

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, June 22, 2009 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 N. B. Jensen

STAFF: Municipal Administrator, W. E. Cochrane  
Municipal Clerk, L. Hilton  
Confidential Secretary, K. Green  
Director of Building and Planning, R. Thomassen  
Municipal Treasurer, P. Walker  
Director of Engineering Services, D. Marshall

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

Bylaw No. 4474, *Eighty-Third Zoning Bylaw Amendment Bylaw, 2009*

The Mayor asked the Municipal Clerk to explain the purpose of Bylaw No. 4474.

The Municipal Clerk explained that Bylaw No. 4474 would change the zoning for the area where the new and expanded Oak Bay Sea Rescue boat house is proposed to be constructed, substantially the same location as it sits at present, by removing it from the Sea Zone (P-4) and adding it to the Marine Commercial Use Zone (CS-2). Like the existing structure, she said, the new boat house would be rectangular; the “L” shape of the area to be rezoned is designed to accommodate the tying up of another craft alongside. Ms. Hilton advised that the regulations set out in Bylaw No. 4474 establish the following maximum dimensions for the boat house: Height Above Sea Level: 5.5 metres; Width: 6.1 metres; Length: 14.4 metres. The regulations also stipulate that the area to be rezoned is not to be used for commercial purposes, she said.

COMMUNICATIONS:

2009-169 OAK BAY SEA RESCUE SOCIETY, May, 5, 2009  
2009-169-1 OAK BAY MARINE GROUP, April 27, 2009  
2009-169-2 MUNICIPAL ADMINISTRATOR, May 6, 2009  
2009-211 OAK BAY MARINE GROUP, June 3, 2009  
2009-223 OAK BAY SEA RESCUE SOCIETY, June 17, 2009  
2009-223-1 OAK BAY SEA RESCUE SOCIETY, June 18, 2009  
2009-223-2 COREY BURGER, JUNE 22, 2009  
Re Rezoning Proposal, Oak Bay Sea Rescue Boat House

MOVED by Councillor Braithwaite

Seconded by Councillor Herbert, That correspondence items no. 2009-169 to 2009-169-2, 2009-211, 2009-223 to 2009-223-2 be received.

CARRIED

Mayor Causton asked the Municipal Clerk if any correspondence pertaining to the Public Hearing had been received and not previously distributed to Council members. It was noted that no further communications 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 Bylaw.

Bob Wright, President and CEO, Oak Bay Marine Group, said he built the Marina docks and buildings at a cost of millions of dollars 47 years ago (in 1962), and he feels that the Marina has served the community well, and he is proud of his professional record.

For approximately 30 years, Mr. Wright said, the sea rescue missions were taken on by the Marina staff with no remuneration for the service provided. He commented that he believes in the sea rescue service and the need for it.

After reading an article in the Times Colonist newspaper, said Mr. Wright, he felt he needed to clarify some errors and half truths. He noted that there are two marinas in the Oak Bay basin, the private Oak Bay Marina, for which he has paid fees for 47 years to the Municipality, where the egress and ingress is controlled and offers quiet enjoyment for all, and the 'Marina' located between Glenlyon-Norfolk School and the Oak Bay Marina, where there are no fees or rules, and the illegally anchored boats are occasionally polluting the bay. This has been an issue he said he has brought to the attention of the Mayor and staff to no avail. However, he added the Oak Bay Police and Fire Departments have always cooperated with the Marina's concerns 100 percent.

It was time to set the record straight, said Mr. Wright, advising that the Sea Rescue Society's boat is the only one covered in Oak Bay. He said he had no objection to the larger boat house originally proposed and was under the impression that everyone was happy with that plan.

With respect to the condition of the boat house, Mr. Wright clarified that through the Engineer's report it was stated that the house was in excellent shape and could continue to be used for another twenty years.

Mr. Wright said that the 'L' shape of the area to be rezoned, which he wished to clarify was not his idea, is what the Marina is strongly opposed to as it would limit or completely block access for the larger ships that are required, due to their size, to moor at the West K dock if another vessel is moored next to the boat house.

Further concern was expressed by Mr. Wright that as the affected party, the Marina was not made aware of the proposed 'L' shape of the area proposed to be rezoned until June 3<sup>rd</sup>, and he asked where was the paper work with respect to the Oak Bay Marina agreeing to the change to an 'L' shape or, he asked, was it acted upon by hearsay? He noted the Sea Rescue Society had been advised by Oak Bay staff that it would need the Marina's agreement for the 'L' shape.

