



Ministry of
Municipal Affairs

Local Government
Structure Branch
4 - 800 Johnson Street
Victoria

MEMORANDUM

November 26, 1999

To: Sunshine Valley Ratepayers Association
Sunshine Community Co-operative Club
Sunshine Valley Developments Ltd.
Fraser Valley Regional District

Re: Sunshine Valley

As a follow up to the September 4, 1999 public meeting, attended by Ministry staff, I am writing to provide some general advice and observations about the issues in Sunshine Valley. Please note that this is directed to all interested parties and individuals in Sunshine Valley, including the Fraser Valley Regional District. Don Low has provided the Ministry with several follow-up letters to the meeting, which I hereby acknowledge. A response to several points raised is included in this memorandum.

General Review of the September 4 Meeting:

In general, the meeting appeared to be useful as a forum for some discussion of issues, and explanation from the Ministry about the operation of the regional district. There was a significant number of residents and property owners in attendance (approximately 70), and a wide variety of views were expressed.

It was apparent from the meeting that there are some long-standing grievances and entrenched positions. However, there was also some recognition that there will be a need to address issues by all parties working together. The Fraser Valley Regional District (FVRD), as the local government for the area, could potentially become more involved in local service delivery and land use regulation, but that must necessarily be based on a consensus of local residents and property owners.

At the meeting, Ministry staff were handed a page of "questions" which served, to some extent, as an agenda. The questions were answered as thoroughly and accurately as possible, but this memorandum will expand on those questions, where necessary, since we were not able to consider the questions in advance.

As a final general comment, which I recall suggesting at the end of the meeting, as the community continues to grow, the potential for conflict between individuals and the entire scheme of private services and regulations is likely to expand accordingly. The community would be well advised to look forward and establish a framework and plan for addressing the issues which you are likely to face.

Private vs Public Services:

A significant theme at the meeting was that services provided to the community are not under a local government jurisdiction, but are provided privately, through the development company or an agent of the development company. The extent to which services are provided privately is, perhaps, the greatest of any recreational/residential community in the Province. However, those private arrangements do not constitute a "government", and do not replace the FVRD as the local government for the area.

The Ministry of Municipal Affairs does not deal directly with the legislation which provides for the establishment of these private arrangements, nor with issues which may arise from them. However, the Ministry can provide advice and observations about the role of local government, which includes the potential for moving private services to the public domain.

This is explored more fully in the letter, dated November 16, 1998, from the Ministry to Don Low, in the context of the concept of municipal incorporation. A copy of that letter is attached for reference.

Existing Regional District Governance, Services and Taxation:

Several questions at the meeting were based on the perception that there is no local government for Sunshine Valley. However, the community is within, and part of, the FVRD, not separate from it. The FVRD may not provide a wide range of services to Sunshine Valley, but this does not alter the fact that the FVRD board is the local government for the community.

As the local government, the FVRD board has the authority to provide local services to Sunshine Valley (for example, recreation, fire protection), supported by local property taxation or other cost recovery methods. It also has the authority to provide regulatory services by bylaw (for example, zoning, animal control), and to include Sunshine Valley in the range of regional and sub-regional services which may be provided (for example, regional parks, waste management).

All services provided by the FVRD are within the procedures (including local approval, where required) and authority of the *Municipal Act*.

Residents and property owners of Sunshine Valley are represented at the board by the elected director for Electoral Area B. Residents (that is, permanent residents) and property owners (that is, owners eligible as property electors) of Sunshine Valley are eligible to vote in the election according to the rules for voter eligibility set out for the entire Province in the *Municipal Act*.

Property taxes paid by property owners in Sunshine Valley include payment for services provided by the FVRD, and a list of FVRD services and property tax requisitions is always available for review. It has been suggested that taxes are paid for services which are not provided (or only provided in a very limited way) to Sunshine Valley. It is understandable why this may appear to be the case, but this is technically not correct.

