

City of Kelowna

Regular Council Meeting

AGENDA



Monday, December 15, 2014

1:30 pm

Council Chamber

City Hall, 1435 Water Street

Pages

1. Call to Order

This meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.

2. Confirmation of Minutes

5 - 15

Regular PM Meeting - December 8, 2014

3. Committee Reports

3.1 External Committee Appointments

16 - 17

To appoint Council representatives to community organizations or committees as requested.

3.2 Council Committee Appointments

18 - 19

To name Council representatives to internal council committees and to provide direction to staff to update Committee Terms of Reference for the 2014-2018 Council term.

4. Development Application Reports & Related Bylaws

4.1 Agricultural Land Reserve Appeal Application No. A14-0010 - 1301 Glenmore Road North, Kelowna Pet Resort Ltd.

20 - 42

Mayor to invite the Applicant, or Applicant's Representative to come forward.

To consider a staff recommendation NOT to support an application to the Agricultural Land Commission (ALC) to allow an existing mobile home to be used by a caretaker for the kennel business on the property.

4.2 Agricultural Land Reserve Appeal Application No. A14-0005 - 1590 Pioneer Road, 11.2 Acre Holding Co. Ltd.

43 - 74

Mayor to invite the Applicant, or Applicant's Representative, to come forward.

To consider a staff recommendation NOT to approve an application to the Agricultural Land Commission (ALC) under Section 20(3) of the ALC Act for a “non-farm use” within the Agricultural Land Reserve (ALR) to permit the activity of soil placement within the ALR.

- 4.3 Rezoning Application No. Z14-0043 & Land Use Contract Application No. LUC14-0001 - 1020 Sutcliffe Court, 1009440 BC Ltd. 75 - 85

To consider an application to discharge the Land Use Contract and rezone the subject property from the RR3 - Rural Residential 3 zone to the RU1 - Large Lot Housing zone to facilitate a two lot subdivision.

- 4.3.1 Bylaw No. 11043 (LUC14-0001) - 1020 Sutcliffe Court, 1009440 BC Ltd. 86 - 86

To give Bylaw No. 11043 first reading.

- 4.3.2 Bylaw No. 11044 (Z14-0043) - 1020 Sutcliffe Court, 1009440 BC Ltd. 87 - 87

To give Bylaw No. 11044 first reading.

- 4.4 Rezoning Application No. Z14-0040 - 4065 Lakeshore Road, City of Kelowna 88 - 94

To consider a Rezoning application to rezone the subject property from P1 - Major Institutional to P3 - Parks and Open Space and RU2 - Medium Lot Housing to facilitate a two lot subdivision.

- 4.4.1 Bylaw No. 11042 (Z14-0040) - 4065 Lakeshore Road, City of Kelowna 95 - 96

To give Bylaw No. 11042 first reading.

- 4.5 Rezoning Application No. Z14-0046 - 822 McCurdy Place, Hyatt Auto Sales Ltd. 97 - 103

To consider a Rezoning application to rezone the subject property from the I1 - Business Industrial zone to the I2 - General Industrial zone.

- 4.5.1 Bylaw No. 11040 (Z14-0046) - 822 McCurdy Place, Hyatt Auto Sales Ltd. 104 - 104

To give Bylaw No. 11040 first reading.

- 4.6 Rezoning Application No. Z14-0045 - 828, 834, 871 & 877 McCurdy Place, Harmony Holdings Limited 105 - 111

To consider a Rezoning application to rezone the subject properties from the I1 - Business Industrial zone to the I2 - General Industrial zone.

- 4.6.1 Bylaw No. 11039 (Z14-0045) - 828, 834, 871 & 877 McCurdy Place, Harmony Holdings Limited 112 - 112

To give Bylaw No. 11039 first reading.

4.7	Rezoning Application No. Z14-0042 - 2210 Abbott Street, Strandhaus Developments Inc.	113 - 129
	To consider a Rezoning application to rezone the subject property from the RU1 - Large Lot Housing zone to the RU6 - Two Dwelling Housing zone to allow a semi-detached dwelling to be built.	
4.7.1	Bylaw No. 11045 (Z14-0042) - 2210 Abbott Street, Strandhaus Developments Inc.	130 - 130
	To give Bylaw No. 11045 first reading.	
4.8	Bylaw No. 10757 (Z12-0046) - 1350 St. Paul Street, 564913 BC Ltd.	131 - 131
	To adopt Bylaw No. 10757 in order to rezone the subject property from the I2 - General Industrial zone to the C7 - Central Business Commercial zone.	
4.8.1	Development Permit Application No. DP14-0169 - 1350 St. Paul Street, 564913 BC Ltd.	132 - 144
	To consider a Development Permit application for the development of a surface parking lot on the subject property.	
4.9	Bylaw No. 10979 (Z14-0019) - 260 Ponto Road, Alexander Ryan Tull	145 - 145
	To adopt Bylaw No. 10979 in order to rezone the subject property from the RU1 - Large Lot Housing zone to the RM1 - Four Dwelling Housing zone.	
4.9.1	Development Permit Application No. DP14-0084 - 260 Ponto Road, Alexander Ryan Tull	146 - 162
	To consider a development permit for a Fourplex dwelling located on 260 Ponto Road.	
4.10	Rezoning Application No. Z11-0018 - 1500 Friesen Road, Gwynne Johnson	163 - 165
	To consider the rescindment of the rezoning bylaw for the subject property from RR3 - Rural Residential 3 to RU6 - Two Dwelling Housing.	
4.10.1	Bylaw No. 10536 (Z11-0018) - 1500 Friesen Road, Gwynne Johnson	166 - 166
	To rescind first, second and third readings given to Bylaw No. 10536 and to direct staff to close the file.	

5. Non-Development Reports & Related Bylaws

5.1	Lease - 1014 Glenmore Road	167 - 187
	To obtain Council support to enter into a two (2) year Lease Agreement for office space with Glenmore Store Limited.	
5.2	Sublease of 346 Lawrence Avenue, Southern Interior Development Initiative	188 - 222

Trust

To approve the sublease of surplus office space at 209 - 346 Lawrence Avenue for a term of one (1) year with a one (1) year option to renew.

5.3 Partnership for the Provision of Public Art 223 - 247

To approve a public art project and funding partnership with Davara Holdings Ltd.

5.4 2014 Election Results Report 248 - 252

To provide Council with the final results report of the 2014 General Local Election including a summary of the overall objectives, voting opportunities and results.

6. Mayor and Councillor Items

7. Termination



City of Kelowna Regular Council Meeting Minutes

Date: Monday, December 8, 2014
Time: 1:30 pm
Location: Council Chamber
City Hall, 1435 Water Street

Council Members Present: Mayor Colin Basran and Councillors Maxine DeHart, Ryan Donn, Gail Given*, Tracy Gray, Charlie Hodge, Brad Sieben*, Mohini Singh and Luke Stack*

Staff Present: City Manager, Ron Mattiussi; City Clerk, Stephen Fleming; Urban Planning Manager, Ryan Smith*; Urban Planning Supervisor, Lindsey Ganczar*; Manager, Subdivision, Agriculture & Environment, Todd Cashin*; Development Engineering Manager, Steve Muenz*; Community & Neighbourhood Services Manager, Louise Roberts*; Parking Services Manager, Dave Duncan*; and Council Recording Secretary, Arlene McClelland

(* denotes partial attendance)

1. Call to Order

Mayor Basran called the meeting to order at 1:31 p.m.

Mayor Basran advised that the meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet and a delayed broadcast is shown on Shaw Cable.

2. Confirmation of Minutes

Moved By Councillor DeHart/Seconded By Councillor Stack

R846/14/12/08 THAT the Minutes of the Regular Meetings of November 10, 2014 be confirmed as circulated.

Carried

Moved By Councillor Singh/Seconded By Councillor Given

R847/14/12/08 THAT the Minutes of the Inaugural Meeting of December 1, 2014 be confirmed as circulated.

Carried

3. Public in Attendance

3.1. Beryl Itani, Chair, Civic Awards Nomination Committee, re: Civic Awards Nomination Period

Louise Roberts, Community & Neighbourhood Services Manager

- Introduced Beryl Itani, Chair, Civic Awards Nomination Committee.

Beryl Itani, Chair, Civic Awards Nomination Committee

- Provided a Power Point Presentation announcing the nomination period for the 40th Annual Civic & Community Awards.

4. Development Application Reports & Related Bylaws

4.1. Official Community Plan Bylaw Amendment Application No. OCP14-0016 & Rezoning Application No. Z14-0031 - 860 Glenwood Avenue, Stanley & Darlene Vereb

Staff:

- Displayed a Power Point Presentation summarizing the application and responded to questions from Council.

Mayor invited the Applicants, or the Applicants' Representative, to come forward.

Stanley Vereb, Applicant:

- Purchased the property approximately 5 years ago.
- The third suite existed upon purchase of the property and was told by the Realtor that the it was a duplex with an in-law suite.
- Discovered after the purchase that there are no in-law suites in Kelowna.
- It is not financially viable to only have two suites as opposed to three suites.
- Confirmed that he spoke to 5 neighbours in the immediate area regarding the suites.
- Responded to questions from Council.

There were no further comments.

