

Memo



Date: March 10, 2010

To: City Manager

From: Community Sustainability Division

File No: Z08-0113 /LUC09-0001 **Applicant(s):** TOM AND MARLENE TOBIN

At: 7850 HWY 97 N **Owner(s):** TOM AND MARLENE TOBIN

Purpose: TO DISCHARGE THE EXISTING LAND USE CONTRACT (LUC 76-1055) AND REZONE FROM THE A1- AGRICULTURE 1 ZONE TO THE A1(s) -AGRICULTURE 1 WITH A SECONDARY SUITE ZONE TO LEGALIZE AN EXISTING MOBILE HOME AS A SECONDARY SUITE

Existing Zone: LUC76-1055 (A1 - AGRICULTURE 1)

Proposed Zone: A1S - AGRICULTURE 1 WITH A SECONDARY SUITE

Report Prepared by: Birte Decloux

1.0 RECOMMENDATION:

THAT Application Number LUC09-0001 to discharge the Land Use Contract 76-1055 for Lot 1, Section 34, Township 23, ODYD Plan 28654 except plan 40322 located on Highway 97 N., Kelowna, BC, be considered by Council;

AND THAT Land Use Contract number (LUC09-0001) 76-1055 be forwarded to a Public Hearing for further consideration;

AND THAT Rezoning Application No. Z08 -0113 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 1, Section 34, Township 23, O.D.Y.D., Plan 28654 except plan 40322, located on Highway 97 N, Kelowna, B.C. from the A1 - Agriculture 1 zone to the A1s Agriculture 1 with a secondary suite zone be considered by Council;

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

AND THAT final adoption of the zone amending bylaw be subject to registration of a no-disturb/no-build covenant to preserve the steep slopes areas of the property (specifically between elevation contours 456m-474m and between 485m-496m);

AND THAT an occupancy permit is issued for the suite be applied for prior to final adoption of the zone.

A handwritten signature in blue ink, appearing to be the initials "R" or "K".

2.0 SUMMARY:

The applicant is seeking the discharge of Land Use Contract # LUC76-1055 in order to facilitate the rezoning of the subject property to the A1(s) Agriculture with a Secondary Suite zone to legalize an existing mobile home as a secondary suite.

3.0 BACKGROUND:

This application to legalize the mobile home as a secondary suite came as a result of a bylaw enforcement investigation. The existing double wide mobile home was the principal residence until the current owners built a new single family dwelling in 2005. A Demolition Permit accompanied the Building Permit which was never executed. The single family dwelling has not received final occupancy, as one of the conditions of the permit was removal of the mobile home.

The Land Use Contract allowed for the subdivision that created the subject property and is obsolete and therefore should be discharged.

The proposed application meets the requirements of A1(s) - Agriculture 1 with a secondary suite zone as follows:

Zoning Bylaw No. 8000		
CRITERIA	PROPOSAL	A1(s) ZONE REQUIREMENTS (for Secondary Suite in accessory building)
Subdivision Regulations		
Lot Area	2.96 ha (7.3 acres)	4.0 ha
Lot Width	107.14 m - 10.51 m	40.0 m
Lot Depth	371.62 m	Na
Development Regulations		
Site Coverage (buildings)	1 %	10%
Site Coverage (buildings/parking)	2 %	10%
Size ratios	86.42 m ² / 42%	In accessory bldg lessor of 90 m ² or 75% of existing bldg
Height (existing house)	6 m	2 ½ storeys / 9.5 m
Height (accessory building)	3.35 m	Max 13.0 m
Development Regulations		
Front Yard	Principal dwelling: 272.83 m Accessory bldg.: 70 m	6.0 m
Side Yard (north)	Principal dwelling: 26.2 m Accessory bldg.: 3.0 m	3.0 m except 4.0 for flanking street

