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# Memo

**DATE:** December 21, 2009  
**TO:** City Manager  
**FROM:** Community Sustainability Division



**APPLICATION NO.** Z09-0066                      **OWNER:** T 231 Enterprises Ltd., Inc. No. 658931  
**AT:** 2598, 2620 & 2636 Highway 97 N.      **APPLICANT:** T231 Enterprises Ltd., dba Braemar Group

**PURPOSE:** TO REZONE THE SUBJECT PROPERTIES FROM C9 - TOURIST COMMERCIAL, C10 - SERVICE COMMERCIAL & A1 - AGRICULTURE 1 TO C10 - SERVICE COMMERCIAL (LIQUOR PRIMARY/RETAIL LIQUOR SALES) TO ALLOW FOR A RESTAURANT AND COMMERCIAL USES.

**EXISTING ZONES:** C9 -Tourist Commercial, C10 - Service Commercial & A1 - Agriculture 1

**PROPOSED ZONE:** C10 - Service Commercial (Liquor Primary / Retail Liquor Sales)

**REPORT PREPARED BY:** Alec Warrender

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## 1.0 RECOMMENDATION

THAT Rezoning Application No. Z09-0066 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 1, District Lot 125, ODYD, Plan 3522, located at 2636 Highway 97 North, Lot 2, District Lot 125, ODYD, Plan 35785 Except Plan KAP83939, located at 2598 Highway 97 North, Lot 1, District Lot 125, ODYD, Plan 35785 Except Plan KAP83940 located at 2620 Highway 97 North, Kelowna, B.C. from A1 - Agriculture 1 to the C10 - Service Commercial (Liquor Primary / Retail Liquor Sales) Zone be considered by Council;

THAT the zone amending bylaw be forwarded to a Public Hearing for further consideration;

THAT final adoption of the zone amending bylaw be considered subsequent to the registration of a plan of subdivision to consolidate the properties into one title;

THAT final adoption of the zone amending bylaw be considered subsequent to the registration of access easements for access to the adjoining hotel property;

THAT final adoption of the zone amending bylaw be considered in conjunction with Council's consideration of a Development Permit on the subject properties;

AND THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of the Development Engineering Branch and the Ministry of Transportation being completed to their satisfaction.

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## 2.0 SUMMARY

This application seeks to rezone the subject properties from C9 - Tourist Commercial, C10 - Service Commercial & A1 - Agriculture 1 zones to the C10 - Service Commercial (Liquor Primary / Retail Liquor Sales) zone to facilitate the development of a restaurant and comprehensive commercial uses, upon consolidation of the lots.

## 3.0 ADVISORY PLANNING COMMISSION

At a meeting held on August 18, 2009, the APC passed the following motion:

THAT the Advisory Planning Commission support Rezoning Application No. Z09-0040, for 2598, 2620 & 2636 Hwy 97 N; Lots 1 & 2, Plan 35785, DL125, except Plan KAP83939; Lot 1, Plan 3522, DL 125, ODYD; to rezone the subject properties from C9 - Tourist Commercial, C10 - Service Commercial; and A1 - Agriculture 1 zone to the C3 - Community Commercial zone to allow for a restaurant and general commercial use.

### *Comment:*

As the APC supported the initial application for the C3 - Community Commercial zone the new application for the C10 - Service Commercial (Liquor Primary / Retail Liquor Sales) was not recirculated to the APC. The C10 zone is less intrusive and accomodates fewer uses than the C3 zone.

