteria should be consistent with OCP objectives and principles and result in improved outcomes in terms of subdivision lot layouts, sustainability and overall land use patterns.

2. Agriculture Zone: this zone is contiguous with the Agricultural Land Reserve (ALR) and is intended to protect farm land, agricultural uses and the viability of farming. Most of the subdivision potential under the current zoning exists in a series of lots in the valley south of Spalding Road. The current minimum lot area in the A zone is 10 acres. This is significantly smaller than the minimum lot area in agricultural zones in other LUBs in the area: North Pender = 40 acres, Mayne = 20 acres, Saturna = 50 acres. Only Galiano has the same regulation. Based on the current 10 acre minimum lot size, approximately 20 additional lots could be created in the A zone and no single parcel could be subdivided into more than 3 additional parcels (no A-zoned portion of any lot exceeds 50 acres)

Any subdivision in the ALR must not only be consistent with LTC regulations, but must be approved by the Agricultural Land Commission on a case-by-case basis through application. At least one recent application for subdivision in the ALR on South Pender, which was consistent with the LUB minimum lot area, was not approved by the ALC regional panel. This indicates that future subdivision of lands in the ALR would be restricted, although not impossible.

There is no single recommended minimum lot area provided by either the ALC or the Ministry of Agriculture and Lands (MAL), any recommendations are specific to the area and the typical farm operations. If the LTC wished to limit subdivision potential in the A zone beyond the restrictions inherent in the ALR approval process, it would have to amend the LUB to increase the minimum lot area. Consultation with ALC and MAL staff would be the first step to determine if a consistent minimum lot size could be recommended.

3. Forestry zone: this zone encompasses lands that were formerly in the Forest Land Reserve (FLR) and other lands with a range of forest values. The zone is intended to maintain contiguous forest cover, support forest management activities, and protect individual trees or stands. Most of the land in the zone is located in the north-central part of the island south of Canal Road. The minimum lot size is 10 acres and the current subdivision potential constitutes approximately 20 additional lots, with about one-half of that in a single 148 acre split-zoned parcel.

It is not evident that the current 10 acre minimum lot size is inconsistent with the intent of the zone to both allow for forestry and to encourage retention of forest cover. This 10 acre minimum is the long-standing minimum area for rural lands throughout the islands. The fact that a significant portion of the lands in this zone also have Private Managed Forest Land (PMFL) status would discourage subdivision in any event: while the PMFL does not preclude subdivision, under the terms of the classification a landowner must have a minimum of 25 hectares of land that is managed as a single unit, and if the land is less than 50 hectares in size, at least 70% of the land must be in active forest production.

If the LTC wished to limit subdivision potential in the F zone, an amendment to the LUB to increase the minimum lot area would be required. Consultation with

PMFL Council should be considered in order to avoid any concerns with restrictions on forest management activities and to determine if a consistent minimum lot size could be recommended.

**STAFF COMMENTS:** the subdivision potential analysis undertaken last year has confirmed that there is relatively significant unrealized development potential, and that much of that potential is concentrated in both one zone (RR) and one part of the island. While much of this potential could never be realized due to site-specific constraints such as topography and lot configuration, the current zoning would result in on-going subdivision in a pattern that is not conducive to sustainable development over the long term. Broadly, there are two approaches the LTC can consider to address concerns related to the current RR subdivision potential:

- Reduce the development potential through amending the minimum average lot area either generally or in specific locations based on sound and objective criteria.
- Accept the current development potential and seek to address the sustainability concerns through changes to policy and regulations such as allowing services closer to existing and future population, considering density transfer options, and managing how development occurs through tools such as subdivision regulations and development permit areas.

The current provisions in the RR zone should be amended at the very least to provide certainty with respect to the application of the ocean frontage provision.

The LTC has also identified subdivision potential in the Agriculture and Forestry zones as an issue. The minimum lot area in the A zone is small in comparison to other bylaws, and is likely smaller than what the ALC would support. However, concern over subdivision potential is mitigated by the need for ALC approval of any application. Amendment to the Agriculture zone would need to proceed based on consultation with the ALC and MAL staff. The current minimum lot area in the Forestry zone is consistent with rural zoning generally, but likely small in comparison to other Forestry zones and to lot areas needed to maintain PMFL status. The requirements of maintaining PMFL status for those F-zoned lots in that classification would be a disincentive to subdivision in any case.

The LTC should consider the following options, and provide direction to staff accordingly:

1. Amend the RR zone provide certainty with respect to the application of the ocean frontage provision.
2. Amend the RR zone so that all lots in the RR zone have a 2.0 acre lot average..
3. Amend the RR zone so that all lots in the RR zone have a 1.0 acre lot average.
4. Develop criteria to apply to the creation of two RR zones.

5. Undertake consultation with the ALC and MAL to establish a recommended minimum lot size in the ALR.
6. Consider larger minimum lot size for lands in the F zone and undertake consultation with the PMFL Council to determine a recommended minimum lot size.
7. Identify potential amendments to policy and regulations that could mitigate the impacts of future subdivision.

Direction with respect to one or more of these options would require revisions to the LTC's work program to identify the initiatives as a priority.

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Respectfully submitted by:



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Robert Kojima

May 28, 2010

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