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June 14, 2011

File Number: GF/AF-1 COM-2011-03

Susan Cunningham, et al
Salt Spring Island, BC
By Email: accurate.minutes@gmail.com

Dear Mss Cunningham, Dashwood, Elder, MacKinnon, Nitikman and Siemens; and Messrs Lake, Lucich and Macpherson:

Re: Salt Spring Island Local Trust Committee -- Administrative Fairness Complaint

Thank you for your letters of May 25 and June 6, 2011 in which you raise a number of concerns related to the actions of the Salt Spring Island Local Trust Committee (SSILTC) and its individual members. We understand from your email of May 27, 2011 that you had no objections to having your concerns made known to affected trustees and staff.

The Islands Trust Executive Committee has now had an opportunity to discuss your concerns and has completed its review of this matter. I am writing as Vice-Chair of the Executive Committee to advise you of our conclusions.

The Executive Committee based its conclusions on a review of your concerns, interviews of trustees and staff, review of the relevant agendas, minutes and staff reports related to the SSILTC's meetings and consideration of relevant legislation, bylaws and policies.

I confirm that while the Executive Committee asked Chair Sheila Malcolmson to provide information related to your complaint, she did not participate in our decisions regarding this matter.

This letter addresses your concerns regarding the actions of the Salt Spring Island Local Trust Committee and its members approximately in the order you presented them in your letter.

1. SSILTC minutes of January 14, 2011 are a false account of events.

You expressed a concern that the SSILTC's minutes of January 14, 2011 were a false account of the SSILTC's business meeting of that date. Your complaint focuses on section 13.3 of the minutes which records the SSILTC's decision regarding SS-DP-2010-10 (a permit for a storm water management plan for the BC Ambulance Service's facility at 275 Park Drive). Specifically, you state that the minutes should have provided more detail regarding Trustee George Ehring's question and statement made before he declared a potential conflict of interest in regards to this matter.

We have reviewed the SSILTC's minutes of January 14, 2011, including the draft of the minutes that were included in the SSILTC's agenda package for consideration at the meeting on February 10, 2011 (but were not adopted at that meeting) and the amended draft of the minutes that were included in the SSILTC's agenda package for consideration at the meeting on April 7,

2011. We have also reviewed the staff report related to SS-DP-2010.10, the transcript of the meeting that you enclosed with your initial letter, the minutes of the SSILTC's meeting of April 7, 2011 and the Islands Trust Council's Guidelines for Local Trust Committee minutes (Trust Council Policy 4.1.vii).

In regards to the January 14, 2011 minutes, we feel section 13.3 of the minutes represent an accurate and appropriate account of events in regards to the SSILTC's consideration of DP-2010-10. In coming to this conclusion, we took into consideration the decision that was before the SSILTC. It is important to consider that the SSILTC was not making a decision regarding rezoning of the property, issuance of a variance permit or any other matter related to the use or density of use on the property. As indicated in the staff report, the SSILTC was only considering issuance of a development permit that authorized a storm water management plan related to buildings that were already permitted by the zoning bylaw.

While Trustee Ehring asked a question (regarding the way the Ambulance Service sought properties) and made a statement regarding an adjacent owner's lack of opposition, his question was clearly asked only from curiosity and his statement was clearly conversational in nature. Neither was germane to the decision before the committee, which was only related to a storm water management permit. We cannot conclude that these remarks could have affected the SSILTC's decision about this permit or should have been recorded in the minutes.

We note that the primary purpose of meeting minutes is to record what is **done** at meetings rather than what is **said** by individual participants. Where discussion is recorded, minutes are intended to form a condensed version of a local trust committee's discussion, summarizing the main topics. Our minute taking guidelines suggest that only important points and questions should be noted. Minutes are clearly not intended to record conversational comments or irrelevant questions that participants raise solely from curiosity. This approach to minute-taking is consistent with Robert's Rules of Order and is similar to that recommended to and practiced by local governments throughout British Columbia.

We note that some confusion may have resulted from inclusion, in the minutes, of other unrelated remarks, such as the applicant's response to Trustee Ehring and Trustee Torgrimson's question about sirens. These remarks are also unrelated to the storm water management permit before the SSILTC and we believe it would have been preferable if they had been left out of the record.

To avoid confusion on this topic, we will recommend that trustees either avoid asking unrelated questions of applicants, or clearly indicate when their questions arise simply from curiosity. Our Legislative Services Manager is reviewing minute-taking practices with our minute-takers and will reinforce the need to avoid unrelated conversation and questions in formal minutes.