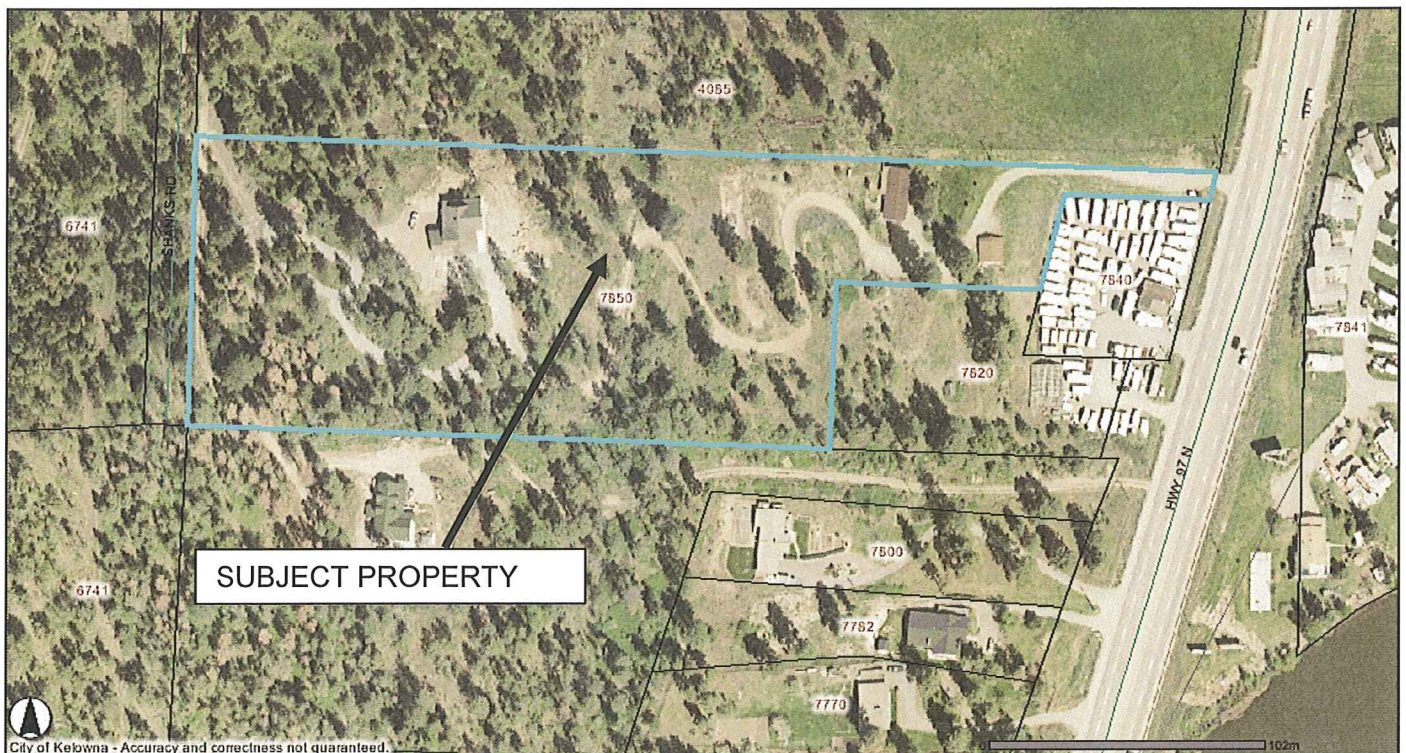
Other Requirements		
Side Yard (south)	Principal dwelling: 60.7 m Accessory bldg.: 23.5 m	3.0 m except 4.0 for flanking street
Rear Yard	Principal dwelling: 82.3 m Accessory bldg.: 300 m	10 m / 3.0 m for accessory buildings
Separation Distance Between Houses	125 m	Min 5.0 m
Parking Stalls (#)	3 Spaces	3 spaces
Private Open Space	meets requirements	No requirement

3.1 Site Context

The subject property is located on Highway 97 N at the Kelowna City Limits and is not located in the agriculture land reserve.

- North - A1 - Agriculture
- East - A1 - Agriculture
- South - A1 - Agriculture
- West - A1 - Agriculture

3.2 Subject Property: 7850 Highway 97N



4.0 CURRENT DEVELOPMENT POLICY

4.1 Council Strategy for the Elimination of Remaining Land Use Contracts

- that staff negotiate with owners of land under Land Use Contracts that only enabled the subdivision of land, to discharge contracts where the subdivision has been completed;
- that priority be given to terminate Land Use Contracts having a significant financial impact or those Land Use Contracts that enable development contrary to the fulfillment of community objectives.

The applicant proposes to rezone to the A1(s) Agriculture 1 with a secondary suite zone. The purpose of this zone is to allow for secondary suites in agricultural areas.

4.2 Kelowna 2020 - Official Community Plan

The proposal is consistent with the future land use designation of Single/Two Unit Residential in the Official Community Plan. The Single/Two Unit Residential designation covers single detached homes for occupancy by one family, single detached homes with a secondary suite, semi-detached and detached buildings used for two dwelling units, and complementary uses (OCP, Chapter 8).

5.0 TECHNICAL COMMENTS

The application has been submitted to various technical agencies and City departments, and the following relevant comments have been submitted:

5.1 Development Engineering Branch

See attached.

5.2 Building and Permitting

BP #1408 issued Sept.1980 for original placement of existing mobile home currently located on property was cancelled and permit fee refunded (information is located in the street file). Current demolition permit BP#28769 is in place for mobile home which is to be removed upon completion of BP#28763 for new dwelling.