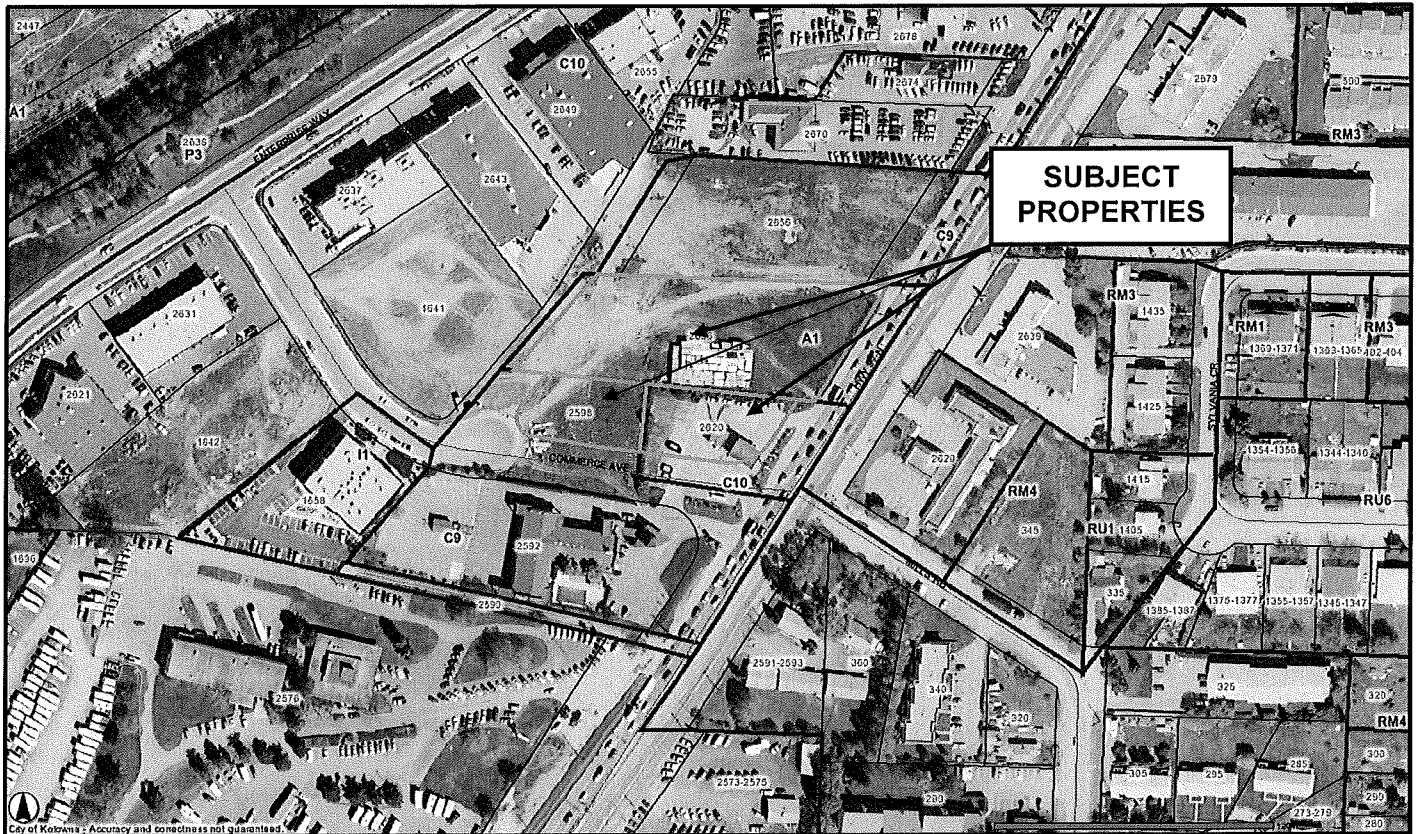
## 4.0 BACKGROUND & THE PROPOSAL

Council recently considered an application for the C3 - Community Commercial Zone, the application was not supported as the community commercial zone was considered inappropriate for this highway location. The concern with the C3 zone in this location was that the conversion to more retail oriented uses in service commercial areas can have an impact on the retention of retail uses in appropriately designated and zoned centres. Rezoning to the C10 zone will help to prevent future retail and office commercial uses, more properly located in Urban Centres, from gravitating to cheaper lease rates available in service commercial areas. This trend would impact the ability to achieve OCP objectives on growth management and intensification in Urban Centres.