Moved By Councillor Stack/Seconded By Councillor Given

R848/14/12/08 THAT Official Community Plan Bylaw Amendment No. OCP14-0016 to amend Map 4.1 of the Kelowna 2030 - Official Community Plan Bylaw No. 10500, by changing the Future Land Use designation of Lot 22, Section 19, Township 26, ODYD, Plan 700, located at 860 Glenwood Avenue, Kelowna, BC from the S2RES - Single / Two Unit Residential designation to the MRL - Multiple Unit Residential (Low Density) designation NOT be considered by Council;

AND THAT Rezoning Application No. Z14-0031 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 22, Section 19, Township 26, ODYD, Plan 700, located at 860 Glenwood Avenue, Kelowna, BC from the RU6 - Two Dwelling Housing zone to the RM1 - Four Dwelling Housing zone NOT be considered by Council;

AND FURTHER THAT the OCP and Zone Amending Bylaws NOT be forwarded to a Public Hearing for further consideration.

Carried

4.2. Official Community Plan Bylaw Amendment No. OCP14-0020 & Rezoning Application No. Z14-0037 - 5000 Gordon Drive, No. 21 Great Projects Ltd.

Staff:

- Displayed a Power Point Presentation summarizing the application and responded to questions from Council.

Moved By Councillor Donn/Seconded By Councillor DeHart

R849/14/12/08 THAT Official Community Plan Bylaw Amendment No. OCP14-0020 to amend Map 4.1 of the Kelowna 2030 - Official Community Plan Bylaw No. 10500, by changing the Future Land Use designation of part of The South 1/2, District Lot 579, SDYD, Except Plans KAP77336, KAP86178, KAP86917, KAP87090, KAP87918, EPP9619, EPP9638, EPP12863, EPP15721, EPP18670 and EPP22118, located on 5000 Gordon Drive, Kelowna, BC from the S2RESH - Single / Two Unit Residential - Hillside designation to the PSU - Public Services / Utilities designation, from the PARK - Major Park / Open Space designation to the S2RESH - Single / Two Unit Residential - Hillside designation, from the MRC - Multiple Unit Residential - Cluster Housing designation to the S2RESH - Single / Two Unit Residential - Hillside designation, and from the MRC - Multiple Unit Residential - Cluster Housing designation to the PSU - Public Services / Utilities designation, as shown on Map "A" attached to the Report of the Subdivision, Agriculture & Environment Department, dated November 26, 2014, be considered by Council;

AND THAT Council considers the Public Hearing public process to be appropriate consultation for the purpose of Section 879 of the Local Government Act, as outlined in the Report of the Subdivision, Agriculture & Environment Department, dated November 26, 2014;

AND THAT Rezoning Application No. Z14-0037 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of part of The South 1/2, District Lot 579, SDYD, Except Plans KAP77336, KAP86178, KAP86917, KAP87090, KAP87918, EPP9619, EPP9638, EPP12863, EPP15721, EPP18670 and EPP22118, located on 5000 Gordon Drive, Kelowna, BC from the A1 - Agriculture 1 zone to the RU2h - Medium Lot Housing (Hillside Area) and P4 - Utilities zones, as shown on Map "B" attached to the Report of the Subdivision, Agriculture & Environment Department, dated November 26, 2014, be considered by Council;

AND THAT the Official Community Plan Bylaw Amendment Bylaw and the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Zone Amending Bylaw be considered in conjunction with Council's consideration of a Development Permit for the subject property;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the issuance of a Preliminary Layout Review Letter by the Approving Officer;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements being completed to the satisfaction of the Development Engineering Manager.

Carried

4.2.1. Bylaw No. 11037 (OCP14-0020) - 5000 Gordon Drive, No. 21 Great Projects Ltd.

Moved By Councillor Hodge/Seconded By Councillor Gray

R850/14/12/08 THAT Bylaw No. 11037 be read a first time;

AND THAT the bylaw has been considered in conjunction with the City's Financial Plan and Waste Management Plan.

Carried

4.2.2. Bylaw No. 11038 (Z14-0037) - 5000 Gordon Drive, No. 21 Great Projects Ltd.

Moved By Councillor Hodge/Seconded By Councillor Gray

R851/14/12/08 THAT Bylaw No. 11038 be read a first time.

Carried

4.3. Text Amendment Application No. TA14-0011 - Text Amendment to include the RM2h Zone in the CD6 - Comprehensive Residential Golf Resort Zone for Tower Ranch

Staff:

- Displayed a Power Point Presentation summarizing the application before Council.

Moved By Councillor Stack/Seconded By Councillor Gray

R852/14/12/08 THAT Zoning Bylaw Text Amendment No. TA14-0011 to amend the City of Kelowna Zoning Bylaw No. 8000, Section 18 - Schedule B - CD6, by adding RM2h to the CD6 - Comprehensive Residential Golf Resort zone for Tower Ranch, as outlined in the Report of the Subdivision, Agriculture & Environment Department dated November 25, 2014, be considered by Council;

AND THAT the Text Amendment Bylaw be forwarded to a Public Hearing for further consideration.

Carried

4.3.1. Bylaw No. 11035 (TA14-0011) - Adding RM2h to the CD6 - Comprehensive Development Zone Golf Resort for Tower Ranch

Moved By Councillor Hodge/Seconded By Councillor Gray

R853/14/12/08 THAT Bylaw No. 11035 be read a first time.

Carried

4.4. Rezoning Application No. Z14-0049 - 5505-5507 Airport Way, Midwest Ventures Ltd.

Councillor Sieben declared a conflict of interest as a family member could be a potential tenant should the rezoning be supported and departed the meeting at 2:25 p.m.

Staff:

- Displayed a Power Point Presentation summarizing the application before Council.

Moved By Councillor Hodge/Seconded By Councillor Given

R854/14/12/08 THAT Rezoning Application No. Z14-0049 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification on a portion of Lot A, District Lot 14, Township 23 ODYD, Plan EPP23036, located on 5505 - 5507 Airport Way, Kelowna, BC from the C9 - Tourist Commercial zone to the CD15 - Airport Business Park zone, be considered by Council;

AND THAT Rezoning Application No. Z14-0049 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification on a portion of Lot A, District Lot 14, Township 23 ODYD, Plan EPP23036, located on 5505 - 5507 Airport Way, Kelowna,

BC from the CD15 - Airport Business Park zone to the C9 - Tourist Commercial zone, be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration.

Carried

4.4.1. Bylaw No. 11036 (Z14-0049) - 5505-5507 Airport Way, Midwest Ventures Ltd.

Moved By Councillor Hodge/Seconded By Councillor Gray

R855/14/12/08 THAT Bylaw No. 11036 be read a first time.

Carried

Councillor Sieben returned to the meeting at 2:29 p.m.

4.5. Rezoning Application No. Z14-0039 - 2046 Pandosy Street, Camara Ventures Ltd.

Staff:

- Displayed a Power Point Presentation summarizing the application and responded to questions from Council.

Moved By Councillor Given/Seconded By Councillor Sieben

R856/14/12/08 THAT Rezoning Application No. Z14-0039 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 1, Block 8, District Lot 14, ODYD, Plan 348 Except Plan 14193 and KAP91738, located on 2046 Pandosy Street, Kelowna, BC from the RU1 - Large Lot Housing zone to the RU6 - Two Dwelling Housing zone, as shown on Map "A" attached to the Report of the Urban Planning Department dated December 8, 2014, be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch being completed to their satisfaction.

Carried

4.5.1. Bylaw No. 11041 (Z14-0039) - 2046 Pandosy Street, Camara Ventures Ltd.

Moved By Councillor Hodge/Seconded By Councillor Gray

R857/14/12/08 THAT Bylaw No. 11041 be read a first time.

Carried

4.6. Rezoning Application No. Z10-0091 - 196 Cariboo Road, D & S Schultz Enterprises Ltd.

Staff:

- Displayed a Power Point Presentation summarizing the application before Council.

Moved By Councillor Hodge/Seconded By Councillor Donn

R858/14/12/08 THAT Council receives, for information, the report from Urban Planning, Community Planning & Real Estate, dated November 25, 2014 with respect to Rezoning Bylaw No. 10513 (Application Z10-0091 - D & S Schulz Enterprises Ltd., Inc No BC0837184 - 196 Cariboo Rd);

THAT Bylaw No. 10513 be forwarded for rescindment consideration and Staff be directed to close the related files.

Carried

4.6.1. Bylaw No. 10513 (Z10-0091) - 196 Cariboo Road, D & S Schulz Enterprises Ltd.

Moved By Councillor Singh/Seconded By Councillor DeHart

R859/14/12/08 THAT No. 10513 be rescinded and the file be closed.

Carried

4.7. Rezoning Application No. Z13-0011, Extension Request - 370 Fleming Road, Wendy Cullen & Michael Anderson

Staff:

- Displayed a Power Point Presentation summarizing the application before Council.

Moved By Councillor Sieben/Seconded By Councillor DeHart

R860/14/12/08 THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of zone amending Bylaw No. 10849 (Z13-0011) for the property located at 370 Fleming Road (Lot B, Section 27, Township 26, ODYD Plan 11730) Kelowna, BC, be extended from June 18th, 2014 to June 18th, 2015;

AND FURTHER THAT Council direct staff not to accept any further extension requests.

Carried

4.8. Rezoning Application No. Z13-0032, Extension Request - 325 Hartman Road, Gary Lupul

Staff:

- Displayed a Power Point Presentation summarizing the application and responded to questions from Council.

Moved By Councillor Singh/Seconded By Councillor Hodge

R861/14/12/08 THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Zone Amending Bylaw No. 10891 (Z13-0032, Gary Lupul, Hartman Road), be extended from November 5, 2014 to November 5, 2015;

AND THAT Council direct staff not to accept any further extension requests.