Responding to Mr. de Claire's comments at the last meeting of Council stating that Oak Bay Sea Rescue would take its chances and go ahead with the request to rezone an 'L' shape area versus asking for an amendment to only rezone the rectangular area for the proposed new boat house with an all or nothing approach, Mr. Wright said if this is the case he believed the Society would be disappointed and that this whole issue is a 'tempest in a tea pot'. Mr.

Wright referred to a letter from the Marina's law firm stating the legal ramifications of adopting the Bylaw with the current 'L' shape to be rezoned.

Mr. Wright advised Council that there are nine boats moored for free at the Marina.

Mr. Wright read out the letter from the Oak Bay Sea Rescue Society to the Oak Bay Marina (correspondence item no. 2009-223-1), which withdraws the request to rezone the 'L' shape area and replaces it with the rectangular area for only the boat house, and solves the problem. He added that it is a shame that this was not agreed upon originally and he hopes the process can now move forward based on rezoning the rectangular shaped area for the boat house only.

Sandy Pratt, Vice President, Finance, Oak Bay Marine Group, said that currently nine boats, from the Oak Bay sailing program and the Oak Bay Sea Rescue Society, receive free annual moorage at the Marina. Ms. Pratt added that the Marina has contributed to the community at large by granting free moorage.

Brian Glennon, Vice President, Oak Bay Sea Rescue Society, confirmed that the letter Mr. Wright referred to earlier was drafted by the Oak Bay Marina for the Oak Bay Sea Rescue Society's signature and was delivered to the Municipality. With respect to the condition of the current boat house, Mr. Glennon said it is in rough shape and that the Engineer's report (which cost the Society \$7,000) Mr. Wright was referring to described the condition of the structure once it was to be re-clad and re-decked.

The Oak Bay Sea Rescue Society responds to various emergencies 24 hours a day, seven days a week, 365 days a year, said Mr. Glennon. The Society is powered by volunteers that drop everything when a call comes in, responding in 20 minutes, he added.

The Society, which is one of four stations in the area, responded to 70 search and rescue calls last year, has saved over 100 lives over the years, and has seen the number of call outs double over the last ten years. The Society also participates in various public events, none of which they receive public funding for, advised Mr. Glennon.

The reason why a new boat house is needed, Mr. Glennon said, is because the new vessel does not fit in the current boat house and exposing this type of inflatable boat to the elements causes the material to breakdown, noting the vessel needs to be in top condition when being run hard when responding to a call. As well, the Society would like to have a secured area in the boat house where volunteers can change while being briefed on a mission, and can store and dry their gear. The Society has had as many as nine calls in one day, he said.

Mr. Glennon provided a brief history of the boat house, noting that it was built in the mid 1990's by the Oak Bay Marina and paid for by the Society to house a 7 metre vessel. Recently, to accommodate the new larger boat, he said that the decking was cut away, leaving it too narrow to be safe.

Mr. Glennon questioned why the water lot lease issues were not mentioned back in 2003 when the new boat house negotiations first started, adding that due to a series of misunderstandings to this point, it has led to where we are now, he said. It was the understanding of the Society, said Mr. Glennon, that the Marina was, since the beginning of discussions, in agreement with the originally proposed 'L' shape boat house to accommodate mooring a second vessel, and of course now realizes this was not so.

The second vessel, which will be used for training purposes for the new and auxiliary crews, is currently being moored at an inconvenient distance from the boat house at a cost of \$3,800

for the year, he said, and ideally, the Society would prefer mooring the vessel adjacent to the boat house for convenience sake.

The Society recognizes that the Marina is a commercial enterprise, and Mr. Glennon said that when it was suggested that the second vessel be moored along side the boat house there was no “mischievous” intent as referred to in the letter from the Oak Bay Marine Group.

In closing, Mr. Glennon, on behalf of the Society, thanked everyone for the many hours spent on the proposal and that he hopes the process can move as quickly as possible so the boat house can be built before the winter storms.

Mia Gosger, Manager, Oak Bay Marine Group, reiterated that allowing a second vessel to be moored next to the boat house would compromise the ability of the Marina to allow larger vessels to moor, pointing out that there were photographs on display to illustrate this.

Ms. Gosger said that Mr. Wright has supported the Oak Bay Sea Rescue Society for the last 30 years and he recognizes its value to the boating community.

Ms. Gosger also mentioned that there is an increased number of dingy boats tying up to the dock and that Marina boat owners have been reporting various incidents including petty theft. As well, Ms. Gosger drew attention to the unattended or derelict anchored boats that sometimes drift into the Marina or onto the beach causing material and environmental damage.

