



SHALLOW BAY ZONING COMMITTEE

REPORT #12

February 10 & 12, 2020 Meetings

Submitted by
Groundswell Planning

February 2020

BACKGROUND

In 2018, Government of Yukon (YG) created the Shallow Bay Zoning Committee (hereinafter referred to as “the Committee”) to develop a draft zoning regulation for consideration for the area. The Committee includes Shallow Bay property owners and Ta’an Kwäch’än Council (TKC) citizens. The Committee held its thirteenth and fourteenth meetings on February 10 and 12, 2020 at the Hootalinqua Fire Hall.

ATTENDEES

Don Allen (YG member) – Feb. 12 only	John Bunbury (TKC member)
Nellie Dale (YG member)	Ruth Massie (TKC member)
Pat Hogan (YG member)	Betsy Jackson (TKC member) – Feb. 12 only
Michelle Sicotte (YG staff)	Natalie Leclerc (TKC staff)
Graham White (YG staff) – Feb 12 only	Jane Koepke (Facilitator)
Jonathan Lucas (YG staff) – Feb 12 only	

MEETING OBJECTIVES

1. Continue drafting the outline of zoning regulations for Shallow Bay, focusing on zones not covered during the January meetings;
2. Revisit the zoning elements for which the Committee did not reach consensus and provide further information and/or discussion to reach consensus; and,
3. Determine the Committee’s readiness for public engagement and have an initial discussion around potential format(s).

KEY MEETING OUTCOMES

Draft Zoning

- Protected Open Space – The Committee decided uses and prohibitions for Protected Open Space zone that emphasized natural/environmental functions and allowed for certain recreational and traditional activities. The resulting draft zoning outline was not reviewed.
- First Nation Land Use – A designation of FNLU will be applied to Settlement Land parcels in the planning boundary. Natalie explained that this designation is preferred to the “Hinterland” zone that Settlement Land has received in the Grizzly Valley Development Area. FNLU better signals the ownership of these parcels and the fact that use of them is limited to the provisions of the TKC Final Agreement. As envisioned, this zone would have a purpose but no other provisions (i.e. accessory, discretionary uses, etc.). Natalie noted that there may be some merit in considering a slightly different approach to the zone if it indirectly supports the management of off-lot recreation impacts that are of concern to the Committee.
- Large lots – The Committee previously agreed these lots should be zoned Agriculture and agreed to AG-2 zoning.

- Rezoned lot – The Committee determined that a lot rezoned Multiple Rural Residential should be zoned consistently as RR-1 neighbours but a special provision made. Michelle noted that this property was rezoned in 2012 to accommodate up to 4 dwelling units and the rezoning application was not opposed by any residents at the time.
- RR- 2 buffer – The Committee agreed to a 50-metre buffer for development – specifically permanent structures – for RR-2 parcels.

DISCUSSION

Aquatic Buffers

- Fencing – Michelle confirmed that once a buffer was applied, no new fencing could be installed within it. Existing fencing could remain, however. When the fences were rebuilt they would need to be outside the buffer.
- Lot Line vs. OHWM – Committee members agreed that the buffer should apply from the lot line versus OHWM because of the fluctuation of the latter. Lot owners will have an easier time ensuring they are in compliance with a buffer that relates to property pins. Jane pointed out that this clarity may not have been shared by all when the Committee previously established draft ranges for rural residential and agricultural buffers in January, and that the ranges could potentially change. Graham explained that OHWM is specific to the point in time at which a survey is undertaken and is “accurate but imprecise” as a marker. Mapping of shorelines doesn’t necessarily reflect OHWM but rather where water was present when a map is created. As such, there can be discrepancies. For example, agricultural parcels on the south end of the bay do have a setback from the bay (even though the map suggests there isn’t one). The survey plans for each lot along the bay describe the distance of the lot line from the OHWM. The rural residential lots are all the same. There is quite a bit of variability between the agriculture lots.
- Shallow Bay Study – Natalie presented a summary of a study on Shallow Bay wildlife that was undertaken for Ducks Unlimited by Mossop/Robichaud from 2007. The study covers the bay’s significance as a wetland and critical habitat for many species of waterfowl, fish, amphibians and mammals. Shallow Bay is recognized as a Globally Significant Important Bird Area site. Recommendations from the study include limitation of waterfowl hunting and motorized access of all kinds. The study notes that motorized vehicle use leaves deep scars in the shoreline and inhibits plant life. It also states that agricultural activity poses the greatest threat to the ecosystem’s health and balance via clearing of essential habitat (including the willows). The report recommended a 50 metre buffer from development to protect wildlife but Michelle noted that there may not be a shared understanding or agreement on what specifically the buffer relates to (OHWM, riparian vegetation, or other).
- Agricultural Practices & Water Impacts – Jonathan with Agriculture Branch attended the meeting to discuss the potential impacts of agricultural activity on the bay. He explained the manufacturers specify application amounts for chemicals (i.e., pesticides, herbicides, and fertilizers) and that they are designed to bind to the plant. Due to the high