Carried

4.9. Development Permit Application No. DP13-0195 & Development Variance Permit Application No. DVP13-0196, Extension Request - 2105 Benvoulin Court, Society of Hope

Councillor Stack declared a conflict of interest as he is an employee of Society of Hope and departed the meeting at 2:44 p.m.

Staff:

- Displayed a Power Point Presentation summarizing the application and responded to questions from Council.

Moved By Councillor Sieben/Seconded By Councillor Hodge

R862/14/12/08 THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the issuance of the Development Permit Variance DVP13-0196 and Development Permit Application DP13-0195, for Lot C D.L. 128 and 142 ODYD Plan KAP89861, located at 2105 Benvoulin Court, Kelowna B.C. be extended from September 14, 2014, to September 14, 2015.

Carried

Councillor Stack rejoined the meeting at 2:48 p.m.

- 4.10. Rezoning Application No. Z10-0092, Extension Request - 3150 Sexsmith Road, Kimberly & John Berg
- 4.11. Rezoning Application No. Z10-0093, Extension Request - 3170 Sexsmith Road, Shanny & Marlin Toews
- 4.12. Rezoning Application No. Z09-0035, Extension Request - 3130 Sexsmith Road, Matthew James Ewonus

Councillor Given declared a conflict of interest as the Applicant for Item 4.12 is her financial planner and departed the meeting at 2:49 p.m.

Staff:

- Presented on the following three linked applications.

Moved By Councillor Stack/Seconded By Councillor DeHart

R863/14/12/08 THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Zone Amending Bylaw No. 10443 (Z10-0092), for Lot 27 Section 3 Township 23 ODYD Plan 18861, located at 3150 Sexsmith Road, Kelowna, BC, be extended from November 16, 2014 to November 16, 2015.

Carried

Moved By Councillor Stack/Seconded By Councillor DeHart

R864/14/12/08 THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Amending Bylaw No. 10445 (Z10-0093), for Lot 26 Section 3 Township 23 ODYD Plan 18861, located at 3170 Sexsmith Road, Kelowna, BC, be extended from November 16, 2014 to November 16, 2015.

Carried

Moved By Councillor Stack/Seconded By Councillor DeHart

R865/14/12/08 THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Zone Amending Bylaw No. 10436 (Z09-0035), for Lot 28 Section 3 Township 23 ODYD Plan 18861, located at 3130 Sexsmith Road, Kelowna, BC, be extended from November 16, 2014 to November 16, 2015.

Carried

Councillor Given returned to the meeting at 2:53 p.m.

5. Bylaws for Adoption (Development Related)

5.1. Bylaw No. 10555 (Z11-0025) - 2857 East Kelowna Road, Christopher Fehr & Ian McClellan

Moved By Councillor Stack/Seconded By Councillor DeHart

R866/14/12/08 THAT Bylaw No. 10555 be adopted.

Carried

5.2. Bylaw No. 11012 (TA14-0017) - Amendments to Zoning Bylaw No. 8000, CD18 - Vintage Landing Comprehensive Resort Development

Moved By Councillor Sieben/Seconded By Councillor Given

R867/14/12/08 THAT Bylaw No. 11012 be adopted.

Carried

6. Non-Development Reports & Related Bylaws

6.1. Latecomer Charges 2250-70-91 - Storm Drainage Facility

Staff:

- Responded to questions from Council.

Moved By Councillor Given/Seconded By Councillor Hodge

R868/14/12/08 THAT Council requires the owner of Lot C Plan EPP18422 Sec 33 Twp 26 ODYD which is to be subdivided or developed, to provide the excess or extended services shown in Appendix D of the Latecomer Agreement No. 2250-70-91 attached to the report of Manager, Development Engineering Branch, dated August 25, 2014;

AND THAT Council considers the cost to provide the excess or extended services shown in Appendix D of Latecomer Agreement No. 2250-70-91 in whole or in part, to be excessive;

AND THAT the Latecomer charges be imposed for excess or extended services, as shown in Appendix D of Latecomer Agreement No. 2250-70-91, which are required to be installed as part of the referenced Development Project;

AND THAT Latecomer charges be imposed on the benefiting lands listed in Appendix D of Latecomer Agreement No. 2250-70-91;

AND THAT Council authorizes the City to enter into Latecomer Agreement No. 2250-70-91 with the owner to be effective upon Substantial Performance of the Excess or Extended Services, and that the Mayor and City Clerk be authorized to execute and affix the corporate seal to the said Latecomer Agreement;

AND FURTHER THAT the owners of the benefiting lands be advised in writing of the Latecomer Charges to be imposed on their land.

Carried

6.2. Latecomer Charges 2250-70-92 - Watermain - Chute Lake Rd/Frost Rd to Killdeer Rd

Staff:

- Responded to questions from Council.

Moved By Councillor Singh/Seconded By Councillor DeHart

R869/14/12/08 THAT Council requires the owner of LOT A DL 579 SDYD and The South ½ of DL 579 SDYD which is to be subdivided or developed, to provide the excess or extended services shown in Schedule B of the Latecomer Agreement No. 2250-70-92 attached to the Report of Manager, Development Engineering Branch dated August 18, 2014.

AND THAT Council considers the cost to provide the excess or extended services shown in Schedule B of Latecomer Agreement No. 2250-70-92 in whole or in part, to be excessive;

AND THAT the Latecomer charges be imposed for excess or extended services, as shown in Schedule B of Latecomer Agreement No. 2250-70-92, which are required to be installed as part of the referenced Development Project;

AND THAT Latecomer charges be imposed on the benefiting lands shown on Schedule D of Latecomer Agreement No. 2250-70-92;

AND THAT Council authorizes the City to enter into Latecomer Agreement No. 2250-70-92 with the owner to be effective upon Substantial Performance of the Excess or Extended Services, and that the Mayor and City Clerk be authorized to execute and affix the corporate seal to the said Latecomer Agreement;

AND FURTHER THAT the owners of the benefiting lands be advised in writing of the Latecomer Charges to be imposed on their land.

Carried

6.3. Latecomer Charges 2250-70-93 - Storm Facility - Neighbourhood #3

Staff:

- Summarized the Latecomer Charges before Council.

Moved By Councillor Given/Seconded By Councillor Donn

R870/14/12/08 THAT Council requires the owner of LOT A DL 579 SDYD and The South ½ of DL 579 SDYD which is to be subdivided or developed, to provide the excess or extended services shown in Schedule B of the Latecomer Agreement No. 2250-70-93 attached to the Report of Manager, Development Engineering Dated August 18, 2014.

AND THAT Council considers the cost to provide the excess or extended services shown in Schedule B in whole or in part, to be excessive;

AND THAT the Latecomer charges be imposed for excess or extended services, as shown in Schedule B of Latecomer Agreement No. 2250-70-93, which are required to be installed as part of the referenced Development Project;

AND THAT Latecomer charges be imposed on the benefiting lands listed in Schedule D of Latecomer Agreement No. 2250-70-93;

AND THAT Council authorizes the City to enter into Latecomer Agreement No. 2250-70-93 with the owner to be effective upon Substantial Performance of the Excess or Extended Services, and that the Mayor and City Clerk be authorized to execute and affix the corporate seal to the said Latecomer Agreement;

AND FURTHER THAT the owners of the benefiting lands be advised in writing of the Latecomer Charges to be imposed on their land.

Carried

6.4. Free Saturday Parking in December

Staff:

- Summarized the report before Council.

Moved By Councillor Hodge/Seconded By Councillor Sieben

R871/14/12/08 THAT Council receives, for information, the Report from the Manager, Parking Services dated December 1, 2014 with respect to Free Downtown Parking on Saturdays in December;

AND THAT Council approves free on-street parking in the Downtown area on the four (4) Saturdays in December 2014.

Carried

7. Resolutions

7.1. City Clerk, Draft Resolution, re: Deputy Mayor Schedule 2014-2018

Staff:

- Advised that the Alternate Deputy Mayor shall be the next Deputy Mayor as available in monthly sequences.

Moved By Councillor Stack/Seconded By Councillor Donn

R872/14/12/08 THAT the Deputy Mayor Schedule for the City of Kelowna Municipal Council 2014-2018 term be as follows:

DEPUTY MAYOR:

December 2014	Councillor Luke Stack	January 2017	Councillor Gail Given
January 2015	Councillor Gail Given	February 2017	Councillor Maxine DeHart
February 2015	Councillor Maxine DeHart	March 2017	Councillor Mohini Singh
March 2015	Councillor Mohini Singh	April 2017	Councillor Brad Sieben
April 2015	Councillor Brad Sieben	May 2017	Councillor Tracy Gray
May 2015	Councillor Tracy Gray	June 2017	Councillor Ryan Donn
June 2015	Councillor Ryan Donn	July 2017	Councillor Charlie Hodge
July 2015	Councillor Charlie Hodge	August 2017	Councillor Luke Stack
August 2015	Councillor Luke Stack	September 2017	Councillor Gail Given
September 2015	Councillor Gail Given	October 2017	Councillor Maxine DeHart
October 2015	Councillor Maxine DeHart	November 2017	Councillor Mohini Singh
November 2015	Councillor Mohini Singh	December 2017	Councillor Brad Sieben
December 2015	Councillor Brad Sieben	January 2018	Councillor Tracy Gray
January 2016	Councillor Tracy Gray	February 2018	Councillor Ryan Donn
February 2016	Councillor Ryan Donn	March 2018	Councillor Charlie Hodge
March 2016	Councillor Charlie Hodge	April 2018	Councillor Luke Stack
April 2016	Councillor Luke Stack	May 2018	Councillor Gail Given
May 2016	Councillor Gail Given	June 2018	Councillor Maxine DeHart
June 2016	Councillor Maxine DeHart	July 2018	Councillor Mohini Singh
July 2016	Councillor Mohini Singh	August 2018	Councillor Brad Sieben
August 2016	Councillor Brad Sieben	September 2018	Councillor Tracy Gray
September 2016	Councillor Tracy Gray	October 2018	Councillor Ryan Donn
October 2016	Councillor Ryan Donn		
November 2016	Councillor Charlie Hodge		
December 2016	Councillor Luke Stack		

Carried

7.2. City Clerk, Draft Resolution, re: Waiver of Requirement - Agricultural Advisory Committee & Community Heritage Committee

Moved By Councillor Donn/Seconded By Councillor Hodge

R873/14/12/08 THAT Council directs the Divisional Director, Community Planning & Real Estate to waive the requirement to forward applications to the Agricultural Advisory Committee or the Community Heritage Committee until the Terms of Reference and membership of each of the respective advisory committees of Council has been determined within a three month time limit.

