



Gabriola Island Local Trust Committee

Minutes of Special Meeting

Date: July 16, 2024
Location: Mudge Island Citizen's Society Hall

Members Present: Tobi Elliott, Trustee
Susan Yates, Trustee

Members Regrets: Peter Luckham, Chair

Staff Present: Stephen Baugh Island Planner
Warren Dingman, Bylaw Compliance & Enforcement Manager (electronic)
Lisa Millard, Recorder (electronic)

Others Present: There were approximately 72 members of the public in attendance.

1. CALL TO ORDER

Trustee Elliott called the meeting to order at 1:03 p.m. She acknowledged that the meeting was held on the territory of the Coast Salish First Nations.

Trustee Yates nominated Trustee Elliott to chair the meeting, Trustee Elliott accepted.

By general consent, Trustee Elliott will be Acting Chair of the July 16, 2024 meeting.

2. APPROVAL OF AGENDA

By general consent the agenda was approved as presented.

3. PUBLIC COMMENTS

3.1 Bylaw Enforcement

Acting Chair Elliott stated that the meeting is a forum to engage the members of the Mudge Island community in discussion about issues of community concern.

Members of the public asked questions and made the following comments:

- President of the Mudge Island Community Association spoke to the efforts of the association to inform the community about the role of the Local Trust Committee and how bylaw policies work and to encourage residents to attend the meeting and ask questions to better inform a bylaw enforcement policy review.

- Speaker asked if the Local Trust Committee (LTC) will be changing the bylaws.
 - Trustees replied they have added a targeted Mudge Island bylaw review to the future projects list, and are in the process of reviewing bylaw enforcement policies.
- Speaker asked if the LTC had reviewed the bylaw policy amendments that the Mudge Island Community Association submitted to staff and another speaker stated that they had hoped to discuss the amendments during the meeting.
 - Trustees confirmed receipt of the amendments and Bylaw Compliance and Enforcement Manager Dingman noted they will be reviewed, incorporated into a staff report, and available for consideration by the LTC in the fall.
- Speaker stated that, years ago, Trustees were under pressure from Gabriola residents and gave Mudge less in order to give Gabriola more.
 - Trustees will ask staff to locate the Mudge Island Land Use Bylaw Public Hearing documents for their review.
- Numerous members of the public spoke to bylaw compliance investigations and asked that any existing complaints that do not satisfy the proposed criteria for investigation be deferred until amendments to the policy have been made.
 - Bylaw Compliance and Enforcement Manager Dingman provided the following information:
 - Proposed policy changes relate to enforcement not investigations;
 - Investigations are regulated by Trust Council policy;
 - Bylaw Officers will begin investigations at the end of July; and
 - Enforcement action will not be taken until decisions from the LTC are made about enforcement policies.
- Several members of the public spoke to the assertion made by Bylaw Officers that Trust Council policy states bylaw complaints must be investigated; however, the wording used in said policy indicates bylaw complaints may be investigated which points to discretionary leeway. Debate ensued about the term 'must' versus 'may.'
 - Bylaw Compliance and Enforcement Manager Dingman made the following comments:
 - An Ombudsperson review of Islands Trust bylaw enforcement policies recommended that Bylaw Officers be given discretion on whether to investigate a file or not;
 - Current policy does not provide this discretion;
 - The interpretation of the policy is that complaints must be investigated with reporting provided to Trust Council and the LTC;
 - Investigations take place to determine if there is a contravention;
 - If there is no contravention, the file is closed. If there is a contravention, Bylaw Officers will look to the LTC to determine if enforcement will take place;
 - LTC cannot determine if an investigation should proceed; and

