

5.4.i. Guidelines

LAND USE REGULATION GUIDELINES

Trust Council: December 11, 1993

A: PURPOSE:

1. Guidelines for the preparation of Official Community Plan Bylaws, other regulatory bylaws under section 29 of the *Islands Trust Act*.

B: REFERENCES:

1. *Islands Trust Act*
2. *Municipal Act: Part 26*
 - 2.1. Section 694(2)
 - 2.2. Section 723
3. Hornby Island Land Use Bylaw (1993)

C: POLICY:

1. OFFICIAL COMMUNITY PLANS

1.1. Basic Principles

- i. OCPs are optional. Part 26 bylaws can be adopted without an OCP being in effect.
- ii. The content of OCPs is limited by the *Municipal Act* and a court may strike down an OCP statement or policy that is not authorized by the Act.
- iii. OCPs will generally be regarded by the courts as statements of objectives or policy, not to be construed as would be Acts of Parliament. Thus, less precise language is permissible in an OCP than in a land use bylaw.
- iv. All subsequent bylaws must be consistent with the OCP. Where there is an "absolute or direct collision" between a bylaw and an OCP, the bylaw will be invalid.
- v. All OCP bylaws are subject to a public hearing.

1.2. Mandatory Contents

- i. Statements and map designations respecting:
 - 1) residential development to meet anticipated needs over 5 years.
 - 2) other land uses - present and proposed.
 - 3) sand and gravel deposits that are suitable for extraction.
 - 4) land subject to hazardous conditions or environmentally sensitive.
 - 5) public facilities including parks, schools, waste treatment and disposal sites - present and proposed.
 - 6) affordable, rental and special needs housing.
 - 7) location and phasing of any new roads, sewers and water systems.

1.3. Optional Contents

- i. Temporary commercial and industrial permit areas.
- ii. Development permit areas, including justifications for the designations and guidelines on the basis of which development permit conditions will be imposed, designated for:
 - 1) protection of natural environment.
 - 2) protection of development from hazardous conditions.
 - 3) protection of provincial or municipal heritage sites.
 - 4) revitalization of commercial areas.
 - 5) control of form and character of development.
 - a) commercial
 - b) industrial
 - c) multi-family residential

1.4. Points to Consider

- i. Under s.941, the trust committee can determine whether a subdivider dedicates land for park or pays cash in lieu if the OCP contains policies and designations respecting the location and type of future parks.

- ii. Under s.920, a development permit may include only conditions in accordance with stated OCP guidelines; enforceability of DP conditions depends on properly drafted OCP guidelines.
- iii. Density bonuses under s.904 can be anticipated by designating in the OCP areas where greater density can be accommodated on condition that an amenity or affordable or special needs housing is provided.
- iv. Density transfer can arguably be anticipated by designating in the OCP areas where reduced or greater density is appropriate in the context of a density transfer to preserve an amenity (no express statutory authority for this).

2. ZONING REGULATIONS

2.1. Basic Principles

- i. Zoning regulations must be sufficiently precise that an owner can ascertain how he/she may use higher land without reference to an official for bylaw interpretation, and must be expressly authorized in the *Municipal Act*.
- ii. Zoning bylaws and amendments are subject to public hearing except where consistent with OCP, when hearing may be waived (s.890(4)). If other regulations (parking, screening, subdivision servicing) are included in zoning bylaw they can be amended without a hearing.
- iii. Zoning bylaws (like all bylaws) must be consistent with any applicable OCP.
- iv. Any use may be prohibited in any and all zones.
- v. Zoning authority extends to water areas within the local trust area.
- vi. Vertical extent of zones may also be regulated.
- vii. Density regulation may include bonus density applicable on compliance with conditions related to provision of amenities, special needs or affordable housing, rental housing.
- viii. Bylaws do not apply retroactively; non-conformity as to use and non-conformity as to regulations are protected by s.911.
- ix. Bylaws cannot specify minimum standards under general power to "regulate", e.g. minimum height, minimum size: *Orr Development Co. v. North Vancouver*.
- x. Bylaws cannot restrict use of private land to a public use.

2.2. Scope of Zoning Power

- i. Use of land and density of use.
- ii. Use of buildings and structures and density of use.
- iii. Siting, size and dimensions of uses.
- iv. Siting, size and dimensions of buildings and structures.
- v. Location of uses on land.
- vi. Location of uses within buildings and structures.
- vii. Shape, dimensions and area, including minimum and maximum sizes, of parcels created by subdivision.

2.3. Basis of Distinctions

- i. Parcel shape, dimensions and area may be different for different for different areas not necessarily coterminous with zones.
- ii. Other regulations may be different for different
 - 1) zones.
 - 2) uses within a zone.
 - 3) locations within a zone.
 - 4) standards of works and services provided.
 - 5) siting circumstances.
- iii. A regulation that makes distinctions based on some other criterion is not authorized, e.g. greater density for parcels that existed before a specified date.