Carried

8. Bylaws for Adoption (Non-Development Related)

8.1. Bylaw No. 11022 - Amendment No. 4 to Water Regulation Bylaw No. 10480

Moved By Councillor Singh/Seconded By Councillor Sieben

R874/14/12/08 THAT Bylaw No. 11022 be adopted.

Carried

8.2. Bylaw No. 11034 - Amendment No. 25 to Traffic Bylaw No. 8120

Moved By Councillor DeHart/Seconded By Councillor Stack

R875/14/12/08 THAT Bylaw No. 11034 be adopted.

Carried

9. Mayor and Councillor Items

Councillor Donn

- Made Comment of a fundraiser for Kate Rosvold on December 14th at the Evangel Church on Gordon Drive.

Councillor DeHart:

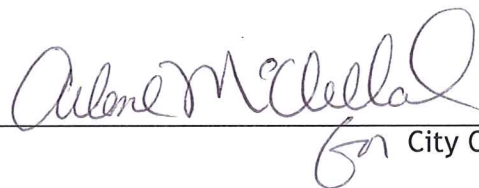
- Made Comment of the Rotary Light Fundraiser.

10. Termination

This meeting was declared terminated at 3:15 p.m.

Mayor

/acm



City Clerk

Report to Council



Date: December 10, 2014
File: 0615-01
To: City Manager
From: Deputy City Clerk
Subject: External Committee Appointments

Recommendation:

THAT Council appoints Councillor Hodge as Council representative to the Central Okanagan Committee for Safe Schools for the 2014-2018 term;

AND THAT Council appoints Councillor DeHart as Council representative to the Citizen of the Year/Civic Awards Committee;

AND THAT Council appoints Councillor Donn as Council representative to the City of Vernon Biosolids Advisory Committee;

AND THAT Council appoints Councillor DeHart as Council representative to the Downtown Kelowna Association, with Councillor Hodge as the alternate for the 2014-2018 term;

AND THAT Council appoints Councillor Sieben as Council representative to the Economic Development Commission, with Councillor Gray as the alternate for the 2014-2018 term;

AND THAT Council appoints Councillor Donn as Council representative to the Kasugai Sister City Association for the 2014-2018 term;

AND THAT Council appoints Councillor Gray as Council representative to the Kelowna Chamber of Commerce, with Councillor DeHart as the alternate for the 2014-2018 term;

AND THAT Council appoints Mayor Basran as Council representative to the Kelowna Joint Water Committee, with Councillor Given as the alternate for the 2014-2018 term;

AND THAT Council appoints Councillor Gray as Council representative to the Okanagan Regional Library District, with Councillor Given as the alternate for the 2014-2018 term;

AND THAT Council appoints Mayor Basran as Council representative to the Southern Interior Local Government Association, with Councillor Hodge as the alternate for the 2014-2018 term;

AND THAT Council appoints Councillor Given as Council representative to the Tourism Kelowna Committee, with Councillor Donn as the alternate for the 2014-2018 term;

AND THAT Council appoints Mayor Basran as Council representative to the UBC Okanagan External Community Advisory Council for the 2014-2018 term;

AND THAT Council appoints Councillor Sieben as Council representative to the Uptown Rutland Business Association, with Councillor Gray as the alternate for the 2014-2018 term;

AND FURTHER THAT Council appoints Councillor Hodge as Council representative to the Veendam Sister City Society for the 2014-2018 term.

Purpose:

To appoint Council representatives to community organizations or committees as requested.

Background:

Community organizations or committees may require Council representation as part of their mandated membership, or request representation from Council to participate in their meetings as either a voting member or liaison to Council.

Considerations not applicable to this report:

Internal Circulation:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:

Alternate Recommendation:

Submitted by:

Karen Needham, Deputy City Clerk

Approved for inclusion:



Stephen Fleming City Clerk

Report to Council



Date: December 10, 2014
File: 0615-01
To: City Manager
From: Deputy City Clerk
Subject: Council Committee Appointments

Recommendation:

THAT Council appoints the Airport Advisory Committee as a committee of Council for the 2014-2018 term;

AND THAT Council appoints Councillor Stack as Councillor representative to the Airport Advisory Committee for the 2014-2018 term;

AND THAT Council directs staff to report back with an updated 2014-2018 Terms of Reference for the Airport Advisory Committee;

AND THAT Council appoints the Audit Committee as a committee of Council for the 2014-2018 term;

AND THAT Council appoints Mayor Basran, Councillor Given and Councillor Stack as Council representatives to the Audit Committee for the 2014-2018 term;

AND THAT Council directs staff to report back with an updated 2014-2018 Terms of Reference for the Audit Committee;

AND THAT Council appoints the Parcel Tax Roll Review Panel as a committee of Council for the 2014-2018 term;

AND FURTHER THAT Council appoints Councillor Hodge, Councillor DeHart and Councillor Singh as Council representative to the Parcel Tax Roll Review for the 2014-2018 term.

Purpose:

To name Council representatives to internal council committees and to provide direction to staff to update Committee Terms of Reference for the 2014-2018 Council term.

Background:

The Airport Advisory Committee, Audit Committee, and Parcel Tax Roll Review Panel each require council members to be appointed as members. Further external appointments to the Airport Advisory Committee will be made in the New Year.

Considerations not applicable to this report:

Internal Circulation:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:

Alternate Recommendation:

Submitted by:

Karen Needham, Deputy City Clerk

Approved for inclusion: City Clerk

REPORT TO COUNCIL



Date: 12/8/2014
RIM No. 1210-21
To: City Manager
From: Subdivision, Agriculture & Environment Services (MS)
Application: A14-0010 **Owner:** Kelowna Pet Resort Ltd. Inc.
No. BC1011608
Address: 1301 Glenmore Road North **Applicant:** Chad Clark
Subject: Non-farm use application - Mobile Home as 'Carriage House'
Existing OCP Designation: Resource Protection Area
Existing Zone: A1 - Agriculture 1

1.0 Recommendation

THAT Agricultural Land Reserve Appeal Application No. A14-0010 for *Lot 3 Block 10 Sections 9 and 16 TWP 23 ODYD Plan 1068*, located at *1301 Glenmore Road* for a 'Non-farm use', to allow a mobile home as a 'Carriage House', pursuant to Section 20 (3) of the *Agricultural Land Commission Act*, NOT be supported by Municipal Council;

AND THAT the Municipal Council directs staff to forward the subject application to the Agricultural Land Commission for consideration.

2.0 Purpose

The applicant is seeking permission from the Agricultural Land Commission (ALC) to allow an existing mobile home to be used by a caretaker for the kennel business on the property.

3.0 Subdivision, Agriculture & Environment Services

Staff does not support the application for a non-farm use of a mobile home as a second dwelling to be used by a caretaker for the kennel business on the property.

Section 18 of the *Agricultural Land Reserve Act*¹ prohibits local government from approving more than one residence on an ALR parcel unless it is necessary for *farm use*. The ALC Regulation permits, unless prohibited by local government bylaw, one manufactured home for a member of the owner's immediate family only.

¹ SBC, 2002. Agricultural Land Commission Act. Chapter 36 http://www.bclaws.ca/Recon/document/ID/freeside/00_02036_01

In this case, the property is owned by Kelowna Pet Resort Ltd. The owners of the company do not live on the property, and the immediate family of the owners live in the primary residence.

Kennels are a permitted secondary use in the A1-Agriculture zone under the City of Kelowna Zoning Bylaw, as well as the ALC Regulation.

Ministry of Agriculture guidelines with respect to second dwellings for farm help do not include employees of secondary businesses such as kennels. Further, the guidelines indicate that, for farm help employees, the property does not qualify for a farm help dwelling if alternative accommodation is available within 20 kilometers.

Daily traffic to and from the farm is expected to increase due to the expansion of the kennel. As part of application DP14-0202, the Development Engineering Branch requires that one of the two existing accesses be closed. The Subdivision, Development and Servicing Bylaw No. 7900 allows only one access per parcel unless it is required for farm use. In this case, the hayfield is leased to a neighbour and can be managed with one access. (See Section 6.2, below). Glenmore is an arterial road. Staff have been consistent with this stretch of Glenmore, given traffic complaints in the past. In addition, traffic is expected to increase once the connection to the University via John Hindle Drive is built (estimated completion 2016).

There is potential this kennel business will become the primary use of the A1-Agriculture parcel, instead of the secondary use as specified by the Zoning Bylaw.

