
TO: Electoral Area Services Committee **DATE:** June 11, 2019
FROM: Greg Keller
Senior Planner **FILE:** PL2018-121
SUBJECT: **Zoning Amendment Application No. PL2018-121**
Fowler Road – Electoral Area H
Amendment Bylaw 500.424, 2019 – Introduction
Lot 23, District Lot 81, Newcastle District, Plan 1967

RECOMMENDATIONS

1. That the Board receive the Summary of the Public Information Meeting held on February 21, 2019.
2. That the conditions set out in Attachment 2 of the staff report be completed prior to Amendment Bylaw No. 500.424, 2019 being considered for adoption.
3. That “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.424, 2019”, be introduced and read two times.
4. That the Public Hearing on “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.424, 2019”, be delegated to Director McLean or his alternate.

SUMMARY

This is an application to rezone the subject property to permit a proposed seven-lot bare land strata subdivision in accordance with the Alternative Forms of Rural Development policies contained in the Electoral Area H Official Community Plan (OCP). A Public Information Meeting was held on February 21, 2019. The requirements set out in the Conditions of Approval are to be completed by the applicant prior to the Board’s consideration of the Bylaw for adoption (see Attachment 2). It is recommended that Amendment Bylaw No. 500.424, 2019 be granted first and second reading.

BACKGROUND

The Regional District of Nanaimo (RDN) has received an application from Essex Properties Ltd. to rezone the subject property in order to permit a proposed seven lot bare land strata subdivision in accordance with the Alternative Forms of Rural Development (AFRD) policies contained in the Electoral Area H Official Community Plan (OCP). This represents the first zoning amendment application considered under the AFRD policies which encourage more sustainable forms of development and help meet community objectives by protecting an area of significance for agriculture, ecological protection, aquifer protection, or another public good purpose.

The subject property is approximately 11.14 ha in area, is currently vacant, and is densely vegetated with mature native vegetation. The property has road frontage on its north, east, and south sides. The property is bordered by Island Highway West to the north, an unnamed dedicated road allowance to the east, and Fowler Road to the south. The subject property is also located adjacent to the Arrowsmith Golf and Country Club. The subject property is currently zoned Agriculture 1 Subdivision District D (AG1D) and is adjacent to other AG1 zoned parcels to the west, Rural 1 zoned parcels to the north and east, and a Recreation 1 zoned parcel to the south (see Attachment 1 – Subject Property Map and Attachment 3 – Current Zoning Map). The southern half of the subject property is located within the Agricultural Land Reserve (ALR).

Proposed Development

This is an application to rezone the subject property to permit the creation of a seven-lot bare land strata subdivision. The proposed lot layout attached is in a conceptual format and the final layout would be addressed through a future subdivision application. The proposal is to develop seven lots on the north half of the property and to protect the remaining southern ALR portion for future agricultural purposes in accordance with the AFRD policies contained in the OCP. A rezoning is required to allow seven lots on the north half of the subject property, to reduce the dwelling unit potential of the ALR portion of the subject property, and to ensure that the overall number of potential dwelling units on the subject property is not increased (see Attachment 3 – Proposed Site Plan).

The proposal is to amend the north portion of the subject property from AG1D to Alternative Forms of Rural Development 1 (AF1). The south portion of the subject property, located in the ALR, is proposed to maintain its AG1 zoning with a revision to the subdivision district to change it from D (2.0 hectare minimum parcel size) to Z (no further subdivision) (see Attachment 4 – Proposed Zoning Maps). As future subdivision potential is addressed in the proposed AF1 zone, no subdivision district is required on the north portion of the subject property.

The property is subject to the Freshwater and Fish Habitat Protection, Aquifers, and Farmland Protection Development Permit Areas (DPA). Therefore, a development permit (DP) will be required prior to development activities occurring within the DPA.

With respect to servicing, the development is proposed to be serviced by individual wells and a shared means of sewage disposal.