2.4. Variances

- i. *Board of Variance:*
 - 1) siting, size, dimensions of building.
 - 2) hardship basis.
- ii. *Development Variance Permit*

iii. *Development Permit*

3. PARKING REGULATIONS

3.1. Basic Principles

- i. Parking regulations don't apply retroactively. Uses may continue with the same parking spaces as before the bylaw but cannot expand without complying with the bylaw.
- ii. Local trust committees cannot exact payment in lieu of parking spaces under s.906(2)(b) because they have no authority to hold property for off-street parking facilities as do other local governments under s.717(1)(a), and this authority cannot be implied from s.906(2)(b).

3.2. Scope of Authority

- i. Includes both off-street parking and off-street loading requirements.
- ii. May specify spaces for disabled persons.
- iii. May differentiate requirements on the basis of
 - 1) different uses.
 - 2) different areas.
 - 3) different zones.
- iv. May establish design standards for parking and loading areas including but not limited to
 - 1) size.
 - 2) surfacing.
 - 3) lighting.
 - 4) numbering of spaces.
- v. May permit off-site parking arrangements.

3.3. Variances

- i. *Development Variance Permit*
- ii. *Development Permit*

4. SCREENING REGULATIONS

4.1. Basic Principles

- i. Screening requirements may apply retroactively.
- ii. Highways from which uses are to be screened must be "designated" in the bylaw (at least named).

4.2. Scope of Authority

- i. May both "require" and "regulate", that is, set standards for screening.
- ii. May require screening of
 - 1) outdoor storage areas from everything.
 - 2) waste disposal sites from commercial and residential uses and highways.
 - 3) waste treatment sites from commercial and residential uses and highways.
 - 4) industrial uses from commercial and residential uses.
 - 5) commercial uses from residential uses.
 - 6) residential, commercial and industrial uses from highways.
- iii. May differentiate requirements on the basis of
 - 1) different areas.
 - 2) different zones.
 - 3) different uses.

4.3. Variances

- i. *Development Variance Permit*
- ii. *Development Permit*

5. DRAINAGE REGULATIONS

5.1. Basic Principles

- i. Cannot apply regulations retroactively; requirements apply only when owner carries out "construction".

- ii. Cannot conflict with Building Code as provincial law takes precedence.

5.2. Scope of Authority

- i. Requirements triggered by construction of paved area or roof area.
- ii. May require owner to dispose of surface runoff and stormwater.
- iii. Requirements could include conservation (cisterns), specifications for treatment of water before discharge.
- iv. May differentiate requirements on the basis of
 - 1) size of paved or roof areas.
 - 2) zones.
 - 3) uses.
 - 4) terrain conditions.
 - 5) surface water conditions.
 - 6) groundwater conditions.

5.3. Variances

- i. *Development Variance Permit*
- ii. *Development Permit*

6. SIGN REGULATIONS

6.1. Basic Principles

- i. Cannot prohibit a sign located on a parcel and relating to or identifying a use on it, but can regulate such a sign.
- ii. Cannot authorize a sign prohibited under s.140 *Motor Vehicle Act* (sign interfering with or resembling a traffic control device, light affecting visibility on highway) or *Highway Act* (light constituting a nuisance to traffic, sign on arterial highway, sign in sight triangle of intersection).
- iii. Cannot prohibit a sign placed under authority of provincial law eg. traffic sign.
- iv. Any sign may otherwise be prohibited.

6.2. Scope of Authority

- i. Regulations may deal with
 - 1) number of signs (e.g. one per parcel).
 - 2) size of signs (e.g. maximum 4' x 8').
 - 3) form of signs (e.g. no free-standing signs).
 - 4) appearance of signs (e.g. no plastic backlit signs).
- ii. May differentiate requirements on the basis of
 - 1) different zones.
 - 2) different uses.
 - 3) different classes of highways.

6.3. Variances

- i. *Development Variance Permit*
- ii. *Development Permit*

7. TREE CUTTING REGULATIONS

7.1. Basic Principles

- i. Trust committee cannot adopt bylaw that would have the effect of restricting any forest management production or harvesting activity on managed forest land or land with *Forest Act* license area.
- ii. Intended as a tool to manage physical hazards connected with tree cutting, not to deal with aesthetic or ecological issues.

7.2. Scope of Authority

- i. May only be exercised where Trust Committee considers there is a hazard of
 - 1) flooding.
 - 2) erosion.
 - 3) land slip.

- 4) avalanche.
- ii. Hazard identification must be based on expert evidence: *Valentine Lands v. Gibsons*.
- iii. Includes authority to prohibit tree cutting.
- iv. Bylaw may designate areas in which tree cutting permit is required.
- v. Includes authority to fix permit fee.
- vi. Includes authority to require applicant to obtain report from qualified person on effect of tree cutting proposed.

8. SUBDIVISION SERVICING REGULATIONS

8.1. Basic Principles

- i. Subdivision Regulation under *Local Services Act* governs if no bylaw is enacted.
- ii. Only minimum standards are authorized; hence approving officer can require higher highway standards under s.75 of *Land Title Act* without violating s.87.
- iii. Standards are not applicable to *Condominium Act* subdivisions.
- iv. Trust committees may not require excess extended services under s.939.

