

May 25th, 2011

The Executive Committee
Islands Trust
200 – 1627 Fort Street
Victoria, BC V8R 1H8

Dear Executive Committee:

This letter is being sent to you by email, hard copy to follow by registered mail. We attach a formal complaint against the members of the Salt Spring Island Local Trust Committee. The complaint documents possible violations of provincial law and Trust policy by one member for you to consider, and concealment of these violations from the official record by the entire committee.

We ask that you investigate and decide on this complaint as soon as possible. Provincial law imposes time constraints on electors who wish to seek relief in the courts should you take no action, and the validity and legality of debates and decisions of the Salt Spring Island Local Trust Committee (and perhaps Trust Council) in 2011 are questionable given the circumstances.

The chair of the Executive Committee must recuse herself from consideration of the complaint, as she is a named party.

If you require further information or clarification, please send email to accurate.minutes@gmail.com, which will reach us all.

Yours sincerely,

Susan Cunningham
Arlene Dashwood
Jean Elder
Peter Lake
Mark Lucich
Brandi MacKinnon
John Macpherson
Shelley Nitikman
Patsy Siemens

cc: Minister, Community, Sport and Cultural Development

A Complaint
to the
Executive Committee of the Islands Trust

Against:

Ms. Sheila Malcolmson, chair, Salt Spring Local Trust Committee
Mr. George Ehring, a local Trustee for the Salt Spring Local Trust Area
Ms. Christine Torgrimson, a local Trustee for the Salt Spring Local Trust Area

Filed by:

Susan Cunningham,
Arlene Dashwood,
Jean Elder,
Peter Lake,
Mark Lucich,
Brandi MacKinnon,
John Macpherson,
Shelley Nitikman,
Patsy Siemens,
electors of the Salt Spring Island Local Trust Area

On:

May 25th, 2011

"Minutes are the official recording of the LTC's proceedings, and are absolutely the right place to record what was decided and why." - Sheila Malcolmson, Driftwood, June 30th, 2010

This is a formal complaint to the Executive Committee of the Islands Trust against three persons:

- Ms. Sheila Malcolmson, elected as a local Trustee for the Gabriola Island Local Trust Area, chair of Trust Council, chair of the Executive Committee, and the appointed chair of the Salt Spring Island Local Trust Committee;
- Mr. George Ehring, elected as a local Trustee for the Salt Spring Island Local Trust Area, a member of Trust Council, chair of Trust Council's Local Planning Committee, and a member of Trust Council's Trust Programs Committee;
- Ms. Christine Torgrimson, elected as a local Trustee for the Salt Spring Island Local Trust Area, a member of Trust Council, a member of Trust Council's Financial Planning Committee, and chair of the Trust Fund board.

For brevity, all dates following are in the year 2011 and LTC is used as an abbreviation for the Salt Spring Island Local Trust Committee.

On April 7th, the LTC adopted minutes for a regular meeting held on January 14th. The minutes are a materially false account of events at the meeting. The same provincial laws that authorize the LTC to conduct the public's business also provide procedural safeguards. The LTC flouted these safeguards on January 14th. They then ignored Trust policy and contravened their own meetings procedure bylaw by delaying adoption of minutes for three months. Finally they whitewashed the official record on April 7th. Public officials are unaccountable to the people they represent if they can, with impunity, publish a false record of how they conduct business. This is an abuse of the public trust.

On January 14th, the LTC considered item 13.3 on its meeting agenda, an application for a development permit. A transcript of that part of the January 14th LTC meeting is provided in Appendix A; two independent audio recordings are available upon request. The corresponding pages of the adopted minutes are provided in Appendix B. The description in the minutes of the critical events is very brief:

*Trustee Ehring reported to the Chair that he may have a possible conflict.
The Ambulance Service noted that they advertised publicly for property.
The meeting recessed at 1:50 PM and reconvened at 2:05 PM.
Trustee Ehring left the meeting.*

The transcript shows that this record is a very selective report of the actual events. The minutes mislead readers by concealing the following:

- Mr. Ehring spoke to the item of business before excusing himself.
- Mr. Ehring said that his partner, who owns an adjoining property, approved of the application.
- The minutes record the applicant answering a question but omit that Mr. Ehring posed it.
- The reason that Mr. Ehring left the meeting.