5.3 Bylaw Services

Bylaw Service Request #08-126057 - Building Bylaw infraction - occupying SFD without Occupancy Permit. BEO Szalla's file is still open and his remarks are as follows:

"...indicated their occupancy permit for the big house has not been issued and they are currently in contravention of the Zoning Bylaw. The Tobin's indicated they will be attending City Hall on Monday, December 8th, to make application for rezoning."

5.4 Fire Department

Fire Department access must meet the City of Kelowna Subdivision By-law. This information is not provided. *The access to the site has been reviewed by the Fire Department and by the Development Engineering group to ensure that access to the site is available through Shanks Road.*

5.5 Environmental Division

The applicant must provide a draft no build/no disturb Section 219 Restrictive Covenant, which is to be registered under the Land Title Act against the title of the subject property to effectively preserve the steep slope sections of the property (specifically between elevation contours 456m-474m and between 485m-496m).

6.0 LAND USE MANAGEMENT COMMENTS

The Land Use Management Department endorses the discharge of the Land Use Contract from the land title of the subject property. The discharge enables the applicant to rezone the subject property and legalize an existing mobile home. The site is in a rural area with larger lots and having two dwellings on the subject property will have no significant impact on the surrounding neighbours. The applicant has written consent from all adjacent properties indicating their support.

There were a number of outstanding issues that needed to be addressed prior to forwarding the application to Council for consideration, which included the installation of a second septic system, approval of the access by the Fire Department to the new single family dwelling, and changes to the floor plan configuration of the existing mobile home to meet the Zoning Bylaw. As these issues have now been addressed, the application can now favorably proceed.

