

November 27, 2018

To: The Directors of the Board of the Regional District of Nanaimo  
6300 Hammond Bay Road  
Nanaimo, BC, V9T 6N2

From: Kevin Monahan  
586 Alder St  
Qualicum Beach, BC, V9K 1J3

**Re: Regional Growth Strategy Amendment Bylaw 1615.03 Request from the Town of Qualicum Beach to amend the Growth Containment Boundary** in the Regional Growth Strategy "...to include the entirety of the Town of Qualicum Beach..."

There are two aspects of this request by the Town of Qualicum Beach which should be fatal to the proposal.

### **1-Failure to consult with residents**

The Town of Qualicum Beach has requested this amendment to the Regional Growth Strategy (RGS) be managed through the process for a minor amendment as set out in section 1.5.1 and 1.5.2 of the RGS. The RGS states that amendments may be considered minor, and subject to a simplified fast-tracked approval process if they result from a "full municipal Official Community Plan process".

The Staff report states

"In the case of a minor amendment request originating in a municipality, the RDN's role is limited to the process to amend the RGS. Opportunities for the public to comment on the specifics of the change to the OCP are provided during the municipal OCP review process. As significant consultation has already occurred through the OCP review process, a similar level of consultation is not warranted for the RGS minor amendment."

In fact, there was zero consultation on this issue and no opportunity for the public to comment on this subject. This subject was not considered during Official Community Plan consultations, nor was it discussed at the public hearing on May 7, 2018. It was only on May 28, three weeks after the public hearing, that Council debated moving the Urban Containment Boundary<sup>1</sup> to be contiguous with the Municipal Boundary. This motion carried and the OCP received third reading.

This was the first time the idea of moving the UCB to the municipal boundary was raised by the Town during the OCP review process. However, when citizens tried to comment on the issue, Council would not listen to ANY comments on the subject on the grounds that the public hearing had already taken place. Refer to the video of the May 28 regular Council meeting at 2:15:52.<sup>2</sup>

The Urban Containment Boundary defines areas where urban development is to be directed. There is no aspect of the OCP that is more fundamental than this boundary. For such an

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<sup>1</sup> "Urban Containment Boundary" and "Growth Containment Boundary" have exactly the same meaning—a line drawn on a map to define where growth is intended to be directed. The former term is used in the Qualicum Beach OCP. The latter term is used in the RDN's Regional Growth Strategy. See the RDN's website at <https://www.rdn.bc.ca/1534>

<sup>2</sup> The video may be found at <https://www.qualicumbeach.com/council-live-streaming>

amendment to be made and for the public to be actively prevented from commenting on the subject is an abuse of process. This proposal should have been submitted to a second public hearing before the OCP was adopted. But such public consultation never took place.

Later, a compromise was reached, wherein the Urban Containment Boundary would not be moved and instead, the Town would request (via a minor amendment) that the RGS Regional Growth Boundary should be moved instead and made contiguous with the municipal boundary. This compromise is now before the Regional Board. However, please note that this compromise was made between councillors and again, the public was not given ANY opportunity to comment.

Since there was zero consultation on this issue which is so fundamental to the Qualicum Beach Official Community Plan, this proposal should not be considered under the minor amendment process.

### **2-This proposal is contrary to Provincial law**

This issue has been characterized by its proponents as being about governance, but this characterization is misleading. Neither is this issue about whether the RDN has control over development in Qualicum Beach. The Provincial government, through the Local Government Act, has imposed an obligation on all jurisdictions within a Regional District to ensure their long-term planning is consistent and coordinated.

In order to ensure this consistency, the Local Government Act [447 (1) (b)] requires that a Municipal OCP must contain a Regional Context Statement which specifically identifies the relationship between the OCP and the RGS, and (if applicable) how the OCP is to be made consistent with the RGS over time. This Regional Context Statement must be submitted to the Regional Board for acceptance [Local Government Act 448 (1)].

The Regional Context Statement states “The Town will manage growth through an Urban Containment Boundary that is independent of the Growth Containment Boundary in the Regional Growth Strategy.” However, it also states that “the Urban Containment Boundary matches the RGS’s Growth Containment Boundary?” These statements cannot both be true. In fact, the terms Urban Containment Boundary and Growth Containment Boundary mean exactly the same thing. (see footnote 1) But this proposal very clearly states that that they are the same and different at the same time.

This self-contradictory Regional Context Statement was accepted by the previous Board on September 18, 2018. However, it is unclear that the Board members appreciated the internal contradiction in the Regional Context Statement or that the Board understood that Provincial law requires that the OCP and the RGS are to be consistent, especially where it pertains to an Urban/Growth Containment Boundary.

The staff report states “This change to the GCB means that all land within the municipal boundary will be designated Urban Area in the RGS.” Contrary to this statement, the Qualicum Beach Urban Containment Boundary defines approximately 45% of the land within the municipal boundary as unsuitable for urban development. Consequently the statement in the staff report that “...no inconsistencies between the two policy documents are identified.” simply cannot be true.

To accept that the Qualicum Beach OCP’s Regional Context Statement complies with the Local Government Act is such a logical impossibility that it literally defies belief.

## Summary

The inescapable conclusion is that acceptance of the Regional Context Statement as written is contrary to Provincial law, and the proposal being presented to the board arose out of a process which may be technically legal, but which constitutes an “abuse of process”.

This is a new Regional Board. I hope the new directors will see the fatal flaws in this proposal, which is contrary to Provincial law and arises from a major failure of collaborative engagement with the community. The Town of Qualicum Beach is essentially asking the Board to participate in perpetuating a fiction. I hope that the new Board will not feel obligated to perpetuate the errors of previous Boards.

I urge the Board to rescind its previous acceptance of the Qualicum Beach Regional Context Statement and to suspend the proposed amendment to the Regional Growth Strategy. If the Directors are unsure of the validity of the information in this letter, I urge them to obtain legal advice before making any decisions.

Respectfully submitted:

Kevin Monahan

Note: I am retired from Transport Canada Marine Regulatory and Legislative Services. For eight years I was a senior Regulatory Project manager responsible for regulatory reform of the Canada Shipping Act, 2001, which was (and still is) the biggest regulatory reform project ever undertaken by the Government of Canada. I was involved in all aspects of regulatory development from technical specifications, to consultation and final writing of the legal wording. In 2011 our team was given an award by the Community of Federal Regulators for this regulatory reform work. In 2012, I was awarded a Queen's Diamond Jubilee medal for my work in regulatory reform. I also served as chair of the Qualicum Beach OCP Review Steering Committee.