

REPORT of a PUBLIC HEARING of the Municipal Council of The Corporation of the District of Oak Bay, held in the Council Chambers, Oak Bay Municipal Hall, 2167 Oak Bay Avenue, Oak Bay, B.C., on Monday, April 26, 2010 at 7:30 p.m.

PRESENT: Mayor C. M. Causton, Chairman
Councillor H. Braithwaite
Councillor A. R. Cassidy
Councillor P. Copley
Councillor J. D. Herbert
Councillor T. Ney

STAFF: Municipal Administrator, W. E. Cochrane
Municipal Clerk, L. Hilton
Confidential Secretary, K. Green
Municipal Treasurer, P. Walker
Deputy Municipal Administrator, M. Brennan
Director of Building and Planning, R. Thomassen

Mayor Causton called the public hearing to order at 7:30 p.m.

Bylaw No. 4505, *Eighty-Fifth Zoning Bylaw Amendment Bylaw, 2010*

The Mayor asked the Municipal Clerk to explain the purpose of Bylaw No. 4505.

The Municipal Clerk explained that the purpose of Bylaw No. 4505 is to enact regulations specific to retaining walls. For any retaining wall, Ms. Hilton said, Bylaw No. 4505 would provide that the exposed face from bottom to top may not exceed a vertical distance of 1.2 metres. Ms. Hilton advised that combinations of terraced walls would also be subject to this limit if the walls are closer than 1.8 metres to one another. Bylaw No. 4505 would apply to all land within the Municipality, she added.

COMMUNICATIONS:

2010-107 DIRECTOR OF BUILDING AND PLANNING, March 25, 2010
2010-141 DARREN BEHN AND OLIVIA DAM, April 26, 2010
2010-142 JOHN JORDAN *et al*, April 25, 2010
2010-143 DIANE PERRY, April 26, 2010
Re Proposed Amendment to Zoning Bylaw – Retaining Wall Regulations

MOVED by Councillor Braithwaite
Seconded by Councillor Copley, That correspondence items no. 2010-107, 2010-141, 2010-142, and 2010-143 be received.

CARRIED

Mayor Causton asked the Municipal Clerk if any further correspondence pertaining to the public hearing had been received. Ms. Hilton noted that just the three letters, which were distributed prior to the meeting, were received with respect to this Bylaw.

PUBLIC:

Mayor Causton asked if any members of the public would like to come forward to speak on the proposed Bylaw.

Pat Wilson, resident, said she read the bylaw and she has seen the result of having no bylaw in Marion Cumming's backyard and it makes sense that Council would proceed with this bylaw amendment.

Rene de Vos, resident, said that it is evident that regulations are needed for monumental construction of this type and as the neighbours have stated, it is a possible danger to their properties. As well, Mr. de Vos said there are habitats that are being tampered with, and having been involved in tree protection preservation, it is becoming more obvious that habitats along the shoreline, rocky places, and moss rock are being affected by construction such as this, and the land needs to be protected. He concluded by saying that he agrees that the proposed bylaw makes sense in terms of protecting the contours of the land.

James Keefer, resident, noted there were no permits or variance for a number of things on that property, and that the retaining wall is one of many issues. Mr. Keefer said he was curious to know why, following the order to remove the retaining wall, it has not yet been removed. He added that the proposed bylaw amendment is needed for issues such as this.

Judith Andersen, resident, stated that on the whole, this is a safety issue, and is what the proposed bylaw amendment is aiming towards. Ms. Andersen said she would like to know what engineering details arose prior to the wall being built, adding that she would like to see in future an engineering report requirement in this regard.

