



MEMORANDUM

To: Electoral Area Services Committee and Fraser Valley Regional District Board of Directors

From: Lisa Grant, Planner 1

Date: February 26th, 2010

Subject: Hemlock Valley Zoning Amendment, Bylaw 0993, 2010

Site location: Hemlock Valley, Area “C”

File No.: 3360-22-2009-01

RECOMMENDATION

That:

1. The Fraser Valley Regional District Board of Directors give Zoning Amendment Bylaw No. 0993, 2010 first reading.
2. Pursuant to s. 865(1) of the Local Government Act the Regional Board determine that Bylaw 0993, 2010 is consistent with the Regional Growth Strategy;
3. The Regional Board forward Bylaw 0993, 2010 to public hearing;
4. The Regional Board delegate holding of the public hearing to the Director for Electoral Area “C”.
5. Any other electoral area and municipal directors may attend the public hearing and hear from members of the public; and in that case, the director to whom the hearing is delegated will chair the public hearing.
6. The Regional Board of Directors resolve that Bylaw 0993, 2010 be referred to Chehalis First Nation, Kwantlen First Nation, Sto:lo Tribal Council, Sto:lo Nation Society, Ministry of Transportation and Infrastructure, Ministry of Environment, Ministry of Forests and Range, Ministry of Tourism, Culture and the Arts, Fraser Health Authority, and the Hemlock Valley Home Owners Association.

ISSUE

Expired Building Schemes have resulted in the majority of Hemlock Valley having no land use management regulations (zoning). OPC policies support the application of zoning regulations to fill the gap.

BACKGROUND

Created in the late 1970's and early 1980's by the Provincial Government, development in Hemlock Valley was regulated by building schemes that were registered on title of private lands. The building schemes regulated not only the form and character of development, but also land uses, densities and siting for individual lots. Building schemes provided land use management for an approximate thirty year span. In 1996, when the first building scheme expired, the Regional District adopted zoning for those specific lands. The remaining Building Schemes expired in 2003. In accordance with OCP policy zoning should be applied to this area. An amendment to

Electoral Area “C” Zoning Bylaw No. 100 will address this gap in land use regulation and is brought forward for Board consideration.

At the time the OCP was developed, and since the expiry of the building schemes, community members have identified the need for zoning in Hemlock Valley. The community recognized the need for land use controls to ensure that development was undertaken in an orderly manner, to prevent non-compatible land uses, and to regulate the siting of structures on lots. By adopting zoning to introduce land use regulations, a level of certainty is provided over the scale and shape of development. Additionally, zoning helps to protect property values and provides a level of assurance about the type of development that may occur. Finally, zoning provides a public forum for community members to comment on new land uses.

The proposed zoning bylaw amendment responds to issues and constraints identified by background research and consultation with community members. Over time issues have arisen and hazards were identified that the original building schemes did not address. They are summarized below:

Geotechnical Hazards

As part of the OCP planning process, an overview geotechnical and avalanche studies were completed in 2000. The geotechnical overview study identified hazards and properties where site specific study may be required prior to development. Hazards include snow avalanche, rock fall, debris landslide, debris flows, creek flooding and erosion and creek deposition and gullying. Since snow avalanche is one of the hazards that pose a threat to privately owned lands, additional review was done by avalanche expert David McClung. McClung’s study identified lands affected by the threat of snow avalanche; they are located on Edelweiss Drive, Snowmist Place and Snowmist Crescent. The study rated avalanches on a color scale, with red being the most significant and yellow the lowest risk. This information was reviewed and compared to the building scheme densities to determine where conflicts may exist.

Snow Loads and Snow Shedding

Hemlock Valley is known for its high snow loads. In recent years there have been disputes between neighbours concerning the shedding of snow onto adjacent lots.

Parking

Due to the large amounts of snow Hemlock Valley experiences, on-street parking is not available. All parking for uses must be provided on-site. When reviewing potential density thresholds staff considered if the property sizes could accommodate on-site parking, this is especially a concern where medium and high density development is envisioned, as well as, if a rental type of use is permitted requiring additional parking spaces.

Utilities and Servicing

Hemlock Valley’s utilities are privately owned and operated. The water system is regulated by Fraser Health Authority (quality and quantity) and the Comptroller of Water Rights. The community sanitary sewer system is under the jurisdiction of Ministry of Environment (MOE). Fraser Health Authority and MOE have mandatory reporting requirements. However, for several years this information has not been provided by the owner to either agency. The Regional District has requested information from the current owner to assist with this zoning project, but to date no information has been received. Staff met with or conducted telephone conversations with these agencies. At a meeting with a Fraser Health Authority official, the water system’s quality and quantity issues were discussed.