- Bylaw staff will be contacting property owners who are not concerned about Officers visiting the property for complaint investigation and will be working through those files first and then move to the files in which property owners have concerns about visits.
- Several speakers inquired about repercussions for individuals making false or frivolous complaints.
 - Bylaw Compliance and Enforcement Manager Dingman replied as follows:
 - There are no consequences for those making false complaints;
 - If an investigation shows the complaint is false, the result is the closure of the file; and
 - Approximately 1% of the files he has investigated stem from vexatious complaints.
- A speaker spoke to the recent volume of bylaw complaints noting they have caused stress and anxiety for community members, the community feels investigation is the first step toward enforcement, and the investigation process will inflame the situation.
 - The Acting Chair indicated that she will be seeking clarification on Policy 5.1 section 3.1 to determine if investigations must be undertaken.
- A speaker stated that the community could choose to allow the investigations take place in order to show they are not doing anything wrong and quickly eliminate false complaints, which would provide bylaw staff the ability to focus on serious complaints related to toxins and waste.
 - Trustees stated there is a significant difference between an investigation and enforcement and there is value to investigations as they inform decision-making on land use bylaw changes.
- A member of the public spoke to the option of getting a variance.
 - The Planner clarified that a variance cannot vary density or use, but could be appropriate for some other contraventions such as setbacks.
- A speaker inquired about the list of complaint priorities outlined in the existing bylaw and if Bylaw Officers would be following the order of priorities.
 - Bylaw Compliance and Enforcement Manager Dingman affirmed investigations typically follow the order of priorities and the Mudge Island investigations will first focus on those property owners that do not have concerns about an investigation taking place.
- Several members of the public spoke to the suspicion that one or two individuals are walking or driving up and down streets looking for potential bylaw infractions and making multiple complaints as indicated by freedom of information request results that show complaints being sent in batches on the same day and with the same signature block. The community considers this action to be harassment and the complaints vexatious.

- Bylaw Compliance and Enforcement Manager Dingman noted that he has reviewed the recent complaints, there is not evidence of improper or vexatious complaints nor abuse of the process, and investigations are required to determine if they are inaccurate or vexatious.
- A speaker noted that they have nine complaints against them and reiterated the need to conserve staff resources and have investigations deferred until the bylaw changes have been completed.
 - Bylaw Compliance and Enforcement Manager Dingman noted the following:
 - Many of the complaints are not within Islands Trust's jurisdiction to investigate;
 - One complaint might include a land use issue as well as noise and animal control complaints; however, they only look at possible contraventions of the Land Use Bylaw;
 - If a property owner tells bylaw staff they do not want them to access their property, he will consider a compromise and defer that particular investigation until after the policy amendments are adopted in the fall; and
 - A property owner can provide evidence that disproves a possible contravention by submitting photographs when appropriate.
- A speaker spoke to the number of false complaints that Bylaw Officers will be investigating first and noted this might result in a delay in the Officers getting to serious complaints related to human or hazardous waste.
 - Acting Chair Elliott referenced the summary received by the Mudge Island Community Association listing bylaw complaint categories, which showed 35 of 65 complaints, were setback contraventions. She noted that the LTC gave direction to defer enforcement on complaints unless there is a health or safety issue.
 - Bylaw Compliance and Enforcement Manager Dingman indicated that complaints about toxins and waste had been received and preliminary discussions with the complainant and others, along with evidence provided, did not show anything that must be investigated immediately.
- Several members of the public commented on the use of the term 'vexatious' versus 'false' and that action is required to stop individuals from making these types of complaints.
 - Bylaw Compliance and Enforcement Manager Dingman replied as follows:
 - Islands Trust does not have policies regarding frivolous, repeat, or vexatious complaints;
 - Trust Council would need to adopt a policy directing staff not to investigate complaints believed to be vexatious and these policies would have to be adopted by elected officials; and
 - If he believes a complaint is vexatious or retaliatory he does not prioritize it for investigation.

- A member of the public spoke to concerns about Bylaw Officers attending private property to conduct an investigation on a specific issue and then looking around for other contraventions.
 - Bylaw Compliance and Enforcement Manager Dingman indicated that the intention is to go to the property to directly address the complaint that was submitted.
- A speaker spoke to the current system in which a respondent is guilty until proven innocent based on a complaint without evidence provided with the onus being on the respondent to prove the complaint is false versus the complainant required to show evidence to prove their complaint.
- A speaker stated they had a second building on their property and were told by the Bylaw Manager the building would need to be decommissioned.
 - Bylaw Compliance and Enforcement Manager Dingman clarified decommission does not mean tear down a building, but typically means to stop the unlawful use. If a lot has two dwellings and is only permitted one, then, one of the dwellings needs to be decommissioned which is typically done by removing the kitchen.
- A member of the public asked what happens if a property owner does not live on the island and it was clarified that bylaw staff work with the owner to set an inspection date that allows the owner to attend.
- A speaker asked if Bylaws Officers only address the issue that is outlined in the initial letter received from the bylaw office even if several issues are listed within the complaint.
 - Bylaw Compliance and Enforcement Officer Dingman made the following comments:
 - Some of the complaints received are outside of Islands Trust jurisdiction;
 - Many of the recent complaints reference a lack of building permits and this is outside of Islands Trust's jurisdiction to investigate;
 - Occasionally, one item on a list of complaints gets missed in the initial letter to the property owner due to administrative error; and
 - If a complaint is about a setback, the Bylaw Officer might look at all of the setbacks on the property, but cannot look at issues unrelated to the complaint such as use.
- A speaker spoke to the bylaws relating to the Official Community Plan and noted that the Official Community Plan needs to change so that the bylaws will not impact the community through enforcement on issues that are not important to them.
- A member of the public asked about the Local Trust Committee motion that was passed in April regarding putting a hold on investigations until the bylaw policy was reviewed and had requested it be included in the bylaws.

