

3.1 Site Context

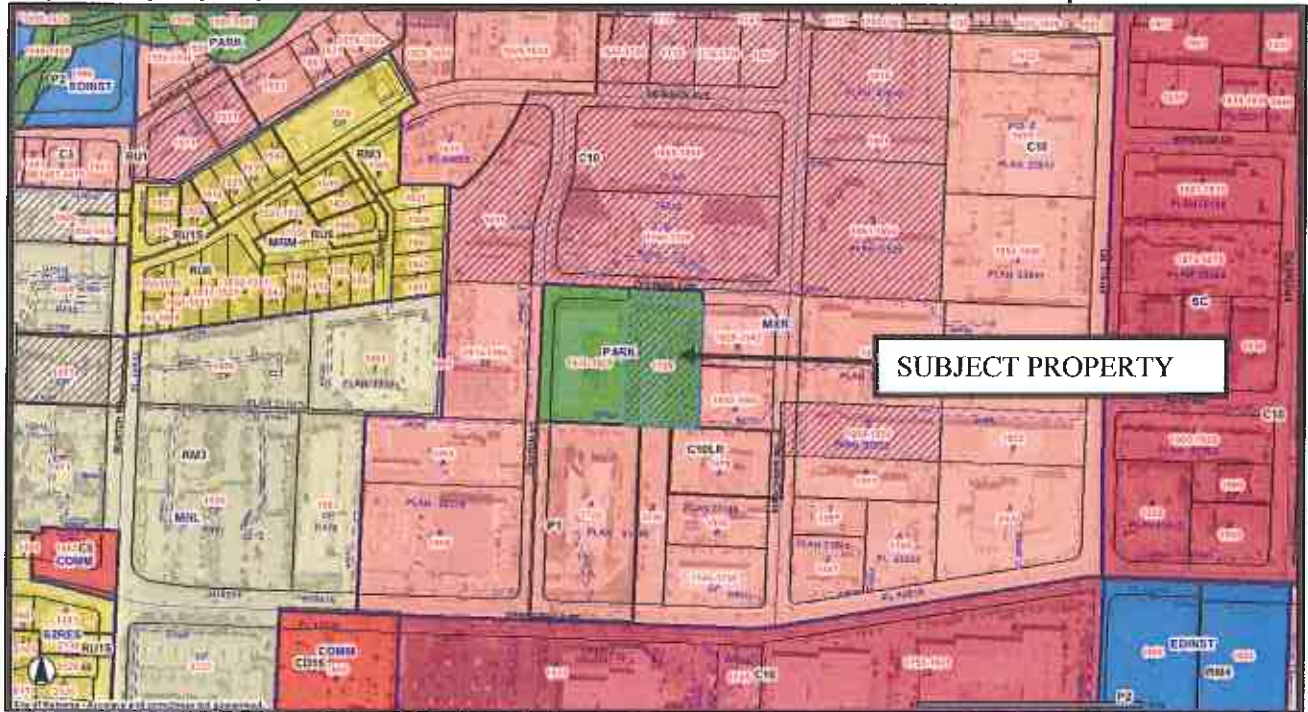
The subject property is located on the south side of Dolphin Avenue, mid-way between Dayton Street and Kirschner Road and contains an existing commercial building. The applicant is proposing to construct a communications tower on the property, otherwise there are no other changes to the existing site being considered at this time.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	C10 - Service Commercial (LUC71-1)	Office Building (Stober Landmark 1 & 2)
East	C10 - Service Commercial	Service Commercial uses
South	C10 - Service Commercial C10lr - Service Commercial liquor primary/retail liquor sales	Parking lot (ICBC) OK Corral cabaret/ beer & wine store
West	C10 - Service Commercial	Service Commercial uses

Subject Property Map:

1735 Dolphin Avenue



4.0 Current Development Policies

4.1 Council Policy No.282 - Strategy for Elimination of Remaining Land Use Contracts

Council Policy No. 282 includes the following statement;

- that the City of Kelowna initiate proceedings to discharge Land Use Contracts that have provisions enabling the City to unilaterally discharge the contracts subject to consultation with affected owners of the land and subject to prior approval by Council with regard to affected contracts;