Mr. Ehring's leaving the meeting indicates a desire to comply with Section 101(2) of the Community Charter. It suggests that, during the recess, Mr. Ehring became convinced that Sections 100-102 of the Community Charter applied, i.e. he had at a minimum an indirect pecuniary interest in the matter.

Section 101(2) of the Community Charter bars a member with a conflict from remaining at the meeting or participating in the discussion. Section 102(1)(a) bars any attempt to influence in any way a decision at a meeting. By the time Mr. Ehring excused himself, he had contravened both of these sections. The same sections allow two affirmative defences to allegations of disqualifying conduct: inadvertence, clearly not applicable in this case, and an error in judgment made in good faith. On April 7th, Mr. Ehring and the other members of the LTC deliberately chose not to offer the defence of a good faith error, and instead decided to conceal what he had done from the official record and the public.

Note also that the adopted January 14th minutes, insofar as they mention Mr. Ehring's conduct in this matter, do not conform to the clear requirements of Section 100(6) of the Community Charter. The section requires that minutes show the member's declaration, the reason for the declaration, the time the member left the meeting and the time the member returned. Of these four mandatory requirements, the minutes record only that Mr. Ehring reported a possible conflict. By adopting minutes deficient in form, the Trustees have ignored their obligations under provincial law and Trust policy.

We therefore petition the Executive Committee to confirm the facts as stated in this complaint, investigate further as it deems necessary, and ask that the Executive Committee:

- formally reprimand the members of the LTC for concealing from an official record questionable and possibly disqualifying acts that are expressly forbidden by provincial law;
- consider whether the falsification of an official record is a breach of trust that merits requesting the resignation of the members of the LTC from their elected offices;
- remove Ms. Malcolmson, Mr. Ehring, and Ms. Torgrimson from all other positions and offices to which they have been elected or appointed, including Trust Council committees and the Islands Trust Fund Board;
- take what action it can to annotate the adopted minutes of the January 14th LTC meeting with an accurate account of events, and in a form that complies with provincial law;
- take what action it can to annotate the adopted minutes of the April 7th LTC meeting to record that the LTC adopted materially false minutes for its January 14th meeting;
- in light of Mr. Ehring excusing himself from the meeting and the LTC's subsequent adoption of whitewashed minutes, consider and determine:
 - whether Mr. Ehring engaged in disqualifying conduct per Sections 101 and 102 of the Community Charter, and should be removed from office per Section 110;
 - whether Mr. Ehring should be deemed to have left office at the time of his disqualifying behaviour (January 14th, 1:45 p.m.) and is disqualified through the next general election;
 - whether the resolutions and bylaws of the LTC subsequent to Mr. Ehring's behaviour, i.e. SSI-06-11 and anything subsequent, are valid and legal enactments;
 - whether meetings of the LTC's advisory committees in which Mr. Ehring participated after January 14th are valid, and if their deliberations and recommendations should stand;
 - whether resolutions and bylaws of Trust Council and its committees that were moved by Mr. Ehring after January 14th are valid and legal enactments;
- instruct staff to suspend the LTC's work plan until this complaint is adjudicated and, if necessary, new Trustees are seated; and
- consider referring the conduct documented in this complaint to the Attorney General of B.C. and/or the proposed Office of the Municipal Auditor General.

Appendix A

Transcript of a portion of the January 14th, 2011 regular meeting of the Salt Spring Island Local Trust Committee

Item 13.3 of the agenda is under consideration, a development permit application SS-DP-2010.10 - 275 Park Drive - KMP Architecture Inc. (Brian Kapuscinski) – *to build an ambulance station.*

For brevity, initials are used for the speakers as follows.