- The Planner read the motion referred to and confirmed it only stated the policies and Trustee Elliott said she would bring it forward to add a new motion to support that enforcement of the Land Use Bylaw be deferred until a project to amend the Mudge Island Land Use Bylaw be initiated.
- A speaker spoke to the history of having minimal interaction with Islands Trust, a lack of understanding of the Land Use Bylaws, and the Regional District of Nanaimo's refusal to issue building permits and perform building inspections resulting in non-conforming structures being inadvertently built. There has been limited oversight and bylaw enforcement has suddenly stepped in resulting in community members being scared and frustrated. They asked that Trustees establish a date in which structures built prior to that date would be deemed legal non-conforming.
- A member of the public spoke to concerns about personal information contained in the freedom of information request documents including names, phone numbers, and emails. Another member of the public noted that the information he requested about his own property contained his personal information but others receiving information about his property had that information redacted.
- A member of the public stated that it should be mandatory for complainants to be present during an investigation and, if they do not show up, the investigation should not go forward.
- A speaker spoke to the community's history of looking after themselves and self-regulating in the absence of Islands Trust involvement and the preference for this practice to continue.
- A speaker reiterated the community's fear about consequences of bylaw enforcement, stated it is a traumatic experience to receive a letter of non-compliance pending investigation, and that something needs to be done to alleviate the community's collective anxiety and stress.
- A speaker expressed concern about Trustees saying they have come to the island to hear community concerns and then making rules behind closed doors.
 - Trustees noted that the community had provided them with a list of bylaw amendments they are seeking and planning and bylaw staff need to look at the proposed amendments and make recommendations to Trustees on how to implement them within the allowances of the Islands Trust Act.
- A member of the public spoke to a land use bylaw change on Gabriola in which small acre lots were changed to small rural residential lots with 20% lot coverage allowance and the lot designation on Mudge Island changed at the same time, but lot coverage allowance remained at 10%. They felt the community was not heard when they requested lot coverage allowance be increased to match the allowance provided on Gabriola.

- A speaker asked if all complaint files in which the complainant was the same would be closed if Bylaw Officers found that initial investigations prove the complaints to be false. They asked how many files need to be investigated before Bylaw Officers would consider closing them.
 - Bylaw Compliance and Enforcement Manager Dingman stated that half of the files would need to be investigated before staff would have sufficient data to make a determination and they need to complete the work in order to close the files.

3.2 Public Water Access to Mudge Island

- A member of the public stated that they have had an application for a mooring into the Province for three years and the application went to referrals; however, they have been told First Nations have not heard anything about it and they wondered if Islands Trust is causing the delay.
 - Trustees clarified that this issue is under provincial jurisdiction, which presently has a moratorium on issuing mooring permits.
- A member of the public spoke to the need for water access.
 - Trustees indicated that, if potential locations are identified, they could work on land use zoning changes to accommodate access and advocate to the Province and the Ministry of Transportation and Infrastructure.
- A member of the public noted the community does not require a public dock, but needs assistance to create a natural boat ramp at the Davison Bay landing, which would require smoothing out rock surfaces and adding a retaining structure to prevent further shoreline erosion.

At the end of the meeting Acting Chair Elliott summarized actions to be undertaken as follows:

- Local Trust Committee has committed to working with Mudge Island Community Association to provide input and amendments to the draft Gabriola Local Trust Committee Policy on Enforcement and Compliance (Mudge Island), with the goal of finalizing the policy by October, 2024;
- Local Trust Committee will clarify the legal non-conforming status of structures built before the Land Use Bylaw was enacted; and
- Trustee Elliott will follow up with staff to clarify interpretation of Policy 5.5.1 Section 3.1 regarding whether investigations must be initiated when a complaint is made.

4. ADJOURNMENT

By general consent the meeting was adjourned at 4:35p.m.

Tobi Elliott, Acting Chair

Certified Correct:

Lisa Millard, Recorder