Official Community Plan Implications

The north half of subject property is designated Rural and the south half of the subject property is designated Resource pursuant to the OCP. This zoning amendment application is being considered pursuant to the AFRD policies. The AFRD policies support rezoning to permit subdivision within a smaller minimum lot size than otherwise supported by the OCP within the Rural Residential and Rural land use designations, provided the proposal does not result in more dwelling units than what is permitted by the OCP or the zoning bylaw at the time the application is made, subject to meeting a number of defined criteria. The intent of the AFRD policies is to encourage more sustainable forms of rural development while protecting areas of significance in perpetuity for agricultural, ecological, aquifer protection, or other public good purposes.

Based on current zoning, the subject property has the potential to permit eight dwelling units. As per the AFRD policies, where more than one dwelling unit is permitted on a lot, each dwelling unit can be counted as one lot for the purpose of calculating the number of lots permissible under AFRD policies. The overall number of lots proposed is eight with seven on the north non-ALR portion and one on the remaining portion within the ALR.

The area of significance to be protected is agricultural land located in the ALR. In order to satisfy AFRD criteria, the applicant has submitted an Agricultural Land Capability Assessment prepared by Madrone Environmental Services Ltd. dated November 27, 2018. The assessment found that 92% of the ALR portion is Class 3 lands that could support a wide range of crops with moderately intensive management practices.

In accordance with AFRD policy 4, future use and development of the donor portion of the parcel must be ensured through zoning that allows a reduced level of development, and the registration of a Section 219 Covenant (see Attachment 2 – Conditions of Approval).

Given the above, the proposal has satisfied the requirements of the AFRD policies and is consistent with the OCP.

Land Use Implications

Based on AFRD policy, the subject property has potential to be subdivided into four parcels, each permitted to have two dwelling units. The proposed amendments would permit seven dwelling units on the north half of the property and one dwelling unit on the remaining portion within the ALR (see Attachment 3 – Proposed Site Plan). The ALR portion of the subject property would be protected from future development through zoning and a Section 219 Covenant.

To satisfy Board Policy B1.21 – Groundwater Application Requirements for Rezoning of Unserved Lands (Policy B1.21) that was in place at the time of application, the applicant has submitted a preliminary Hydrogeologic Report prepared by H₂O Environmental Ltd. dated July 12, 2018. The report indicates that based on reported yields of wells located on surrounding properties and characteristics of the aquifer, it is anticipated that the proposed wells will be capable of supplying 3.5 m³ of water year-round and that the additional wells would not have an adverse impact on the aquifer, surrounding wells or the receiving waters. In accordance with Policy B1.21, the applicant is required to register a Section 219 Covenant on title of the subject property prior to adoption of the proposed amendment bylaw which requires that all wells be constructed and tested, and a report submitted to the RDN prior to final approval of the future subdivision (see Attachment 2 – Conditions of Approval).

To address onsite sewage disposal, the applicant submitted a Wastewater System Feasibility report prepared by H₂O Environmental Ltd. dated December 7, 2018. The report concludes that the subject property is capable of supporting onsite sewage disposal for the proposed development and if properly installed and maintained, will pose a low risk to human health and environmental safety.

In recognition of the increased development potential that would be achieved through rezoning the subject property, the applicant has proposed a community amenity contribution in the form of 1.6 hectares of land for use as a community park. The proposed park land represents approximately 14 percent of the subject property.

RDN Parks Department staff conducted a thorough evaluation of the parkland proposal based on the community parkland acquisition criteria contained in Section 3.5 of the Community Parks and Trails Strategic Plan. The evaluation concluded that the parkland proposal has low to moderate-low value for acquisition. In addition, the candidate parkland does not meet the preferred parkland criteria identified in Section 4.1.11 of the OCP. Therefore, it is recommended that the RDN not accept the proposed parkland as a community amenity contribution for this rezoning application. Please note, at the time of subdivision, the applicant will be required to satisfy the minimum 5% parkland requirement pursuant to Section 510 of the *Local Government Act*.

In recognition of the increased development potential that would be achieved through rezoning the subject property, the applicant is also offering a community amenity contribution in the form of voluntary cash contribution of \$4,500 for trail improvements in Electoral Area H (see Attachment 2 - Conditions of Approval).