An example is the land use planning service, for which taxes are paid even though the FVRD currently has no land use planning bylaws in place for Sunshine Valley, because there was a conscious decision by the regional district board in 1977 to exclude Sunshine Valley from zoning regulations. However, the legislation governing regional districts requires that the cost of planning be recovered from all electoral areas. Further, it is still the case that the FVRD has the land use jurisdiction for Sunshine Valley, even if there is a policy choice by the board not to exercise that jurisdiction in a particular area, based on the desire of residents.

Otherwise, the relationship between the taxes paid by Sunshine Valley owners and services received is clear and within the framework of the *Municipal Act*. The suggestion that there should be a "substantial reduction, or elimination of these charges, or..... grants programme" cannot be acted upon by the Ministry, and from the Ministry's perspective, is not warranted. However, the FVRD may be in a position to consider changes to the parameters of some services which would change the property taxation levels in Sunshine Valley.

Restrictive Covenant:

A copy of the restrictive covenant, including Schedule "A" ("Land Use and Building Regulations"), has kindly been provided by Don Low. A copy is enclosed with this memorandum. Generally, these are documents registered on title under the *Land Title Act*, and which run with the land. They set out the agreement of the property owners to abide by the defined set of rules about development and operation of the property.

The covenant is in favour of Sunshine Valley Developments Ltd., and the effect of the covenant and Schedule "A" (the latter is referred to as a statutory building scheme) is clear. These documents represent a private arrangement, which can be enforced (or not enforced) on case by case basis by the development company. Enforcement of the statutory building scheme is independent of local government.

A specific question asked on the page given to Ministry staff at the meeting asked about changes to the covenant and statutory building scheme. The answer given at the meeting was to the effect that the content of the documents registered at the Land Title Office could only be amended if registered at the Land Title Office. While this is technically correct in terms of the documents registered at the LTO, it has subsequently come to our attention that the scheme has a clause (# 34) to provide for alterations to the scheme. The extent to which there may be a limit on the degree of alteration could only be addressed by a lawyer.

Overall, there does not seem to be anything particularly unusual about the covenant and statutory building scheme. By purchasing property, owners agree to the content of the scheme, by definition. In the subsequent sections of this memorandum, some reference back to the scheme will be made.

"Building Inspection":

Of the issues which have been raised with the Ministry, building inspection is the most difficult to address. It is clear that building regulation is an authority which can only be exercised by local government (and the Province). The FVRD does not presently have, and has not had since 1977, a building regulation bylaw in place for Sunshine Valley.

The terminology which has been used is that the building inspection authority was "transferred" from the regional district to the developer in 1977, following amendment of the regional district building regulation bylaw to exclude the Sunshine Valley area. While it is understandable why this leads to the perception of "transfer", this is not really correct. Instead of thinking as the change in 1977 as a "transfer" of the building inspection service, it should be thought of in the following terms:

- the regional district ceased its building regulation service for Sunshine Valley (as well as several other regulatory bylaws, including zoning); and
- the developer has instituted mechanisms to enforce schedule "A", the "land use and building restrictions", which are contained in the statutory building scheme.

Looking at the wording in the statutory building scheme, there does not appear to be any reference to the terminology of building regulation (that is: the BC Building Code, building inspection, building permits, occupancy permits, etc.), in the sense that they would apply to a building inspection service provided by a local government. However, clause # 19 of the statutory building scheme does have the requirement that all "plans and specifications" for buildings, etc. must be submitted to, and approved by, the developer. This is reasonable, as a mechanism whereby owners submit plans to the developer to ensure that the requirements of the statutory building scheme are met.

A mechanism for review and approval by the developer has been designed with similar terminology to a local government building regulation scheme. That is, the mechanism instituted by the developer uses permits, inspections, reference to the BC Building Code, etc. The Ministry cannot comment on whether this is within the authority of the statutory building scheme, since that would require review by a lawyer.

This is a complex arrangement, which is understandably confusing. However, given that it is the developer's choice to institute such a mechanism, the Ministry can provide no specific advice on the situation. The Ministry would reiterate that this is a private scheme of building regulation, not a local government building regulation service.