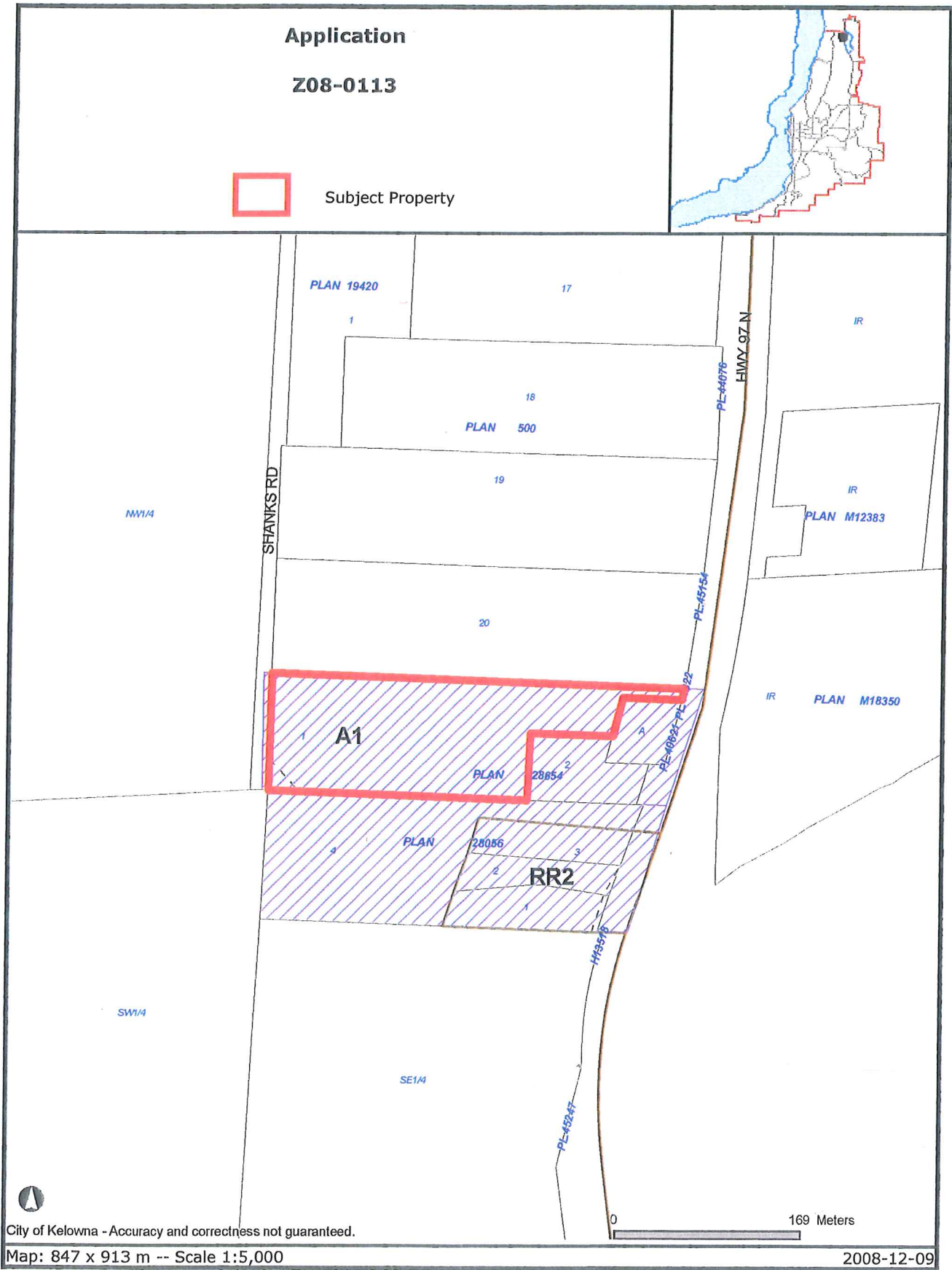
Danielle Noble
Urban Land Use Manager

Approved for inclusion

Shelley Gambacort
Director of Land Use Management

Attachments:

Subject Property Map
Site Plan
Floor Plans
Photo of Principal dwelling
Photo of Secondary Suite
Land Use Contract
Development Engineering comments



City of Kelowna - Accuracy and correctness not guaranteed.

Map: 847 x 913 m -- Scale 1:5,000

2008-12-09

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.

Property / lot
measurements

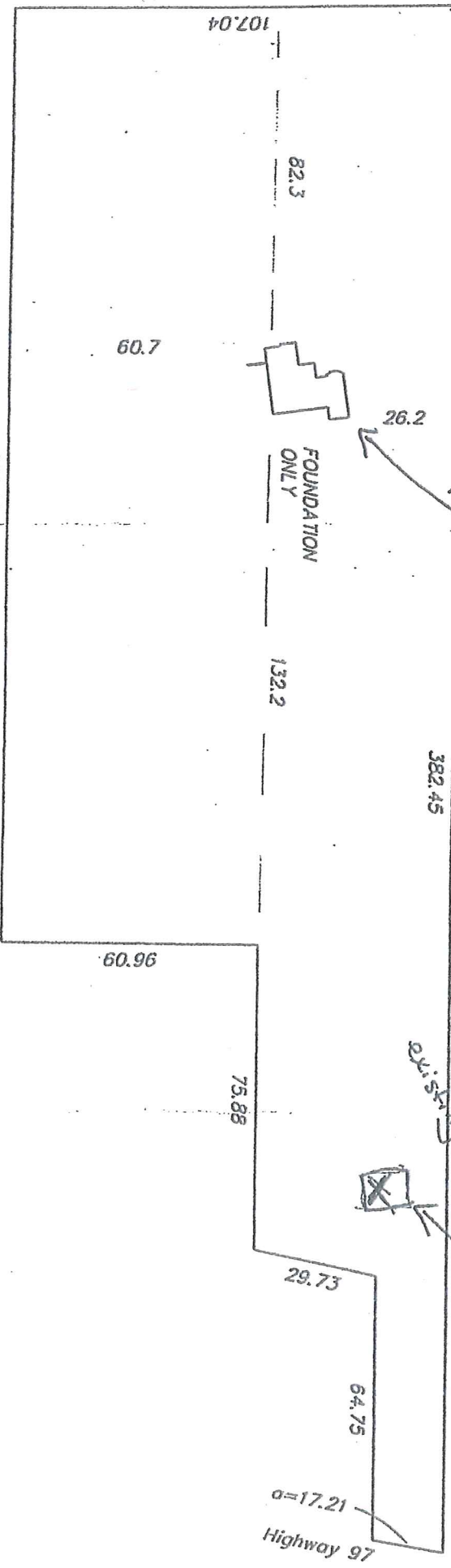
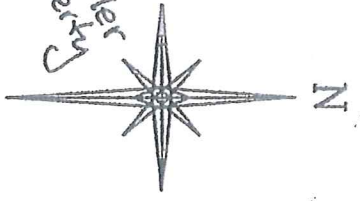
**B.C. LAND SURVEYOR'S CERTIFICATE OF
LOCATION OF BUILDING ON LOT 1
PLAN 28654 SEC. 34 TP. 23 O.D.Y.D.**

SCALE 1:1500 DISTANCES ARE IN METRES.

Shanks Rd

location of
existing
property

location of
mobile trailer
on property



(C)

THIS DOCUMENT IS NOT VALID UNLESS
ORIGINALLY SIGNED AND SEALED.

CERTIFIED CORRECT

this 2nd day of May, 2005.

D.A. Goddard BCLS

**FILE#2922 FB 284
RE: TT CONTRACTORS**

THIS PLAN IS FOR MORTGAGE OR
MUNICIPAL PURPOSES ONLY AND IS
NOT TO BE USED TO DEFINE THE
BOUNDARIES OF THIS LOT.