Given that the application is consistent with AFRD policies, has demonstrated that the proposed development would not have an adverse impact on the aquifer or surrounding wells, and has confirmed that the proposed development can be adequately serviced with onsite water and sewage disposal, it is anticipated that the proposed development will have a positive impact on the community.

Environmental Implications

The applicant has submitted a Bio-inventory prepared by Toth and Associates Environmental Services dated June 23, 2018. The Bio-inventory identifies an ephemeral red alder/slough sedge wetland and a vegetated low-gradient unnamed watercourse. The Bio-inventory indicates that the *Riparian Areas Regulation* does not apply to these water features. Although no occurrences of rare species were observed on the property, the Bio-inventory indicates that the majority of natural features on the property that could be considered sensitive to development are associated with the riparian areas of the unnamed creek and wetland.

The Bio-Inventory provides the following three recommendations to protect the natural features contained on the subject property:

1. That an additional Bio-inventory be conducted prior to site development to assess the currently undeveloped section of Fowler Road, drainage, and the proposed subdivision.
2. That a 15.0 metre vegetated buffer strip around the perimeter of the proposed subdivision be maintained.
3. That a Drainage Management Plan be developed prior to physical development of the subject property.

It is noted that recommendation No. 1 above will be satisfied through the issuance of a Freshwater and Fish Habitat DP at the time of subdivision. In order to secure the above recommendations, it is recommended that the applicant be required to register a Section 219 Covenant on the property title identifying a 15.0 metre no disturbance riparian buffer adjacent to all watercourses and wetlands identified in the Bio-inventory, to establish a 15.0 metre buffer strip around the perimeter of the non-ALR portion of the subject property, and to require the applicant to submit and implement a Drainage Management Plan to the satisfaction of the RDN

prior to the RDN issuing a subdivision compliance letter (see Attachment 2 – Conditions of Approval). It is noted that approval from the Agricultural Land Commission (ALC) for the Section 219 Covenant is required as it would apply to land located in the ALR.

As the environmental implications of this application have been assessed by a Qualified Environmental Professional, and the proposed development will be undertaken in accordance with the recommendations contained in the above Bio-inventory, the proposed development is not anticipated to have a negative environmental impact.

Intergovernmental Implications

The application was referred to the Dashwood Volunteer Fire Department (DVFD), Vancouver Island Health Authority (Island Health) and the Ministry of Transportation and Infrastructure (MOTI) for review and comment. These agencies have advised that they do not have any concerns with the proposed amendment.

The DVFD indicated that additional water storage for firefighting purposes is needed in the area. In response, the applicant is proposing to grant the RDN a statutory right-of-way (SRW) to accommodate a water storage tank and to provide access for firefighting apparatus. The applicant is also proposing to permit the DVFD to utilize an existing well to fill a water storage tank. The DVFD has a water storage tank that would be suitable for installation on the subject property that it may choose to install at a later date. It is recommended that the above SRW and an agreement allowing use of the existing well be prepared to the satisfaction of the RDN and registered prior to adoption (see Attachment 2 – Conditions of Approval). As the land is located in the ALR, approval of the SRW from the ALC is required. Preliminary discussions with ALC staff suggest that approval would be delegated to the Chief Executive Officer of the ALC. If approval cannot be obtained, the applicant will explore the possibility of an alternate location on lands owned by the applicant or within the road right-of-way subject to MOTI approval.

Public Consultation Implications

A Public Information Meeting (PIM) was held on February 21, 2019. Approximately 13 members of the public attended and no written submissions were received prior to the PIM (see Attachment 5 – Summary of Minutes of the Public Information Meeting).

In accordance with Section 464 of the *Local Government Act*, should the Board grant First and Second reading to the amendment bylaw, a Public Hearing is required to be held or waived prior to the Board's consideration of 3rd reading. The purpose of the Public Hearing is to provide an opportunity for those who believe that their interest in property is affected by the proposed bylaw to be heard by the Regional Board. In addition, the Regional Board may delegate the Public Hearing by resolution in accordance with Section 469 of the *Local Government Act*. Therefore, it is recommended, that should the Board grant First and Second reading to the proposed amendment bylaw, that a Public Hearing be held in accordance with Section 464 of *The Local Government Act* and that the Public Hearing be delegated to Director McLean or his alternate.

