



**DRAFT - Minute Excerpts from the
November 26, 2024, Regular Council Meeting**

9. CORRESPONDENCE

**9.3 221 Minato Road - OCP & Subdivision Application - Flood Assurance Statement
*Joshua Hunt, CEO, ERIF Sustainable Solutions***

This correspondence item was brought forward for discussion. The following summarizes the Council and Staff comments:

Mayor McEwen:

- summarized Kerr Wood Leidel Ltd's (the "KWL") finding in their draft report titled "Flood Assessment for 221 Minato Road, Ucluelet" (the "report"), and the letter requested by the proponent (the "letter") that, if issued, would confirm that the level of risk set out in the report is acceptable to Council;
- explained that the District does not have a risk tolerance policy and recommended that the report and letter request be referred to the District's solicitor and insurer for comment on liability;
- noted that the proponent is working hard to develop affordable housing on a difficult site and if the development is approved, Ucluelet would be the first community in British Columbia to authorize a development in a flood zone after receiving appropriate assurances;
- further noted that a covenant may not successfully prohibit lawsuits against the District and that she has several questions related to the District's liability that should be answered by the District's solicitors and insurer before Council proceeds with the requested letter; and
- explained that an author of the report noted there would be no liability for Council or Staff associated with issuing the requested letter and referenced a document in the Province of British Columbia Flood Hazard Area Land Use Management Guidelines (the "guidelines") which is a covenant template intended to indemnify Staff and Council (the "covenant template").

Councillor Kennington:

- stated that he is comfortable with the report and issuing the letter requested by the proponent which is necessary for KWL to complete their report;
- noted that the flood assurance is being provided by a subject matter expert that

DRAFT - Minute Excerpts from the November 26, 2024, Regular Council Meeting

developed the guidelines;

- submitted that the risk identified in the report is low, other uncommon risks are more likely than the risk of mortality outlined in the report, and the greatest risk is to individuals on the ground and therefore trail users;
- explained that liability issues can be addressed using the covenant template in the guidelines and covenants could be reviewed by the District's solicitors at a later date;
- clarified that the 11 homes on Lot 3 would fund the affordable housing units in the development and noted the importance of developing affordable housing in Ucluelet;
- reasoned that regardless of whether there is liability associated with this development, Council needs to take responsibility for housing residents, and doing so may require the District to take risks;
- advocated against seeking legal advice at this time because it would delay and therefore jeopardize the project which includes much-needed affordable housing, and because the covenant templates in the guidelines should protect the District, Council, and Staff from liability;
- noted that the flood assurance statement is not required by provincial legislation, site-specific analysis is sufficient, and the District should have sought legal advice about how to receive and consider the report before requesting it; and
- recommended that to avoid delays the District should move project elements forward in parallel rather than sequentially.

Councillor Maftai:

- recommended that Council issue the letter requested by the proponent at this point since there is a significant need for affordable housing, the level of risk identified by the report is low, delays could escalate project costs and in turn project viability, and the District would not take on liability by issuing the letter; and
- noted that Council could receive input from the District's lawyer and insurer on the risk to the District later and any legal advice at this time would be of limited value.

Councillor Anderson:

- recommended issuing the requested letter now because the identified risk is low, the need for affordable housing is high, and project delays will have financial ramifications for end users, including those interested in the proposed affordable units;

DRAFT - Minute Excerpts from the November 26, 2024, Regular Council Meeting

- acknowledged that the report was prepared by industry experts and by issuing the letter Council would be confirming that they reviewed the report, and Council accepts the low level of risk associated with Lot 3;
- reasoned that all actions come with risk, the risk level identified in the report is low, and the risk of mortality identified in the report (1 in 142,000) is lower than the United Kingdom's risk tolerance (1 in 100,000). Councillor Anderson noted higher risk developments located in fire interface areas in other communities in British Columbia;
- compared the risk associated with the development with the risk of not building affordable housing;
- explained that the proponent met with the Fire Chief to discuss risk management and evacuation plans for the property, and the proponent has made changes to their site plan to address identified risks;
- noted Council's strategic priorities focus on enhancing development by reducing barriers and tsunami risks are mitigated for the majority of the development other than Lot 3; and
- highlighted the template covenant in the guideline intended to protect the municipality against liability.

Councillor Hoar:

- recommended issuing the letter now as the risk set out in the report is acceptable and the report is sufficient due diligence; and
- opposed delaying issuing the letter because it would delay the proposed development which includes affordable units.

In response to Council questions the Chief Administrative Office:

- recommended that the report be reviewed by a third party and referred to the District's solicitor and insurer for comment on the District's liability as issuing the letter may have lasting liability implications for the community and create unforeseen challenges for this development;
- explained that if Council issues the letter, it is establishing that Council accepts the level of risk outlined in the report (including the risk of mortality associated with the development of Lot 3 (1:142,000 annually)) and accepts the accompanying liability;
- clarified that the report is seeking confirmation from Council that the level of risk associated with permitting development on Lot 3 (which is identified as low), is acceptable. Staff cannot advise Council on this issue without additional time to complete due diligence by consulting with the District's lawyers and insurer. He went on to clarify that the legal advice would not quantify or qualify the report, instead, it would provide information on the implications to the community of

DRAFT - Minute Excerpts from the November 26, 2024, Regular Council Meeting

accepting the level of risk outlined in the report by issuing the letter;

- noted that the requested letter is new territory, as Staff are unaware of a subdivision that was approved in a tsunami risk area after related legislation was enacted, the Province of British Columbia has a zero-tolerance risk policy, and the District does not have a risk tolerance policy;
- reasoned that to determine what the District's risk tolerance is Council should consider what the District's potential liability would be if the risk arises. In this case, Council should consider what liability would arise if there was damage to property, damage to infrastructure, or loss of life arising from a tsunami event that affected Lot 3. The CAO noted that Staff do not know what this liability would be;
- noted that Staff cannot provide legal advice on the efficacy of the covenant templates in the guidelines but noted that covenants are not generally an effective tool for prohibiting lawsuits; and
- clarified that the Flood Assurance Statement was not optional under provincial legislation as municipalities are not permitted to allow development in a flood risk area without a flood assurance statement.

In response to Council questions, the Director of Community Planning:

- noted that it is unusual for municipalities to allow construction in areas that may be prone to flooding and to take on associated liability, and explained that the provincial subdivision approval framework generally aims at avoiding development in these areas;
- clarified that the engineers are willing to provide the flood assurance statement for Lots 1, 2, 4, and 5 but will not provide a flood assurance statement for Lot 3. As a result, the letter is requesting that the District accept the liability associated with allowing development on Lot 3. He recommended that Council seek further information from its lawyers and insurer, before determining whether to accept this liability;
- explained that the template covenant in the guidelines may not be relevant as they are intended to be used when a flood assurance statement is provided with no conditions and there is no request for the local government to tolerate a level of risk. This is not the case here, as the report indicates there is a risk and the letter requests that Council tolerate that risk; and
- reiterated that staff are unaware of a subdivision that has been approved with a municipality accepting some level of risk.