

Memo

To: District of Sooke Committee of the Whole

From: Bev Suderman, Chris Hall & Michael Kelly
Island Planning Services Consortium

Date: June 27, 2011

Re: Sooke Zoning Bylaw Project 2011: Final Review
Comments received after May 30, 2011

Consultant Report

The purpose of this report is to:

1. Respond to comments at the May 30 Committee of the Whole meeting, and address other staff and public comments received, and
2. Proceed to bylaw adoption stage for the draft Zoning Bylaw.

This report builds on previous reports. Members of the consulting team will be present to respond to any questions or concerns.

The purpose of preparing a new zoning bylaw is to ensure that Sooke is equipped with an important regulatory tool that will aid in implementing the OCP and other policy documents. To that end the following elements have been incorporated into the draft bylaw:

- New zones for industry, rural properties, and the Town Centre, consistent with the OCP;
- Rationalization of zones, more clearly distinguishing between them, and making them more inclusive of a variety of uses;
- General update of the bylaw's general provisions and incorporation of new ones consistent with the OCP (e.g. vehicle and bicycle parking); and
- More user friendly layout and mapping.

In addition to the broader aspects of the review, the draft also incorporates numerous smaller items that have been outstanding issues, have emerged as inconsistencies, out-dated terminology, and/or errors in designation. In so doing we wish to acknowledge the assistance of staff in the process.

Follow-Up Items to May 30 meeting:

Council requested that the consultants follow up on two items:

- What are other jurisdictions doing about living fences; and
- How to manage side yard setbacks between new development and existing single family residential developments.

Living fences:

A quick web search indicates that in Canada, it seems that living fences are to be encouraged as a more environmentally friendly way of providing boundaries between properties than are other kinds of fences. There is however very little evidence of measures to regulate through zoning. Rather, other bylaw tools and civil means are used to address issues and conflicts between property owners. The following are some examples:

- City of Coquitlam: It is homeowner responsibility to manage vegetation along sidewalks and walkways.
- City of Surrey addresses overgrown vegetation at the property lines through their transportation division, in terms of impaired sightlines.
- City of Richmond: It is homeowner responsibilities re noxious weed management, and fencing. Disputes about fencing are “strictly a civil matter.”
- Salt Spring Island defines “landscape screens” as a way to screen land uses from abutting lands and highways. It is required for B&B’s (to screen guest parking), and agricultural properties.

There was an issue in Squamish last fall when bylaw enforcement removed vegetation along a property line under the authority of “unsightly premises bylaw.” The dispute reflected the concern by the municipality to keep vegetation tidy, protect sight lines and keep sidewalk/road access clear of vegetation. The opposing view was that native vegetation had been removed, and that the bylaw enforcement went way beyond what was required to keep sight lines clear by stripping all vegetation between the fence and the road.

Recommendation: That the District of Sooke not try to regulate living fences through the zoning bylaw other than in the context of maintaining sightlines, until there is an opportunity for a fuller investigation within the context of a vegetation strategy or urban forest management study.

Side Yard Setbacks:

The consultants were asked to research side yard setbacks in other jurisdictions to determine how they managed the potential conflicts between single family residential uses and adjacent uses.

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The consultants reviewed the bylaws of comparable municipal jurisdictions within the Capital Regional District, looking specifically at the commercial setbacks adjacent to residential areas as a key indicator:

View Royal	7.5 m side yard setbacks in all commercial zones adjacent to residential
Esquimalt	Side yard setbacks vary from 1.5 m, with no distinctions made based on adjacent uses, to 4.5 m, with the average being 3 m
Colwood	Side yard setbacks vary from 4 m (while permitting encroachments for balconies and patios) to 7.5 m, with the average being 6 m
Central Saanich	Side yard setbacks vary from 1.5 m to 10 m. In some cases, the side yard setbacks are expressed as a total of both sides, e.g. 3 m total side yard setbacks, without requiring that they be the same on both sides
Langford	Minimum of 6 m interior side lot line requirement when adjacent to residential or multi-family zones
District of Saanich	Generally side yard setbacks are set at 3 m for 1-storey buildings and 6 m for more than 1-storey buildings, but potentially up to 7.5 m
North Saanich	Side yard setbacks vary from 7.6 m to 15 m when commercial developments abut residential

In conclusion, there is no consistent approach. We can however draw the inference that where single family development is a highly valued form of development, such as in North Saanich, the setbacks are much larger than where a denser form of development is supported, such as Central Saanich.