John Jordan, resident, commented that it is difficult for neighbours to have all the right information and he has circulated to the neighbours what he feels is the best information to date. Mr. Jordan read from the petition letter, which was submitted to Council as correspondence item no. 2010-142, pointing out the neighbours' concerns regarding the rock wall built at 63 Sylvan Lane. As noted in his petition letter, Mr. Jordan questioned why the retaining wall has not yet been removed, noting that the five metre high wall was built without a permit, without soil or technical engineering studies, and poses a safety concern for the neighbours down slope of the boulder wall. There is concern, he said, that the owners and contractors (for 63 Sylvan Lane) are refusing to accept the municipal order to remove the wall, and it may be their intention to manipulate a different decision from the Municipality through a loophole in the system or to simply not comply and that could create a risk for neighbours now and in future.

Other concerns as noted in his letter, include the fact that retaining wall may create a danger that could have a damaging impact on the value and saleability of the immediate neighbouring properties.

Mr. Jordan said that with respect to the boulder wall being a risk factor, the Municipality could be held financially liable for any damages to neighbouring properties caused by the retaining wall.

He went on to say that if the wall is permitted to stay, it would be seen as a statement that Oak Bay does not support its community, and finally, he said that it is imperative that Council enforce this removal order of the boulder wall, and further, that the shot rock back-fill be taken from the site.

Suzanne MacLeod, resident, speaking to the boulder wall construction at 63 Sylvan Lane, first thanked Council and staff for ordering the removal of the wall. Ms. MacLeod, reading from her letter, said that it is important in a community that all residents follow the local rules and know what is expected of residents with respect to consenting to those rules. Ms.

MacLeod also commented that consideration should be given to the safety of fellow community members and the protection of the natural environment in this regard.

In conclusion, Ms. MacLeod said that this does not mean rules cannot be flexible and that is why there is clear protocol for requesting variances, which would include consulting with neighbours, prior to non-conforming construction taking place, such as the case, repeatedly, at Sylvan Lane. Ms. MacLeod concluded by urging Council to continue to uphold the mandate bestowed upon them to enforce the bylaws and she encouraged Council to continue to enforce the order to remove the boulder wall as it is unsafe, unsightly, and no one would want to live under it, and finally, she said, it is unneighbourly.

Suzanne MacLeod speaking on behalf of Maggie Owen, resident, said that Ms. Owen expressed her concern that it seems that a clear message is being sent to allow building at will because the Municipality does not follow through, and non-compliance is not taken seriously. Ms. Owen wanted it pointed out that the removal order has not been enforced and if the boulders fall the Municipality is liable, and she as a taxpayer does not want her tax money to be spent on unnecessary legal costs.

Alan Gilroy-Scott, resident, commented that he heard that the retaining wall was built in non-compliance with the Building Code, and said that, if this is the case, then it should have been incumbent on the contractor to complete a risk assessment and a design review to justify deviating from the Code, which should be available to all parties affected by the wall.

After viewing the wall, Mr. Gilroy-Scott said he has a few concerns, such as the effect of the changes to the topography of the land, and their affect on the area. He said he believes that the natural drainage of the slope below the wall will be seriously affected causing water issues for the property below. He also said that not knowing what is behind the boulders could create problems, and that the water flow will likely come through below the wall, which could wash away the base of the wall, possibly sending the boulders down the hill. Mr. Gilroy-Scott ended by saying he would urge Council not to just look at the aesthetics of the wall but to also consider the long term consequences of soil/water erosion, earthquakes, and anything related to an unsubstantiated base.

Marion Cumming, resident, said she has two letters she would like to read out, one being a letter addressed to her from Chris Yorath, Geologist, and a letter of her own, which will be given to the Municipal Clerk following the public hearing.

Ms. Cumming referred first to Dr. Yorath's correspondence that expressed concern that the focus has been on the height of the boulder wall and that he felt equal attention should be devoted to the materials from which the wall was constructed, noting that unsecured large boulders on a steep slope constitute a hazard to people living down-slope. The letter also drew attention to the possible effects of an earthquake on neighbouring properties below the wall, saying it could result in property damage and serious injury. Dr. Yorath's letter concluded by saying that, in his opinion, Ms. Cummings should insist that the boulders be removed.