ALTERNATIVES

1. To proceed with Zoning Amendment Application No. PL2018-121, consider first and second reading of the Amendment Bylaw and proceed to Public Hearing.
2. To not proceed with the Amendment Bylaw readings and Public Hearing.

FINANCIAL IMPLICATIONS

The proposed development has been reviewed and has no implications related to the Board 2018 – 2022 Financial Plan.

STRATEGIC PLAN IMPLICATIONS

The proposed development has been reviewed and the proposal help conserve lands for agricultural use is in keeping with the 2019 – 2022 Board Strategic Plan.



Greg Keller
gkeller@rdn.bc.ca
May 21, 2019

Reviewed by:

- G. Garbutt, General Manager of Strategic and Community Develop
- P. Carlyle, Chief Administrative Officer

Attachments

1. Subject Property Map
2. Conditions of Approval
3. Proposed Site Plan
4. Proposed Zoning Maps
5. Summary of Minutes of the Public Information Meeting
6. Proposed Amendment Bylaw No. 500.424, 2019

SUBJECT PROPERTY
Lot 23, District Lot 81,
Newcastle District, Plan 1967
PID: 006695221

D.L. 81

0 100 200 Meters

Attachment 2

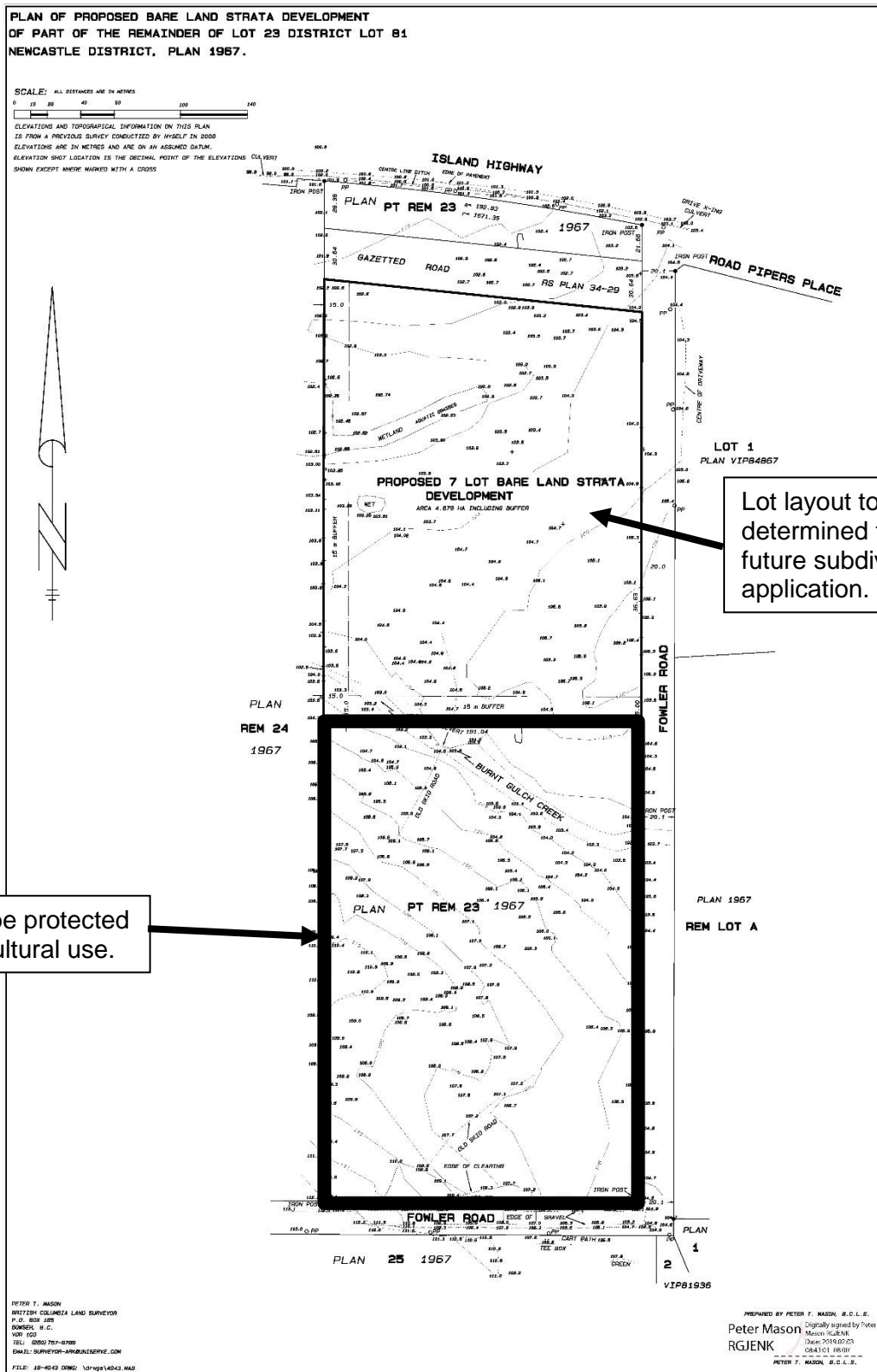
Conditions of Approval

The following is required prior to the “Regional District of Nanaimo Land Use and Subdivision Amendment Bylaw No. 500.424, 2019” being considered for adoption:

1. The applicant is required to register, at the applicant’s expense and to the satisfaction of the RDN, a Section 219 Covenant on the property title requiring that property owner agrees:
 - a. not to make application to the RDN for an Official Community Plan or Zoning Bylaw Amendment in order to subdivide, or add additional dwelling units;
 - b. not to make application to the Agricultural Land Commission (ALC) for a non-adhering residential use, for a non-farm use, to subdivide, or to remove the portion of the subject property within the Agricultural Land Reserve (ALR); and,
 - c. that the number of dwelling units located on the portion of the subject property within the ALR shall be limited to one.
2. The applicant is required to register, at the applicant’s expense and to the satisfaction of the RDN, a Section 219 Covenant on the property title identifying a 15.0 metre no disturbance riparian buffer adjacent to all watercourses and wetlands identified in the Bio-inventory, to establish a 15.0 metre buffer strip around the perimeter of the non-ALR portion of the subject property, and to require the applicant to submit and implement a Drainage Management Plan to the satisfaction of the RDN prior to the RDN issuing a subdivision compliance letter