The purpose of this new application is to rezone the subject properties to the C10 - Service Commercial (Liquor Primary / Retail Liquor Sales) which is a more appropriate zone for this location. The intended use of the subject property is for a restaurant building and a second building with commercial use(s). This application would result in the dedication of land for the Jenkins Road right-of-way as well as additional widening of the Hwy 97 right-of-way. The applicant has not submitted a Development Permit application at this time, pending support for the proposed land use. Should the rezoning be favourably considered by Council, final reading of the zone amending bylaw will be withheld until a Development Permit application is brought forward for consideration.

4.1 SUBJECT PROPERTY MAP:

2598, 2620 & 2636 Highway 97 N.



4.2 Site Context

The surrounding area has been developed with a variety of uses, with commercial hotel uses to the north, south and east. The adjacent land uses are as follows:

<i>Direction</i>	<i>Zoning Designation</i>	<i>Land Use</i>
North	C9 - Tourist Commercial	Hotel
West	C10 - Service Commercial	Commercial
South	C9 - Tourist Commercial	Hotel
East	C9 - Tourist Commercial	Hotel

5.0 CURRENT DEVELOPMENT POLICY

5.1 Future Land Use (OCP)

The proposed zone is consistent with the “Commercial” Future Land Use as outlined in the OCP.

5.2 OCP Objectives for Commercial Development

- All development should be an appropriate response to its physical context, or anticipated future context where an area is designated for increased density or land use transition in the OCP.

- All development should provide visual interest and human scale.
- All development should contribute to a sense of community identity and sense of place (integration of development within larger community, belonging, and community cohesiveness).
- All development should facilitate access by, and minimize conflicts among pedestrian, bicycle, and vehicular modes of transportation (access, mobility).
- All development should promote safety and security of persons and property within the urban environment (CPTED).

### 5.3 OCP Commercial Land Use Policy Objectives

**Location of New Commercial.** Direct new commercial ventures to locate in areas designated for commercial purposes (see Map 19.1);

**Urban Centre Focus.** Encourage new retail, service, office, hotel/motel, and entertainment facilities to locate within the Urban Centres, in accordance with the provisions of Map 6.2 and the policies of Chapter 6;

**Conversion from C10.** Discourage the conversion of C10 Service Commercial zoned areas to C3, C4 or C7 zoning, outside of Urban Centres. The City, depending on site-specific circumstances, may support the conversion of C10 Service Commercial zoned sites to C3, C4 or C7, within Urban Centres;

### 6.0 TECHNICAL COMMENTS

The application has been submitted to various technical agencies and City departments, whose comments are included as attachments to this report.

### 7.0 LAND USE MANAGEMENT DEPARTMENT COMMENTS

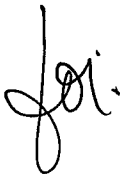
The Land Use Management is supportive of the proposed C10 zone as it is the appropriate zone for this location. The subject property is designated as Commercial in the OCP and therefore the proposed zoning is in compliance with the OCP and could be supported.

The proposed consolidation will result in a more efficient utilization of the land and has the potential to provide better site planning opportunities along the Highway. This application will also result in the dedication and construction of Jenkins Road as well as additional widening of the Hwy 97 right-of-way. As the site is located along a major corridor identified as a Commercial Development Permit Area and a DP application will be required (no application has been submitted at this time).

