

## **APPENDIX F**

### **Excerpts of the Fraser Valley Regional District Official Community Plan for Electoral Area "G" Bylaw No. 0866, 2008**

#### **7.1 Hatzic Island**

The recreational amenities and rural atmosphere of Hatzic Island have made it a popular recreation and residential location for many decades. However, the attraction of the area, combined with its particular development history and environmental attributes, have created a number of difficult challenges for the community:

- The average density of development on Hatzic Island is high for an unserviced rural area due to the presence of non-conforming urban-type residential developments, mobile home parks, and recreational resorts. By most standards, unserviced development at the density found on Hatzic Island is not sustainable. Redevelopment of several non-conforming developments is unlikely due to legislation, land ownership structures, and form of the development currently existing.
- On-site sewage disposal fields may be contaminating groundwater and water supplies in some locations.
- Hatzic Island is within the Fraser River floodplain. Even high points on the Island are two metres below the elevation of a 1:200 Fraser River flood. Locations on the island are also subject to frequent minor flooding from within the Hatzic watershed which cause the most disruption and damage in low lying areas such as Everglades Resort.
- Residents of the Island are dependent on one access road and bridge; access may be cut off during major Hatzic floods.

For these and other reasons, the land use plans and zoning bylaws since the late 1960's have generally designated the Island for low density rural uses. In doing so, they rendered a number of existing developments "nonconforming".

This plan continues the objective of these previous plans to generally limit development to existing levels. However, it includes important new directions that may improve the situation in meaningful ways. This plan contains new policies regarding:

- a. legitimization of some non-conforming uses if current servicing, site development and flood mitigation standard can be met;
- b. investigation of public sewer and water services to address environmental and human health risks;
- c. the prospect of limited 'country residential'-type subdivision if community water or sewer infrastructure is achieved; and,
- d. advocacy for infrastructure improvements to reduce flood hazards and enhance recreational values.

## Non-conforming Uses

Occasionally, the adoption or amendment of a zoning bylaw will prohibit uses that were previously permitted. In these cases, lawfully existing uses established before the prohibiting bylaw are considered to be nonconforming, or 'grandfathered'. Rights surrounding lawfully non-conforming uses are set out in Section 911 of the Local Government Act (LGA). Section 911 allows lawfully established non-conforming uses to continue while eventually facilitating their elimination. The tension inherent in this purpose is obvious. Not surprisingly, a large and complex body of case law dealing with statutory nonconforming use has evolved which, from time to time, changes how the legislation is understood. It is essential to consider this case law when applying Section 911 in a particular instance.

Generally, Section 911 actively works towards conformance by preventing an increase in the scale of the use and limiting the duration of the use to the 'natural' life of the structure. In addition, nonconformance with zoning may depress the value of a property and increase difficulty in obtaining insurance, mortgages and financing. The net effect is to encourage replacement of the nonconforming use with one that conforms to the zoning bylaw.

However, in some instances the legal framework combined with practical considerations such as ownership structure and the nature of the use, leaves little or no expectation that conformity will be achieved, even in the long term. The result may be that a nonconforming use is permitted, and expected, to continue indefinitely but is still subject to the depressing affects of nonconforming status.

In these instances, nonconforming status may create uncertainty and stifle investment necessary for the maintenance of safe and healthy residences or neighbourhoods. It can become difficult to sell or transfer interests, achieve market value, and obtain mortgages or financing necessary for upgrades and repairs. As a result, developments may steadily degrade over time without any clear mechanism for renewal and replacement. Some of the lawfully nonconforming developments on Hatzic Island may fall into this category.

It is the policy of the Regional Board that:

7.1.1 Where the Regional Board considers that there is low likelihood of achieving conformity with zoning over time, the Board may treat lawfully non-conforming uses on Hatzic Island as Class II nonconformities under Section 5.7 of this Plan and rezone to reflect actual existing uses subject to:

- a. connection to a community water or sewer system, or where no public system is available, upgrade of on-site systems to meet acceptable standards;
- b. implementation of appropriate site development standards;
- c. no increase in density, scale or intensity of development;
- d. no increase in hazard or exposure to risk;
- e. ability to meet flood construction levels and setbacks; and,
- f. adequate access.