Community Co-operative Club Association:

The restrictive covenant and statutory building scheme do not contain any provisions about membership of the community co-op club. However, we understand that there are separate agreements, signed by prospective owners or lessees at the time of purchase, which commit owners to being a member of this club, subsequent to its formation. These arrangements are, again, purely a private matter.

It is noted that the statutory building scheme (clause # 26) provides for a fee to be paid by owners to cover the cost of services provided by the developer. It is assumed that there is some linkage between the services managed by the club, and this fee providing funds for that activity. From a terminology point of view, it is important to state that this is not a "tax", in the usual local government sense, although it is sometimes referred to in that way.

Generally, the role of the community cooperative club association appears to be a valuable one in dealing with the internal management of the Sunshine Valley community, especially in relation to the management of some services provided by the development company. A good example is the recreation facilities.

Further, the club can be, and has been, established (by the development company) as a forum for overall community discussion of general issues.

However, it is more difficult to see the club in the role of representing the interests of the entire Sunshine Valley community in a broad, and exclusive, context. The perception that the executive of the club (or any other organization) is somehow equivalent to a village council has a very limited application. The fact that there is a second community organization (the ratepayers association), and other groups (for example, the volunteer fire department) indicates that there is no single group to represent the community. In addition, of course, the development company must be a part of any community discussion because of its role as both landowner and provider of the private services.

Local Government Structure:

At some point in the future, Sunshine Valley may become a municipality. This would only occur after the implications of municipal incorporation have been studied, discussed by the community, and approved by voters. Two general conditions will likely be needed to trigger this transition in local government structure:

- a substantial increase in permanent resident population to (say) about 500 persons; and
- a significant expansion of the role of local government (ie the FVRD) in providing local services, including some services which are presently provided privately. This would facilitate the transition of services from the FVRD to the new municipality, if and when incorporation does occur.

Based on this, municipal incorporation would appear to be many years into the future. In the meantime, the FVRD is the local government for Sunshine Valley. At some point, the FVRD may be in a position to consider establishing a form of local governance for the community. For example, a local services management committee, or a local community commission, are methods which could be used by the FVRD. In this regard, the Province is currently looking at electoral area and rural community governance as part of the overall work on regional district legislation, and this may provide a wider range of alternatives.

A critical element of the idea of enhancing local governance through the FVRD is the fact that any new structure for Sunshine Valley will necessarily be related to the role of the FVRD in providing services. In other words, if and when the FVRD becomes more

involved in local service delivery, then the opportunity and need for a local governance structure to manage those services will become more apparent.

Potential Future Regional District Services:

Based on the discussion at the meeting, there appears to be some potential to investigate the FVRD as a means of providing some local services. It must be clearly stated that any consideration of FVRD services is a decision of the regional board, and there are processes (including local assent) which apply before services can be provided. Having said that, some of the circumstances discussed at the meeting included the following:

- management of community / recreation facilities is being considered for change;
- there is interest in putting the volunteer fire department on a sounder basis;
- there may be some interest in developing a community plan and land use regulations;
- there may be some interest in the development of other regulatory bylaws (for example, animal control); and
- there may be, in the longer term future, a desire for the developer to transfer the water system, which is a Private Water Utility, to public ownership.

These items, and possibly others, represent potential for the involvement of the FVRD in local service delivery. However, much discussion and analysis would be needed before reaching any formal stage of FVRD service establishment.

What Next? - Possible Assistance From the Ministry:

As mentioned at the meeting, the Restructure Planning Grant program is potentially available to assist the community and the FVRD to develop a local services plan for Sunshine Valley. This program provides grants to local government, subject to the approval of the Minister, to study community governance and service delivery.

The responsibility for the first step in considering such a process lies with the community. If there is agreement by all parties that such an exercise should be undertaken, the community should make representation to the FVRD. The electoral area director should be directly involved in local discussion. Essentially, the community as a whole must show that all parties are interested in working together to investigate an increased role for the regional district. You must work towards the specific way of achieving this.