Submitted by:



Danielle Noble  
Manager, Urban Land Use



Approved for inclusion:

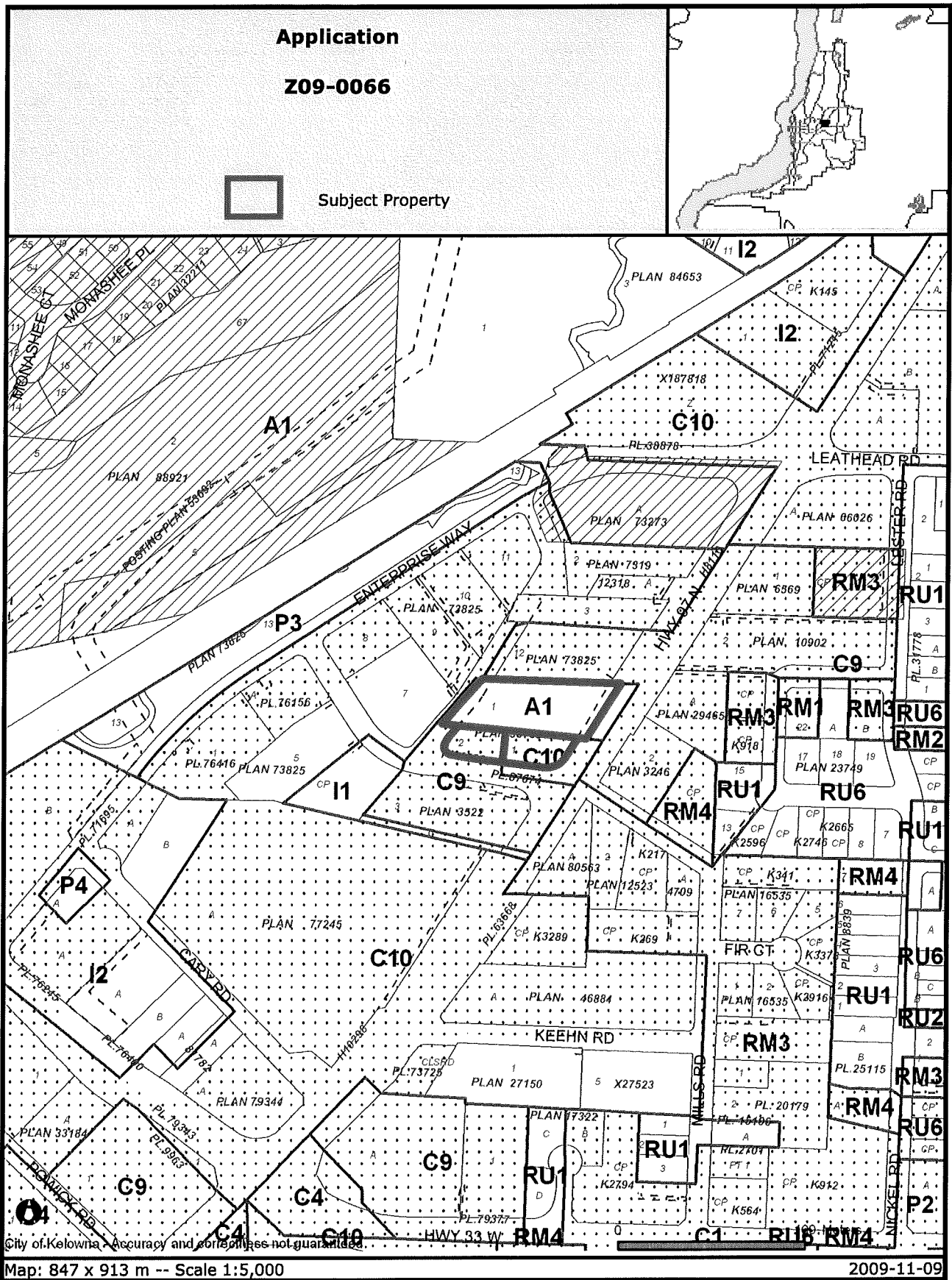


Shelley Gambacort  
Director, Land Use Management

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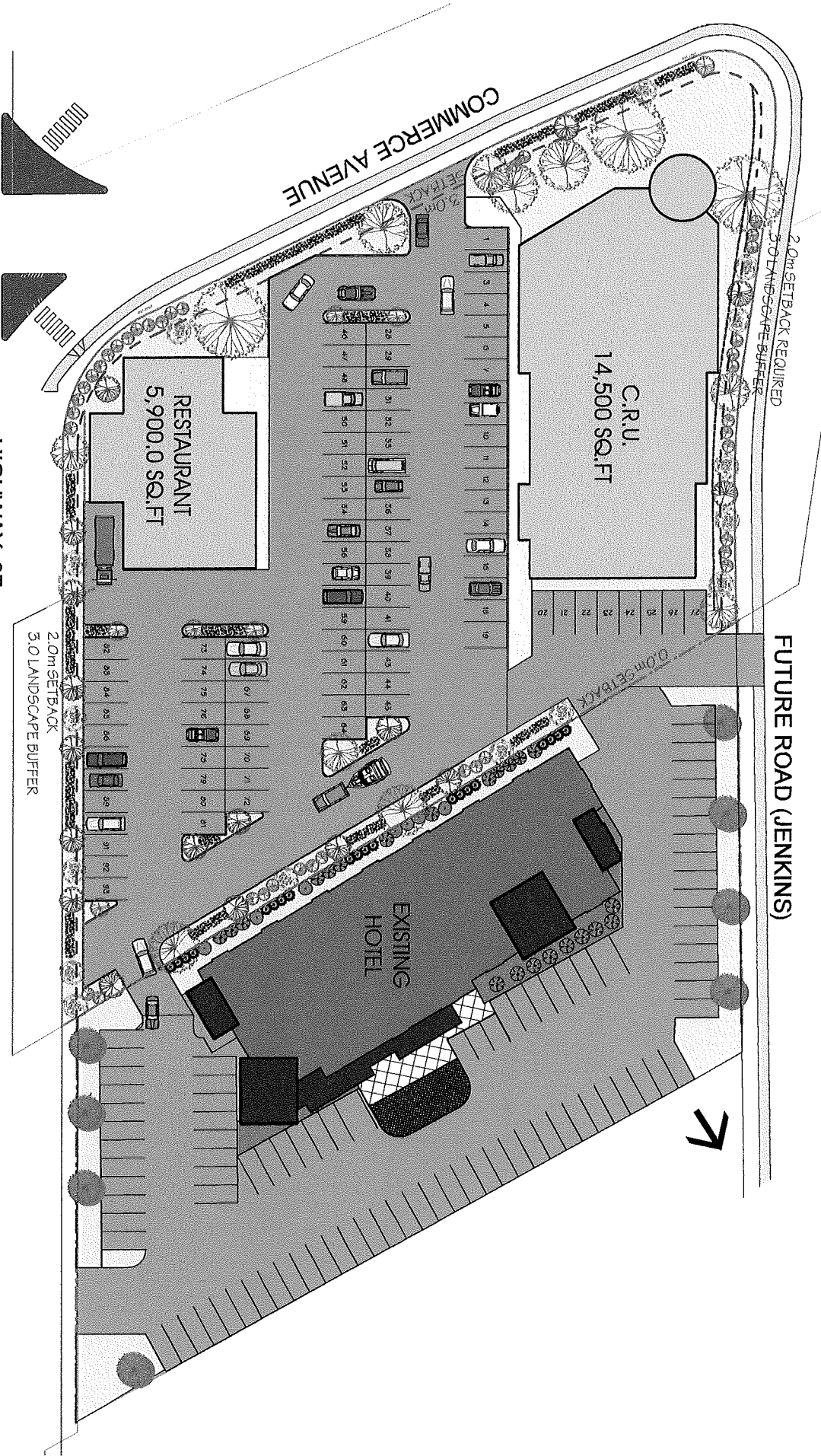
**Attachments:**

- Subject Property Map
- Site Plan
- Technical Comments
- Development Engineering Branch Comments



Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.  
 The City of Kelowna does not guarantee its accuracy. All information should be verified.