5.0 Technical Comments

Building & Permitting Department

No Comment

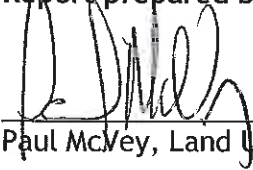
5.1 Development Engineering Department

Provide a statutory right of way, 5.5 meters in width, along the south property line over the existing 1075mm diameter storm main. Existing building footings that will be within this proposed right-of-way will need to be addressed in the right-of-way agreement. *(Note: Staff will be approaching the property owner regarding this, however, it is not a requirement of the LUC discharge).*

Application Chronology

Date of Application Received: April 12, 2012

Report prepared by:



Paul McVey, Land Use Planner

Reviewed by:



Danielle Noble, Manager, Urban Land Use

Approved for Inclusion:



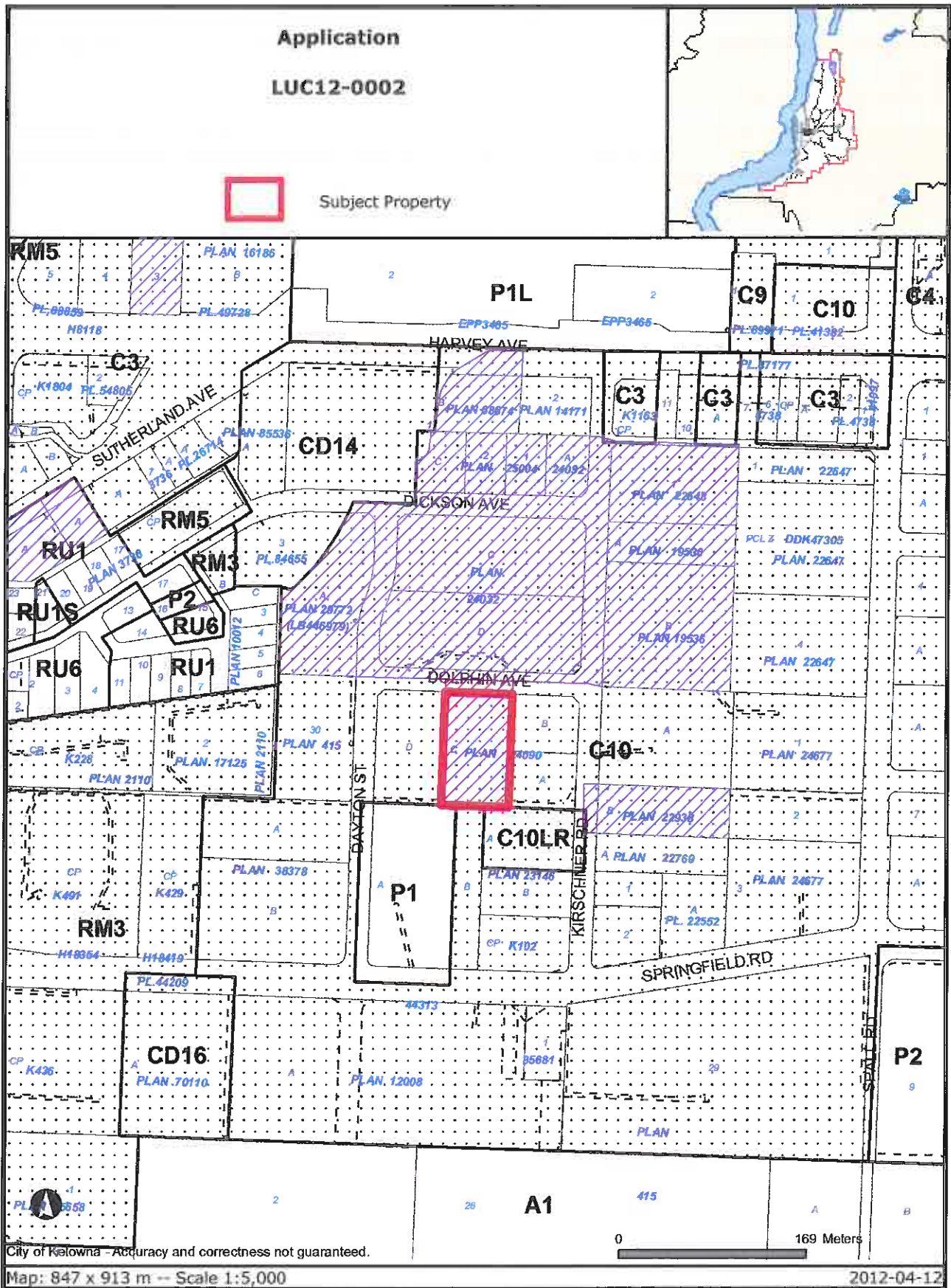
Shelley Gambacort, Director, Land Use Management