- SM – Sheila Malcolmson, Chair, Local Trust Committee
- KA – Kristin Aasen, Planner
- BK – Brian Kapuscinski, representative of the applicant
- WH – Wendy Hall, Director of Facilities, BC Ambulance Service (the applicant)
- GE – George Ehring, local Trustee
- LH – Leah Hartley, Regional Planning Manager

The meeting proceeded as follows, beginning at approximately 1:38 p.m.

SM: [unintelligible] ask representatives of the applicant [unintelligible] oh this is the ambulance proposal. So again I'll ask the planner to speak to the report briefly and ask the applicant if he would like to add anything. [unintelligible]

KA: [speaks to the Staff report in the agenda package for approximately three minutes]

SM: Would the applicant like to address the Local Trust Committee?

BK: [speaks to the application for approximately three minutes]

SM: Is there anything the applicant would like to add before the Local Trust Committee comments?

WH: [speaks to the application for approximately one minute]

SM: Any questions from the Trustees for the applicant or the planner? Trustee Ehring?

GE: I do have a question for the applicant but even before I ask that ... I ask for the Regional Planning Manager. This proposed location happens to abut the backyard of my partner, Katherine. I want to... I have no interest in her property ... no benefit or involvement in that way but I want to have it up front that I'm asking this question. If there is any notion of conflict or perception of conflict then I'll excuse myself from the discussion. But, like I say, I have no interest in her property and as a point of interest she supports this for that matter. So, I just don't know if that's the kind of conflict that I should be concerned about or not. So I raise that first.

LH: With respect to conflict of interest, Trustees, when wondering if they might be putting themselves into a conflict, are given access to the Islands Trust lawyers to seek clarification whether they are in a conflict of interest or not. With respect to my recommendation, is that if you are at all concerned of that question you may wish to voluntarily absent yourself from the discussion of this application and the

vote. But it is something that if you wish to seek legal opinion, that is at your discretion.

GE: Umm.

LH: I'm not in a position to be able to assess that [unintelligible]. I can't provide you legal advice.

GE: I mean you know my honest sense of this is that it is not a conflict. There is no direct personal involvement one way or another but I do want to make clear that is her property next door. So...

SM: Can I just give some advice? I've seen this done... often the Trustee might say "Notwithstanding the fact that I'm a member or I sit on the ArtSpring Board, I still have an open mind and I do not... I've got no interest financially in the outcome." So it's a question of putting on the record that you're acknowledging that you have a connection ...

GE: Okay.

SM: I think you've probably done that.

GE: I've done that. I have. Yes.

SM: Here we are, not working it out before we start.

GE: I do have a question for the applicant in that case. Many of the concerns that were raised this morning and the questions I was going to ask, I think you have already addressed with respect to the noise of the sirens and the safety on a fairly narrow road so my question would be one step back and ask, because I can't believe on "Rumour Island" how this didn't come to my attention before I saw this in the Agenda package. I wonder what other properties, other specific properties ... I'm asking about the extent to which the Ambulance Service has been looking for locations on the island and what you ... what process you went through and how you dealt with that.

BK: [speaks to the question for approximately forty seconds]

SM: [unintelligible] Can I suggest we take a five minute break? We've been going at this for a little while, and George has raised this issue and it just might be worth being sure. Let's take five and ask the question [unintelligible]

[The meeting recesses for 15 minutes.]

SM: OK. We're going to come back to order. The first person I am going to turn to is Trustee Ehring.

GE: [unintelligible] nothing to gain or whatever from a decision about this application, I'm going to remove myself from the discussion about this at all the stages with respect to up until a decision is made on the Development Permit itself. So I don't want to... I don't want to participate and I will just go, and somebody can fetch me when you're done with the item. All right. Thank you.