4.0 Proposal

4.1 Background

The property has a dog and cat kennel business on the property. Kelowna Pet Resort Ltd. has recently purchased the property and plans to expand the dog kennel with capacity for 50 more dogs, including facilities for an indoor and outdoor dog run, and dog grooming. The project also includes a dog blanket business that is in accordance with a rural home based business under the Agricultural Land Reserve Use, Subdivision and Procedure Regulation B.C. Reg. 171/2002 (*the "ALR Regulation"*) and Section 11 of the City of Kelowna Zoning Bylaw No. 8000.

Approximately 1.9 ha (4.7 acres) of the property is farmed for hay. The property has 2 existing barns, and an agricultural accessory building that will house the dog blanket business. There is one single family dwelling and a mobile home on the property.

The mobile home was placed in the property in 1981 with an affidavit that it would be used solely for members of full time agricultural workers and their family, or seasonal farm workers, and also that it would not be rented or leased out.

4.2 Project Description

The applicant wishes to be able to rent an existing mobile home to a caretaker that will work at the kennel and be able to help in providing 24 hour care to the dog and cat kennels. (Refer to statement of purpose, attached). The plans for the new dog kennel and grooming business, are also attached.

4.3 Site Context

The subject property is located in the McKinley Sector of the City and is within the Agricultural Land Reserve. The future land use of the property is Resource Protection Area (REP). It is zoned A1 - Agriculture 1. It is outside of the Permanent Growth Boundary. (Maps 1 - 4, below). It is within the Glenmore Ellison Irrigation District water supply area.

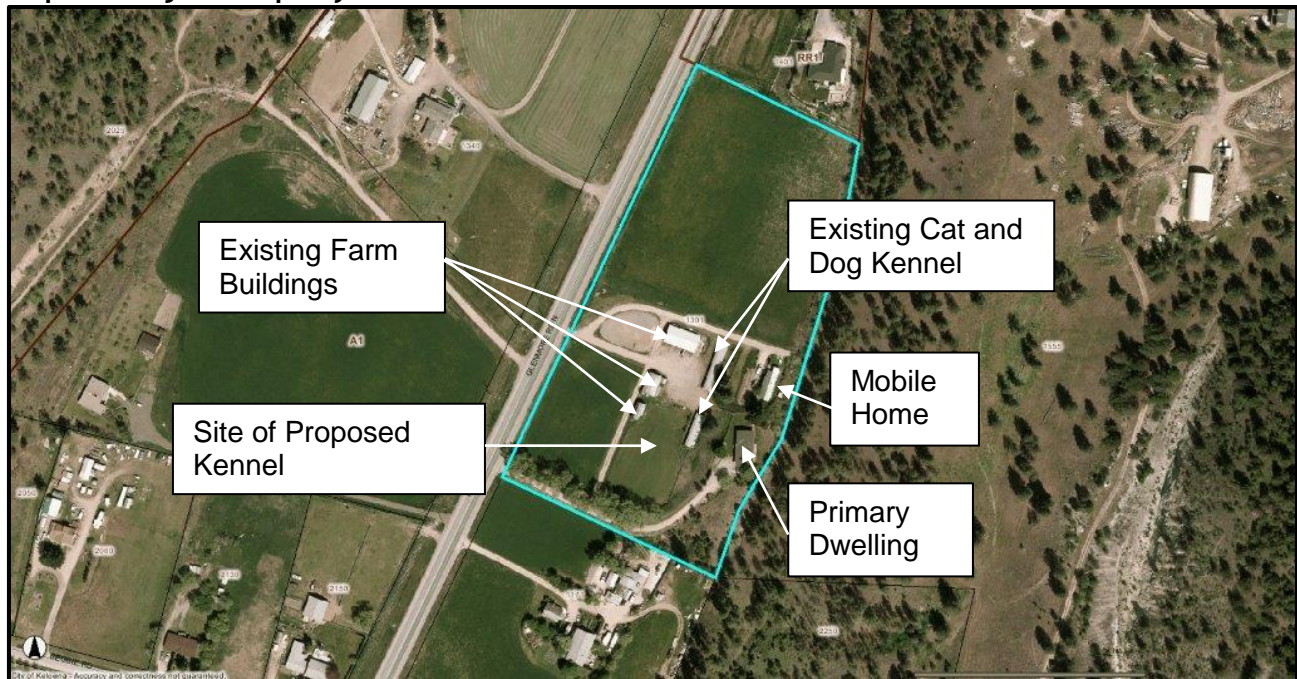
Parcel Summary:

Parcel Size: 3.45 ha (8.54 ac)
Elevation: 440 to 458 metres above sea level (masl)

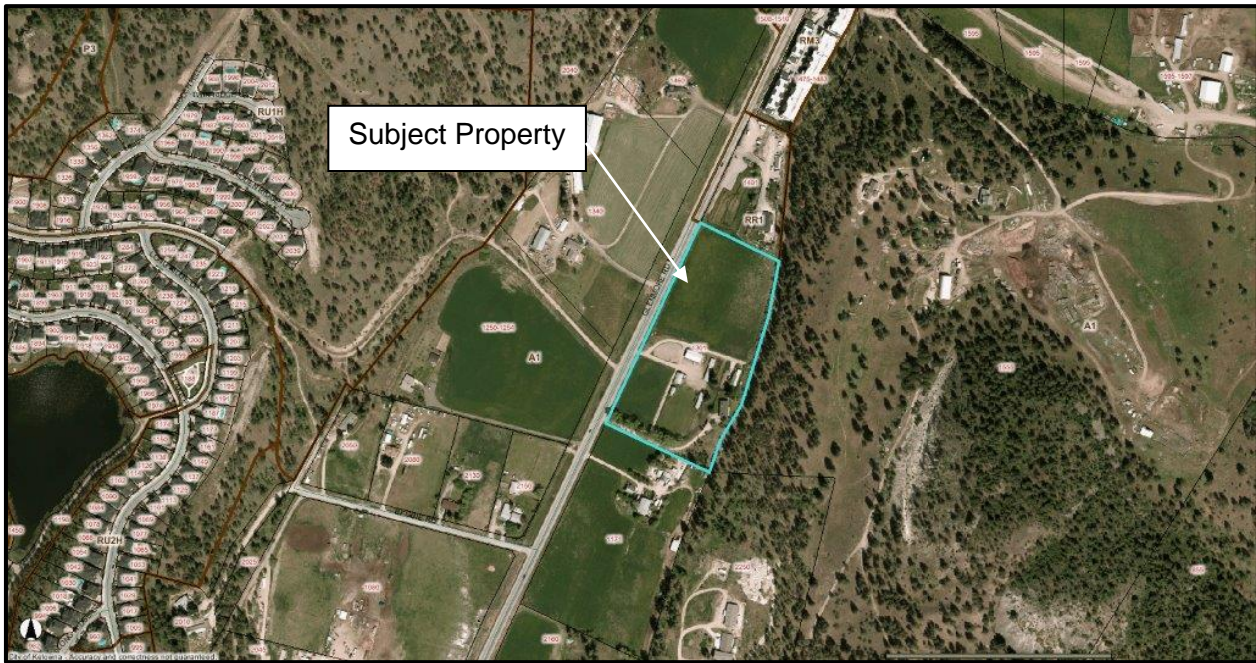
Specifically, adjacent land uses are as follows:

Direction	Zoning	ALR	Land Use
North	RR1 - Rural Residential 1	Yes	Rural Residential
South	A1 - Agriculture 1	Yes	Agriculture
East	A1 - Agriculture 1	No	Agriculture
West	A1 - Agriculture 1	Yes	Agriculture