2. SSILTC minutes of January 14, 2011 were 'whitewashed' by the SSILTC on April 7, 2011.

You also express a concern that the SSILTC deliberately 'whitewashed' section 13.3 of the January 14, 2011 minutes during its meeting of April 7/11. We can find no evidence in support

of this complaint. As noted above, we have carefully reviewed section 13.3 of the minutes and the history of the minutes' adoption.

We understand that the SSILTC received draft minutes for its January 14, 2011 meeting in its agenda package for its February 10, 2011 meeting, but that staff advised during the meeting that the draft was not in fact ready for the SSILTC's consideration. The SSILTC received an amended draft of the January 14, 2011 minutes in its April 7, 2011 agenda package. Our review of these minutes do not indicate any changes to section 13.3 between the time the minutes were first circulated to the SSILTC in February 2011 and the time they were adopted on April 7, 2011. Section 4.4 of the SSILTC's minutes of April 7, 2011 confirms that the SSILTC adopted its January 14, 2011 minutes 'as circulated', with no amendments proposed by members of the SSILTC.

Our discussions with trustees and staff indicate that there were no attempts by members of the committee to have section 3.13 of the minutes amended outside of public meetings.

If it had sought to amend the minutes in ways that you have suggested, we do not believe that such amendments would have been appropriate, as discussed in the previous section. However, we can find no evidence of any attempt by trustees to amend the record as presented by staff.

We can find no grounds for your complaint that the SSILTC improperly amended, or 'whitewashed' its minutes of January 14, 2011.

3. SSILTC delayed adoption of the minutes of January 14, 2011

You indicated a concern that the SSILTC delayed the adoption of its minutes of January 14, 2011, in contravention of the Salt Spring Island Meeting Procedures Bylaw 391 and (unnamed) policies of the Islands Trust.

We have reviewed the Salt Spring Island Meeting Procedures Bylaw 391 and note that it is silent in regards to the timing of minute preparation and adoption.

We have reviewed the *Community Charter* and the *Local Government Act* and cannot find any requirements regarding the timing of minute preparation and adoption.

We have also reviewed Trust Council Policy 4.1.vii which provides guidelines for local trust committee minutes. They indicate that 'draft minutes of the previous meeting must be brought forward to a Local Trust Committee meeting for adoption'. While we believe it is common practice and preferable that meeting minutes be considered at the next possible meeting, we also note that staff work loads do not always make this possible.

From our review and interviews with trustees and staff, it appears that any delay in processing of the minutes between February and April 2011 was due to our senior staff's inability to review the minutes in time for the March 2011 meeting of the SSILTC. Our staff are balancing

hundreds of tasks and during particularly busy periods, some work items are inevitably delayed. While such a delay is not ideal, it does not contravene legislation, bylaw or policy. It is not evidence of improper action on the part of trustees or staff.

We also note that the delay in the minutes was of concern to members of the SSILTC. Individual members requested staff to give priority to completion of the minutes. The Chair of the SSILTC sent emails to staff on more than one occasion to stress the need to have the January 14, 2011 minutes on an upcoming meeting agenda.

We cannot find any basis for your allegation that the SSILTC acted to intentionally delay adoption of its minutes of January 14, 2011 or that its actions contravened any legislation or bylaw.

4. Trustee Ehring contravened the Community Charter in regards to a conflict of interest.

You have indicated a concern that Trustee George Ehring contravened the Community Charter because you conclude that he had a fiduciary conflict of interest regarding the issuance of SS-DP-2010-10 (BC Ambulance Service – KMP Architecture Inc. – 275 Park Drive).

We have reviewed this matter carefully, due to the serious nature of your complaint and have the following comments.

We note that, when the matter first came before the committee, Trustee Ehring noted a potential **non-fiduciary** conflict of interest because the subject property was adjacent to property owned by his partner. He clearly stated he had no financial interest in that property. After a brief discussion, the SSILTC recessed and Trustee Ehring sought further advice from staff regarding a potential conflict of interest. We understand that Islands Trust staff advised Trustee Ehring that, if he was uncertain about a potential conflict, the best course of action was to withdraw from the meeting. We note that this advice is consistent with standard legal advice in such a situation, and that Trustee Ehring followed the advice. He declared a potential non-fiduciary conflict and, left the meeting as required by the *Community Charter*.