The community water system is a surface water source that collects water from Cohen Creek. Fraser Health Authority advised that for the past few years the water system has had quality issues because of water samples testing positive for e-coli bacteria, resulting in boil water advisories. The Regional District obtained a copy of the permit to operate a community water system and the subsequent non-compliance order that was issued because the utility company failed to meet the terms of their operating permit. The Fraser Health Authority official advised that quantity is also a potential issue and this has an impact on the level of fire protection that currently exists.

The water system is currently permitted through a Certificate of Public Convenience and Necessity (CPCN) to operate a water system with a potential for 193 fee simple lots plus the lodge, fire hall and 60 condo units to be connected. It should be noted that currently there are 268 lots located in Hemlock Valley. As a result there appears to be a short fall. The Regional District anticipates the need for the water system owner to apply for an amendment to the current CPCN certificate and undertake a major upgrade to the water system and address quality and quantity short comings.

The community sanitary sewer system is regulated by MOE based on discharge rates. The utility has a valid operating certificate, but the system would most likely not meet current standards. Like the water system, there is a lack of current information about the sewer system. The operator is required to record these on a monthly basis and report this information. To date, the utility company has not reported any information for several years.

Moving forward in light of these servicing uncertainties is challenging. The zoning bylaw has used the tools available to address these issues to best of our abilities. It is important to note that servicing issues are dealt with by senior levels of government and are out of the Regional District's jurisdiction.

DISCUSSION

In addition to meeting the requirements of the Local Government Act (LGA), including being consistent with the OCP, the proposed zoning amendment should account for constraints detailed in the background section of this memo. Two OCP policies stood out, the first was the use of building schemes as a baseline guide to apply zoning. The second was to direct development away from hazards. . Certainly, the building schemes and policy direction from the OCP have been central considerations in the development of this zoning amendment bylaw. A number of other considerations were also relevant. The section below outlines the principles that guided the development of the proposed zoning for Hemlock Valley.

Guiding Principles

Building Schemes

Building schemes were registered on property titles at the time the ski resort was initially developed and have established the current pattern of development. They help to inform specific zoning regulations such as height, permitted uses, density and siting. Staff reviewed Building Schemes in partnership with all other background information to create a baseline for establishing new zoning regulations. Those familiar with the building schemes will note the common elements found in the proposed new zones.

Avoiding the Creation of Non-conforming Uses

The proposed zoning bylaw amendment will not create any non-conforming land uses. All existing uses have been zoned as permitted uses under the proposed zoning bylaw.

Avoiding Medium and High Density in Hazard Areas

At the time the resort was initially approved by the Province, hazard information was largely unknown. Not until overview studies were undertaken as part of the OCP development process were hazards understood on a lot by lot basis.

Part Two, section 6 of the OCP has a specific policy stating “new development shall, where possible, be directed away from lands susceptible to mass slope instability, erosion, rockfall, snow avalanche other forms of geological hazards from lands with severe building or road foundation limitations.” The OCP indicates one avenue of implementation of this policy is through zoning. The second policy document to consider is the Hazard Acceptability Policy, which directs development away from hazardous areas.

It is not possible to entirely avoid the snow avalanche hazard because of existing lots. However, it is possible to assign a lower density (one-family residence or duplex) zone to these lands. As explained in the background section of this memo, an overview geotechnical and snow avalanche studies were undertaken during the OCP

development stage. Approximately 11 vacant properties are located in the red and blue snow avalanche area. To ensure that future development meets the hazard policies as set out in the OCP, staff is proposing to designate these properties a maximum density of two dwelling units (duplex). Originally, the Building Schemes had envisioned that the properties would have a density of 4 or 6 units.

Staff will be contacting an avalanche specialist to determine the feasibility of undertaking an update study based on estimated cost and timelines. The study should re-evaluate the run-out zones and magnitude of the hazard, i.e. if properties are still rated as red, blue or yellow. However, preliminary discussions with the consulting engineer indicate that hazard areas are unlikely to change.

Maintaining Overall Density within Assumed Servicing Thresholds

As noted above, utilities serving Hemlock Valley are privately owned and operated. At the time the utilities were established in the late 1970's, servicing thresholds and capacities were established. These hold true today as no major upgrades or changes have been undertaken. Staff structured the zoning bylaws to reflect these density thresholds. Essentially, the new zones established an overall density that is the same as density established by the Building Schemes maintaining the overall the density thresholds.