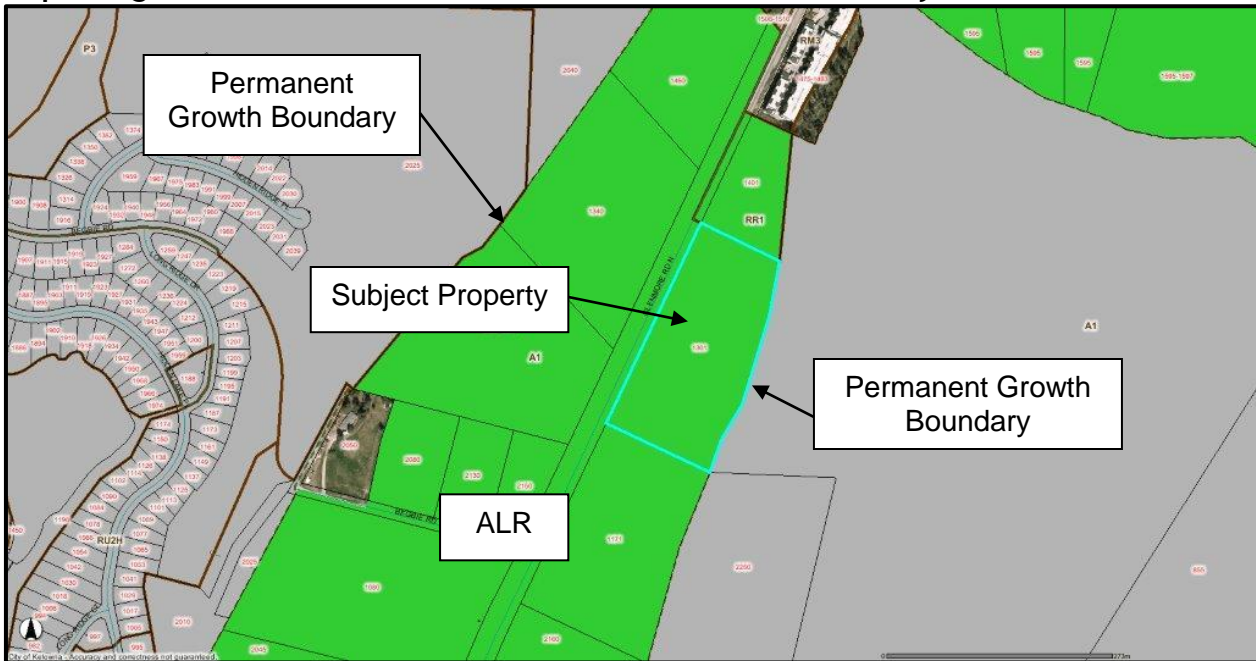
Map 1 - Subject Property



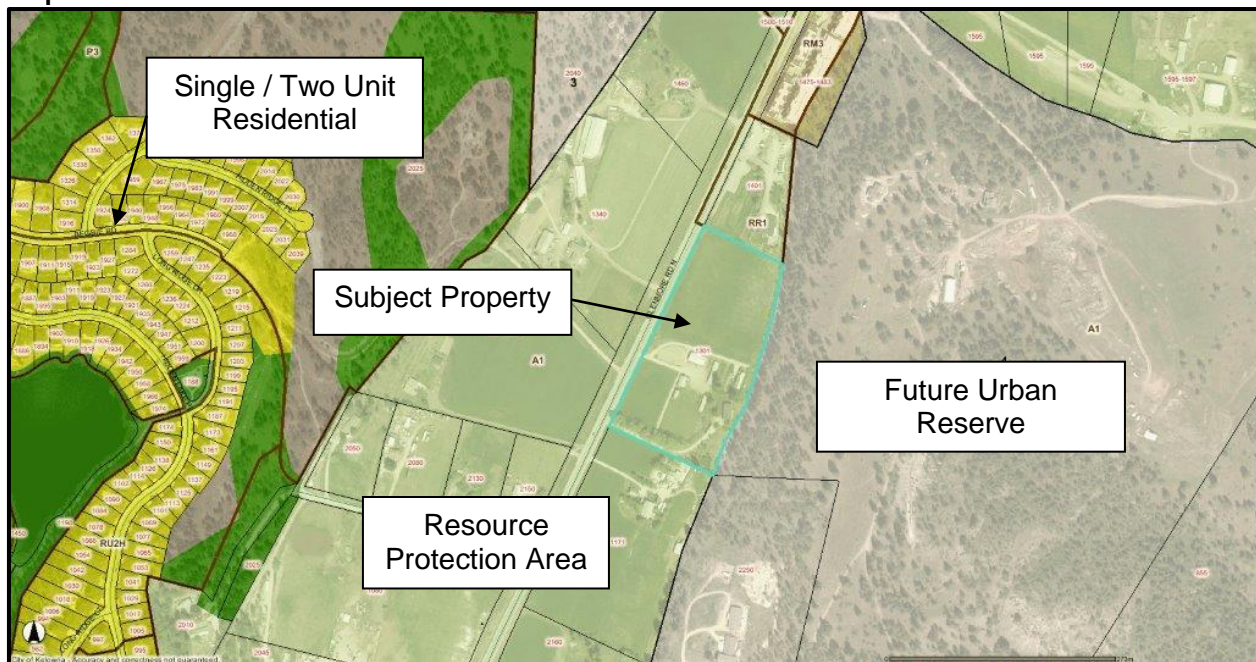
Map 2 - Neighbourhood Context



Map 3 - Agricultural Land Reserve and Permanent Growth Boundary



Map 4 - Future Land Use



5.0 Current Development Policies

The subject property has a future land use designation of Resource Protection Area and relevant policies are included below:

2030 Official Community Plan: Greening Our Future

Objective 5.33 Protect and enhance local agriculture².

Policy. 1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .3 Urban Uses. Direct urban uses to lands within the urban portion of the Permanent Growth Boundary, in the interest of reducing development and speculative pressure on agricultural lands.

Policy .7 Non-farm Uses. Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;
- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operations.

Objective 5.34 Preserve productive agricultural land³.

² City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

5.1 City of Kelowna Agriculture Plan

ALR Application Criteria⁴

Exclusion, subdivision, or non-farm use of ALR lands will generally not be supported. General non-support for ALR applications is in the interest of protecting farmland through retention of larger parcels, protection of the land base from impacts of urban encroachment, reducing land speculation and the cost of entering the farm business, and encouraging increased farm capitalization.

Defined Urban - Rural/Agricultural Boundary. Confirm support for the Agricultural Land Reserve and establish a defined urban - rural/agricultural boundary, as indicated on Map 14 - Urban - Rural/Agricultural Boundary, utilizing existing roads, topographic features, or watercourses wherever possible;

Farmland Preservation. Direct urban uses to land within the urban portion of the defined urban - rural / agricultural boundary, in the interest of reducing development and speculative pressure, toward the preservation of agricultural lands and discourage further extension of existing urban areas into agricultural lands;

5.2 Agricultural Land Commission

The Agricultural Land Commission (ALC) has no limit on the number of residences permitted on a parcel, but all residences must be required for farm use. The policies which outline residential use are outlined below.

Policy #9 - Additional Residences for Farm Use⁵

Agricultural Land Commission Act, 2002, Section 18

- 18** *Unless permitted by this Act, the regulations or the terms imposed in an order of the commission,*
- (a) a local government, or an authority, a board or another agency established by it or a person or an agency that enters into an agreement under the Local Services Act may not*
 - (ii) approve more than one residence on a parcel of land unless the additional residences are necessary for farm use*

Policy # 8 - Permitted Uses in the ALR: Residential Use⁶

Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Reg. 171/2002), the "Regulation", Section 3 (1) (b)

- Section 3 (1)** *"the following land uses are permitted in an agricultural land reserve unless otherwise prohibited by a local government bylaw:*
- (b) for each parcel,*
 - (i) one secondary suite within a single family dwelling, and*
 - (ii) one manufactured home, up to 9 m in width, for use by a member of the owner's immediate family;*

³ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

⁴ City of Kelowna Agriculture Plan (1998); p. 130.

⁵ BC Reg., 2002. Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Reg. 171/2002); Policy #9

⁶ BC Reg., 2002. Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Reg. 171/2002); Policy #8

Section 1 (1) *"immediate family" means, with respect to an owner, the owner's*

- (a) parents, grandparents and great grandparents,*
- (b) spouse, parents of spouse and stepparents of spouse,*
- (c) brothers and sisters, and*
- (d) children or stepchildren, grandchildren and great grandchildren;*

6.0 Technical Comments

6.1 Building & Permitting Department

Development Cost Charges (DCC's) are required to be paid prior to issuance of any Building Permits.

Full Plan check for Building Code related issues will be done at time of Building Permit applications.

6.2 Development Engineering Department

Comments provided for DP14-0202 (Kennel Building) per below:

Domestic water and fire protection

The property is located within the Glenmore Ellison Improvement District service area.

Ensure an adequately sized domestic water and fire protection system is in place. The developer is required to make satisfactory arrangements with the GEID for these items. All charges for service connection and upgrading costs are to be paid directly to the GEID.

Sanitary Sewer

- a) This subject parcel is within the City service area. The developer's consulting mechanical engineer will determine the development requirements of this proposed development and establish the service needs.
- b) The developer at his cost, will arrange for the installation of the service. Performance security and a Servicing Agreement is required for work within the road right-of-way
- c) On-site servicing will be reviewed by Building & Permitting.

Road Access

- a) With regards to driveway access onto Glenmore Road North, the property will be limited to one access. Ensure that sightlines are not obstructed for a minimum of 110 meters in both directions.

6.3 Irrigation District

The property is currently supplied with domestic and irrigation water for the two existing residences and the acreage. In addition, the kennel operations on the property are interconnected to the water supply for one of the residences.

GEID has provided comments (see DP14-0202) regarding the new kennel building.
GEID has no comments regarding this ALR application.

7.0 Application Chronology

Date of Application Received: October 16, 2014

Agricultural Advisory Committee No Quorum - No AAC Meeting available

Report prepared by:

Melanie Steppuhn, Land Use Planner

Reviewed by: ☐ Todd Cashin, Manager, Environment & Land Use

Approved for Inclusion ☐ Doug Gilchrist, Divisional Director, Community Planning & Real Estate

Attachments:

Photos
Subject Property Map
ALR Map
Letter of Rationale
Site Plan - Kennel
Conceptual Elevations - Kennel

PHOTOS

Photo 1: Mobile Home (background) and Cat Kennel (foreground)