D.A. Goddard Land Surveying Inc.
200-1449 ST. PAUL STREET KELOWNA



Principal Dwelling

Pictures of!
existing
mobile
trailer on
property
and
pictures of
landscape

5.



6.



2.

4.

>351'←

LEGAL DESCRIPTION

LOT 1 SECTION 34
TP 23 ODVD

PLAN 28654

4.32 ACRES

>759'←

→128'4"←

DRIVEWAY



→10'←

DRIVEWAY

→56'←

HELOWNA ←

HWY 97 NORTH

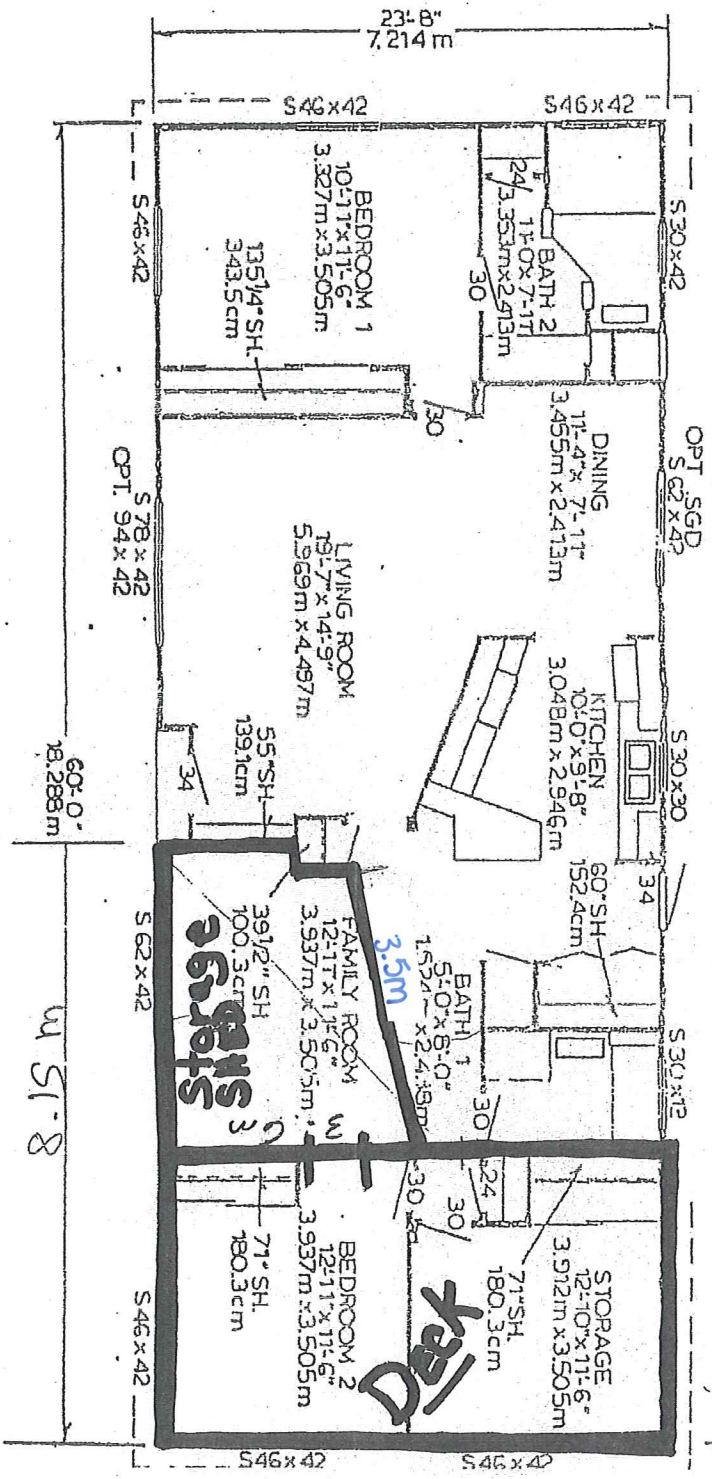
→ VERNON

ED. MCGOWAN
SITE 59 COMP 6
R.R. # 2 HWY 97 N

Mobile home siting

1 4 5 6 7 8 9 10 11 12

S PER CMHC
 3 PER CMHC
 THAN 24"



WINDOW AREA	m ² (ft ²)	STANDARD	(OPTION)
STANDARD		% LIGHT	% VENT
(165.42)	3.503 (37.7)	16.0% (11.0%)	7.6% (5.0%)
	1.681 (18.08)	14.0%	7.0%
	5.81 (6.25)		
	2.268 (24.4)		14.0%
	1.246 (13.42)		11.0%

07511-09511

Mobile Home floor plan

86.42m²

24 x 64 2BR-2B-C

CITY OF KELOWNA
MEMORANDUM

Date: August 5, 2009 Revised
File No.: Z08-0113 DVP09-00018 LUC09-0001
To: Land Use Management Department (BD)
From: Development Engineering Manager (SM)
Subject: 7850 Hwy 97 N Lot 1 Plan 28654 A1 to A1s

The Works & utilities Department has the following comments and requirements associated with this application.