cost, over application of these substances is not favourable to cost effectiveness of farming and could ultimately harm the plant. He noted that across Canada, 30 metres is typically applied as a buffer between agricultural parcels and waterbodies. He also noted that certain types of alkaline soils, including those in the Shallow Bay area, naturally bind phosphorus (a component of fertilizer), further reducing the likelihood of off-site migration.

Natalie noted that TKC water sampling typically happens prior to and post application of fertilizer, etc. so it doesn't feel like it has a clear understanding of whether or not agricultural chemicals are migrating into the bay.

- Implications of Lot Line Buffer – The theoretical application of the same buffer, relative to lot line, for all AG-2 parcels, could have different results due to the presence of Commissioner's Land between the water and agricultural parcels in the north end of the bay. There is quite a bit of variability in the distance between the lot line and the OHWM for each agriculture parcel. Jonathan noted that considerable areas of currently farmed land could theoretically be forced out of production if the buffer applies to all farming activity. TKC reps explained that the Commissioner's Land was negotiated with YG during YESAA consideration of Lots 1497 and 1506. It was not as significant an area as TKC had desired. This area is not really considered a "buffer" from agricultural activity but a natural area that provides for continued ecosystem functions. Some Committee members indicated that the potential loss of farming area was an acceptable outcome.
- Horse Creek buffer – A 30-metre strip of Commissioner's Land is theoretically in place along Horse Creek but Natalie noted that aerial imagery would suggest that this buffer is being encroached upon in actual practice. A 2006 YESAA assessment for agricultural development of Lot 1506 recommended a minimum 30-metre setback from the change of riparian vegetation upland species along the fen and associated wetland. It is also difficult to maintain a buffer along Horse Creek because the creek is dynamic and moves.
- Basis for Decision- Making – Natalie reminded the Committee that the TKC interviews had revealed citizen dissatisfaction not with agriculture in general, but with poor or inadequate planning related to it. This needs to be kept in mind during decision-making. Jane asked the group what guiding principle the buffer concept stems from; a precautionary approach to "community values" may provide the strongest link. The Committee clarified that environmental protection, and associated protection of related traditional uses, was the rationale for a buffer. Jane suggested that the Guiding Principles may need to be reconsidered to ensure that the Committee has a solid rationale on which to base its final decision on this challenging issue.

Public Engagement

- Readiness – All agreed that the Committee has made considerable progress over the past two sets of meetings but that reaching consensus on all items will likely not be possible prior to early March. Given the need to advertise several weeks in advance, it is more prudent to postpone this step and continue working on outstanding items.

- Format – Committee members provided some initial thoughts around the format that public engagement should take. One suggested that an information session could be held for property owners of specific zones instead of a general meeting; this would allow for more meaningful and informed discussion. Another noted that if a public meeting is to be held, a facilitator should be used (Michelle confirmed that Jane would fill this role).

NEXT STEPS

Next Meeting

- The Committee agreed to meeting on two evenings about a week apart in early March to accommodate the availability of TKC members. March 12th and March 2nd were confirmed following the meeting.

Outstanding Issues/Action Items

Action items and outstanding questions stemming from the February meetings include:

- Circulating January and February meeting minutes for Committee review;
- Further discussion/decision around AG-2 buffers;
- Further discussion/decision of appropriate zoning (and potentially buffers) for Horse Creek properties tentatively designated RR-1 and AG-1;
- Review and acceptance of POS zoning outline;
- Resolution of uses for RR-1/RR-2 and AG-1/AG-2, with particular consideration of off-lot impacts and how to manage them, as well as compatibility of AG uses versus support for secondary revenue to help farmers; and,
- Clarification of personal livestock (i.e., thresholds, etc.) and considerations for limiting impacts.
- File information regarding lot 1096 and 65.