Photo 2: Mobile Home

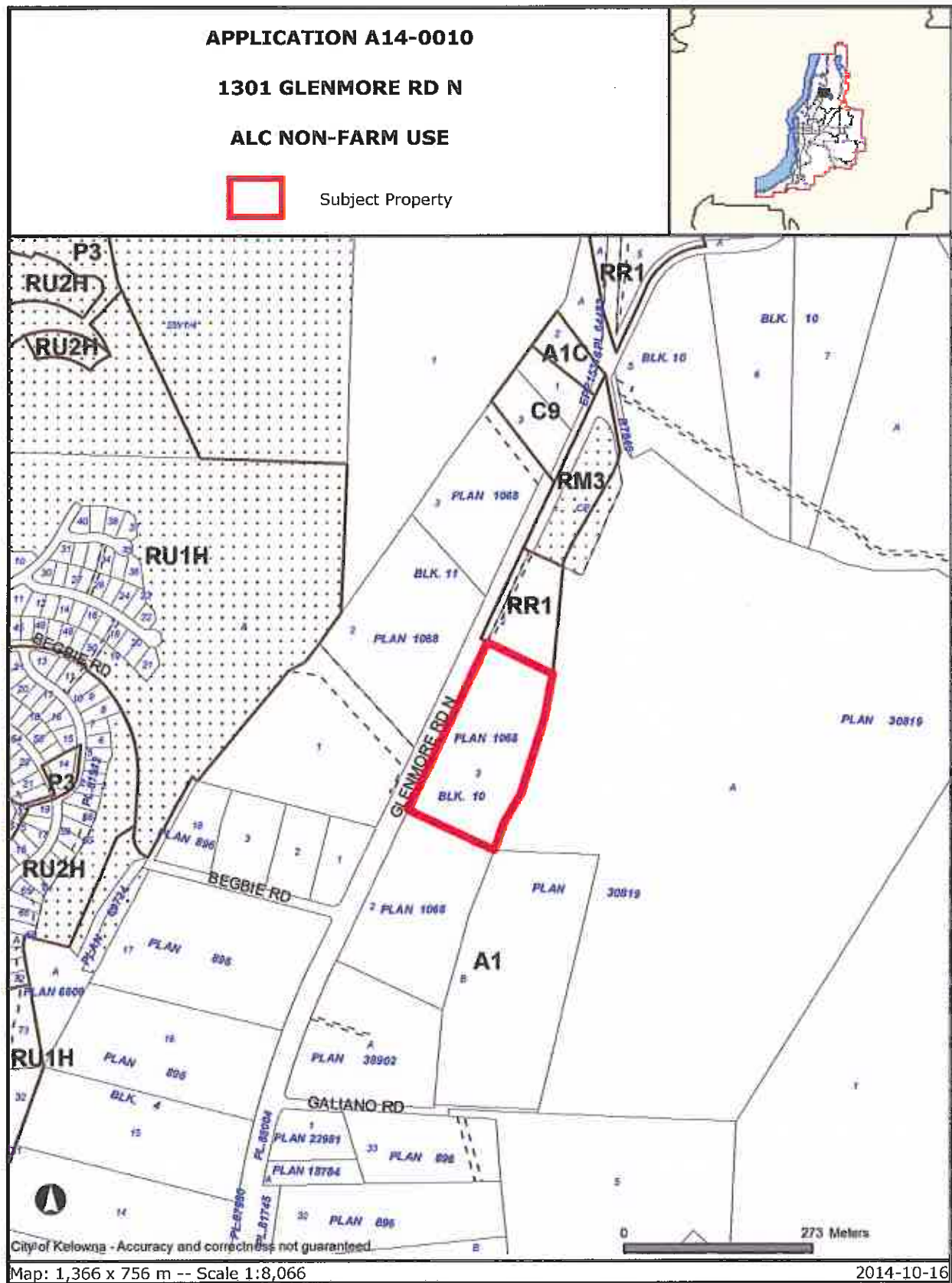


Photo 3: Mobile Home looking South

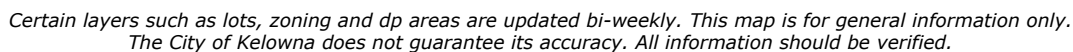


Photo 4: Mobile Home





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.



* Non farm application for the mobile home for either:

② Mobile home for family use ① Carriage house.

PROPOSAL (Please describe and show on plan or sketch) * ① first choice, if not possible please consider ②

There is an existing mobile home on the property. I believe it has been there for > 30 years. I run a dog and cat kennel on the property. The mobile home would serve of significant importance in the running of the kennel operation. It is a requirement (I think) to have employees stay overnight on occasion in the mobile home to ensure safety to the animals. It is a family run business, myself, my wife, [my wifes sister & husband (live in main house)], my sister, my mom and my dad. The mobile home would be a great asset for workers to stay when the main operators are not staying in their house for the care and safety of the animals.

CURRENT USE OF LAND (Show information on plan or sketch)

List all existing uses on the parcel(s) and describe all buildings

[Dog & cat kennel business, hay revenue.]
Lopdog lodge, cats meow motel, main house, mobile home, 2 barns, shop

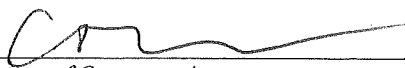
USES ON ADJACENT LOTS (Show information on plan or sketch)

North	~ 1/2 acre if my hay then single family home
East	forest
South	single family parcel on large acreage
West	glennmore road then cherry harvesting facility.

DECLARATION

I/we consent to the use of the information provided in the application and all supporting documents to process the application in accordance with the *Agricultural Land Commission Act* and regulation. Furthermore, I/we declare that the information provided in the application and all the supporting documents are, to the best of my/our knowledge, true and correct. I/we understand that the Agricultural Land Commission will take the steps necessary to confirm the accuracy of the information and documents provided.

Oct 1/14
Date


Signature of Owner or Agent

Chad Clark
Print Name

Date

Signature of Owner or Agent

Print Name

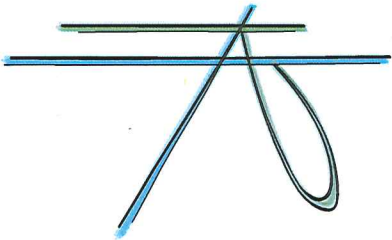
Date

Signature of Owner or Agent

Print Name

Please ensure the following documents are enclosed with your application:

- Application fee payable to the Local Government
- Certificate of Title or Title Search Print
- Agent authorization (if using agent)
- Map or sketch showing proposal & adjacent uses
- Proof of Notice of Application *(See instructions)
- Photographs (optional)



UPRISE DESIGN + DRAFTING INC.
12909 SHORELINE DR. WINFIELD BC
PH: 778.480.0341

KELOWNA PET RESORT
MALKIN CONSTRUCTION
DEVELOPMENT PERMIT DRAWINGS
DATE: SEPT 08, 2014
SCALE: AS NOTED

REVISIONS

ISSUED FOR DP	09/08/2014
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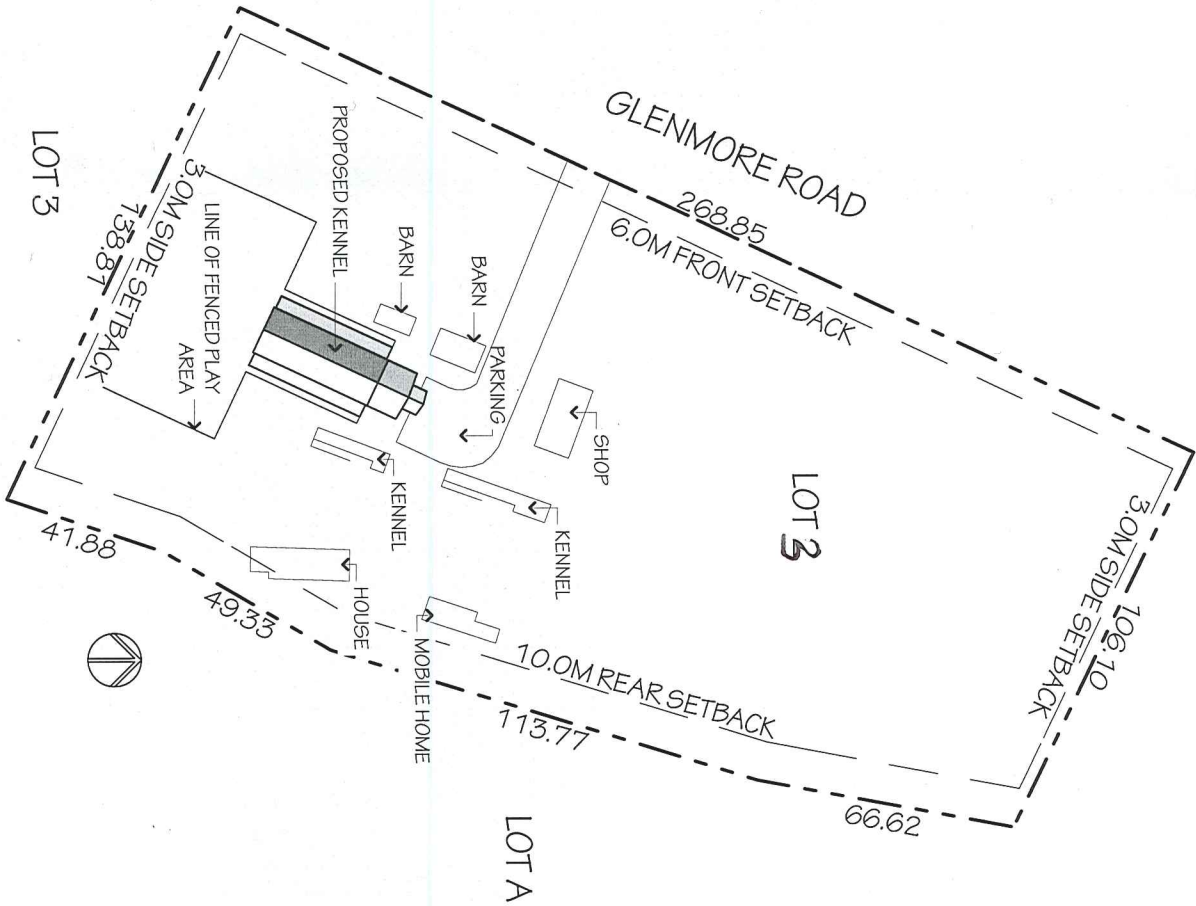
GENERAL NOTES

- 1. ALL PLANS AND DIMENSIONS MUST BE REVIEWED BY CONTRACTOR BEFORE CONSTRUCTION AND MUST VERIFY ANY DISCREPANCIES BETWEEN THE DRAWING AND EXISTING CONDITIONS PRIOR TO WORK BEING DONE.
- 2. CONTRACTOR MUST COMPLY WITH ALL CURRENT BUILDING CODES, BY-LAWS AND REGULATIONS.
- 3. THESE PLANS ARE FOR A SINGLE PROJECT AND THE COPYRIGHT BELONGS TO UPRISE DESIGN + DRAFTING INC. THE DESIGN MUST NOT BE COPIED AND THESE DRAWINGS MUST NOT BE DUPLICATED BY ANY PERSONS.