These are The Development Services Branch initial comments and they may be subject to MOT requirements

1. Domestic Water and Fire Protection

The property is located outside the water service area. Water must be accommodated on site.

2. Sanitary Sewer

Sanitary sewage is to be handled by an on-site sewage disposal system subject to approval of the Provincial Public Health Officer.

3. Roads and Access

The Ministry of Transportation does not support any increase in density without achieving an alternative access.

The Fire Department is satisfied with the existing condition of Shanks Road and the Hwy access for emergency vehicle purposes. Therefore we do not require any road upgrades for this rezoning.

Steve Muenz, P. Eng.
Development Engineering Manager

DC

CITY OF KELOWNA
MEMORANDUM

Date: February 24, 2009
File No.: LUC09-0001
To: Land Use Management Department (BD)
From: Development Engineering Manager (SM)
Subject: 7850 Hwy 97 N Lot 1 Plan 28654

These are The Development Services Branch initial comments and they may be subject to MOT requirements

The discharge of the Land Use Contract does not compromise the Development Services Branch. Refer to Z08-0113 for the Development services branch comments.

Steve Muenz, P. Eng.
Development Engineering Manager

DC

CITY OF KELOWNA

BY-LAW NO. 4179

A by-law to authorize the entering into of a Land Use Contract.

WHEREAS Subsection (3) of Section 702A of the "Municipal Act" being Chapter 255 of the Revised Statutes of British Columbia, 1960, provides in part that the Council may, by by-law, notwithstanding any by-law of the municipality, or Section 712 or 713 of the "Municipal Act", enter into a Land Use Contract containing such terms and conditions for the use and development of the land as may be mutually agreed upon, and thereafter the use and development of the land shall, notwithstanding any by-law of the municipality, or Section 712 or 713 of the said Act, be in accordance with the land use contract;

AND WHEREAS the Municipal Council of the City of Kelowna is desirous of entering into a Land Use Contract with John Edward McGowan, Site 59, R.R. #2, Winfield, British Columbia;

THEREFORE, the Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. The Municipal Council of the City of Kelowna hereby authorizes the City of Kelowna to enter into a Land Use Contract with John Edward McGowan, Site 59, R.R. #2, Winfield, British Columbia in the form of a Land Use Contract attached hereto and forming part of this By-Law.
2. His Worship the Mayor and the City Clerk are hereby authorized to sign the attached Land Use Contract as well as any conveyances, deeds, receipts and other documents in connection with the attached Land Use Contract and affix the Corporate Seal of the City of Kelowna to same.
3. This By-Law may be cited for all purposes as the "John Edward McGowan Land Use Contract Authorizing By-Law, 1976, No. 4179."

Read a first time by the Municipal Council this 9th day of November, 1976.

Considered at a Public Hearing on the 30th day of November, 1976.


Read a second time by the Municipal Council this 30th day of November, 1976.

Read a third time by the Municipal Council this 26th day of April, 1977.

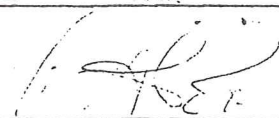
Approved under the Controlled Access Highways Act this 25 day of April, 1977.

1977 (Signed) H.F. Blunden
Approving Officer,
Ministry of Highways and Public Works.

Reconsidered, finally passed and adopted by a vote in favour thereof of at least two-thirds of the members present of the Municipal Council of the City of Kelowna this 3rd day of May, 1977.



Mayor.



City Clerk.

LAND USE CONTRACT

This Agreement made the 2nd day of May 1977

BETWEEN:

CITY OF KELOWNA

a municipal corporation having
its office at 1435 Water Street
in the City of Kelowna, Province
of British Columbia.

(hereinafter called the "Municipality")

OF THE FIRST PART;

JOHN EDWARD MCGOWAN, Businessman,
of Site 59, R.R. #2, Winfield,
Province of British Columbia.

(herein called the "Developer")

OF THE SECOND PART.