We have received and considered legal advice in regards to this matter and are confident that Trustee Ehring did not have a fiduciary conflict of interest in this matter. Trustee Ehring has clearly stated he has no financial interest in the adjacent property and you have provided no evidence that he has. Even if he did have a fiduciary conflict, we would have concluded that he acted in good faith by identifying a potential concern, seeking advice, declaring a conflict and complying with the *Community Charter* once the declaration had been made, as is required. In the absence of a fiduciary conflict, his behaviour was particularly appropriate.

The Islands Trust provides regular legal sessions for all trustees regarding conflict of interest and provides individual access to legal advice if trustees have specific questions. We will remind all trustees that such advice is available and that the advice is most effectively accessed

in advance of local trust committee meetings, so that confusion and inaccurate perceptions can be avoided.

5. SSILTC Minutes of January 14, 2011 do not comply with requirements of the Community Charter

Your letter includes a concern that the minutes of January 14, 2011 do not comply with the requirements of the Community Charter, specifically s. 100(6) which specifies what should be recorded when a member declares a conflict of interest.

We have reviewed the SSILTC's minutes of January 14, 2011, the *Community Charter* and Trust Council's Policy 4.1.vii. We have also considered legal advice in regards to this concern.

We note that the minutes of January 14, 2011 indicate when Trustee Ehring left the meeting, when the SSILTC voted in regards to DP-2010-10, and when Trustee Ehring returned to the meetings. After considering legal advice, we are confident that the minutes comply with the requirements of s. 100(6)(a)(ii) of the Community Charter, even though they do not state specific times of the day.

We also note that the minutes of January 14, 2011 do not indicate the reasons for Trustee Ehring's declaration regarding a conflict of interest, although Trustee Ehring did give a reason during the meeting. We agree that, in this regard, the minutes are not in strict compliance with s. 100(6)(a)(ii) of the *Community Charter*.

By copy of this letter, we recommend that the SSILTC amend its minutes of January 14, 2011 by:

- a. Amending the sentence "Trustee Ehring reported to the Chair that he may have a possible conflict." so it reads "Trustee Ehring reported to the Chair that he may have a possible non-fiduciary conflict because his partner owns property adjacent to the property that is subject to the development permit."
- b. Amending the sentence "Trustee Ehring left the meeting" so it reads "Trustee Ehring declared a non-fiduciary conflict of interest for reasons he had identified before the recess and left the meeting."

We believe that these insertions would give an accurate reflection of what was said at the meeting and would also bring the minutes into full compliance with the *Community Charter*.

We note that our guidelines for minute takers offer correct guidance for this particular situation and we will ask our Legislative Services Manager to review this part of the guideline with our contract minute takers and with other staff who may be proofreading meeting minutes. Thank you for bringing this matter to our attention.

We would like to offer some concluding remarks after reviewing your concerns and the actions you have requested of the Islands Trust Executive Committee and Trust Council. On balance,

we believe that members of the SSILTC and our staff have acted responsibly and appropriately and that the minutes of their various meetings provide ample evidence of this. From our experience within the Islands Trust, from interacting with other local government officials and from discussing this matter with our staff and legal counsel, we believe that the concerns you have raised are in fact minor administrative and procedural concerns, rather than evidence of some greater wrong. Throughout our review, we could find no evidence of wrong-doing or improper intentions on the part of trustees or staff. On the whole, all parties appeared to be striving to take appropriate action to the best of their abilities in what is often a rushed and high-pressure environment.

We do not intend to recommend Trust Council take further action in regards to this matter or refer it to other parties. Other than a minor amendment to the SSILTC's meeting minutes, we do not believe that any actions of the SSILTC warrant the outcomes you suggest.

If you are unsatisfied with our response, you have the option of making your concerns known to the Office of the Ombudsperson for an independent review or of seeking a judicial review.

Thank you again for writing to express your concerns. I want to assure you that the Executive Committee takes such concerns seriously and that we carefully considered your point of view. If you have further information to provide us in regards to this matter, please do not hesitate to contact us again.

Sincerely,



Peter Luckham
Vice-Chair
Islands Trust Executive Committee
pluckham@islandstrust.bc.ca

Islands Trust Council
Salt Spring Island Local Trust Committee
pc: L. Adams, Chief Administrative Officer
D. Marlor, Director – Local Planning Services
L. Hartley, Regional Planning Manager – Salt Spring Island
C. Thiel, Legislative Services Manager
M. Furey – Assistant Deputy Minister, MCSCD
Gulf Islands Driftwood
Islands Independent
Gabriola Sounder