

TOWARDS COLLABORATIVE CHANGE: ENGAGING THE COMMUNITY IN LAND USE PLANNING

Some History:

Did you know that in Canada, unlike the United States, we technically don't have the right to own land? In fact, almost all land is held in fee simple, which is to say that the Crown actually owns the land, and under Common Law issues a land title or deed allowing someone to legally occupy the property described on the deed. This is common practice through-out most countries that were colonized by England and originated with the Norman conquest of 1066 when King William declared that the King owned all the land in England by right of conquest.

In the 1800s, in what is present day British Columbia, the Crown decided that it owned all of the land that it claimed as British territory – something which most First Nations communities are still trying to settle through the Treaty Settlement process. As the Crown colonies on Vancouver Island and the Mainland grew and eventually came together as the province of British Columbia, the Crown deeded land to settlers, land developers and businesses in order to encourage settlement, the extension of railways and the development of resource industries such as forestry and mining.

What may also come as a surprise to some is that while the Crown can deed you the surface rights to your property, it retains the subsurface rights. This means that someone else can apply to the province for the mineral (including gravel) rights on your property. By paying the province as little as 17 cents an acre someone can stake a claim and receive the legal right under the Mineral Tenure Act to explore and mine on your property in exchange for providing you with reasonable compensation. The province also owns nearly all of the water in the province. This right of ownership has been raised when it comes to who can access underground water. However, the province has thus far backed away from suggestions that access to underground water for domestic purposes should be regulated in a manner similar to the licensing system used for accessing surface water from lakes and streams.

Attempts to change the Canadian Constitution to include a clear statement on property rights have never been successful. Some provinces fear that the courts could end-up making rulings on property rights that would not be in society's best interest; citing the possible loss of provincial control over the use of private land in situations where the broader needs of the community or the environment should prevail. So what does this have to do with land use planning and zoning in Shirley and Otter Point?

Land Use & Zoning Bylaws:

Our present day land use and zoning bylaws control how private property may be used and are derived, in part, from this historical evolution of property rights. Official Community Plans (OCPs) are bylaws which set up general policies for

land use which are then put into effect by zoning bylaws. Under the Local Government Act, the province (i.e. the Crown) has the responsibility and legal right to ensure that land use planning and zoning take place in a manner which is suitable to the Crown. The province can delegate this responsibility to incorporated areas; however unincorporated areas such as the Juan de Fuca Electoral Area are not allowed to make their own OCPs and zoning bylaws. Instead, our OCPs and zoning bylaws are made legal by a committee of the Capital Regional District (CRD) Board of Directors. This committee consists of the JDFEA Regional Director and the mayors of Sooke, Metchosin, Colwood, and Langford for the western portion of the JDFEA and the JDFEA Regional Director and the mayors of Langford, Saanich, Highlands and Central Saanich for the eastern portion. Decisions made by this committee of the CRD Board are usually based upon recommendations received from the Juan de Fuca Land Use Committee (LUC) which is made-up of an elected representative from each of the six OCP areas in the JDFEA plus the JDFEA regional director who chairs LUC.

CRD Zoning Bylaw 2040, which covers our area, originated in 1992. The Otter Point and Shirley Local Area Plan guided land use from 1996 until the first OCPs were approved in 2007. An OCP is authorized by the provincial Local Government Act and is defined as “A general statement of the broad objectives and policies of the local government respecting the form and character of existing and proposed land use and servicing requirements.” Zoning under the same legislation allows for a municipality or electoral area to be divided into zones such as residential, commercial, recreation and industrial. Within each zone the size, height and location of structures, permitted uses, and density can then be regulated.

There are many accepted reasons why OCPs and zoning bylaws are considered necessary. The principle purpose of OCPs and zoning bylaws is to bring some predictability into a community and to help protect property owners from incompatible uses. Deciding where roads, water, sewers and other utilities should go, what should be protected as green space and the intensity of development are all considerations. If the community has reached agreement on its OCP and zoning bylaws this should allow for:

- Orderly development that is in the best interests of the property owners.
- Help to retain property values.
- Encourage development which respects community values.
- Clear guidelines for new development.