3. The applicant is required to register, at the applicant’s expense and to the satisfaction of the RDN, a Section 219 Covenant on the property title which requires that all wells be constructed and tested, and a report from a Professional Engineer (registered in BC) be submitted to the RDN prior to final approval of subdivision. No subdivision shall occur until such time that a report from a Professional Engineer (registered in BC) has been completed to the satisfaction of the Regional District of Nanaimo confirming that the wells have been pump tested and certified including well head protection, and that the water meets Canadian Drinking Water Guidelines.
4. The applicant is required to register, at the applicant’s expense and to the satisfaction of the RDN, a statutory right-of-way to accommodate the construction of a water storage tank and related improvements and to provide access for firefighting apparatus. If approval from the ALC cannot be obtained, the applicant must work with the RDN to explore the possibility of locating the water storage tank in the road right-of-way subject to MOTI approval or in another location to the satisfaction of the RDN.
5. The applicant is required to prepare, at the expense of the applicant and to the satisfaction of the RDN and the Dashwood Fire Chief an agreement to allow use of the existing well for firefighting purposes.

6. The applicant shall provide a voluntary community amenity contribution in the amount of \$4,500.00 for trail improvements in Electoral Area H.

Attachment 3 Proposed Site Plan







Attachment 5
Summary of the Public Information Meeting
Held at Lighthouse Community Hall
240 Lions Way, Qualicum Bay
Thursday, February 21, 2019 at 6:30 pm
RDN Application PL2018-121

Note: This summary of the meeting is not a verbatim recording of the proceedings, but is intended to summarize the comments and questions of those in attendance at the Public Information Meeting.

There were 13 members of the public in attendance at this meeting.