WHEREAS as a result of the mass rezoning carried out in the City of Kelowna following the boundary extensions to the City of Kelowna the Land was zoned to a rural designation but the Council agreed to consider a Land Use Contract to permit completion of a subdivision of the property, so as to preserve the value of the property and to void imposing an economic hardship upon the Developer;

AND WHEREAS it is acknowledged that this Land Use Contract was agreed upon only because of the extraordinary situation arising out of the mass rezoning that Council of the Municipality deemed to injuriously affect the Developer unless this Contract was entered into;

AND WHEREAS the Land has been designated a development area pursuant to Section 702A(2) of the Municipal Act;

AND WHEREAS the Municipality, pursuant to Section 702A of the Municipal Act, may, notwithstanding any by-law of the Municipality, or Section 712 or 713 of the Municipal Act, enter into a Land Use Contract containing such terms and conditions for the use and development of land as may be agreed upon with a Developer, and thereafter the use and development of the land shall be in accordance with the Land Use Contract;

AND WHEREAS the Municipal Act requires that the Municipal Council consider the criteria set out in Section 702(2) and 702A(1) in arriving at the terms, conditions and consideration contained in a Land Use Contract;

AND WHEREAS the Developer was presented to the Municipality a scheme of use and development of the within described lands and premises that would be in contravention of the new zoning of the Municipality and has requested that the Council of the Municipality enter into this Contract under the terms, conditions and for the consideration hereinafter set forth;

AND WHEREAS the Council of the Municipality, having given due consideration to the criteria set forth in Sections 702(2) and 702A(1) of the Municipal Act, have agreed to the terms, conditions and consideration herein contained;

AND WHEREAS the Land is within an area of the Municipality designated as the development area pursuant to Section 702A of the Municipal Act;

AND WHEREAS if the Land is within a radius of one-half mile of the intersection of a controlled access highway and another highway, the approval of the Minister of Highways to the terms hereof must be obtained;

AND WHEREAS the Municipality and the Developer both acknowledge that the Council of the Municipality could not enter into this Agreement, until the Council held a public hearing in relation to this Agreement, and considered any opinions expressed at such hearing, and unless two-thirds of all of the members of the Council voted in favour of the Municipality entering into this Contract;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and the conditions and covenants hereinafter set forth, the Municipality and the Developer covenant and agree as follows:

Owner

1. The Developer is the registered owner of an estate in fee simple of all and singular that certain parcel or tract of land and premises, situate, lying and being in the City of Kelowna in the Province of British Columbia, and being more particularly known and described as:

Lot A, Section 34, Township 23,
Osoyoos Division Yale District
Plan 9139;

Lot 21, except that part thereof included within
the boundaries of Plan 9139, Section 34, Township 23,
Osoyoos Division Yale District,
Plan 500

(herein called the "Land")

Consents

2. The Developer has obtained the consent of all persons having a registered interest in the Land as set out in the schedule prefacing the consents to the use and development set forth herein which consents are attached hereto.

Uses

3. The Land shall be used for the following purposes:

(a) As to Lot "A", Plan 9139

The uses permitted shall be all those uses permitted under City of Kelowna Zoning By-Law No. 4500, A-1 (Rural); a copy of which regulations are annexed hereto as Schedule "A", and Sale and rental of new and used recreational vehicles including motor homes, travel trailers, truck campers, canopy tops, tent trailers, utility trailers, horse trailers, boats, boat motors, boat trailers, and all terrain vehicles and pleasure water craft, motor bikes, motorcycles, winter recreation vehicles, and storage and sales of propane gas, including all parts and accessories related to any of the foregoing and servicing and repair of the same.

As to Lot 21, Plan 500

The uses permitted shall be all those uses permitted under City of Kelowna Zoning By-Law No. 4500, Zone A-1 (Rural); a copy of which regulations are annexed hereto as Schedule "A".

Subdivision

4. Lot 21 may be subdivided into two parcels, one parcel of approximately 1.5 acres and the other of approximately 7.5 acres, both having highway access. Such subdivision is subject to approval by the Department of Highways and the Approving Officer. No further subdivision will take place on the 7.5 acre parcel.

Buildings

5. Buildings and structures containing a total combined maximum gross floor area of five thousand (5,000) square feet may be constructed and used to accommodate the uses set out in Section 3(a). All other buildings and structures in excess of five thousand (5,000) square feet may be used only to accommodate uses permitted in the A-1 (Rural) zone of the City of Kelowna Zoning By-Law, 1976, No. 4500, a copy of which regulations are annexed hereto as Schedule "A".

Compliance

6. Save and except for the use herein specifically permitted the Land and any development thereon is subject to the provisions of all the by-laws of the Municipality and the Land for all purposes except as exempted by this contract shall comply with the provisions of the A-1 zone.

Representation

7. It is understood and agreed that the Municipality has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Developer other than those in this Contract.

