



BOARD REPORT

TO: Chair and Directors

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| File No: BL 900-9 PL20140127 |
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SUBJECT: Electoral Area F: Lakes Zoning Amendment (Meadow Creek Properties Park Association) Bylaw No. 900-9

DESCRIPTION: Report from Dan Passmore, Senior Planner, dated September 12, 2017
5140 Squilax-Anglemont Road, Magna Bay.

RECOMMENDATION: THAT: "Lakes Zoning Amendment (Meadow Creek Properties Park Association) Bylaw No. 900-9", be given no further readings this 16th day of November, 2017.

SHORT SUMMARY:

This is a proposed amendment to Lakes Zoning Bylaw No. 900 to reflect a unique upland ownership circumstance. The owners of the upland property Lot 1, Section 8, Township 22, Range 10, W6M, K.D.Y.D., Plan 26006 are a community association. This association of upland property owners would like to amend the Multi Family 1 (FM1) zone to include a site-specific regulation for only that portion of the lake adjacent to their property.

After considerable consultation between the Association and the Ministry of Forests Lands, Natural Resource Operations, and Rural Development (MFLNRORD), the Association has amended their application to reduce the overall number of docks from 12 to 3. Therefore, this amended regulation would allow a total of 3 docks, together with the 61 mooring buoys, 1 swim platform and the boat launch facilities that currently exist on the Shuswap Lake foreshore and were part of the original application.

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| VOTING: | Unweighted Corporate | <input type="checkbox"/> | LGA Part 14 (Unweighted) | <input checked="" type="checkbox"/> | Weighted Corporate | <input type="checkbox"/> | Stakeholder (Weighted) | <input type="checkbox"/> |
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BACKGROUND:

See attached "2015-01-15_Board_DS_BL900-9_MMCPA.pdf".

POLICY:

See attached "2015-01-15_Board_DS_BL900-9_MMCPA.pdf".

FINANCIAL:

The rezoning is the result of a bylaw enforcement action. If the Board does not adopt the proposed amending bylaw, and the owner does not bring the property into compliance, the Board may then wish to direct staff to seek a legal opinion regarding possible court action. Costs for the legal opinion and possible court action, although partially recoverable through Court, could nonetheless be substantial. Staff involvement in legal action is not recoverable

KEY ISSUES/CONCEPTS:

See attached "2015-01-15_Board_DS_BL900-9_MMCPA.pdf".

Update

CSRD staff forwarded the referral response received from MFLNRORD, and dated January 29, 2015 to the association. The association began a long consultation with MFLNRORD which resulted in MFLNRORD ultimately looking favourably on the reduction of the total number of docks to 3. As a result of this, the Association gave members that currently had docks, other than the 3, until September 30, 2017 to remove the extra 9 docks. In an interesting twist MFLNRORD gave the Meadow Creek Properties Park Association (MCPA) until September 1, 2017 to have the docks removed. Bylaw Enforcement staff have visited the site after this deadline in early October, and advise that the docks have not been removed.

A central concern of staff was regarding ownership and therefore management of the moorage facilities (both docks and buoys). The MCPA has subsequently reported that the Society membership will have ownership of the 3 docks. The docks will be used for loading and unloading of boats and therefore not for overnight moorage, but only day moorage. The docks will be available to all members of the Association on a first come first serve basis. The buoys are all owned by members and the MCPA will be able to allow other members who have a boat but no buoy to use a buoy that is not being used while they visit the Lake.

Should the buoys remain under private ownership, they will still remain illegal except those that are proven by buoy owners to be non-conforming, because they were not placed by the upland property owner, the MCPA. The buoys cannot be considered as belonging to semi-waterfront property owners.

Private Mooring Buoys placed in Shuswap Lake adjacent to the MCPA property prior to the adoption of Lakes Zoning Bylaw No. 900 in August 2012 are considered non-conforming, and it is only those buoys placed after the adoption of the bylaw that are considered illegal, despite not being placed by a waterfront or semi-waterfront property owner. For the proposed zoning bylaw amendment to recognize the buoys, this issue will need to be addressed. If the MCPA does not step in and take ownership, the bylaw will need to consider allowing buoys which are not owned by waterfront or semi-waterfront property owners. This precedent may impact future applications.

