

June 21, 2011

**To – Chair Sheila Malcolmson,
Salt Spring Island Local Trust Committee and Islands Trust Executive Committee**

Dear Sheila

I am writing to you this morning, rather than raising the following Points of Order at the Public Hearing tonight, in the hope you will be able to immediately confer with Staff on this matter during regular office hours.

Background

The proposed bylaw 449 was given first reading on June 2, 2011. As reported in the Driftwood, this was purportedly the 3rd 1st Reading of this Bylaw. However, as I am about to explain, there have been a number of procedural improprieties in the process leading up to today which I believe necessitates the canceling of this Hearing.

The 1st, 1st Reading of Bylaw 449 was given on April 7, 2011.

At a Special Meeting held on April 20th, that 1st Reading was rescinded, and the 2nd 1st Reading was purportedly given.

However, as of just a few days ago it has been confirmed, the Special Meeting held on April 20th did not meet at least two of the requirements of the sections of the Community Charter which are applicable to Local Trust Committees under the Islands Trust Regulation.

It is now evident Islands Trust staff in 2003 and 2004 improperly relied upon a section of the Model Local Trust Committee Meetings Procedure Bylaw, which is not in fact a bylaw, but a policy - Policy 4.1.iii. Chapter 4, Section 1, subsection iii, of Islands Trust Policy - in order to amend Salt Spring Island Local Trust Committee Meetings Procedure Bylaw 351 on February 25, 2004.

Within that Policy it states:

Under the *Islands Trust Act* and the *Islands Trust Regulation* (B.C. Reg 119/90), the following Sections of the *Local Government Act* and the *Community Charter* apply to Local Trust Committee meeting procedures:

***Community Charter* Section 127(2) Notice of special meetings:**

This Policy however is ultra vires the Islands Trust Regulation.

Islands Trust Regulation, under Section 11, specifically states:

Application of *Community Charter* and *Local Government Act* to trust bodies

(2) The following provisions of the *Community Charter* apply as indicated: section 127 (2) and (3), other than subsection (2) (b), [notice of special meetings]

(4) For the purposes of the application of the *Community Charter* or the *Local Government Act* to the trust or a trust body, a reference to a local government corporate officer is to be considered a reference to the secretary.

The following is therefore a correct reading of Section 127 (2) and (3) other than subsection (2) (b) of the Community Charter, as it applies to Local Trust Committees:

(2)....notice of a special council meeting must be given at least 24 hours before the time of meeting by

*(a) posting a copy of the notice **at the regular council meeting place**, and*

(c) leaving one copy for each council member at the place to which the member has directed notices be sent.

*(3) The notice under subsection (2) must include the date, time and place of the meeting, describe in general terms the purpose of meeting and **be signed by the mayor or the corporate officer**.*

I have obtained a copy of the posted Notice of the Special Meeting held on April 20th through a Freedom of Information request.

The Notice of the Special Meeting was not signed by the corporate officer or secretary. In fact, it was not signed by anyone, in contravention of Section 127 (3) of the Community Charter and the Islands Trust Regulation.

Secondly, the Notice was not posted at the "**regular council meeting place**," but, at the Islands Trust office.

Section 127, subsection (2)(b) of the Community Charter, is **specifically excluded** by the Islands Trust Regulation. It states:

(2)notice of a special council meeting must be given at least 24 hours before the time of meeting by... **(b) posting a copy of the notice at the public notice posting places.**

If this section were applicable, which it is not, the "**public notice posting place**" would arguably be the Islands Trust office.

However, as I have just mentioned, this subsection of the Community Charter is not applicable to Local Trust Committees. Given that there are few Local Trust Committees with regular offices, such as the Salt Spring Islands Trust Office, it makes complete sense that (2) (b) was excluded, and subsection **(2) (a)** "*posting a copy of the notice at the **regular council meeting place***" was included in the Regulation.

This means that all **Special Meeting Notices** must be posted at the regular council meeting places. As example, on North Pender that would be the Pender Island Community Hall, on Gabriola at the Gabriola Women's Institute Hall, and on Salt Spring at Artspring.

As a result, the Special Meeting held on April 20th, was ultra vires of both the Community Charter and the Islands Trust Regulation.

As a consequence of the Special Meeting being ultra vires, I submit that there may now technically be two Bylaw 449's in existence - The 1st, 1st Reading given at the April LTC Meeting, and the 3rd 1st Reading, given at the June LTC Meeting.

However, the 3rd 1st Reading of this Bylaw, which is the purported subject of this Public Hearing, was improperly given, in that it followed the rescission of the 2nd 1st Reading, which was given

improperly following the improper rescission of the 1st 1st Reading and the improper 1st Reading of the 2nd First Reading at the April 20th Special Meeting.