As noted in the background section, the current CPCN permits 193 lots to connect to the water system but during the development approvals the Province permitted 268 lots to be created without increasing the capacity of the water system and subsequently the CPCN. Therefore, an apparent shortfall exists. Staff is concerned about the number of connections and assumes that community member may be surprised to learn there are potential insufficient water connections. In light of these challenging issues, is the Regional District must rely upon the services approved by the Province at the time of the initial development and the continued oversight of these services by the Province.

Current services are provided under Provincial permits and approvals. Services have to be maintained to meet these requirements and expanded as development requires. According to the office of the Comptroller of Water Rights,

“...if new development was to occur, whereby the Utility was to provide additional service either within or outside of its service area an application for an amended CPCN would be required. Sections 38 and 39 of the Utilities Commission Act requires that a public utility is to provide and maintain its property and equipment in order to provide service that is adequate, safe, efficient, just and reasonable without discrimination or delay to all persons who apply for service and are reasonable entitled to it and pay or agree to pay the rates established of that service.”

Moreover, the Resort is undergoing a Master Plan update proposing significant new development and will result water system upgrades being a necessity under current operating permits. The Regional District must rely on the Province to monitor and enforce required system upgrades including an amendment to the CPCN as development thresholds are reached and new connections are needed.

Proceeding with the zoning amendment as proposed, the Regional District must rely on the following:

- Original utility approvals by the Province took into account overall building scheme densities;
- The Province as the regulator of utilities will ensure that adequate quality and quantity standards are met; and
- Utilities will be expanded as servicing thresholds are met so that all existing private parcels in Hemlock Valley can connect to water and sewer utilities.

In response to the uncertainty associated with water and sewer utilities, the zoning bylaw as proposed would permit residential uses only if connected to community water and sanitary sewer systems.

As an alternative, zoning could be applied that limits residential development to single family dwellings until such a time as: a) the water system is upgraded; or 2) it is demonstrated that water and sewer systems are adequate to serve higher density uses without compromising the ability of the systems to serve all existing parcels in Hemlock Valley.

Siting Issues

The topography, environmental conditions and lot sizes in Hemlock Valley can pose challenges at the design and construction stage of development. During the background review, a siting exercise was undertaken in which staff plotted each vacant lot to determine if site constraints existed. Lots in Hemlock Valley are similar in size to single family lots in urban areas. As a result, some lots may have a difficult time developing at the density threshold envisioned by the building schemes, especially because all parking must be provided on site.

Snow loads and snow shedding was expressed as a concern by residents. There have been instances where snow has shed from one roof onto an adjacent property and/or structures resulting in damage. Building Scheme setbacks are inadequate to deal with snow shedding. To help address this issue through zoning, staff is proposing a side lot line setback of 3.5 metres. This setback allows snow to shed onto the property and be cleared with a small front end loader from the side of property into the rear or front of a lot. The side setback would allow for roof overhangs, steps and other building components to extend into the setback. It is important to note that snow shedding is considered to be an important issue for the community despite only approximately 40-50% of lots being built on. The problem can be expected to increase as Hemlock Valley is built out and areas for snow storage become even more limited.

To help compensate for the increased side setbacks, staff recommend that front setbacks be reduced from 7.6 metres to 6.0 metres and the rear setback to 5 metres. This allows some flexibility for the siting of buildings. The proposed zoning bylaw also includes a provision requiring 35% maximum lot coverage to provide adequate snow storage area on lots.

Increased side setbacks will create some siting non-conformities on existing lots. All structures legally existing prior to the adoption of the zoning bylaw would be 'grandfathered' pursuant to section 911 of the LGA and would be able to continue in their existing location as long as the extent of the non-conformity is not increased in the future. Furthermore, if necessary, property owners can apply for development variance permits to address any siting issues that arise for new construction.

Proposed Zone Structure

The building schemes provided for one-family and duplex, a 4-plex, 6-plex and multi-unit dwellings for three lots (17 units, 24 units and 37 units, consecutively). Rather than apply four or more new zones, staff opted to draft three new zones that provide greater flexibility. They are detailed below and summarized in a table attached in Appendix A:

Resort Residential-3 (RST-3)

The purpose of this zone is to provide for one (1) one-family residence or duplex on an individual lot. This zone applies to all lands in which the building scheme permitted either one family residence or duplex housing. Staff is recommending zoning properties for a duplex use or single family use as indicated in the original building schemes. It should be noted that a duplex use is permitted in hazard areas. Vacant lands located along Edelweiss Drive originally designated for four-plex or six-plex dwelling units but located in the red or blue avalanche hazard zone have been zoned for a duplex use. This totals approximately 11 lots.

