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Galiano LTC votes to rescind a forest land policy ~ Patrick Brown

Galiano's August 10 Local Trust Committee meeting included a Public Information session and a Public Hearing on Bylaw 203, which would remove Forest Policy (d) from both the OCP and the Land Use Bylaw.

The bylaw was introduced with Galiano's on-going Official Community Plan Review providing the impetus—as well as current legal challenges to the existing Forest land policies. Following the two public meetings, the Galiano Local Trust Committee voted to rescind the option to rezone Forest Lands to Community Forest and Rural Residential in the current OCP. The bylaw was given second and third reading and referred to the Trust Executive.

Forest Policy (d)

Forest Policy (d), part of the Year 2000 OCP, provided one of the means by which owners of Forest 1 zoned land (which does not allow residential use) could rezone one quarter of their property to Rural Residential (which allowed one dwelling per 2 hectares), provided that the remainder of the property was transferred to a local organization for stewardship, under covenant, as 'community forest'. This is known as the 'RR/FH option'. It has been contentious, with some Forest landowners viewing it as a 'land grab.'

Galiano's Forest 1 zoned land was formerly part of a tree farm owned by Macmillan Bloedel and was sold to private owners in the 1990s. The zone totals 2,300 hectares, some 38% of Galiano Island. Since Policy (d) was implemented, three landowners have rezoned their land under the scheme, and a further three have made applications which would require variation of the Policy; a fourth application has not yet been reviewed.

The Current Court Challenges

While legal advice given to the Islands Trust is subject to solicitor-client privilege, the Galiano Trustees indicated the general nature of the legal questions that had been raised by two outstanding writs filed with the courts:

1. Local governments are limited in their authority to regulate forestry but the actual definition of 'forestry' in this context is unclear and ambiguous.

2. The Galiano Bylaw implementing Policy (d) requires that

the land be covenanted before an application for rezoning is made. This could be interpreted as 'fettering' the discretion of the LTC to pass or defeat the rezoning Bylaw. It is apparently acceptable to require a covenant after the rezoning is passed, but not to require it before.

3. The legal position of a third party to a conservation covenant is unclear as to whether the third party has any rights, and what type of organizations or government agencies can hold such covenants.

4. The status of covenants restricting forest management on lands registered under *Private Managed Forest Land Act* (PMFL) is unclear.

5. Under the *Local Government Act*, an LTC can only require an amenity from a landowner as a consequence of a change in density, not a change in zoning.

These may appear to be fine points, but they could well be included in legal challenges to policies in the Galiano OCP.

In addition, the original OCP policy, adopted on March 1, 2000, provided that applications for the RR/FH option could be accepted within two years of adoption. All four of the applications presently active were received well after March 1, 2002.

Island Trust staff hold the opinion that some portions of the policy are ultra vires of the *Local Government Act*—that is, not within the LTC's legal powers.

Making Decisions At Home

At the information meeting, Chair Gary Steeves reminded that the Islands Trust had a unique mandate (to preserve and protect) but had no unique powers; it could only take action under the *Local Government Act*. (However, the Islands Trust Mandate, described as 'no mere piety' by Madame Justice Southin of the BC Appeal Court, provides an important rationale for the Islands Trust's actions.)

He went on to advise that sections of the *Local Government Act* were frequently attacked in the BC Supreme Court, with the result that a judge might effectively be making OCP decisions. He felt that, considering that an OCP Review was well underway on Galiano, it would be better to have these decisions made by Galianoites.

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Public Discussion

Discussions that followed covered the need for land for community facilities; this could be approached in the new OCP. Could Policy (d) be amended so as to allow more flexibility to accommodate the applications which had been made more recently, but which did not fit the requirements of the original policy?

Forest lot owners did not appear to be represented at the meeting; there was some discussion between those who felt that the Trust was being subjected to 'legal chill' and should stand up for the Galiano Bylaws in court and those who saw Bylaw 203 as a way of 'dodging the bullet' and who felt that an improved policy could be crafted in the OCP process.

The question of 'perceptions' was raised by speakers who felt that the policy had been widely misinterpreted by its

opponents, who had painted Galiano as an island where the laws were unjust and unfair. This was, interestingly, given as a reason to pass Bylaw 203 and write a new policy in the OCP.

In the end, the uncertainties of the court processes won the day, and the LTC gave second and third reading to the bylaw.

The rewriting or eventual elimination of forest policy was left to the OCP committees, who were told clearly that, with the old policy out of the way, they would be perfectly free to write a new one.

PS: the implementation of the Transportation and Roads Plan is one of the conditions attached to any rezoning of the forest area. It was reported that the local Highways Manager from the Ministry of Transportation was unable to visit Galiano to discuss this because his department was under a provincial government travel ban, as a money saving policy. ✍