The most interesting example came from the Town of Sidney, where the side yard setbacks vary from 1 m in the core commercial areas to 4.5 m. The Town of Sidney links setbacks to OCP land use designations. This approach is respectful of the community vision for how the community should develop, rather than being tied to how the community is currently developed.

In areas where the District of Sooke wishes to create greater density, particularly for infill development on small lots, small side yard setbacks may provide adequate fire separation, but otherwise, these setbacks do not result in useable functional space. In these cases, other municipalities have found it helpful to be more flexible in establishing side yard setbacks, so that the aggregated setbacks equal a certain amount of space, but any particular property does not require minimum setbacks on both sides. For example, in Central Saanich, the side yard setbacks are expressed as a total of both sides, e.g. 3 m total side yard setbacks, without requiring that they be the same on both sides, i.e. 1.5 m each side. This permits different groupings. In the case of small infill lots, for example, a 3 m setback on one side, and a 0 m setback on the other, permits a useable driveway to be created on one side of the property, without negatively impacting the amount of developable space.

The reality is that transition from single family development to denser forms of development, whether multi-family or mixed-use commercial as is anticipated in the District of Sooke's Town Centre, can result in conflict. The best approach is to have a base standard incorporated into the Zoning Bylaw, applicable to future CD zones, as a primary regulatory mechanism, but supported by good development permits guidelines that allow variances where necessary to minimize conflicts.

The District of Sooke has a number of options:

1. Modify side yard setbacks in the Town Centre zones to require a certain amount of setback, but permit these side yard setbacks to be put together, as in Central Saanich.
2. Modify side yard setbacks in the Town Centre zones to be based on building height, as has been done in Central Saanich. With higher building construction, a larger setback is required when adjacent to residential.
3. Develop policy to modify the Town Centre Plan and DP guidelines so that setbacks may be increased or reduced based on OCP designation of abutting properties.
4. Carry on with the existing pattern of side yard setbacks based on past practice.

Recommendation: That the District of Sooke directs the consultants to modify the side yard setbacks, specific to Town Centre zones, to permit flexibility adjacent to residential zones.

Update on June 20 Public Information Meeting

A public information meeting for the District of Sooke was held in Council Chambers on June 20, 2011, from 4:00 – 6:00 pm. The format was open house, with posters set around the room, and an up-to-date proposed zoning map available. Approximately 20 people attended, most with specific questions about their property, or about how the proposed changes might affect their property. Several comments emerged, which are addressed in the next section of this report.

Recommended Changes to the draft Zoning Bylaw

The table below highlights comments received since May 30, 2011, and the consultants' recommendations.

Zoning Bylaw Section	Comment	Discussion	Recommendation
Map	Change all shoreline access parks to P1.	A number of mandatory water access points have been developed as parks over time. Because these parks were developed in road rights-of-way, they did not have any zoning. As part of the overall Zoning Bylaw upgrade, staff have recommended that these areas be zoned as parks.	Approve
Definitions: Community Water System	Should expand on this definition because there are 3 types of community water systems in BC: shared, water utilities, local government systems	The previous version of the bylaw only recognized the local government type of community water system. While it is unknown how many and where other types of community water systems are located within the District of Sooke, VIHA's website lists a variety of existing community water systems. Staff recommended that all types be recognized in the Zoning Bylaw.	Approve
Definitions: Density	Remove this definition, and refer to the Local Government Act's definition of density.	The purpose of defining density is to restrict certain types of uses and developments. Because the LGA has a definition, the District of Sooke cannot define the term differently in the Zoning Bylaw as it is the meaning under the LGA that applies in the interpretation of restrictions on use, particularly as it applies to the use of DVPs.	Approve
Definitions: Frontage	Add definition for frontage – portion of lot that fronts on a public road	As a new term used in the ZB, staff recommend that the term be defined.	Approve
Definitions: Highway	Remove this definition, and refer to the Transportation Act's definition of highway	By making this change, the definition of highway will include a number of types of "ways", such as trails, that are not currently included in the District of Sooke's definition. It will also omit reference to vehicular use as a defining feature of highways, as well as omitting reference to bare land strata roadways. These changes are felt to be consistent with municipal direction.	Approve
Definitions: Industrial,	Delete prohibition against cleaning	The specific needs of industrial sites have received	Approve.