In their protracted communications with the MFLNRORD it has come to light that the Province has registered a Notation of Interest for public use (a UREP) in 1996 (Reserve No. 963009, which extends 50 m into the lake) for the foreshore fronting the MCPA property. The purpose of the UREP was to reserve the area of the lake adjacent to the MCPA property as open for public use. Officials with MFLNRORD have speculated that the Reserve was reflective of the covenant reserving the upland property owned by MCPA as park use only. All works on the foreshore, either sanctioned by the MCPA or not since this time which serve a private interest are therefore in violation of the UREP. The MCPA, had they been active with the Lands Branch in securing tenures for structures in the foreshore would likely have become aware of this issue.

In terms of any privately owned buoys which may trespass into the 50 m UREP, staff has posed that question to MFLNRORD who have responded that they would really not have any jurisdiction within the UREP or other legislation to take action against the encroaching buoy owners. Rather they are restricting their jurisdiction to the docks only.

MFLNRORD has indicated that it is willing to look favourably on 3 docks remaining on the MCPA waterfront, provided ownership of the docks is with the MCPA. The MCPA is aware of this caveat, and will apply for permits for these 3 docks. However, they will not manage the docks use, but rather

will leave them to be used on a first come first served basis. Further, they have advised that they will still not take action with respect to private buoys, except through some nebulous sharing concept.

SUMMARY:

Staff are concerned that the MCPA has not enforced their deadline for removal of the additional docks, and has not put forth a management plan for these assets that is realistic. Further, staff are concerned that private non waterfront or semi-waterfront property owners will continue to own private mooring buoys and that this ownership would be recognized in Lakes Zoning Bylaw No. 900, despite the fact that Bylaw No. 900 does not otherwise permit this use. As a result, staff are recommending that the Board consider giving Bylaw No. 900-9 no further readings, so that bylaw enforcement actions can commence.

IMPLEMENTATION:

As per CSRD Policy No. P-18 regarding Consultation Processes-Bylaws, staff recommended the simple consultation process. Neighbouring property owners first became aware of the application for zoning amendments when the notice of development sign was posted on the property.

COMMUNICATIONS:

If the Board supports the staff recommendation, the applicant will be advised and the matter will be referred back to Bylaw Enforcement staff for further action.

If the Board supports second reading of Bylaw No. 900-21 and delegates a Public Hearing staff will proceed with notification of adjacent property owners and advertising the Public Hearing as set out in the Local Government Act.

Referral agencies have provided their comments and they have been attached as Appendix B to this report.

DESIRED OUTCOMES:

That the Board endorse staff recommendation.

BOARD'S OPTIONS:

1. *Endorse the Recommendation.*
2. *Deny the Recommendation.*
3. *Defer.*
4. *Any other action deemed appropriate by the Board.*


LIST NAME OF REPORT(S) / DOCUMENT(S) AVAILABLE FROM STAFF:

1. Lakes Zoning Bylaw No. 900, as amended
2. Maps, Plans, and Photos

Report Approval Details

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| Document Title: | 2017-11-16_Board_DS_BL900-9_MCPPA.docx |
| Attachments: | <ul style="list-style-type: none">- 2015-01-15_Board_DS_BL900-9_MMCPA.pdf- BL900-9 BylawSecondasamendedg.pdf- Agency_referral_responses_BL900-9.pdf- Maps_Plans_BL900-9.pdf |
| Final Approval Date: | Nov 6, 2017 |

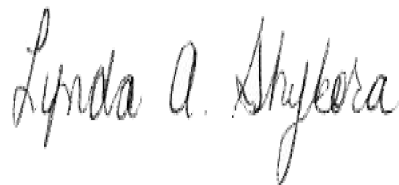
This report and all of its attachments were approved and signed as outlined below:



Corey Paiement - Nov 3, 2017 - 9:56 AM



Gerald Christie - Nov 6, 2017 - 7:19 AM



Lynda Shykora - Nov 6, 2017 - 11:47 AM



Charles Hamilton - Nov 6, 2017 - 1:39 PM