Present for the Regional District of Nanaimo:

Director Stuart McLean, Electoral Area 'H' (the Chair)
Greg Keller, Senior Planner, handling the development application
Stephen Boogaards, Planner

Present for the Applicant:

Kim Jiggins, Essex Properties Ltd.
Patrick Jiggins, Essex Properties Ltd.

The Chair opened the meeting at 6:30 pm, outlined the evening's agenda, and introduced the RDN staff and the applicants in attendance. The Chair then stated the purpose of the Public Information Meeting and asked RDN staff to provide background information concerning the development application.

Greg Keller provided a brief summary of the proposed zoning amendment, supporting documents provided by the applicant, and the application process.

The Chair invited the applicant to give a presentation of the development proposal.

Kim Jiggins presented an overview of the proposal.

Following the presentation, the Chair invited questions and comments from the audience.

Marci Ditor, 226 Sabina Road, asked about the lot size.

Kim Jiggins responded that there will be seven half acre lots.

Nelson Eddy, 5058 Longview Drive, asked the proportion of the property in the Agricultural Land Reserve and if there will be an exclusion.

Kim Jiggins confirmed approximately 13 acres is in the Agricultural Land Reserve (ALR) and will not be removed.

Dianne Eddy, 5058 Longview Drive, commented that the first application under the Alternate Forms of Rural Development policies requires scrutiny. She identified that the use of the word

‘perpetuity’ in the policy is not an appropriate term because nothing will last forever. Since the density is being transferred from the ALR, which is already protected, the transfer of density is misleading. She also identified a concern with the wetlands situated between the dwellings and the sewage treatment facility.

Kim Jiggins confirmed that the perk tests found no problem with contamination that would affect fish or riparian areas. He also completed other engineering and agrology reports.

Dianne Eddy, 5058 Longview Drive, asked for clarification for where density can be transferred from. She is concerned that density can be transferred from anywhere in the RDN. If it was able to transfer across the region, Cedar may get more parks while Area H receives more development. She stated that Area H needs more parks.

Greg Keller explained that the word perpetually comes from the Official Community Plan (OCP) and that the proposal is for clustering, not density transfer. The zoning amendment follows the applicable policies of the OCP.

Colin Thompson, 4737 Maple Guard Drive, commented that the wording of the OCP is convoluted and that the RDN is pushing development.

Dick Stubbs, 6920 Island Highway West, asked for confirmation if this was density transfer or clustering.

Greg Keller confirmed that it is clustering and that the intention is to not increase the number of permitted dwelling units. Currently the number of dwelling units may be spread over the entire parcel, whereas the proposal is to focus the units in a smaller area. The proposal is for 8 lots based on the units permitted under zoning, removing 20% for roads.

Kim Jiggins confirmed that the lots will be half acre and the balance will be preserved for agriculture.

Dick Stubbs, 6920 Island Highway West, commented that there is no such thing as ‘perpetually’. He stated it would be better to use a restrictive covenant.

Greg Keller explained that the word ‘perpetually’ would mean the use of zoning and covenant to restrict further subdivision or dwelling units.

Barry Kurland, 4858 Island Highway West, identified that the ALR takes precedence over a covenant. Barry asked if the land will still be protected.

Greg Keller answered that regardless of if the property is in the ALR, the land is meant to be protected for farming.

Barry Kurland, 4858 Island Highway West, asked what the zoning will be.

Greg Keller responded that the name of the zone is not relevant; it is the content that matters. He explained that minimum parcel size depends on the type of servicing. The review for rezoning is to prove out feasibility. If successful, there will be another review through the subdivision process.

Barry Kurland, 4858 Island Highway West, identified he was the closest affected neighbour to the proposal. Mr. Kurland stated that his concerns, as an organic farmer, are that he has to pay for water while domestic uses does not. He also indicated that he was concerned that clustering dwelling units will increase the potential to use pesticides and herbicides.

Kim Jiggins confirmed their golf course is all organic.

Barry Kurland, 4858 Island Highway West, identified that he does not want street lights, as the neighbourhood is already safe. He stated the applicant can already subdivide land without doing anything else. He indicated that he is not in favour or against the proposal.

