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Editorial: Our Islands: The Spirit and the Letter

With the local government elections less than a month away, this is a good time to review why Islands Trustees need to be dedicated and courageous people. They need more integrity and determination than most local representatives. More is required of them than in other jurisdictions. First they must swear an oath to uphold the mandate of the Islands Trust, and then they must carry out that pledge.

The Islands Trust, unlike virtually any other local government structure in North America, has a provincially legislated Mandate to 'preserve and protect' its thirteen member Islands. This includes the environment and Island communities.

The legislation also required a 'Policy Statement' which answers the questions: 'Preserve and protect what? and How?' The Policy Statement was developed during a lengthy public process in 1994 and can only be amended through the action of Trust Council, whose membership comprises all the Trustees from all the Islands.

The Official Community Plan (OCP) for each Island must be consistent with the Policy Statement. Each Island's implementing document, the Land Use Bylaw (LUB), must under the laws governing local governments, be consistent with the OCP.

This chain of consistency is unusual even in well-planned, mature cities. The Mandate and Policy Statement are effectively a constitution for the Islands and express the spirit of the law; the OCPs and LUBs comprise the detailed letter of the law.

Because of the very existence of the Mandate, this structure puts the community ahead of the individual. And because of the nature of the Mandate, there exists a built-in bias against change.

The Social Contract

It is not surprising, therefore, that this structure shapes the expectations of communities and individuals on the Islands. Even though it legally governs only land use, it comprises a sort of social contract which residents and visitors alike are expected to honour. Those who have, by settling on the Islands, implicitly adopted this contract, are entitled to assume that those who are responsible for change and development will also honour it. They are also entitled to assume that the Trustees which they elect to each Island's Local Trust Committee (LTC) will be prepared to enforce it.

Whenever, in the eyes of the community, the contract is

broken, the Mandate is eroded for all the Islands.

The Letter of the Law

Virtually all LUBs in BC are based on the concept of zoning—that is, that new development should match, in terms of density, land use, and appearance, its surroundings, whether existing or future. In theory, adherence to the detailed and specific requirements of the zoning bylaw will in fact ensure that the social contract is carried out. But, on the Islands, meeting those legal and confirmable requirements is not sufficient; change and development, whether by newcomers or settled residents, must be consistent with all levels of the law: the OCP, Policy Statement, and the Mandate.

While Islanders would emphasize close attention to objectives, developers (and planners and the Trust lawyers) would prefer to work to the letter of the law rather than its spirit. They can then utilize a legal framework of municipal law that relies on precedents established in the courts.

But almost none of these precedents take into account the existence of a Mandate established by provincial legislation. And where the Trust Mandate has been tested in the courts (as in the Galiano Forest Lands case) it has proven robust and enforceable.

Zoning

Zoning alone cannot adequately express the objectives of the Island community, as expressed in the OCP. It is, in practice, a very primitive restrictive mechanism, and may unduly restrict development which the community may find desirable.

Virtually all LUBs contain provisions for changing zoning designations, creating site-specific designations such as development permit areas, or granting density bonuses. It is these mechanisms that development proposals seek to utilize in order to develop things unanticipated by the zoning bylaws, usually to increase the value of the development so it would be more profitable to build, but sometimes because it will benefit of the community.

Such ideas must be stringently tested: developments may be consistent with the OCP, the Policy Statement, and 'preserve & protect.' But not always. Within the Mandate, an Island may decide to consider, or not to consider any such variations from existing zoning. It may take advice from voluntary bodies, such as Advisory Planning Commissions, Environmental Advisory

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Commissions, or public referenda.

Procedures

The procedures which each LTC must follow in administering and amending its LUB are constrained by the same legislation that governs procedures for all municipalities in BC. Unfortunately, this legislation, along with most municipalities' OCPs and LUBs, is designed to facilitate development. In most places, change is driven by proposals from individual landowners, not from the community.

While municipal law requires that proposals to change land use for which the necessary fees have been paid be 'considered' (and given first reading), a LTC can rely on the Mandate, the Policy Statement, and the OCP to judge at an early stage whether a proposal is consistent with them.

This reflects the importance of the social contract embodied in Islands Trust law. It is in fact both strict and meaningful, but at the same time allows more initiative and freedom of action

than conventional municipal law.

Often, LUB amendments necessitate matching OCP amendments. The vital implication of this is that changes to the legal land use of a particular parcel may well create precedents for parcels elsewhere on the Island and in fact change the social contract.

The Role of Trustees

Island Trustees must be prepared to take responsibility to ensure that their OCP, and any changes to it, are not only consistent with the Mandate and the Policy Statement, but that they also reflect the wishes of the community. This may lead them to strengthen OCPs and refuse LUB/Zoning changes that are not consistent with OCP intentions. They have the power to do so.

That's why it's so important to elect Trustees who are prepared to uphold the spirit, as well as enforce the letter, of Islands Trust laws. ✍

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