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Zoning Bylaw Section	Comment	Discussion	Recommendation
General	and washing gravel in general industrial areas.	significant attention as part of the zoning bylaw review. One issue was whether or not gravel screening and wash plants constitute a heavy industrial use, or a general industrial use. Given that Sooke permits ready-mix concrete batch plants in its general industrial areas, it seems appropriate to also permit gravel cleaning in this zone, because it is often most appropriate and efficient to have these two uses in close proximity to each other. Cleaned gravel is an ingredient in concrete mixes.	
Definitions: Swimming Pool	Add definition for swimming pool, to clarify what is meant, and when the regulations apply.	Swimming pools are not defined in most zoning bylaws, other than to specify setbacks for pools, which must mean that other municipalities regulate swimming pools using some other mechanism. Key issues are safety, fencing, and access to pools. The City of Nanaimo's definition provides a model in that it defines a pool by depth, which is an objective measure for regulatory purposes: "SWIMMING POOL" - means any structure or construction, intended primarily for recreation that is, or is capable of being, filled with water to a depth of .6 metres (2 feet) or more. For the purpose of this definition, a hot tub shall not be considered a swimming pool The insertion of a definition of swimming pool led to a small modification in Section 44(b), so that the exception would be consistent with the definition.	Approve
Part 36: Setbacks, Highway 14	This section is confusing and not consistent with the MOU with the Ministry of Transportation.	The diagram and wording were inconsistent with the MOU for a 30 m R of W. This has been modified accordingly. The new language is clear enough as to not require a diagram.	Approve
Part 44 (a): Swimming Pools	Change "should" to "must" and add "and self-latching."	The purpose of these changes is to strengthen the safety aspects of access to pools, by requiring self-latching gates.	Approve
Schedule 104 (RU4)	RU4 lots are too small for agriculture. Remove as permitted use; substitute horticulture	Section 17 of the proposed ZB permits the keeping of livestock and male poultry on lots of 2000 m ² in area or greater. Min lot size in RU4 is 1 ha, which is the same as	No change.

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		10,000 m ² . Prohibiting agriculture on lots of 1 ha seems contradictory to other provisions of the bylaw.	
Add Schedule 305	Make the RM4A subzone into a new, higher density residential zone.	<p>The purpose of this change is to create a zone for the Town Centre that provides the developer with rights to almost the highest densities that Sooke is willing to contemplate, i.e. 6 storeys and 90 dwelling units/ha. Although there are currently two properties zoned RM4, it will be possible for the District of Sooke to negotiate amenity contributions according to their policy, at the time of rezoning for other properties.</p> <p>Implementing this change requires a re-allocation of zoning codes as follows:</p> <ul style="list-style-type: none"> • Former RM1 is now MHP- Manufactured Home Park (Schedule 301) • Former RM2 is now RM1- Low Density Multi-Family 1 (Schedule 302) • Former RM3 is now RM2 – Medium Density Multi-Family 2 (Schedule 303) • Former RM4 is now RM3 – High Density Multi-Family 3 (Schedule 304) • Former RM4A is now RM4 – High Density Multi-Family 4 (Schedule 305) 	Approve
Schedules 405 & 406: Town Centre Commercial	Make lot coverage 100%, rather than 85%.	The concern has been expressed in response to the risk of the creation of small awkward areas on site through design, due to the 85% lot coverage restriction, that can lead to dangerous conditions. It also has the potential to create a situation where the desired vision of the Town Centre could not be built out. This change has an impact on the proposed density bonus provisions (Section 20), which may require tweaking to still be effective in the Town Centre areas.	Approve