Resort Residential Medium Density-4 (RST-4)

The RST-4 zone permits a minimum of three up to a maximum of six dwelling units. Approximately 27 lots are proposed to be zoned RST-4. The almost half of the lots are developed and comprised of strata ownership. Purpose of this zone is to provide for row house or townhouse style of development. The size of the structure is controlled by maximum lot coverage (35%), siting setbacks and parking requirements. The zone was drafted to allow a level of flexibility for the number of dwelling units located on an individual property. This allows a property owner to work with the land to determine the threshold of density on an individual lot.

Resort Residential High Density Multi-Family-5 (RST-5)

In total, there are three vacant lots that are designated for high density. The building schemes envisioned that lots would contain in consecutive order seventeen units, twenty four units and thirty seven units. The new

zoning designation provides for (in consecutive order) nineteen units, twenty seven units, and forty four units, a modest increase in density for these sites. It is important to note that all densities for lots are within the servicing thresholds as set out in the initial development for water connections and sanitary sewer connections.

The RST-5 zone, a high density multi-family zone, is oriented toward an apartment or condo use. One of the notable accessory uses is a tourist accommodation use. This use allows for rentals of an entire dwelling unit for an individual or group on a temporary basis. The final item of note for this zone is the introduction of common amenity space. This ensures that each development provides some form of common space either indoor or outdoor for residents to access.

Limited Use (L-1)

Currently crown lands located in the OCP boundary are un-zoned. The crown land forms part of the controlled recreational area used by Hemlock Valley Services Ltd for the ski resort lifts and runs. By applying zoning at this time the Regional District is able to regulate land uses and ensure future proposals for development are compatible with surrounding land uses and that a proper level of servicing is provided for the proposed development. If the lands continued to be un-zoned the Regional District loses the discretionary ability that zoning provides and there would be no mechanism for FVRD to ensure public consultation on any development that occurs there in the future.

Park (P-1) Zone

To ensure the zoning bylaw amendment is consistent with the OCP, staff is recommending that areas designated PARK in the OCP have a P-1 (Park) zone applied. The P-1 zone will be applied to crown lands around Sakwi Creek bisecting the residential lands along Edelweiss Drive and Sakwi Creek Road and the former tennis courts located off Enzian Way.

Ski Lodge

The ski lodge is one area that is remaining un-zoned lot at this time. This is a use that is not located near other buildings and has adequate parking facilities available therefore siting is not an issue. Upon reviewing this site, it became evident that this site is a dynamic use that provides a range of uses and changes to suit the market. To ensure that the lodge is able to provide a range of services without the limitation of permitted uses, staff has refrained from developing a zone for this property pending further information from the resort owner about uses. Zoning for this property may be included when the bylaw comes forward for second reading. It is important to note that building permit regulations still apply, as well as health regulations.

Temporary Tourist Accommodation Use

Based on community input, staff recognizes a need to provide an alternative accommodation use in addition to a bed and breakfast use. The purpose of this use is to provide rental accommodations allowing dwelling units to provide a temporary 'home'. It is important to understand this use is different from a bed and breakfast use where the owner lives on site and operates the business out of a portion of the dwelling. In the case of temporary tourist accommodation the owner is not present on site at the time visitors reside in the unit.

The draft bylaw permits this use quite broadly in all resort residential zones (RST-2, RST-3, RST-4 and RST-5). However, the use will be restricted to areas not located in the avalanche hazard zone as identified by the OCP. As a property owner there is a level of understanding of hazards that affect your property whether through geotechnical studies completed as part of a building permit or covenants registered on title. This familiarity with snow avalanche hazards will not be understood nor may not be adequately communicated to visitors renting a cabin or townhouse. Staff is proposing to restrict this use in avalanche hazard areas because unlike the a bed and breakfast use or boarding use, the owner of the property is not present on site and therefore not able to monitor the situation if snow conditions are creating a situation in which the threat of a snow avalanche is elevated and the safety of people and property is at risk.

Next Steps

To date, many of the issues have been resolved concerning land use regulations for residential areas in Hemlock Valley. A few remaining items will need to be addressed in the zoning bylaw. Any necessary changes will be

incorporated into the bylaw before second reading and public hearing. Potential changes may include an application of a resort commercial zone to the lodge and parking area (further information is needed from the owner prior to drafting a new resort commercial zone); and secondly, a decision made concerning the feasibility of a snow avalanche update study is possible. It should be noted, that many of the major issues have been addressed and staff wishes to proceed with first reading to begin working on the public review portion of the consultation strategy of the draft bylaw can be released to the public for review and comment.