Registration

8. The Agreement shall be construed as running with the Land and shall be registered in the Land Registry Office by the Municipality pursuant to the provisions of Section 702A(4) of the Municipal Act.

Interpretation

9. Whenever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.

Binding

10. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

A public hearing on this Contract was held on the 30th day of November, 1976.

THIS AGREEMENT WAS APPROVED by the affirmative vote of at least two-thirds of all the members of the Council of the Municipality on the 3rd day of May, 1977.

IN WITNESS WHEREOF the said parties to this Agreement have hereunto set their hands and seals the day and year first above written.

THE CORPORATE SEAL OF THE)
CITY OF KELOWNA was hereunto)
affixed in the presence of:)

John Edward McGowan)
Mayor)

[Signature])
Clerk.)

SIGNED, SEALED AND DELIVERED)
by JOHN EDWARD McGOWAN)

John Edward McGowan)

in the presence of:)

D. A. Heene)
Witness)

A-1 - RURAL

Purpose

The purpose of this zone is to designate and preserve land for rural uses in areas not within defined urban areas.

1. Permitted Uses

The following uses and no others shall be permitted in those areas designated by this By-Law as A-1:

A. Principal Uses

- i) All agricultural uses with the exception of hog farms, farms for the purpose of breeding and raising fur bearing animals, poultry farms and feed lots
- ii) Boarding and breeding kennels
- iii) Commercial nurseries
- iv) Riding stables
- v) Single family residential

B. Secondary Uses

- i) Seasonal fruit and vegetable stands

C. Conditions of Secondary Uses

- i) Secondary uses shall be permitted only in conjunction with a Principal Use.
- ii) The maximum gross floor area of fruit and vegetable stands shall be three hundred (300) square feet; (27.88 square metres).
- iii) Structures containing Secondary Uses shall meet all the siting requirements of Residential Buildings.
- iv) Secondary Uses shall provide for off-street parking and loading in conformance with Sections 5 and 6 of Part III of this By-Law.

2. Permitted Buildings and Structures

The following buildings and structures and no others shall be permitted in those areas designated by this By-Law as A-1:

- A. Buildings and other structures which are necessary to accommodate the needs of the uses set forth in Sub-sections A and B of Section I of this Schedule.

3. Regulations Pertaining to the A-1 Zone

The following regulations apply to every development in all areas designated by this By-Law as A-1:

A. Lot Area

The minimum lot area shall be five (5) acres; (2.02 hectares).

B. Minimum Frontage

A minimum of ten (10) per cent of the total perimeter of the lot shall have frontage.

C. Number of Buildings

i) Principal Residential Buildings

The number of principal residential buildings on a single building lot shall not exceed one (1) building.

ii) Secondary Residential Buildings

The number of secondary residential buildings to be used solely by the families of full-time agricultural workers on the lot in question, shall not exceed one (1) building per ten (10) acres; (4.05 hectares).

The number of dwelling units necessary to accommodate seasonal labourers employed on the lot in question, shall not exceed one (1) self-contained unit per two and one-half (2 1/2) acres: (1.01 hectares).

iii) Accessory Buildings

Any number of accessory buildings shall be permitted on each lot.

D. Height

i) Residential Buildings

The height of residential buildings shall not exceed two (2) storeys.

ii) Accessory Buildings

The height of accessory buildings shall not exceed forty (40) feet; (12.19 metres).

iii) Accessory Structures

The height of accessory structures shall not exceed fifty (50) feet; (15.24 metres).

E. Front Yard

Subject to Schedule A of this By-Law a Front Yard shall be provided of not less than twenty (20) feet; (6.10 metres) in depth.

F. Side Yard

Subject to Schedule A of this By-Law, a Side Yard shall be provided on each side of the principal building, of not less than twenty (20) feet; (6.10 metres) in width.

G. Rear Yard

Subject to Schedule A of this By-Law a Rear Yard shall be provided of not less than thirty (30) feet; (9.14 metres) in depth.

H. Siting of Accessory Buildings

- i) Accessory buildings shall meet all the siting requirements of residential buildings.
- ii) Accessory buildings used for the purposes of sheltering livestock or other domestic animals shall be a minimum of fifty (50) feet; (15.24 metres) from any building used for residential purposes located on the same lot.
- iii) Accessory buildings used for purposes of sheltering livestock or other domestic animals shall be a minimum of fifty (50) feet; (15.24 metres) from any public road and a minimum of fifty (50) feet; (15.24 metres) from any front, side, or rear lot line of the lot it occupies.

I. Minimum Ground Floor Area

One family dwellings shall have a minimum ground floor area of seven hundred and fifty (750) square feet; (69.70 square metres).

J. Lot Coverage

Lot coverage by residential buildings and by accessory buildings shall not exceed ten (10) per cent of the total lot area.