SM: So, better safe than sorry. I appreciate you being careful.

[Mr. Ehring leaves the room.]

RPM Hartley returned to the meeting.

13.2 SS-HAP-2010.1 - 125-129 McPhillips Avenue - Capital Regional District

Planner Palmer spoke to her report. A representative of the applicant was present.

Trustee Ehring queried the process of amalgamating the lots. Planner Palmer noted that this is done through the Land Title Office. Mr. Frederick, representing the applicant, noted that the property will eventually be owned by the CRD.

SSI-05-11

It was **MOVED** and **SECONDED** that the Salt Spring Island Local Trust Committee approves the Heritage Alternation Permit SS-HAP-2010.1 for 125 and 129 McPhillips Avenue. **CARRIED**

13.3 SS-DP-2010.10 - 275 Park Drive - KMP Architecture Inc.

Planner Aasen spoke to her report. The applicant was present.

The following points were noted: an engineer's report is part of the application; that funding must be used by the end of March, creating some urgency; and, because this permit is for an institution, compliance would be voluntary regarding any suggestions from the Advisory Design Panel.

The Ambulance Service representative noted that they do not use sirens in the middle of the night. They want to work with communities they serve and not cause problems. They are aware of the school and the ambulance route will avoid it unless the call is to that area. Wendy Hall, Director, Facilities, BC Ambulance Service, noted that Ambulance, Fire and Police are separate services under different jurisdictions.

Trustee Ehring reported to the Chair that he may have a possible conflict. The Ambulance Service noted that they advertised publicly for property.

The meeting recessed at 1:50 PM and reconvened at 2:05 PM.
Trustee Ehring left the meeting.

The Chair asked the RPM to explain the difference between a zoning change and a development permit. This is a Development Permit Application and does not require a Public Hearing nor notification to the surrounding neighbours.

Trustee Torgrimson requested staff to develop a one-page summary of the differences between the two types of applications for the information of the public.

Staff noted that the Trustees are restricted to the Development Permit guidelines.

Trustee Torgrimson queried if ambulances without sound sirens have been considered. The representative of the Ambulance Services noted that this is not under consideration and that their drivers receive special training and are operating under the BC Motor Vehicles Act. Trustee Torgrimson noted that while the advice of the Advisory Design Panel could be sought, because this is an application from an institution, the Panel's advice is not mandatory.

Ms. Hall noted that some funding may be carried over into the next fiscal year but there are no guarantees that this will happen.

SSI-06-11

It was **MOVED** and **SECONDED** that the Salt Spring Island Local Trust Committees approves the issuance of Development Permit SS-DP-2010.10 by Shared Services BC and KMP Architecture respecting the property described as Lot 3, Section 3, Range 3 East, North Salt Spring Island, Cowichan District, Plan 13007 (275 Park Drive) to construct an ambulance station. **CARRIED**

SSI-07-11

It was **MOVED** and **SECONDED** that the Salt Spring Island Local Trust Committee indicates to the Advisory Design Panel the Shared Services BC willingness to receive the Advisory Design Panel's advice on form and character of SS-DP-2010.10. **CARRIED**

Trustee Ehring returned to the meeting.

13.4 SS-DP-2010.7 - 162 Fulford-Ganges Road - Jonathan Yardley

Planner Aasen spoke to her report. A representative of the applicant was present.

Comments received today would be referred to the architect. Regarding parking, Trustee Ehring requested clarification and Staff noted the requirement is met. The Chair noted that Schedule "A" consists of the 1989 guidelines and should be so designated for information if the application is referred.

Any correspondence received would also be forwarded to the Advisory Design Panel.

SSI-08-11

It was **MOVED** and **SECONDED** that the Salt Spring Island Local Trust Committee refers Development Permit application SS-DP-2010.7 by Jonathan Yardley respecting the property described as Lot B, Section 1, Range 4 East, North Salt Spring Island, Cowichan District, Plan 48425