Attachments:

Subject Property Map

Site Plan

Copy of LUC76-1048



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.



Dolphin Avenue

Existing Building

BCH pole w/
transformer

Hydro Room

Site (approx.
7.0m x 7.0m)

Premises

Existing Fencing

PREMISES:
PID: 006-150-365
LOT C DISTRICT LOT 129 OSOYOOS
DIVISION YALE DISTRICT PLAN
24090

Note: Sketch not to Scale

1735 DOLPHIN

JOSEPH TAKACS

HOLDINGS LTD

CITY OF KELOWNA

BY-LAW NO. 4320-77

(Skoglund Enterprises Ltd., D.G. McConachie & J. Blackmore
Land Use Contract Authorizing By-Law)
Dolphin Avenue, LUC76-1048

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 Skoglund Enterprises Ltd., D.G. McConachie and J. Blackmore, Kelowna, B.C.;

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 Skoglund Enterprises Ltd., D.G. McConachie and J. Blackmore 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.

Read a first time by the Municipal Council this 17 day of May, 1977.

Considered at a Public Hearing on the 7th day of June, 1977.

Read a second time by the Municipal Council this 14 day of June, 1977.

Read a third time by the Municipal Council this 14 day of June, 1977.

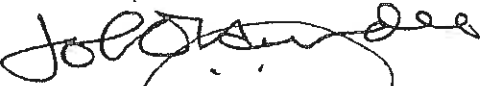
Approved under the Controlled Access Highways Act this 18 day of July, 1977.

"Signed" H.F. Blunden
Approving Officer, Ministry of Highways and Public Works.

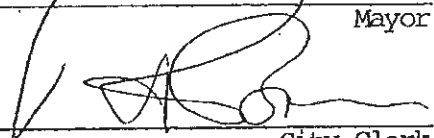
Reconsidered, finally passed and adopted by a vote of two-thirds of the

By-Law No. 4320-77 - 2.

members of the Municipal Council of the City of Kelowna present this 14 day
of February, 1978.



Mayor



City Clerk

LAND USE CONTRACT

This Agreement made the 30th day of January, 1978.

BETWEEN:

CITY OF KELOWNA

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

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

B M M DEVELOPMENTS LTD.

(Incorporation No. 127985), a company duly
incorporated under the laws of the Province
of British Columbia, having its place of
business at 1630 Ellis Street, Kelowna,
British Columbia

SKOGLUND ENTERPRISES LTD.

(Incorporation No. 95565), a company duly
incorporated under the laws of the Province
of British Columbia, having its place of
business at 1630 Ellis Street, Kelowna,
British Columbia

(hereinafter called the "Developer")

OF THE SECOND PART

WHEREAS B M M Developments Ltd. is the registered owner in fee of
an undivided one-half interest in and to the Land and whereas Skoglund Enterprises
Ltd. is the registered owner in fee of an undivided one-half interest in the said
Land whose interests are subject to mortgages in favour of B.M.M. Developments
Ltd. registered under number M1991F and Skoglund Enterprises Limited under numbers
ML6391 and ML6392;

AND WHEREAS the Land has been zoned C-7 (Service Commercial) in a mass
rezoning of the City of Kelowna but at the time of the rezoning on an Appeal from
the Developer the City Council of the Municipality agreed to enter into a Land Use
Contract so that the existing use of the Land as premises for Okanagan College
would not be a non-conforming use;

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 has presented to the Municipality a scheme of use and development of the within described lands and premises that would be in contravention of a by-law 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 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:

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 C
District Lot 129
Plan 24090
Osoyoos Division
Yale District

(hereinafter 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.