Dianne Eddy, 5058 Longview Drive, asked about setbacks to wells.

Kim Jiggins confirmed the community septic was far away from any well or wetlands. Each dwelling unit will have its own well.

Dianne Eddy, 5058 Longview Drive, stated she was concerned about drinking water.

Kim Jiggins said he did not have any information on the depth of the wells.

Barry Kurland, 4858 Island Highway West, identified that a creek runs through his property and goes under the Island Highway and to Widgeon Road. The creek drains all year round. He also asked if the applicant considered community water.

Kim Jiggins responded that community water was considered with Island Health, though it would be too costly.

Nelson Eddy, 5058 Longview Drive, asked if they were using pump stations for the community septic.

Kim Jiggins confirmed that they would use gravity to the septic.

Barry Kurland, 4858 Island Highway West, stated that any parkland would be very wet. He asked if the RDN would want the land.

The Chair clarified that parkland acceptance would be at the discretion of the RDN Board.

Dianne Eddy, 5058 Longview Drive, asked why the RDN would not want parkland. She identified that Area H needs more parkland.

Greg Keller clarified that parkland will be considered through rezoning and subdivision, or a combination of processes.

Dianne Eddy, 5058 Longview Drive, commented that the principal is to create greenspace and if parkland is not being considered then there should not be clustering.

Greg Keller clarified the objective of clustering in this application is meant to protect land for agriculture. In other situations, the proposal may be to protect environmentally sensitive areas.

Dianne Eddy, 5058 Longview Drive, asked if the RDN is taking over parkland or if it will be the developer.

Greg Keller identified that the RDN needs to work with the developer on the parkland proposal and the zone. All proposed recommendations will be provided to the RDN Board.

Barry Kurland, 4858 Island Highway West, identified the wildlife that is on the property and asked if the proposal has been assessed by a biologist.

Kim Jiggins confirmed a biologist has prepared a report and nothing requires protection on the seven lots.

Greg Keller explained that for the ALR portion, the land may be cleared for agriculture, subject to satisfying the Wildlife Act and all other applicable federal and provincial legislation. Mr. Keller explained that the environmental assessment identified areas for protection, which will require a covenant. He indicated that any covenant on the ALR portion will require approval by the Agricultural Land Commission, as it may restrict farming.

Colin Thompson, 4737 Maple Guard Drive, asked about the formula for the maximum size of the dwelling units.

Greg Keller explained that parcel coverage restricts building footprint, though the percentage has not yet been determined for the zone.

Colin Thompson, 4737 Maple Guard Drive, asked if the proposal was subject to a rental pool.

Kim Jiggins confirmed that the proposal is freehold tenure.

Victor Jensen, 496 Renbar Road, asked about the access and roads going into the subdivision.

Greg Keller explained that the Ministry of Transportation and Infrastructure is the Provincial Approving Officer for subdivision and the Ministry will identify the standard for roads.

Marci Ditor, 226 Sabina Road, asked who was responsible for looking after wildlife corridors.

Greg Keller explained that it was very complex, including federal and provincial protections. The challenge is that wildlife corridors also do not follow property lines.

Barry Kurland, 4858 Island Highway West, identified that the peat bog is the main ecological zone. It is virtually impossible to build in, though it is the main ecological resource.

Colin Thompson, 4737 Maple Guard Drive, asked if half of the property was in the ALR and if each lot would be two and a half acres based on the permitted zoning density.

Greg Keller explained the density calculation and clarified that overall density does not change.

Dianne Eddy, 5058 Longview Drive, stated that the density seemed very high. She also stated that the notice was not clear for how the density clustering was determined.

Barry Kurland, 4858 Island Highway West, stated that there is a need to accommodate population growth while also preserving land. Under the current regulations the property can be developed without regard for the land.

The Chair asked if there were any further questions or comments.

Being none, the Chair thanked those in attendance and announced that the Public Information Meeting was closed.

The meeting was concluded at 7:44 pm.

A handwritten signature in cursive script, appearing to read 'S. Boogaards'.

Stephen Boogaards
Recording Secretary

Attachment 6
Proposed Amendment Bylaw No. 500.424, 2019