



Memorandum

Suite 200 - 1627 Fort Street Victoria BC BC V8R 1H8

Telephone (250) 405-5151 FAX: (250) 405-5155

Toll Free via Enquiry BC in Vancouver 660-2421. Elsewhere in BC 1.800.663.7867

information@islandstrust.bc.ca www.islandstrust.bc.ca

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File Number MA-DP-2004.1

To Mayne Island Local Trust Committee

IN CAMERA

From Alison Fox
Planner 2
Local Planning Services

Robert Kojima
Island Planner
Local Planning Services

Re Above Ground Water Tank at the Mayne Inn

Background:

In August 2008, the Islands Trust initiated bylaw enforcement action against the Mayne Inn as a result of possible non-compliance with the issued Development Permit MA-DP-2004.1 relating to the installation of an above ground water tank. In October 2008, the Islands Trust sought legal advice after receiving correspondence from the Mayne Inn disputing the allegation of non-compliance. This memorandum offers some recommendations of how to proceed with the file to reach a resolution.

A development permit is a permit granted by the LTC to develop in a certain manner and under certain conditions, based on the guidelines in the OCP and consistent with the legislation. The LTC has limited discretion to refuse a development permit that is consistent with the OCP guidelines. A development permit like that issued for the Mayne Inn can establish conditions for the general form and character of development only. The legislation specifies that a DP may not include requirements for "particulars of the landscaping or of the exterior design and finish of buildings and other structures"

Summary

Staff has reviewed and undertaken research on four points and offers the following comments:

1. Does the owner have permission to install a water tank?

There is a discrepancy between the approved site plan and the approved landscape plan. The site plan shows an above ground cistern in the approximate present location of the water tank. The landscape plan does not show this above ground cistern. However, the site plan should prevail in this instance as it shows all structures and buildings, whereas the landscaping plan was only intended to show landscaping. In any case, the Islands Trust is not disputing that there may be water storage on the property, only the form and character of that water storage.

2. Does the owner have permission to install a water tank of greater capacity than shown on the site plan?

Initially, Islands Trust took the stance that the capacity of the water tank was integral to the form and character of the structure. This was due to the fact that the approved site plan showed an above ground cistern of 18,700 gallons, whereas the installed water tank holds a larger amount of water. However, a review of the appropriate section of the Local Government Act confirmed that a development permit for commercial form and character

cannot regulate capacity of a structure, as this does not directly relate to the form and character of the structure. If the structure was installed below ground, for instance, the capacity of the tank would have no impact on the form and character of the development.

3. Does the owner have permission to install a water tank of this size?

The diameter of the installed tank is only 4.5 feet wider than the one shown on the plan. The 1"= 30' scale of the site plan means that this translates to a difference of only 0.15 inches on the plan. As the development permit only requires that the development be "substantially" in accordance with the permit, it is unlikely that a court would rule that the permit holder was in breach of the permit in this case.

4. Does the location of the tank comply with the setback requirements?

Mayne Island Land Use Bylaw No. 94 would ordinarily require 8 metre setbacks for the siting of all buildings and structures. However, development permits may vary a zoning or land use bylaw with respect to siting and other regulations that do not vary use or density. In this case, the setback along the north lot line was varied in the Development Permit to 4.5 metres; however, the text portion of the Development Permit only varies the lot line setback for buildings and not for structures. However, the site plan suggests that the Development Permit meant to vary structures as well, due to the fact that the water tank is shown within the 8 metre setback on the plan, and due to the fact that complying with the 8 metre setback would cause the water tank to infringe on the view corridor which was the main reason for reducing the setback to 4.5 metres in the first place. Once again, the siting of the water tank would likely be considered to be "substantially" in accordance with the Development Permit site plan, and Islands Trust would likely be unsuccessful in trying to enforce the zoning bylaw setback requirements in a court application under these circumstances.

Conclusions and Recommendations:

Based on the above analysis and legal advice, staff are of the opinion that any attempt to compel the owners to reduce the size of the water tank or require that the water tank be relocated through litigation would likely be unsuccessful. Staff are of the opinion that the best option is to ensure there is landscape screening around the tank sufficient to minimize its visual impact from Arbutus Drive. Staff have asked the owners of the Mayne Inn to have a qualified landscape professional prepare a report that includes an outline of the changes required to the approved landscape plan as a result of screening the water tank. Islands Trust holds a letter of credit for the landscaping of this project and will not release funds until this requirement is met. If the owners do not complete the landscaping in a manner consistent with the terms of the development permit, the Islands Trust has the option to retain the funds and complete the landscaping on behalf of the owner.

Staff recommend that the Mayne Island Local Trust Committee:

1. Receive this memorandum for information
2. Consider a resolution to release this memorandum to the public
3. Direct staff to continue pursue completion of satisfactory landscaping

pc Miles Drew, Bylaw Enforcement Officer
David Marlor, Regional Planning Manager