This is a procedural nightmare of unprecedented proportions.

As you know, I recommended to you at the May LTC meeting that until this matter was properly resolved, all business flowing out of the April 20th meeting, including the consideration of the 2nd 1st Reading of the bylaw by advisory committees, or further consideration of amendments to the bylaw should be tabled. You chose to ignore my suggestion after receiving advice from Staff.

On May 11th I filed a Freedom of Information Request to examine evidence to support my claim, and I have been patiently awaiting a response from the Trust to bring this matter back to your attention. That request was finally fulfilled late last Friday, albeit in contravention of Islands Trust Policy, 7 days after the maximum allowable time under Islands Trust Policy and the Freedom of Information Act of BC for the receipt of the information.

Initial examination of the documents provided also indicate further transgressions of the Community Charter and Islands Trust Regulations in the calling of the Special Meeting. I have not had time to prepare a detailed explanation yet.

In addition, a recent examination of the Staff Report, dated February 19, 2004, on proposed amendments to Salt Spring Island Local Trust Committee Meeting Procedures Bylaw 351, given to the LTC at the LTC meeting held on February 25, 2004, indicates Staff of the day ignored both the Islands Trust Regulation and the Community Charter in the preparation of the bylaw. Bylaw 391 is also therefore ultra vires of the Islands Trust Regulation and the Community Charter. Being an administrative bylaw, Bylaw 391, while having been wrongfully passed by the Executive Committee in contravention of Islands Trust Regulation and Community Charter, was never vetted by the Ministry for its compliance with the Community Charter.

In addition to the above procedural problems, it appears the scheduling of this Public Hearing was also not in compliance with Islands Trust Policy **5.7.i. Policy and Procedure D. Procedure Section 3. Public Hearing**

*3.1 Final booking arrangements and notification for a public hearing may only occur after **ALL of the following events have occurred in the order as presented below:***

- i) either after 30 days from sending bylaw referrals to agencies or when the agency referral responses are complete to the satisfaction of planning staff; and*
- ii) when the application file (public hearing binder) is ready for public viewing; and*
- iii) when the Secretary or his/her designate has signed the Bylaw Checklist to authorize a bylaw to be booked for public hearing; and*
- iv) upon resolution of a local trust committee authorizing a bylaw to be forwarded to public.*

It is clear from the public record that this policy has also not been followed.

The final booking arrangements and notification for this public hearing were made at sometime prior to June 7th, since the Public Hearing Notice was published in the Driftwood on the morning of June 8th. The Public Hearing Binder was not ready for public viewing until June 8th. The resolution authorizing Bylaw 449 to be forwarded to a public hearing was made on June 2nd,

prior to both other items, and, prior to Staff having been satisfied bylaw agency responses were complete, as evidenced by the Staff report on proposed Bylaw 449 to the LTC on June 2nd.

In other words, the procedural Policy requirements were clearly not followed by Staff or Trustees.

This particular Islands Trust Policy has a written Purpose:

A. PURPOSE:

1. To ensure that local trust committee bylaw processing is carried out in accordance with statutory requirements as outlined in the *Islands Trust Act* and the *Local Government Act*.
2. To ensure proper completion and procedural certainty of the finished bylaw document.

Should you decide to proceed with the Hearing tonight, you will be doing so in full knowledge that with regards to the proposed bylaw, the LTC is currently in breach of provisions of the Community Charter, the Islands Trust Regulation, and Islands Trust Policy, and, has been given due notice of these facts.

Inconsistency and non-compliance with Provincial law, and/or local government procedures, bylaws, regulations and policies does not create overriding "precedental law" which can ignore those legislative requirements.

I therefore suggest that you, as Chair of not only the Salt Spring Island Local Trust Committee, but also as Chair of the Executive Committee, at this time cancel this Public Hearing, have staff attend to the litany of improprieties I have brought forward to your attention, before considering (a) giving proper rescission of the 1st 1st Reading, (b) proper 2nd 1st Reading to the proposed bylaw, and (c) scheduling of a Public Hearing in accordance with the above mentioned Trust Policy. I note this will also effectively allow the LTC to consider granting the Agricultural Advisory Committee's request for a delay in the proceedings.

Further to the concerns I have just raised, it is now evident there have been two other Special Meetings this year which have likewise not met the Islands Trust Regulation and Community Charter provisions aforementioned, and, I suggest those improprieties are dealt with at the same time.

Thank you, and I hereby submit for your convenience the supporting Islands Trust Staff Report, Islands Trust Regulation, Community Charter and Islands Trust Policy extracts to you for your consideration.

Yours truly,



Eric Booth

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Salt Spring Island, BC, V8K 2B5

Islands Trust Regulation

Application of *Community Charter and Local Government Act* to trust bodies

11 (1) In this section, "**trust body**" means the trust council, the executive committee, a local trust committee and the trust fund board.