Deane Strongitharm, representing the Oak Bay Marine Group, and an Oak Bay resident, drew attention to the concerns expressed by Ms. Gosger, saying that the number of boats anchoring in the bay has tripled which creates a risk to boaters trying to access the Marina. Mr. Strongitharm provided additional information concerning boats in the bay, noting that if left uncontrolled the situation will only worsen and that it merits Council’s further consideration.

With respect to the rezoning application currently before Council, Mr. Strongitharm advised that he was happy to see the issues being resolved. It was at the time he got involved with the licence application process that it came to light that the area proposed to be rezoned was an ‘L’ shape to accommodate a second vessel.

With respect to the application, he said that the three options available to Council are to table, approve or deny the request currently before Council and that from his professional point of view he would suggest a clean option that would be to go with a new application with the ‘I’ or rectangular area to be rezoned and a new public hearing.

Lanny Sawchuck, Executive Vice President and Chief Operations Officer, Oak Bay Marine Group, said that it was suggested that he meet with the Sea Rescue Society initially to discuss the condition and reasons for expanding the boat house.

Mr. Sawchuck, referring to his letter dated April 27, 2009 (correspondence item no. 2009-169-1) said that the Oak Bay Marine Group insists that the Crown Land tenure sublease be in the name of the Marina.

Mr. Sawchuck read a letter from the solicitor representing the Oak Bay Marine Group. The letter stated that as the holder of leasehold interests in upland and aquatic properties under a lease with the Municipality, the Oak Bay Marine Group has an exclusive right to possess and occupy these areas.

It was noted that the lease includes an agreement to provide the Oak Bay Sea Rescue Society, without charge, the use of a boat house to house one boat, which has been honoured by the Marina.

The rezoning is intended to accommodate a larger boat house than was previously agreed to by the Marina and it is proposed that a space will be created for an additional boat. The letter states that the Marina is opposed to accommodating two boats.

The letter went on to say that the Municipality does not have the authority to amend the lease and that any alterations without the Marina's agreement are a breach of the lease agreement.

The purpose of the letter, he said, was to advise the Municipality that if it approves any agreement with the Society that would increase the burden of the Marina under the lease, action will be taken to seek remedies, including injunction and damages, which the solicitor feels will have a very high likelihood of success.

In closing, said Mr. Sawchuck, the letter suggests that the Municipality refrain from taking any action that would affect the Marina's right to quiet enjoyment and other rights under the lease.

The letter was then submitted to the Municipal Clerk.

Mark Appleton, Appleton Consulting, said he has had a business relationship with Mr. Wright for 30 years and that he is also a concerned tax payer.

Mr. Appleton read his letter that states the privately owned and operated marina has complied with all the terms and conditions of the lease including providing free moorage for one vessel for the Sea Rescue Society. To change these arrangements, Mr. Appleton said, it is clearly stated that prior approval of the Oak Bay Marina is required and it is pointless to be moving forward with a public hearing knowing the Marina is strongly against the proposed amendment.

Mr. Appleton's letter expressed concern that, in light of the current economic situation the Municipality should be more mindful about using public funds to engage in what could result in a meaningless expenditure, and ensure that the proper processes are followed.

The letter was then submitted to the Municipal Clerk.

Brian Glennon, said he would like to clarify that the reason for the amendment is because the boat house is outside the leased area and the Province would need to grant tenure over the area to be occupied by the new boat house. The Oak Bay Sea Rescue Society is trying to ensure all the proper steps are taken in that regard, he said.

Bob Wright commented that with respect to Provincial Crown land leases, he has 20 or 30 along the coast of British Columbia and, in his opinion, there is no issue with changing the boundary.

The issue, said Mr. Wright, is more the case of the Oak Bay Marina not being given the opportunity to offer or not offer its consent to this request until after it went to Oak Bay Council.

With respect to Mr. Glennon's comments about the current condition of the boat house, Mr. Wright said he did not agree and proceeded to read from a copy of the Engineer's report dated

May 28, 2002, which stated that the dolphins appear to be in excellent shape and that the boat house had no signs of deterioration or wear and should provide service for another 20 years provided that maintenance and service is performed. He added that it was the Society's decision to spend \$7,000 for the report, not his.

Mayor Causton asked a second and third time if any members of the public would like to come forward to speak on Bylaw No. 4474. Seeing no one come forward, it was

MOVED by Councillor Jensen

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

CARRIED

The public hearing adjourned at 8:21 p.m.

Certified Fair and Accurate:

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Municipal Clerk

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Mayor