



STAFF REPORT TO COMMITTEE

DATE OF REPORT November 9, 2023
MEETING TYPE & DATE Electoral Area Services Committee Meeting of December 6, 2023
FROM: Development Services Division
Land Use Services
SUBJECT: Proposed Bylaw No. 4539 to Amend Section 5.18(m) of Electoral Area B – Shawnigan Lake Zoning Bylaw No. 985
FILE: 4539

PURPOSE/INTRODUCTION

Development Services staff present a Zoning Bylaw Amendment to the Electoral Area B – Shawnigan Lake Zoning Bylaw No. 985, to replace Section 5.18(m). The current regulation 5.18(m) prohibits subdivision of a small suite from a single-family dwelling, despite compliance with other zoning regulations such as minimum parcel size and servicing. A new amendment Section 5.18(m) would align the regulation with Electoral Areas A, C, and D, and better implement Official Community Plan and Local Area Plan objectives and policies.

RECOMMENDED RESOLUTION

That it be recommended to the Board:

1. That CVRD Bylaw No. 4539 – Area B – Shawnigan Lake Zoning Amendment Bylaw (Suite Covenant Amendment), 2023, be forwarded to the Board for consideration of 1st and 2nd reading.
2. That public notice be undertaken in accordance with the *Local Government Act* and CVRD Bylaw No. 4483 – Development Application Procedures Bylaw, 2023.

BACKGROUND

The CVRD Development Services has recently received multiple subdivision applications in Electoral Area B – Shawnigan Lake proposing to subdivide a small suite from a single-family dwelling. After such subdivisions, each dwelling would be considered a principal dwelling on separate parcels, despite that the small suite would be smaller than a typical principal single-family dwelling. These parcels for which applications were received are also located within the Growth Containment Boundaries (GCBs), and with the new suite regulations recently implemented, these new parcels would allow for construction of a second dwelling on each new parcel, thereby increasing infill development in the serviced Village area.

Despite that these subdivision applications meet zoning bylaw requirements in the Electoral Area B Zoning Bylaw No. 985 regarding minimum parcel size, servicing, setbacks and other conditions of use, the Electoral Area B zoning bylaw contains a regulation that currently prohibits subdivision of a small suite from a single-family dwelling:

5.18 Small Suites

- (m) *The small suite shall not be subdivided from the parcel upon which it is located, nor shall a strata plan of any type pursuant to the Strata Property Act be registered on a parcel which contains a small suite, and the owner(s) of the property shall enter into and register on the State of title Certificate a covenant Agreement to this effect.*

The regulation 5.18(m) requires that any time a small suite be constructed on parcel after a single-family dwelling (or a single-family dwelling be constructed and a previous dwelling be considered a small suite), a restrictive covenant be registered on the property to prevent subdivision regardless of the potential for future subdivision based on property size, servicing and other considerations.

In other zoning bylaws, such as the South Cowichan Zoning Bylaw No. 3250, and the Electoral Area D Zoning Bylaw No. 3705, which are more recent in their adoption, a restrictive covenant is only required for a parcel that cannot be subdivided under the respective zoning bylaw. For parcels with subdivision potential, the registration of a restrictive covenant prohibiting subdivision is not required. Further to this, if parcels are not able to subdivide, but in the future the potential arises, there is a clear path forward for subdivision with the discharge of the restrictive covenant, without requiring a rezoning.

- See Attachment A – Draft Zoning Bylaw

OFFICIAL COMMUNITY PLAN / POLICY CONSIDERATIONS

[Official Community Plan for the Electoral Areas Bylaw No. 4270](#): The OCP contains numerous goals and objectives related to housing and growth in residential designations:

Goal 1. Manage Growth Holistically

3.2.1.1. Objectives

3. *Focus development to settlement nodes within the growth containment boundary.*

3.2.1.2 Policies

The CVRD Board:

3. *Supports development in growth containment boundaries consistent with servicing capacity.*
5. *Supports development near transit and within serviced areas that have capacity for growth.*

Goal 2. Improve and Expand the Range of Housing and Type of Construction

2. *Develop a housing continuum and increase supply of housing across the spectrum of affordability.*
8. *Increase affordable housing options by increasing the supply of suites, manufacture homes, and support infill development.*

3.2.1.4 Policies

The CVRD Board:

3. *Supports housing that is consistent with the surrounding context, including character of existing neighbourhoods and rural areas.*

4.10.1 Residential Objectives

1. *Provide a wide range of housing and lifestyle options for various stages of life and different community lifestyles, as the community demographics continue to change.*

4.10.2. Residential Policies

The CVRD Board:

2. *Encourages affordable housing in all communities.*
3. *Encourages secondary suites or second dwelling units in service areas.*

The [Electoral Area B – Shawnigan Lake Local Area Plan](#) also contains objectives and policies related to housing and growth in residential areas:

2.1.1 Growth Containment Boundary Objectives

1. *Ensure Shawnigan Village area remains a compact lakeside community.*

2.9.13. Village Suburban Residential Objectives

1. *Provide a wide range of housing.*
2. *Provide opportunities for safe, affordable rental and special needs housing.*

2.9.15. Village Residential Objectives

1. *Maintain the small-scale rural village character of the community.*
3. *Create compact, complete communities.*
4. *Provide affordable housing.*

2.9.16 Village Residential Policies

The CVRD Board:

2. *Supports zoning standards for compact, low-density development with a maximum of 20 units/ha.*

[Electoral Area B Zoning Bylaw No. 985](#): Section 5.18 of the Zoning Bylaw regulations the construction of small suites. The small suite shall not be subdivided from the parcel upon which it is located, nor shall a strata plan of any type pursuant to the *Strata Property Act* be registered on a parcel which contains a small suite, and the owner(s) of the property shall enter into and register on the State of title Certificate a covenant Agreement to this effect [Section 5.18(m)].