JCS

is 3. The Land, and any and all buildings and structures erected thereon, thereover or therein shall be used for the purpose of providing classrooms, administrative offices, teaching facilities for Okanagan College Technical and Vocational Institute in addition to such other uses as are allowed in the C-7 (Service Commercial) zone of the City of Kelowna Zoning By-law No. 4500 a copy of which regulations are annexed hereto as Schedule "A".

TERMINATION

min-
tion 4. This Contract and the uses permitted hereby shall terminate and be at and end when the lease between the Developer and Okanagan College Technical and Vocational Institute is surrendered. At the date of such termination either of the parties hereto may, without the consent of the other, apply to discharge this Contract from the records of the Land Registry Office, Kamloops.

pliance 5. Save and except for the use herein specifically permitted the land and any development thereon is subject to the provisions of all of the by-laws of the Municipality.

resen-
tion 6. 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.

istration 7. 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.

erpret-
tion 8. 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.

ding 9. 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 *14* day of *June*,
1977

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 _____ day of _____ of _____

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:

Joe Danise
Mayor
[Signature]
Clerk

THE CORPORATE SEAL OF B M M DEVELOPMENTS LTD. was hereunto affixed in the presence of its proper officers in that behalf:

[Signature]
[Signature]

THE CORPORATE SEAL OF SKOGLUND ENTERPRISES LTD. was hereunto affixed in the presence of its proper offices in that behalf:

[Signature]
Pres.

SIGNED, SEALED and DELIVERED in the presence of:

Name:

Address:

Occupation:

LAND USE CONTRACT

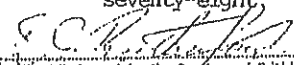
Schedule of Persons Having a Registered Interest in the Land Whose Consents are Required.

<u>Full Name.</u>	<u>Address</u>	<u>Occupation</u>	<u>Nature of Charge</u>
Skoglund Enterprises Ltd.	1630 Ellis Street		Mortgage
The Imperial Life Assurance Company of Canada	95 St. Clair Avenue, West, Toronto, Ontario		Mortgage

Acknowledgment of Officer of a Corporation

I HEREBY CERTIFY that, on the 10th day of January, 1978,
at Kelowna, in the Province of British Columbia,
Donald G. McConachie (whose identity has been proved by the evidence on
oath of _____, who is) personally known to me,
appeared before me and acknowledged to me that he is the Director of
B M M DEVELOPMENTS LTD. _____, and that he is the person
who subscribed his name to the annexed instrument as Director of the said
said Company and affixed the seal of the
to the said Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to
the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of
British Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office,
at Kelowna in the Province of
British Columbia, this 27 day of January
one thousand nine hundred and seventy-eight.



A Notary Public in and for the Province of British Columbia,
A Commissioner for taking Affidavits for British Columbia.

NOTE—WHERE THE PERSON MAKING THE ACKNOWLEDGMENT IS PERSONALLY KNOWN TO THE OFFICER TAKING THE SAME, STRIKE OUT THE WORDS IN BRACKETS.
DONALD JAMES RUTLEDGE FORD

Acknowledgment of Officer of a Corporation

I HEREBY CERTIFY that, on the 30th day of January, 1978,
at Kelowna, in the Province of British Columbia,
David Skoglund (whose identity has been proved by the evidence on
oath of _____, who is) personally known to me,
appeared before me and acknowledged to me that he is the President of
Skoglund Enterprises Ltd. _____, and that he is the person
who subscribed his name to the annexed instrument as President of the said
said Company and affixed the seal of the
to the said Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to
the said Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of
British Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office,
at Kelowna in the Province of
British Columbia, this 30th day of January
one thousand nine hundred and seventy-eight


A Notary Public in and for the Province of British Columbia,
A Commissioner for taking Affidavits for British Columbia.
DENNIS K. BOON

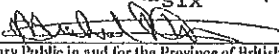
NOTE—WHERE THE PERSON MAKING THE ACKNOWLEDGMENT IS PERSONALLY KNOWN TO THE OFFICER TAKING THE SAME, STRIKE OUT THE WORDS IN BRACKETS.