8.2. Scope of Authority

- i. *On site services:*
 - 1) minimum standards for highway dimensions, locations, alignment, gradient.
 - 2) requirements for highways, sidewalks, boulevards, boulevard crossings, transit bays, street lighting and underground wiring.
 - 3) requirements for water distribution system, fire hydrants, sewage system, drainage system, including connection to community water, sewer or drainage system.
 - 4) requirements for source of potable water at specified flow on parcels not served by community water system.
 - 5) triggered by application for subdivision or application for building permit.
- ii. *Off site services:*

- 1) may require services on highway adjacent to property being developed or subdivided up to centreline of highway.
- 2) must be directly attributable to the subdivision or development and coordinated with DCCs.
- 3) triggered by application for subdivision or building permit.

8.3. Variances

i. Board of Variance:

- 1) on site water, sewage and drainage services in agricultural and industrial zones only.
- 2) hardship basis.

ii. Development Variance Permit

iii. Development Permit

9. MOBILE HOME PARK REGULATIONS

9.1. Basic Principles

- i. Must be consistent with Building Code.
- ii. S.911 does not apply: no non-conforming use protection.
- iii. Regulations must be for the health, safety and protection of persons and property.
- iv. Regulations are subject to *Fire Services Act* and *Health Act*.

9.2. Scope of Authority

- i. Regulation of trailer courts, manufactured homes parks, campgrounds.
- ii. Regulation of both layout and construction.
- iii. Specification of facilities that must be provided e.g. laundry facilities, sanitary facilities.

9.3. Variances

i. Board of Variance:

- 1) siting of manufactured home.

- 2) hardship basis.

- ii. *Development Variance Permit*

10. SOIL REMOVAL AND DEPOSIT REGULATIONS

10.1. Basic Principles

- i. Bylaw prohibiting soil removal requires approval of Ministers of Municipal Affairs, Energy.
- ii. Bylaw setting fees for permit and fees for soil deposit or removal requires approval of Minister of Municipal Affairs.

10.2. Scope of Authority

- i. Soil includes rock, sand, gravel.
- ii. Bylaws may regulate or prohibit deposit and removal.
- iii. Bylaws may require permits, fix permit fees, fix deposit and removal fees.
- iv. Permit fees may vary with amounts deposited or removed.
- v. Deposit and removal fees may also vary with amounts deposited or removed.
- vi. Regulations and fees may be different for different areas.

11. DRAFTING AND FORMATTING GUIDELINES FOR LAND USE BYLAWS

11.1. Definitions

- i. Definitions in the *Municipal Act* and the *Interpretation Act* automatically apply.
 - 1) *Interpretation Act* includes definitions for British Columbia land surveyor, land, may, must, person, professional engineer, property, shall
 - 2) *Municipal Act* includes definitions for highway, land title office, occupier, owner, parcel, density, subdivision.
- ii. Definitions shouldn't be put in the bylaw if the ordinary dictionary meaning (e.g. Concise Oxford) is adequate. Use bylaw definitions only when you wish to artificially limit the ordinary meaning of an expression.
- iii. Avoid including regulations in definitions; e.g. "**Home Occupation** means a commercial or industrial activity carried out in not more than 40 percent of the area of residential

premises". The 40 percent rule should be included in the "Regulations" part of the bylaw dealing with home occupations.

- iv. The ideal "plain language" land use bylaw would have no "Definitions" section at all.

11.2. Table or Text?

- i. Zoning regulations can be made by incorporating into the bylaw maps, plans, tables or other graphic material.
- ii. Tabular formats are efficient and can be understood by planners and others who consult the bylaw frequently, but may be difficult for lay readers.
- iii. Tables require meticulously drafted interpretation provisions to give legal effect to the numbers and phrases in the tables.
- iv. Most lay readers of the bylaw will be best served by text rather than tables, setting out in each zoning district the zone-specific regulations as well as at least cross-reference to other regulations that apply generally in all areas subject to the bylaw, if the regulations are not repeated completely in each zoning district. The bylaw will be a longer document overall if it is prepared this way, but in many cases (particularly if footers are used) staff will be able to respond to inquiries by providing just a few pages of the bylaw.

11.3. Numbering and Pagination

- i. The WordPerfect 5.0 "paragraph number definition" menu facilitates preparation and amendment of text with automatic section numbering. Each Part, Section, Subsection, Article, Sentence, Clause and Subclause should have an individual number for ease of reference, and a consistent system should be used throughout the document.
- ii. If section numbering is used, pagination is not required.
- iii. If bylaw consolidations are prepared, sections that have been amended since the adoption of the original bylaw should be identified with the amending bylaw number and year of adoption.

11.4. Plain Language

- i. Most lawyers are using plain language drafting bylaws, eliminating words like "notwithstanding" and "herein". Instruct counsel on legal services requests to use plain language drafting.
- ii. The expression "must" is defined in the Interpretation Act to have the same meaning as "shall" and is being used in place of "shall" in all provincial statutes.