(2) The following provisions of the *Community Charter* apply as indicated:

<i>Community Charter</i> provision	applies to
Division 3 [<i>Open Meetings</i>] of Part 4	all trust bodies
section 95 (2) to (5) [<i>public access to records</i>]	all trust bodies
section 97, other than subsection (1) (d) and (h)	all trust bodies
section 122 (4) [<i>validity of proceedings</i>]	the executive committee and the trust fund board
section 123 (1) to (5) and (7) [<i>voting rules</i>]	all trust bodies
section 127 (2) and (3), other than subsection (2) (b), [<i>notice of special meetings</i>]	all trust bodies
section 129 (4) to (6) [<i>quorum</i>]	all trust bodies
section 132 [<i>authority of presiding member</i>]	all trust bodies
section 133 [<i>expulsion from meetings</i>]	all trust bodies
section 183 [<i>investment of municipal funds</i>]	the trust council
section 184 [<i>property accepted in trust</i>]	the trust council
Division 4 [<i>Reserve Funds</i>] of Part 6	the trust council
Division 5 [<i>Restriction on Use of Funds</i>] of Part 6	the trust council
section 282 (2) (c) and (f) [<i>regulations</i>]	all trust bodies

(3) The following provisions of the *Local Government Act* apply as indicated:

<i>Local Government Act</i> provision	applies to
section 198 (a) to (c) [<i>corporate officer responsibilities</i>]	the secretary
section 236 [<i>minutes of board meetings</i>]	all trust bodies
section 237 [<i>minutes of board committee meetings</i>]	all trust bodies
section 260 [<i>extended definition of "bylaw"</i>]	the trust council, the executive committee and the trust fund board

section 261 [<i>validity of council proceedings</i>]	the trust council, the executive committee and the trust fund board
section 300 [<i>self insurance</i>]	trust and trust fund
section 793 (8), (8.1) and (9) [<i>voting on urgent issues</i>]	the executive committee and the trust fund board
section 794 (1) (a) and (b) [<i>procedure bylaws</i>]	the executive committee and the trust fund board
section 794 (2) [<i>procedure bylaws</i>]	the trust council, the local trust committees and the trust fund board
section 821 [<i>revenue anticipation borrowing</i>]	the trust council
section 822 [<i>short term capital borrowing</i>]	the trust council

(4) For the purposes of the application of the *Community Charter* or the *Local Government Act* to the trust or a trust body, a reference to a local government corporate officer is to be considered a reference to the secretary.

(5) For the purposes of the application of section 236 (1) (b) of the *Local Government Act*, the reference to the designated regional district officer is to be considered a reference to the person who records the minutes at the meeting.

(6) The trust council may, by bylaw, establish fees for obtaining copies of documents that are available for public inspection.

(7) For certainty, the application of section 821 and 822 of the *Local Government Act* to the trust council is subject to section 8 (3) [*prior approval by minister*] of the *Islands Trust Act*.

[en. B.C. Reg. 469/2003.]

Community Charter

Notice of council meetings

127 (1) A council must

(a) make available to the public a schedule of the date, time and place of regular council meetings, and

(b) give notice of the availability of the schedule in accordance with section 94 [*public notice*] at least once a year.

(2) Subject to subsection (4), **notice of a special council meeting must be given at least 24 hours before the time of meeting by**

(a) posting a copy of the notice at the regular council meeting place,

(b) posting a copy of the notice at the public notice posting places, and

(c) leaving one copy for each council member at the place to which the member has directed notices be sent.

(3) The notice under subsection (2) must include the date, time and place of the meeting, describe in general terms the purpose of meeting and be signed by the mayor or the corporate officer.

(4) Notice of a special council meeting may be waived by unanimous vote of all council members.

5.7.i. Policy and Procedure**BYLAW CHECKLISTS**

Trust Council: March 12, 1994

Amended: March 11, 1995; December 7, 1996; June 16, 2005

A. PURPOSE:

1. To ensure that local trust committee bylaw processing is carried out in accordance with statutory requirements as outlined in the *Islands Trust Act* and the *Local Government Act*.
2. To ensure proper completion and procedural certainty of the finished bylaw document.