Although all the final decisions concerning property rights would seem to remain with the Crown and our elected representatives, there is an important role for both ratepayers and residents to play in the development and review of OCPs and zoning bylaws. In fact, considerable importance is given to public participation. The greater problem is that of getting enough local area residents

to participate in the process. This often takes more effort than some elected representatives and professional planners feel it is worth!

Collaborative Change:

Any discussion of possible changes to a community's official community plan can not happen in isolation from the community. The process used to ensure that all of the stakeholders are included is called collaborative change and begins by identifying all of the groups and organizations that need to be engaged in the discussion. This was the process used when putting together the Advisory Committee for the Otter Point, Shirley and Jordan River Developing a Strategic Vision project. More than 30 organizations, community services, businesses, commissions and elected representatives were identified and invited to attend the introductory session. Representatives from about two dozen chose to come together periodically over the two year life of the project. They appointed a steering committee, shared ideas and commented on the report's recommendations. Through-out the process the community was invited to forums, sent newsletters and asked to respond to drafts of the final report.

To make collaborative change work you also need good information. Good information is complete, accurate and relevant to the community's needs and concerns. Suggestions for change which come from outside the community or from only one or two stakeholders in the community will need to be reviewed in this context. For example if there was a request to alter Otter Point's OCP Settlement Containment boundaries to allow for the extension of potable water to other parts of the community how should this be considered? Some regard access to unlimited safe drinking water as a right while others will see it as an incentive to increase development density. About 800 residents of Otter Point are already on the Kemp Lake Water Works system. This means that about 40% of the community has access to unlimited water for drinking, cooking and fire protection. Should this service be extended to everyone else in Otter Point who can afford the cost of lengthening the distribution system? Should the cost of extending the waterline be directed towards alternate means such as engineered rainwater cisterns, grey water recycling or micro neighbourhood water systems which would rely on nearby lakes, streams and deep wells? Should the rest of the community support these changes through their property taxes?

Identifying all of the different interests in making a decision about water requires engaging the community.

Engaging the Community:

There was a time in Otter Point and Shirley when engaging the community wasn't that difficult an undertaking. As communities become established and grow they quickly identify certain necessary services. When a community comes together to create and support its organizations we can consider the community to be engaged. This was how the local fire departments were started as were the two water works and the various resident and ratepayer associations in Shirley

and Otter Point. Over the past 150 years the residents have come together to organize many types of community associations. However several things can happen to undo that initial community engagement. Sometimes the enthusiasm or motives which brought the first groups together is lost. Sometimes new residents move in who don't share the same sense of community. Sometimes new members can't be recruited and the size of the organization diminishes over time. Sometimes the organization becomes such a well run essential service that few consider there is any need to have broad community participation in the organization. Sometimes we are just too busy, feel unqualified, disinterested or willing to leave it to others. Sometimes an organization discourages new members and new ideas.

These are the challenges which arise when trying to engage the community in an OCP and zoning review. However, there are some steps that can be taken to promote interest.

1. Make the topic familiar by providing examples which the community can identify with. Inviting the community to help develop "A general statement of the broad objectives and policies respecting the form and character of existing and proposed land use and servicing requirements." is almost guaranteed to leave most of them at home. Instead provide examples of proposed land and service requirements and how they could be improved or changed under certain conditions.
2. If we know the purpose of the community engagement and the exact areas within the community we need to engage, we have a beginning. If we want to talk about extending development into the forest interface then we need the fire department there. If we are looking at extending the trail system then we need all the trail users and the Parks and Recreation Commission there.
3. Prepare the community to look over the horizon. Sometimes this means looking at what other communities have done. Learn from both their good decisions and their bad ones.
4. Prepare the community for trade-offs. This can be in the way of exchanging density for amenities or preventing development in some areas to protect green space in exchange for higher taxes or preserving rural values.
5. Provide different opportunities for the community to participate. Workshops, forums, surveys and other traditional means of collecting and sharing information still have a role; so do the newer technologies which allow interactive exchanges, community modeling and anonymous comment.
6. Emphasize that the preparation of an OCP is a sound investment in the future of the community.
7. Provide examples of how clarifying where development should happen has protected property values and added amenities which are supported by the residents.