Zoning Bylaw Section	Comment	Discussion	Recommendation
Schedule 502: General Industrial (M2)	Delete "asphalt plant" as a permitted use in M2. Only permit asphalt plants in M3 (Heavy Industrial Zone)	See discussion below re Butler properties.	Approve.
Schedule 503: Heavy Industrial (M3)	Permit all uses in M3 that are permitted in M2.	It is very important to protect industrial lands from potential encroachment by other types of uses. However, there can be some overlap between general industrial uses and heavy industrial uses. Generally, any challenges with compatibility can be resolved.	Approve.
	Add an "infill" zone to permit multi-family developments on small lots within the Town Centre	The concern is to find a way to assist the District of Sooke with achieving its infill goals within the Town Centre, by having a small scale multi-family option. The consultants believe that the proposed RM3 and RM4 zones provide enough flexibility already, in that permitted uses in these zones include townhouses and stacked townhouses, as well as apartment buildings. When such developments are adjacent to other multi-family zoned properties, the side yard setbacks are permitted to be as low as 0 m. During the transition phase, however, when the most likely scenario is that proposed multi-family infill developments will be adjacent to single family development, the requirement for a 3 m side lot line may create awkwardness in design considerations. Please see discussion re side lot lines	No change.
	Do not proceed with lot frontages	Frontages have received a considerable amount of discussion during the Zoning Bylaw review process. No new discussion was presented with the comment. At the last COW meeting, it was decided that frontage requirements would be tried.	No change.
	Park issue at Harbourview	Correspondence received from South Island Recreation Association (Terrance Martin, Director), re concerns about highway closures within Harbourview Park and limitations on use of off-road vehicles within it. Park rules are generally	No change.

Zoning Bylaw Section	Comment	Discussion	Recommendation
		set by the park owner, and not within the purvue of the Zoning Bylaw.	

The table below highlights individual property changes requests received since May 30, 2011, together with consultant recommendations:

Property Owner/Location	Zoning	Request	Discussion	Recommendation
Fuzzy Federenko 6545 Sooke Road	R1	C	This property is located along Sooke Road (Highway 14). It has been legally non-conforming since 1979, when a previous owner requested that it be rezoned to commercial, and the application was denied. The property line is only 10m from the centreline of Hwy 14. Other properties of a similar size and shape in a similar situation in relation to Hwy 14 have required a full rezoning application. When the rezoning was approved, a major land dedication in support of Hwy 14 was required.	Not approve
Steve Unger & Mary Coll 6698 Helgesen Rd PID: 000-021-733	RU3 current RU1 proposed	RU3	This property is located in an area where it is adjacent to other RU3, and RU2 zoned properties, as well as an RU1 zoned property. Other requests to keep RU3 zoning have been honoured, due to surrounding land uses. No development, subdivision or rezoning is intended by the owners.	Approve
Terry Curry & Ted Dawes Representatives of numbered company that owns property located at 1573 Dufour Lease #: 105716 20 years, expires 2017	W3 current W2 proposed	W3	The property owners are concerned that the proposed rezoning threatens the value of their property, which was purchased for investment purposes with W3 zoning on the water lot. The water lot has been rezoned to be consistent with the terms of the current lease, which is for a non-commercial private dock. The property owners are	Not approve.