B. REFERENCES:

1. The *Islands Trust Act*:
 - 1.1 Part 2 Trust Council, Trust Policy Statement Section 15 (4) and Approval of Bylaws Section 16.
 - 1.2 Part 3 Executive Committee Section 22 Approval of Bylaws.
 - 1.3 Part 4 Approval requirement for local trust committees Section 27.
2. The *Local Government Act*:
3. The Islands Trust Council Bylaw No. 17, a Bylaw to Adopt a Policy Statement for the Trust Area cited as “The Islands Trust Policy Statement Bylaw, 1993”.
4. The *Islands Trust Policy Manual*:
 - 4.1 Policy Statement, Implementation Policies 1.3. i. Policy Statement Implementation (Amended June 2005).
 - 4.2 Policy Statement, Implementation Policies 1.3. ii. Topic Review Framework (Amended March 2005).
 - 4.3 Trust Council Executive Committee 2.4.iv. Executive Committee Legislative Role (June 1994).

C. BACKGROUND

1. The Bylaw Checklist for local trust committees can be used as a tool by both local trustees and planning staff to ensure that statutory requirements, public accountability, and proper completion of the bylaw are addressed (Attachment I).
2. The Policy Statement Directives Only Checklist (Attachment II) is based on the directive only policies from the Islands Trust Policy Statement.
3. The Policy Statement Council Commitments and Recommendations Checklist (Attachment III) is based on the other types of statements in the Policy Statement which are non-directive.

D. PROCEDURE:**1. Use of Bylaw Checklists**

- 1.1 Authority is provided to the Islands Trust Secretary (and/or designate) to ensure the use of the Local Trust Committee Bylaw Checklist (Attachment I) as follows:
 - i. No public hearing shall be booked until the Secretary provides authorization.
 - ii. Staff are responsible to ensure that local trust committees receive an updated Bylaw Checklist upon their consideration of a bylaw at the public hearing stage.
 - iii. Staff are responsible for ensuring that the Executive Committee receive an updated Bylaw Checklist upon their consideration of Section 22 approval.
- 1.2 The Directives Only Checklist (Attachment II) is to be included with a bylaw referred to the Executive Committee for approval.
- 1.3 The Council Commitments and Recommendations Checklist (Attachments III) may be used by staff to reference relevant sections of the Policy Statement in staff reports and briefings.

2. Bylaw Referrals

- 2.1 Planning staff may forward bylaws to referral agencies either before or after the bylaw has received first reading.
- 2.2 Planning staff will use the Policy Statement Directives Only Checklist (Attachment II) as an unofficial reference when examining proposed bylaws for compatibility with the Policy Statement prior to first reading.
- 2.3 Planning staff may refer bylaws to Trust Area staff if planning staff need to seek clarification relative to the Policy Statement.
- 2.4 The Executive Committee is not considered a referral agency for local trust committee bylaws.
- 2.5 Correspondence sent to the Executive Committee regarding local trust committee bylaws should be forwarded to the Director of Local Planning Services who will prepare a report for consideration by the Executive Committee.

3. Public Hearing

- 3.1 Final booking arrangements and notification for a public hearing may only occur after ALL of the following events have occurred in the order as presented below:
- i) either after 30 days from sending bylaw referrals to agencies or when the agency referral responses are complete to the satisfaction of planning staff; and
 - ii) when the application file (public hearing binder) is ready for public viewing; and
 - iii) when the Secretary or his/her designate has signed the Bylaw Checklist to authorize a bylaw to be booked for public hearing; and
 - iv) upon resolution of a local trust committee authorizing a bylaw to be forwarded to public.
- 3.2 Each member of the local trust committee will receive a public hearing information binder which will include a copy of the Bylaw Checklist (Attachment I) and any additional relevant information and material.

4. Executive Committee Approval

- 4.1 Under Section 22 of the *Islands Trust Act*, the Executive Committee must consider approval of all local trust committee bylaws after third reading.
- 4.2 Planning staff will forward to the Executive Committee after third reading, a copy of the proposed bylaw, the signed Bylaw Checklist (Attachment I) and the Policy Statement Directives Only Checklist (Attachment II).

5. Ministerial Approval

- 5.1 If Ministerial approval is required, the following documentation is sent to the Ministry of Community Services:
- i. two copies of the bylaw submission form; and
 - ii. three copies of the proposed bylaw, certified at third reading; and
 - iii. the completed Bylaw Checklist (includes Executive approval and the date); and
 - iv. Any additional staff planner reports to accompany agency comments and public hearing notes if necessary.

6. Bylaw Adoption

6.1 Once the Bylaw has been adopted by the local trust committee, certified copies of the bylaw are sent to appropriate agencies and staff.

7. Bylaw Filing

7.1 Once the original bylaw has been sealed and filed in the fire-proof filing cabinet, the Secretary of the Islands Trust signs and dates the Bylaw Checklist, which will be kept in the bylaw file along with a certified copy of the bylaw.

E. ATTACHMENTS:

ATTACHMENT I – Bylaw Checklist

ATTACHMENT II - Policy Statement Directives Only Checklist

ATTACHMENT III - Policy Statement Council Commitments and Recommendations Checklist