**PROPOSED SITE PLAN**  
Scale: 1:500



Proposed Rezoning for Commercial Development at Hwy 97 & Commerce Ave.  
FOR BRAEMAR GROUP, KELOWNA, B.C.



File: Z09-0066

Application

File: Z09-0066

Type: REZONING - NON APC

File Circulation

Seq	Out	In	By	Comment
				B.C. Assessment Authority (info only)
	2009-11-09	2009-11-09		
				Building & Permitting
	2009-11-09	2009-11-09	RREADY	Preliminary drawings appear ok, construction drawings required for code review.
				Development Engineering Branch
	2009-11-09	2009-11-30		See "Documents" Tab.
				Fire Department
	2009-11-09	2009-11-13		There is no objections to the change in zoning. The fire department access, fire flows, and hydrants are required as per the BC Building Code and City of Kelowna Subdivision Bylaw 7900. The emergency response from the fire department to the existing hotel and the new commercial buildings would benefit from the completion of Jenkins Road as this would provide an addition access route and fire hydrant. Additional comments will be required as the property is developed and building plans are submitted.
				FortisBC
	2009-11-09	2009-11-13		No Comment provided
				Infrastructure Planning
	2009-11-09	2009-11-13		As part of the landscaping for the development, we recommend that street trees are planted adjacent to the sidewalk at an 8.0 m spacing. Appropriate trees include Red Oak, Londonplane Tree, and/or Tulip Trees.
				Irrigation District - RWD
	2009-11-09	2009-11-17		CEC applicable. 2009-11-13 RWD has no objection to rezoning as outlined in the request for comment. Should there be future application for DP or BP, RWD will forward the request for comment to our engineer for response.
				Ministry of Transportation
	2009-11-09	2009-11-13		MOT File No. 2009-06467  With regards to the above file, the Ministry has no objection to the rezoning of the following conditions: 1) No access to Highway 97 from Proposed Lot A 2) Consolidation of Lot 1, Plan 3522 and Lot 1&2 Plan 35785 into Proposed Lot A as shown in referral package. 3) Dedication of lands along Highway 97 as shown on plan submitted with referral package to accommodate future improvements. 4) Dedication and construction of Jenkins Road along Proposed Lot A's Jenkins frontage. If you require anything further please feel free to contact me directly. Have a great Christmas and New Year. Thanks, Blaine Garrison, BA
				Policy & Planning
	2009-11-09	2009-11-25		The subject property is designated as Commercial in the OCP and therefore the proposed zoning is in compliance with the OCP and could be supported. In addition, the site is located along a major corridor identified as a Commercial Development Permit Area and a DP application will be required (no application at this time).  Given that we said we would support C9 or C10 uses under a previous application it is therefore recommended that this rezoning application be supported.  The concern that we have is that once a building has been constructed there has been a history of gradual conversion to more retail oriented uses in service commercial areas that can have an impact on retention of retail uses in appropriately designated and zoned centres. The intention would be to prevent future retail and office commercial uses, more properly located in Urban Centres, from gravitating to cheaper lease rates available in service commercial areas. The gradual conversion of service commercial nodes to allow general commercial uses could force displaced service commercial uses to seek other locations, most likely in areas extended along the highway corridor or on industrial land. This trend would impact the ability to achieve OCP objectives on growth management and intensification in Urban Centres. (See Commercial Study - page 38)  This may partially be a business licensing issue and one that we need to be more conscious about ensuring that a change in future tenants still meets the C10 permitted use requirements.
				Public Health Inspector
	2009-11-09	2009-11-13		No comment.
				RCMP
	2009-11-09	2009-11-13		No comment.