Property Owner/Location	Zoning	Request	Discussion	Recommendation
			in discussions with the ILMB regarding upgrading the terms of their lease to permit group use of the private dock, but to keep it non-commercial at this time. However, they wish to keep the W3 zoning so that if they ever wish to develop the property for commercial uses, the zoning will be in place to do so.	
Sun River Park PID: 025-686-054 Lot #, Plan VIP75447	P1 current RU3 proposed	P1	The zoning on this property is proposed to be changed from P1 to RU3 in response to concerns by the ALC because the park is in the ALR. Community members are concerned because it appears that the District of Sooke is divesting itself of a park without going through a public process. However, parks are a permitted use in every zone, and the land use is not changing. A further concern is that the RU3 zoning permits residential uses, so in future the land use could be converted. It is felt that the change in zoning does not protect the property as a park.	Not approve – However, within the RU3 zone description, add a “notwithstanding” clause which specifies that the only permitted uses on this property are agriculture and park.
Butler property Edward Milne Road	M2	M2/M3 split zone	Split zoning is proposed to accommodate an existing asphalt plant use on a partial area of existing M2 zoned property. The asphalt plant is operated by Island Paving who lease the site from Butler Brothers. Apparently Island Paving has all of the required permits from Ministry of Energy, Mines & Petroleum Resources and the Ministry of Environment and/or their successors. The plant appears to comply with provincial setback requirements related to adjacent uses – school, residential and other uses; it is located +/- 500 m away from the school in accordance to requirements from MOE. The use has been illegal for 2 years. Rezoning should have been sought	Approve

Property Owner/Location	Zoning	Request	Discussion	Recommendation
			<p>prior to establishment of the asphalt plant, but it was not.</p> <p>Zoning of the site to permit the asphalt plant use is a large concession on the part of the District to an established illegal use. It may also require careful handling in the discussions with the Tsouke First Nations, since they have registered an objection to heavy industrial uses in proximity to their boundaries, in light of their future development plans. NOTE: It is estimated that the asphalt plant is located approximately 130 m from the nearest boundary.</p> <p>There are benefits of having the asphalt plant operating within the District of Sooke in light of all the anticipated road work that will be coming up with the Grant Rd connector, and Highway 14 improvements. The next nearest asphalt plant to Sooke is the Island Paving plant in the Millstream area at the foot of Bear Mountain. Having the plant here will reduce costs on District road construction projects as well as providing potential cost reductions for developers building roads as part of an approved subdivision.</p>	
Sooke Elderly Citizens Housing Society, operating as Ayre Manor 6764 Ayre Road	RM3	RM4	To serve the community to the fullest, the Sooke Elderly Citizens Housing Society (non-profit) has created a long term conceptual master plan to provide 200 housing units for elderly people. The Plan has the support of Council and requires the proposed RM4 zoning to achieve the required density.	Approve
C1 zoned property at Sooke Rd	C1		Suggestion is to determine ownership of this	This idea is outside of

Property Owner/Location	Zoning	Request	Discussion	Recommendation
(Hwy 14) and Gillespie (near Adrenaline)			property, work with MOTI to acquire it so that a highway improvement project can be developed to make an improved T-junction, with vastly improved sight lines, at the intersection of Sooke Road (Hwy 14) and Gillespie. Should this be addressed when Atwater Landing comes online?	the scope of the Zoning Bylaw, but may be something that the DoS wishes to put on its "to do" list.
Scott Taylor BC Adventure College/Fuse Restaurant 5449 Sooke Road	C4	CM1	The property owner is objecting to the elimination of the Marine Commercial zone (CM-1) in the proposed zoning framework. He argues that he is losing the unique zone created specifically for his property at 5449 Sooke Road. Key concerns include: <ol style="list-style-type: none"> 1. Loss of monetary value of the property; 2. The property no longer has a unique zone. <p>Generally zoning which permits more uses has more value than zoning with restricted uses. All formerly permitted provisions of the CM1 zone have been extended to the C4 zone, in some cases with a unique provision specific to Mr. Taylor's property, such as lot coverage.</p>	No change.
Dick and Mary Lynn Zandee 6969 Sea Lion Way Lease/Permit #109979	W1	W2	In response to community discussion, property owners discovered that their water lot was not reflected in the zoning, and have asked for the appropriate zoning for their private dock. They have provided proof of lease.	Approve.
Ingrid Johnson 1565 Dufour Rd PID: 018-921-281 Lot 2, Section 6 Sooke District, plan VIP59703 Lease #1404226	W1	W2	Property owners have asked for the appropriate zoning for their private dock. Proof of lease has been provided.	Approve.

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