Acknowledgment of Officer of a Corporation

I HEREBY CERTIFY that, on the 17th day of December, 1976,
at City of Kelowna, in the Province of British Columbia,
David Skoglund (whose identity has been proved by the evidence on
oath of _____, who is personally known to me,
appeared before me and acknowledged to me that he is the President of
SKOGLUND ENTERPRISES LTD., and that he is the person
who subscribed his name to the annexed instrument as President of the said
Company and affixed the seal of the
said Company
to the said instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal
to the said instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of
British Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office,
at City of Kelowna In the Province of
British Columbia, this 17 day of December
one thousand nine hundred and seventy-six

MICHAEL ROBERT DIRK
BARRISTER & SOLICITOR
1630 Ellis Street Kelowna, B.C.


A Notary Public in and for the Province of British Columbia.
A Commissioner for taking Affidavits for British Columbia.

C O N S E N T

KNOW ALL MEN by these presents that:

THE IMPERIAL LIFE ASSURANCE COMPANY OF CANADA, a body corporate having its head office at 95 St. Clair Avenue, West, Toronto, Ontario, and having an office situate at Suite 310, 1477 West Pender Street, Vancouver, British Columbia,

the holder of a charge by way of a First Mortgage registered in the Land Registry Office, Kamloops, British Columbia, under No. M1992, against all and singular that certain parcel or tract of lands and premises, situate and being in the City of Kelowna, Province of British Columbia, and more particularly known and described as:

Lot "C",
District Lot one hundred twenty-nine (129),
Osoyoos Division Yale District
Plan twenty-four thousand ninety (24090)

in consideration of the sum of ONE DOLLAR—and other good and valuable consideration (\$1.00), THE IMPERIAL LIFE ASSURANCE COMPANY OF CANADA, hereby agrees and consents to the registration of a Land Use Contract, made between the registered owners of the said lands described above, and the City of Kelowna, dated the *2nd* day of *November*, 1977, against the aforementioned lands in priority to the said First charge in the same manner and to the same effect as if it has been dated and registered prior to the said charges.

THE CORPORATE SEAL OF THE IMPERIAL LIFE ASSURANCE COMPANY OF CANADA was hereunto affixed in the presence of:



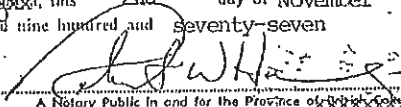
Per: _____
Title: _____ TREASURER
Per: _____
Title: _____ Financial Vice-President

Acknowledgment of Officer of a Corporation

I HEREBY CERTIFY that, on the 2nd day of November, 19 77
at City of Toronto, Municipality of Metropolitan Toronto in the Province of British Columbia,
(whose identity has been proved by the evidence of

~~XXXX~~ J. B. Purdy, who is) personally known to me,
appeared before me and acknowledged to me that he is the Financial Vice-President of
THE IMPERIAL LIFE ASSURANCE COMPANY OF CANADA, and that he is the person
who subscribed his name to the annexed instrument as Financial Vice-President of the said
Corporation. and affixed the seal of the
said Corporation
to the said instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to
the said instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of
British Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office,
at Toronto in the Province of
British Columbia, this 2nd day of November
one thousand nine hundred and seventy-seven


A Notary Public in and for the Province of British Columbia, ONTARIO

NOTE - WHERE THE PERSON MAKING THE ACKNOWLEDGMENT IS PERSONALLY KNOWN TO THE OFFICER TAKING THE SAME, STRIKE OUT THE WORDS IN BRACKETS.

ROBERT WILLIAM HALL

C-7 - SERVICE COMMERCIAL ZONE

Purpose

The purpose of this zone is to designate and preserve land for the development of non pedestrian oriented service commercial areas.

1. Permitted Uses

The following uses and no others shall be permitted in those areas designated by this By-Law as C-7:

A. Principal Uses

- i) Auction Sales
- ii) Bicycle and Motor-Cycle Sales and Service
- iii) Building Material Supply
- iv) Building Trade Offices
- v) Car Washing Establishments
- vi) Catering Services
- vii) Commercial Printing
- viii) Communication Equipment Supply and Service
- ix) Delivery and Express Terminals and Storage Facilities
- x) Drapery Manufacturing and Installation Services
- xi) Dry Cleaning Establishments, including linen supply and drapering and rug cleaning
- xii) Electronic and Electric Equipment Supply
- xiii) Farm and Garden Supplies
- xiv) Frozen Food Lockers
- xv) Fruit and Vegetable Stands and Farmer's Markets
- xvi) General Automotive Parts Supply
- xvii) General Automotive Repair Establishments
- xviii) Instrument and Small Equipment Supply and Service
- xix) Janitorial Services, including window cleaning, disinfecting and extermination services
- xx) Laboratories
- xxi) Locksmith and Gunsmith
- xxii) Major Household Appliance Sales
- xxiii) Office Machines and Furniture Sales and Service
- xxiv) Rentals, including car, truck and machinery rentals
- xxv) Re-upholstery and furniture repair shops
- xxvi) Sanitary Supplies

- xxvii) Service and Repair Establishments (excluding heavy machinery)
- xxviii) Sign Painting and Fabricating
- xxix) Stationery Supply
- xxx) Taxi-cabs and Limousine Dispatch Offices
- xxxi) Telephone Booths
- xxxii) Used Good Sales
- xxxiii) Veterinarian Services, Animal Hospitals and Animal Beauty Parlours
- xxxiv) Radio & T.V. Studios

B. Secondary Uses

- i) Outdoor Storage Areas
- ii) Warehousing
- iii) Offices

C. Condition of Secondary Uses

- i) Secondary Uses shall be permitted only in conjunction with a principal use.
- ii) All storage yards shall be surfaced by a permanent surface of asphalt or concrete.
- iii) All storage yards shall be screened by a fabricated fence of not less than six (6) feet; (1.83 metres) and not greater than eight (8) feet; (2.44 metres) in height.
- iv) All exterior lighting shall be designed to deflect away from adjacent properties.
- v) All outdoor storage yards shall be located to the rear of the principal building they serve.
- vi) All outdoor storage yards shall have road access to a public street or public lane.
- vii) No toxic, noxious, explosive, odorous, or radio active materials shall be stored in outdoor storage yards.

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 C-7:

- A. Commercial buildings.
- B. Accessory buildings and structures.
- C. Telephone booths.

3. Regulations Pertaining to the C-7 Zone

The following regulations apply to every development in all areas designated by this By-Law as C-7:

A. Lot Area

The minimum lot area shall be five thousand (5,000) square feet; (464.68 square metres).

B. Minimum Frontage

The minimum frontage of a lot containing a principal building shall be fifty (50) feet; (15.24 metres).

C. Floor Area Ratio

The maximum floor area ratio shall be zero point six five (0.65).

D. Height

i) Principal Buildings

The height of principal buildings shall not exceed thirty (30) feet; (9.14 metres).

ii) Accessory Structures

The height of accessory structures shall not exceed forty (40) feet; (72.19 metres).

E. Front Yard

Subject to Schedule "A" of this By-Law, a Front Yard shall be provided of not less than seven (7) feet; (2.13 metres) in depth. No storage of materials shall be permitted in the required Front Yard.

F. Side Yard

Subject to Schedule "A" of this By-Law:

- i) No Side Yards shall be required in cases where the zoning of the abutting lot is commercial or industrial.
- ii) A Side Yard of fifteen (15) feet; (4.57 metres) in width shall be provided in cases where the existing zoning of the abutting lot is residential; institutional or rural.
- iii) In the case of a corner lot, the Side Yard abutting the flanking street shall not be less than seven (7) feet; (2.13 metres) in width.
- iv) In the case where a lot is not served by a rear lane, one (1) Side Yard shall be provided of not less than fifteen (15) feet; (4.57 metres) in width.

G. Rear Yard

Subject to Schedule "A" of this By-Law, a Rear Yard shall be provided of not less than twenty-five (25) feet; (7.62 metres) in depth.

H. Minimum Gross Floor Area

Minimum gross floor area of one (1) commercial unit shall be five hundred (500) square feet; (46.47 square metres).

I. Lot Coverage

Lot coverage by principal buildings should not exceed sixty-five (65) per cent of the total lot area.

J. Off-Street Parking

Provision for off-street parking shall be made in accordance with the requirements established in Section 6 of Part III of this By-Law.

K. Off-Street Loading

Provision for off-street loading shall be made in accordance with the requirements established in Section 5 of Part III of this By-Law.