[South Cowichan Zoning Bylaw No. 3520](#): Section 4.15 regulates accessory dwelling units. An accessory dwelling unit may be subdivided from the parcel upon which it is located if:

- a. It is in a zone which would allow for the proposed parcel sizes following subdivision;
- b. The principal dwelling and accessory dwelling unit are so located as to allow for setback requirements to be met following subdivision, with each being on a separate parcel following subdivision;
- c. The approval of the Health Authority for sewage disposal has been obtained.

If the parcel upon which the accessory dwelling unit would be located is in a zone which would not allow for subdivision, the owner shall, prior to the issuance of a building permit for the accessory dwelling unit, register a covenant under Section 219 of the *Land Title Act* in favour of the CVRD against the title to the parcel which prohibits its subdivision or the registration of any form of strata plan under the *Strata Property Act*.

[Electoral Area D Zoning Bylaw No. 3705](#): Section 9 regulates accessory dwelling units. Neither an accessory dwelling nor a secondary suite shall be located on a parcel unless the owner of

such a parcel has, prior to issuance of an occupancy permit, registered a restrictive covenant under Section 219 of the *Land Titles Act*:

- i) Prohibiting subdivision or the registration of a strata plan under the *Strata Property Act* or *Land Title Act*
- ii) Limiting the number of dwellings permitted on the parcel to two, including the principal dwelling;
- iii) Requiring the owner of the parcel to permanently reside on the same parcel.

PLANNING ANALYSIS

The South Cowichan is facing the pressures of population growth, as can be seen within the Village communities of Mill Bay, Cobble Hill, Shawnigan Lake and Cowichan Bay. Province-wide residents are facing challenges with finding suitably appropriate and affordable housing options, as can be seen from recent Provincial discourse and legislative changes. Regulation 5.18(m) in the Area B Zoning Bylaw is exacerbating these challenges by prohibiting subdivision on parcels which could provide two perfectly suitable separate constructed single-family dwellings on separate parcels. Development Services staff propose a simple amendment to align the regulation with the surrounding Electoral Area Zoning Bylaws, thereby providing a path forward for property owners to subdivide a single-family dwelling and separate small suite.

The OCP objectives and policies support growth and infill development within the identified growth containment boundaries and serviced areas with capacity to growth. In particular, infill development within the Village areas is encouraged. The OCP also encourages a wide range of housing and lifestyle options across the housing continuum. These OCP policies are aimed at ensuring that development can accommodate population growth, and increased diversity of housing options become available.

The zoning bylaw regulation 5.18(m) in Electoral Area B Zoning Bylaw No. 985 currently prohibits subdivision of a small suite from a single-family dwelling, even if all other regulatory requirements (such as minimum parcel size, servicing requirements, setbacks etc.) are met. This regulation is currently unnecessarily prohibiting subdivision in areas where servicing and infill development is not only possible, but the where the OCP strongly supports and encourages growth.

More recently adopted Zoning Bylaws for Areas A, C, and D provide an example of a more nuanced regulation, whereby a restrictive covenant is only required if the zoning bylaw prohibits subdivision through minimum parcel size and servicing requirements. The regulation itself does not prohibit subdivision of a separate suite just for the sake of preventing subdivision. Staff consider this approach to be aligned with OCP policies that allow for, and even support and encourage, growth in certain areas. The current Area B regulation unnecessarily prohibits subdivision in areas that could accommodate growth (and in fact where the OCP encourages it).

Therefore, Staff are recommending that the Electoral Area B – Shawnigan Lake Zoning Bylaw No. 985 be amended by replacing the Section 5.18(m) regulation with a regulation that is similar to that in the Electoral Area D Zoning Bylaw No. 3705 and the South Cowichan Zoning Bylaw No. 3520. As staff consider the zoning amendment to comply with OCP objectives and policies, no public hearing is recommended, and instead public notification should be undertaken in accordance with the *Local Government Act* and CVRD Procedures and Fees Bylaw.

OPTIONS

Option 1:

That it be recommended to the Board:

1. That CVRD Bylaw No. 4539 – Area B – Shawnigan Lake Zoning Amendment Bylaw (Suite Covenant Amendment), 2023, be forwarded to the Board for consideration of 1st and 2nd reading.
2. That public notice be undertaken in accordance with the *Local Government Act* and CVRD Bylaw No. 4483 – Development Application Procedures Bylaw, 2023

Option 2:

That it be recommended to the Board that the Zoning Amendment Bylaw No. 4539, be referred back to staff (*for specific changes or reasons to be decided by the Board*).

Option 3:

That it be recommended to the Board that the Zoning Amendment Bylaw No. 4539, be denied.

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Reviewed for form and content and approved for submission to the Committee:

Resolution:

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Financial Considerations:

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ATTACHMENTS:

Attachment A – Draft Bylaw 4539