If the community as a whole is interested in taking the idea of study further, and makes representation to the FVRD, then the following points can be considered:

- The FVRD board would need to indicate that it is willing to facilitate such an exercise. A restructure planning grant would be requested by board resolution, considered by the Minister, and awarded to the FVRD.
- There would be a need to establish some form of local steering committee for the exercise. This should include representatives from the organisations, the developer, and the different neighbourhoods in the community, so that it is broadly representative. Generally, this would not be a decision-making group, but would manage the process, including public consultation.
- A key part of the exercise would be to define terms of reference for the study. This may not be easy, since the scope of current issues is broad. From a Ministry perspective, the focus would be on the potential for involvement of the FVRD in local service delivery. While the process would need to take a look at the current service arrangements, this process should not be viewed as an evaluation of (or challenge to) those current private service delivery arrangements.
- Based on the terms of reference, a consultant could be hired to facilitate the discussions, including a full public consultation, prepare a report, make some recommendations on how to approach future service delivery in the community.

If there is interest in proceeding with this exercise, Ministry staff would be available to work closely with FVRD staff, and provide advice as needed. This could include attending a meeting of all interests to assist with the design of the process and terms of reference.

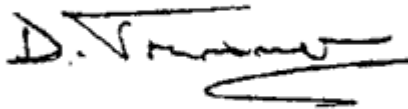
Conclusion:

I hope that the above will be a useful contribution to local discussions. It will take some time for those discussions to be taken to the next stage, and the Ministry would encourage all parties to work together. If there is agreement among residents and owners in Sunshine Valley to consider local service delivery further, I am hopeful that the community could develop an approach with the FVRD which could provide a long term plan to meet community objectives.

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It was a pleasure to attend the meeting on September 4, and to meet residents of Sunshine Valley.

Cheers,

A handwritten signature in black ink, appearing to read "D. Trimmer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Derek Trimmer
Director
Local Government Structure Branch

enclosures

pc: Elizabeth Brennan, Senior Policy Analyst
Municipal Advice and Approvals Branch, MMA

Mitch Fumalle, Director, Planning Advice and Approvals Branch, MMA

Legals Legals



Fraser Valley Regional District

PUBLIC NOTICE

Building Inspection and Regulations Sunshine Valley Area of Electoral Area B

The following information is intended to clarify concerns with the provision of Building Inspection in the Sunshine Valley area of Electoral Area B.

- Building inspection Service may be provided by a local government (Regional District) under the authority of Sections 694 and 797.1 of the Local Government Act.
- The Regional District removed the Sunshine Valley area from the Building Inspection service area in 1984 and has not required permits or inspections since that time.
- The authority to undertake building inspection in the Sunshine Valley area has not been granted by the Province of British Columbia to any other agencies.
- The Regional District cannot delegate its authority to inspect or regulate building to a developer and has not done so.
- There is no other provincial legislation which provides for building permits to be issued for the Sunshine Valley area.
- A "building permit" issued a private corporation is not a building permit for the purposes of section 694 of the Local Government Act and is not enforceable by the Regional District.
- The British Columbia Building Code is applicable throughout the Province but there is no inspection of buildings to ensure compliance with the Code unless a local government adopts a bylaw to provide that service.
- The Fraser Valley Regional District intends to reintroduce Building Inspection Service to the Sunshine Valley area of Electoral Area B after completion of an official community plan, zoning bylaw, geotechnical review and other legal requirements.

Sherald H. Kingston
Chief Administrative Officer
Fraser Valley Regional District

This is Exhibit "C" referred to in the
affidavit of ~~BASMAN~~ ~~ALICE~~ ~~SPRATC...~~
sworn before me at Hope B.C., This
1st Day of August, 19 2001

~~Paul J. Green~~
A Commissioner for taking Affidavits
within the Province of British Columbia