

Article rank | 12 May 2010 | Times Colonist | *BILL CLEVERLEY* bcleverley@tc.canwest.com
Times Colonist

Bylaws redistributing sewer costs illegal: ruling

Colwood failed to follow procedure, judge says

Colwood bylaws designed to redistribute sewer costs in the Esquimalt Lagoon area have been ruled illegal in B.C. Supreme Court and set aside.

Mayor David Saunders said he was disappointed and that the municipality lost on “a technicality.”

But in her ruling, Justice Barbara Fisher said Colwood failed on several fronts to follow proper procedure in creating the new local service area, which covers roughly 30 per cent of Colwood’s sewer homes. “There were numerous instances of non-compliance. Considered together, the nature of the illegality was serious,” Fisher said in her reasons for the judgment.

Fisher cited several procedural problems with the process: a bylaw was adopted before the city obtained permission from the Inspector of Municipalities, proposed service-area boundaries were unclear, and property owners were not informed of the actual amount of outstanding debt.

Colwood enacted the bylaws in February after being petitioned by the majority of residents in the area requesting the change. Under the scheme, a new local service area known as Tranquility LSA would have been created by merging two existing LSAs — known as Lagoon and Phase V. The associated debt would have been refinanced as a parcel tax and distributed evenly among all 350 property owners in the area.

But the municipality was taken to court by Ridley Brothers Development Co., who are part of a group of developers known as the Upstream Users Group, which has won a succession of legal battles with the municipality over the way it taxes for sewers.

John Alexander, lawyer for Ridley Brothers, said Colwood’s proposed changes put the Upstream Users at risk of not having enough sewer capacity for all their land to be serviced, even though they paid 100 per cent of the cost of trunk lines brought into the municipality.

Alexander said if Colwood wants to make changes, it has to sit down with the Upstream Users Group.

“The real solution is for the parties to sit down and reach an understanding as to what is the fair way to move forward that takes into account historically who has paid for these sewers and takes into account in a fair way the need for new development in Colwood,” Alexander said

Under the new LSA, all affected residents would have paid a flat rate of \$358 for sewers for the next 30 years and an annual operating bill of about \$140. Property owners within the service area not hooked up to the system would have also paid the same bill.

“It’s a setback for initiating fairer taxes for the majority of our residents for this tax season,” Saunders said.

“In this instance now, in Phase V, these citizens will now be faced with costs of \$1,100, as opposed to under the parcel tax we were trying to create it would have been

\$358.”

Saunders hopes to hold an emergency meeting with residents next week to discuss what steps to take next.

He also wants the province to step in to fix what he says it knows is an “illegal” system of sewer taxation.



“It’s about time they stepped up to the plate and did something,” Saunders said.

Printed and distributed by NewspaperDirect | www.newspaperdirect.com, US/Can: 1.877.980.4040, Intern: 800.6364.6364
| Copyright and protected by applicable law.