File: Z09-0066

Seq	Out	In	By	Comment
	Real Estate & Building Services Manager 2009-11-09	2009-11-17		See "Remarks" Tab. 2009-11-13 RE&BS Comments for Inclusion in Council Report: Please contact the Land Agent for road dedications over 20 metres in width, land dedications and land transfers to or from the City of Kelowna, road closures and road reserves. Depending on the type of land transaction being contemplated, the processing time can vary from 3 weeks to 3 months. The Real Estate & Building Services Department requires a full-sized copy, together with an 8 ? x 11 copy, of any survey plans.
2	Real Estate & Building Services Manager 2009-11-09	2009-11-17	KGENCE	RE&BS Comments for Inclusion in Council Report: Please contact the Land Agent for road dedications over 20 metres in width, land dedications and land transfers to or from the City of Kelowna, road closures and road reserves. Depending on the type of land transaction being contemplated, the processing time can vary from 3 weeks to 3 months. The Real Estate & Building Services Department requires a full-sized copy, together with an 8 ½ x 11 copy, of any survey plans.
	Shaw Cable 2009-11-09	2009-11-17		Owner/Developer to install an underground conduit system as per Shaw Cable drawings and specifications. 2009-11-13 No Comment provided
	Telus 2009-11-09	2009-11-24		Telus will provide underground facilities to this development. Developer will be required to supply and install conduit as per Telus policy.
	Terasen Utility Services 2009-11-09	2009-11-16		Please be advised that Terasen Gas' facilities will not be adversely impacted by this proposal as our distribution pipeline is located in the roadway. Therefore, Terasen Gas has no objection to the rezoning at the above-noted location.

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**CITY OF KELOWNA**  
**MEMORANDUM**

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**File No.:** Z09-0066  
**Date:** November 27, 2009  
**To:** Land Use Planner (AW)  
**From:** Development Engineering Manager (SM)  
**Subject:** 2598, 2620, 2636 Hwy 97 N. - Lot 1, Plan 3522 and Lot 1 & 2 plan 35785, DL 125

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The Works & Utilities Department comments and requirements regarding this application are as follows:

**These are Works and Utilities initial comments and they may be subject to the MOT comments and requirements.**

1. General

- a) Consolidate the properties and provide easements as may be required.
- b) Dedicate Jenkins Road right of way along lot 1, plan 3522 to match the property lines of the adjacent lots.
- c) Dedicate the Highway 97 right of way along lot 1, plan 3522 to match the property lines of the adjacent lots.
- d) Register a reciprocal cross access easement between the proposed development and the adjacent hotel site to the North of the subject property.

2. Geotechnical Study.

We recommend that a comprehensive geotechnical study be undertaken over the entire site. The geotechnical study should be undertaken by a Professional Engineer or a Geoscientist competent in this field. This study should analyse the soil characteristics and suitability for development of the requested zoning. As well, the study should address drainage patterns including the identification of ground water and the presence of any surface springs and the suitability of the lands for disposal of site generated storm drainage. In addition this study must describe soil sulphate contents, the presence or absence of swelling clays.

3. Domestic water and fire protection.

- a) The subject property is within the service area of the Rutland Waterworks District (RWD). The developer is required to make satisfactory arrangements with the RWD for these items. All charges for service connection and upgrading costs are to be paid directly to the RWD.

4. Sanitary Sewer.

Lot 1, plan 35785 is currently serviced by the municipal wastewater collection system and is located within Specified Area #1. According to our records the property is serviced with a 250 mm. pipe. The existing service would be adequate to serve the entire consolidated properties.

5. Drainage.

A comprehensive site drainage management plan and design to comply with the City's drainage design and policy manual is a requirement of this application but can be deferred until the application for a building permit is made

6. Power and Telecommunication Services.

The services to this development are to be installed underground. It is the developer's responsibility to make a servicing application to the respective utility companies. The utility companies are then required to obtain the city's approval before commencing their works.