Regional Growth Strategy

Pursuant to section 865(1), Regional District bylaws are required to be consistent with Regional Growth Strategies. Staff sent an internal referral to Regional Planning to obtain comment on the consistency of the proposed bylaw amendment with the Regional Growth Strategy. In an email dated January 25th, 2010, it was determined that the proposed zoning bylaw amendment is consistent with the Regional Growth Strategy for the following reasons:

- One of the eight growth management goals in the RGS is to “*Protect and Manage Rural and Recreational Lands.*” A significant policy aspect of this goal is to “*encourage recreational, residential and resort development to develop in clusters.*” The draft bylaw is consistent with this statement in that, as proposed, it maintains a constant land base with no subdivision of parcels in a land use pattern that can already be considered cluster style development.
- The RGS promotes diversified and sustainable economic growth in the region, and supports the economic viability of small, resource-oriented communities. The draft bylaw supports economic development in the Hemlock Valley area in a sustainable manner and is consistent with the RGS policy to support job growth in rural areas in the region.
- Action 3.6 of the RGS supports settlement patterns that “*minimize development costs to communities and the risks associated with geotechnical and environmental constraints.*” I understand that significant attention has been paid to these issues in the formation of the draft bylaw to ensure that risks to areas of development from hazards such as these have been minimized.
- The RGS is also consistent with the draft bylaw’s policy that in each zone “*all permitted uses shall be connected to an approved community water system and approved community sewer system,*” which supports that growth management goal to “*Manage Water, Energy Resources and Waste Responsibly*” and its related policies.

Referrals and Consultation

Consultation for this project was discussed in a memo dated September 10th, 2009 and identifies groups and agencies that may be affected by the proposed zoning bylaw amendment (see Appendix B). To date a letter has been sent to each group/organization advising that the Regional District is undertaking the project. Once the bylaw has been given first reading a referral will be sent to each of the groups requesting comment. For information sake, a list groups and agencies have been attached for review. Any comments will be brought to Committee for receipt and consideration.

COST

budgeted for in the 2009 financial plan

COMMENTS

Director of Planning:	Reviewed and supported.
DIRECTOR OF FINANCE:	Reviewed and supported.
CHIEF ADMINISTRATIVE OFFICER:	Reviewed and supported.

Appendix A
Zoning Regulations Summary Table

Zones	Permitted uses	Accessory permitted uses	Setbacks and lot coverage	Height	Other regulations
Resort Residential -2 (RST-2)	-One-family residence	-Home Occupation -Bed and Breakfast	Highway: 6.0 metres Side: 3.5 metres Rear: 5.0 metres	Two (2) storeys or 12.00 metres	-35% lot coverage -2 parking spaces
Resort Residential- 3 (RST-3)	-One-family residence -Duplex	-Home Occupation -Bed and Breakfast	Highway: 6.0 metres Side: 3.5 metres Rear: 5.0 metres	Two (2) storeys or 12.00 metres	-35% lot coverage -2 parking spaces per dwelling unit.
Resort Residential Medium Density Multi-Family- 4 (RST-4)	-Duplex -Medium density multi-family	Temporary Tourist Accommodation	Highway: 6.0 metres Side: 3.5 metres Rear: 5.0 metres All buildings unless connected by a common wall 7.0 metres	Three (3) Storeys or 14.00 metres	-35% lot coverage -1.5-2 parking spaces per dwelling unit -Maximum 6 dwelling units per lot
Resort Residential High Density Multi-Family- 5 (RST-5)	Apartment residential use Medium density multi-family	Temporary Tourist Accommodation	Highway: 7.6 metres Side: 7.6 metres Rear: 7.6 metres All buildings unless connected by a common wall 7.6 metres	Four storeys or 18.00 metres	-35 % lot coverage -1.5 parking spaces per dwelling units. -Requires a minimum and maximum dwelling unit size. -Density calculation to determine the number of units.

Appendix B
Consultation

Stakeholders are identified as the following groups:

- Ratepayers- Hemlock Valley Homeowners Association and Action Hemlock
- Chehalis First Nations
- Sto:lo First Nations
- Kwantlen First Nations
- Hemlock Valley Resort, Berezan Management Ltd.
- Brent Hartley from Brent Hartley and Associates
- Ministry of Transportation and Infrastructure- Jon Crump
- Ministry of Forest and Range, Chilliwack Branch
- Ministry of Tourism, Culture and the Arts, Resort Development Branch- Terry Pratt, Manager
- Fraser Health Authority
- Ministry of Environment- Waste Management Section
- Comptroller of Water Rights

*It should be noted that this list may be expanded as the process moves forward and other groups are identified.