Ms. Cumming referred to a conversation with another consulting Geologist, and both Geologists felt that the proposed bylaw tends to address a more generic topography that may be more stable than boulders placed on a slope or cliff-side. Ms. Cumming added that a previous owner of 63 Sylvan Lane had advised the Cummings not to remove trees along the slope for this very reason.

Ms. Cumming agreed with Mr. de Vos's comments regarding having respect for the land and stabilization of the land, which she feels has not been considered in this case.

Another concern regarding the Building Code, said Ms. Cumming, is that the new bylaw calls for retaining walls not to be considered accessory structures, and that she understands that the Building Code regulations could be waived, and in the case of the retaining wall next to her property, if it is acknowledged as a structure, the building code makes it very clear that it is in violation on a number of counts. If not considered a structure because it is not supporting the house then there is a danger that the bylaw could be weakened in its application.

Ms. Cumming said she received some comfort from the Municipal Administrator, Mr. Cochrane, that regardless of the wording, the Building Code would still be implemented. She also said she felt that the structure should be called a boulder structure rather than a boulder wall.

In the context of her correspondence dated April 26, 2010, Ms. Cumming shared the gratitude of many residents in Oak Bay that Council has come forward with a much improved retaining wall bylaw.

Ms. Cumming said she hopes that Council will make a decision tonight and that the new bylaw would well cover 63 Sylvan Lane, both with the current situation and where any future applications are concerned. Although, she said, she did not see the wording for the order to remove the boulder wall, she hoped it included removing the boulders from the site.

Ms. Cumming drew attention to the book "At Risk, Earthquakes and Tsunamis on the West Coast", a copy of which has been left at the Municipal Hall for reference, which she said was well written and so pertinent to this situation.

In connection with Mr. Gilroy-Scott's comments as an Engineer, Ms. Cumming said that Dr. Clay, head of Earth Sciences and Hazard Research at Simon Fraser University, advised that shot rock, being very porous, can contain up to 42% of its volume in water, making shot rock much heavier and therefore creating pressure and disintegrating over time. Because of these comments, Ms. Cumming said she was very concerned when she heard that apparently shot rock had been placed on the grassy lawn area at 63 Sylvan Lane and surrounded with boulders rather than it being trucked away.

Ms. Cumming said that in talking to another neighbour, she was told that the owners of 63 Sylvan Lane may be considering installing undulating concrete that would border the boulder wall, which she understands would be more expensive than removing the existing wall. It was also brought to her attention by Dr. Yorath that as rainwater percolates through the structure it can cause it to move on what is called a "slip surface", precipitating a rock slide that could behave like a slurry as it fans out, which would affect other neighbouring homes, she said. In this regard, Ms. Cumming said it is often the tendency to think nothing will happen until well into the future, and that her concern lies in that she and her husband have bequeathed their property to a Land Trust Society in perpetuity, and it is important not to endanger the lives of future generations.

Ms. Cummings felt that an apology to Council was in order on behalf of the neighbours for focusing mainly on 63 Sylvan Lane and not sufficiently on the proposed bylaw amendment.

Mayor Causton asked the Municipal Clerk to read out the letter Ms. Cummings provided on behalf of Diane Perry, which was included in the amended agenda package as correspondence item no. 2010-143, to be read aloud at the public hearing, as well as the correspondence submitted by Ms. Cumming at tonight's meeting, dated April 26, 2010, which Ms. Cumming had been referring to earlier in the meeting.

Mayor Causton asked three times if any members of the public would like to come forward to speak on the Bylaw. No one came forward.

ADJOURNMENT:

MOVED by Councillor Braithwaite

Seconded by Councillor Copley, That the public hearing do now adjourn.

CARRIED

The public hearing adjourned at 8:14 p.m.

Certified Fair and Accurate:

Municipal Clerk

Mayor