7. Access.

- a) There is a Highway Access Management Plan intended to preclude direct access to the Highway wherever possible, the subject property is affected by the plan.
- b) The Ministry of Transportation has indicated that the direct access onto Hwy 97 will not be granted for this development. Access will have to be provided from Commerce Avenue and Jenkins Street.

8. Road improvements.

Hwy 97

The applicant is responsible to construct a separate sidewalk along the frontage of the property. The elevation of the sidewalk must be set to accommodate the ultimate cross-section of Hwy 97. The cost of the sidewalk is estimated at **\$10,500.00** inclusive of a bonding escalation. Note that the applicant is not required to do the construction at this point in time. The construction can be deferred and the City will initiate the work later at its own construction schedule, the cost would then be reduced to **\$9,500.00**.

Commerce Avenue

The applicant is responsible to construct a sidewalk at the back of the existing curb along the frontage of Commerce Avenue, landscape the boulevard with trees grass and irrigation, install street lights to provide adequate illumination and replace a section of the curb to accommodate the driveway. The cost of these works is estimated at **\$15,800.00** inclusive of a bonding escalation.

### Jenkins Street.

The construction of Jenkins Street has been identified in an agreement between the City, the MOT and the original developer of the Mill Creek Industrial park. The subject properties are not included in the agreement; therefore the applicant is required to construct Jenkins Street along the frontage of the consolidated properties to the City of Kelowna urban standard SS-R5. The construction is to include a minimum of 8.0m. asphalt carriageway, curb, gutter, sidewalk, piped storm drainage, street lights for adequate illumination, landscaped boulevard with trees grass and irrigation, etc. The cost of these works is estimated at **\$77,200.00** inclusive of a bonding escalation

#### 9. Street lights.

Streetlights must be installed on all fronting roads as determined by the Manager of Electrical Utilities.

#### 10. Design and Construction.

- a) Design, construction supervision and inspection of all off-site civil works and site servicing must be performed by a Consulting Civil Engineer and all such work is subject to the approval of the City Engineer. Drawings must conform to City standards and requirements.
- b) Engineering drawing submissions are to be in accordance with the City's "Engineering Drawing Submission Requirements" Policy. Please note the number of sets and drawings required for submissions.
- c) Quality Control and Assurance Plans must be provided in accordance with the Subdivision, Development & Servicing Bylaw No. 7900 (refer to Part 5 and Schedule 3).
- d) A "Consulting Engineering Confirmation Letter" (City document 'C') must be completed prior to submission of any designs.
- e) Before any construction related to the requirements of this subdivision application commences, design drawings prepared by a professional engineer must be submitted to the City's Works & Utilities Department. The design drawings must first be "Issued for Construction" by the City Engineer. On examination of design drawings, it may be determined that rights-of-way are required for current or future needs.

#### 11. Servicing Agreements for Works and Services

- a) A Servicing Agreement is required for all works and services on City lands in accordance with the Subdivision, Development & Servicing Bylaw No. 7900. The applicant's Engineer, prior to preparation of Servicing Agreements, must provide adequate drawings or reports and estimates for the required works. The Servicing Agreement must be in the form as described in Schedule 2 of the bylaw.

- b) Part 3, "Security for Works and Services", of the Bylaw, describes the Bonding and Insurance requirements of the Owner. The liability limit is not to be less than \$5,000,000 and the City is to be named on the insurance policy as an additional insured.

12. Bonding and Levies Summary.

a) Performance Bonding

Sidewalk construction on Commerce Ave	\$ 15,800.00
Jenkins Road construction	<u>\$ 77,200.00</u>
Total Bonding	<b><u>\$ 93,000.00</u></b>

b) Levies

Sidewalk construction on Hwy 97	\$ 9,500.00
Administration and Engineering Fee (inc. GST)	<u>\$ 2,605.05</u>
Total Levies	<b><u>\$ 12,105.05</u></b>

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Steve Muenz, P. Eng.  
Development Engineering Manager