SITE

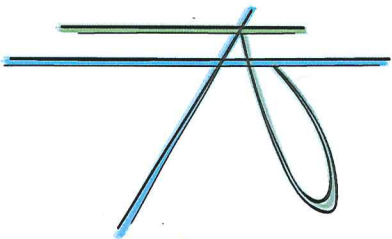
LEGAL: LOT 3, BLOCK 10, SECTION 9 AND 10,
TOWNSHIP 23, O.D.Y.D., PLAN 1068
CIVIC: 1301 GLENMORE ROAD NORTH,
KELOWNA, B.C

ZONED:	AGRICULTURAL - A1
SECONDARY USES:	KENNELS AND STABLES
FOOTPRINT:	453.5 M ²
EXTERIOR COVERED:	251.7 M ²
TOTAL:	705.2 M ²
LOT AREA:	34,568 M ² (3.45 HA)
SITE COVERAGE:	2.04%



SITE CONTEXT

SITE PLAN



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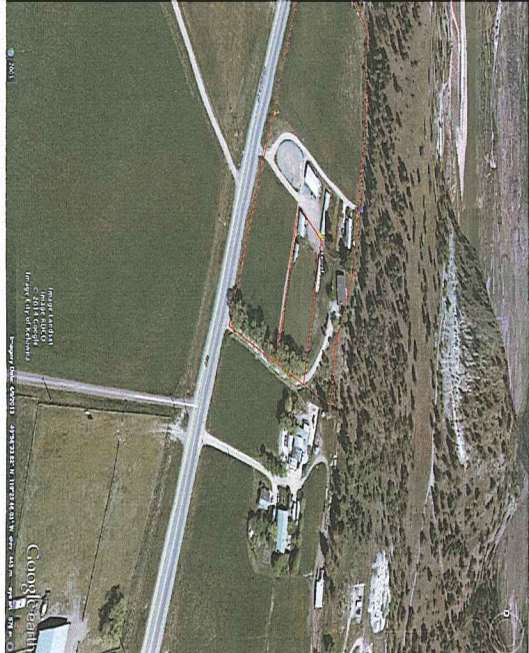
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CONTEXT AND
MASSING



EAST FACING



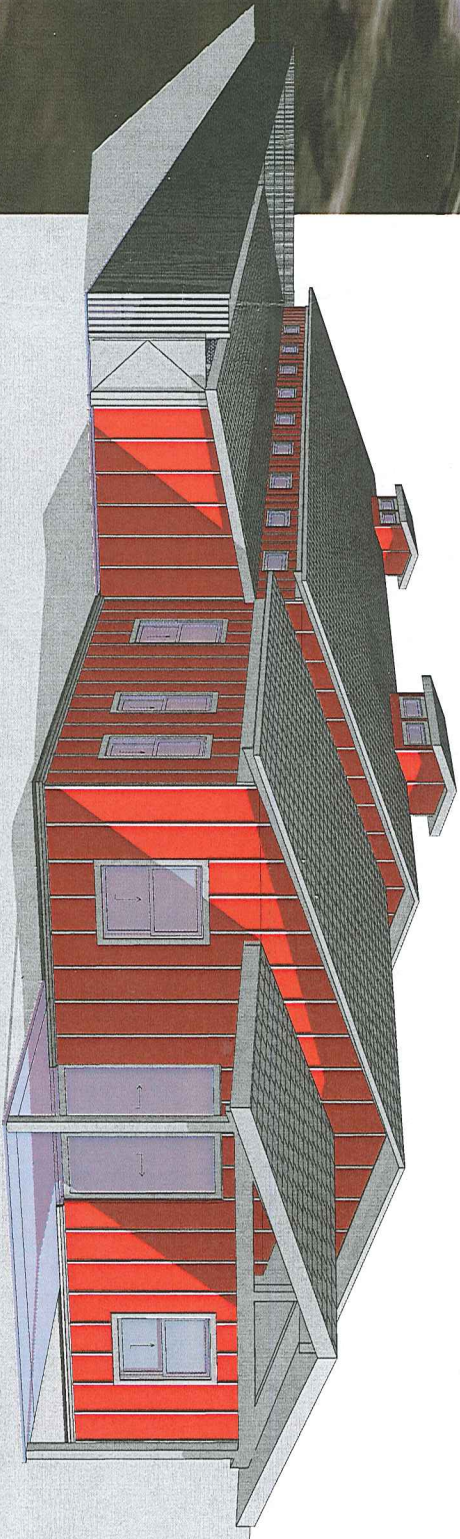
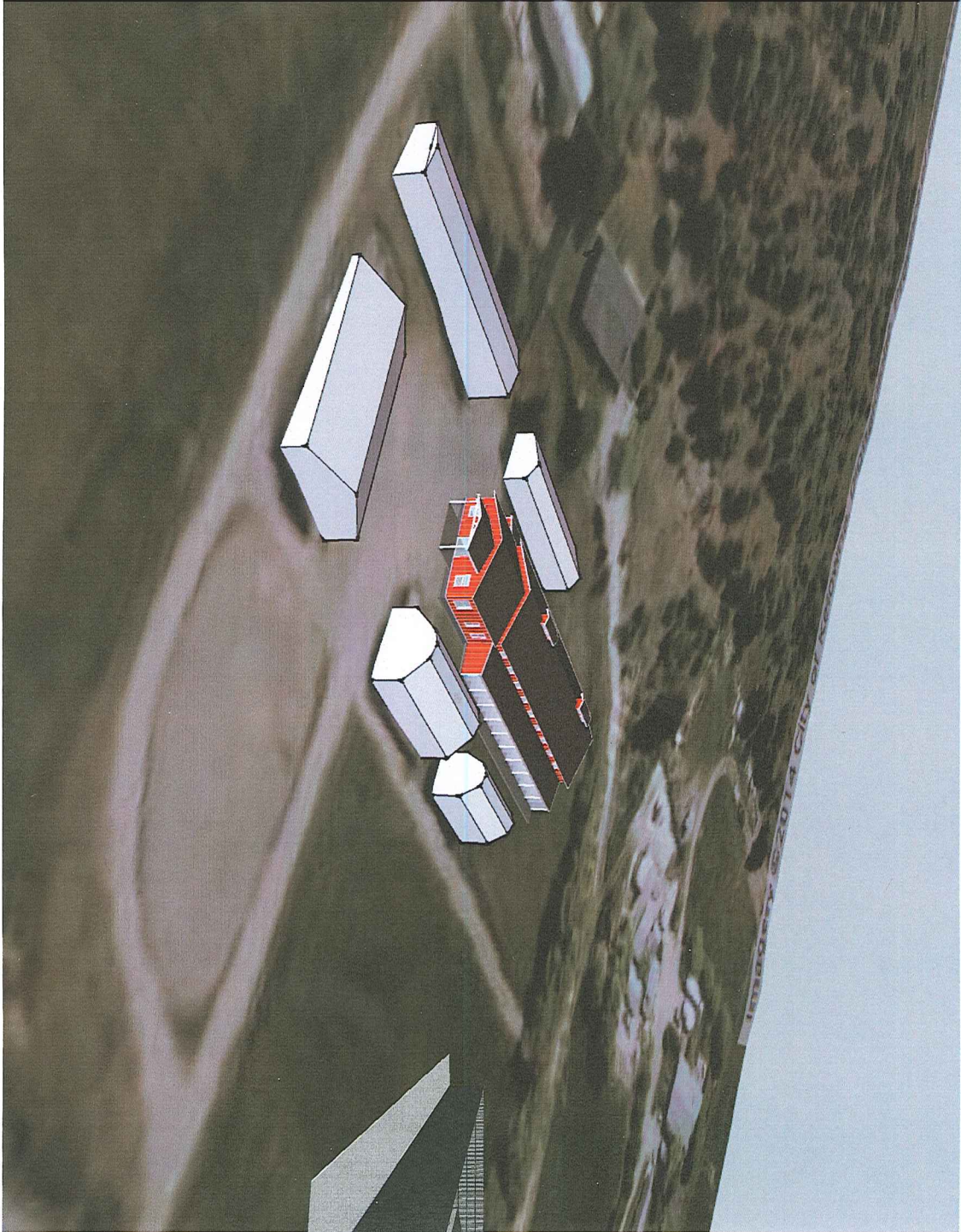
NORTH FACING

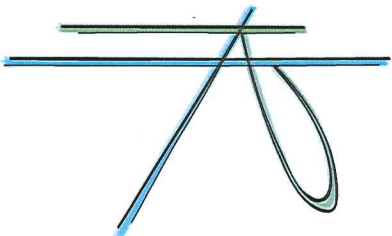


SOUTH FACING



WEST FACING





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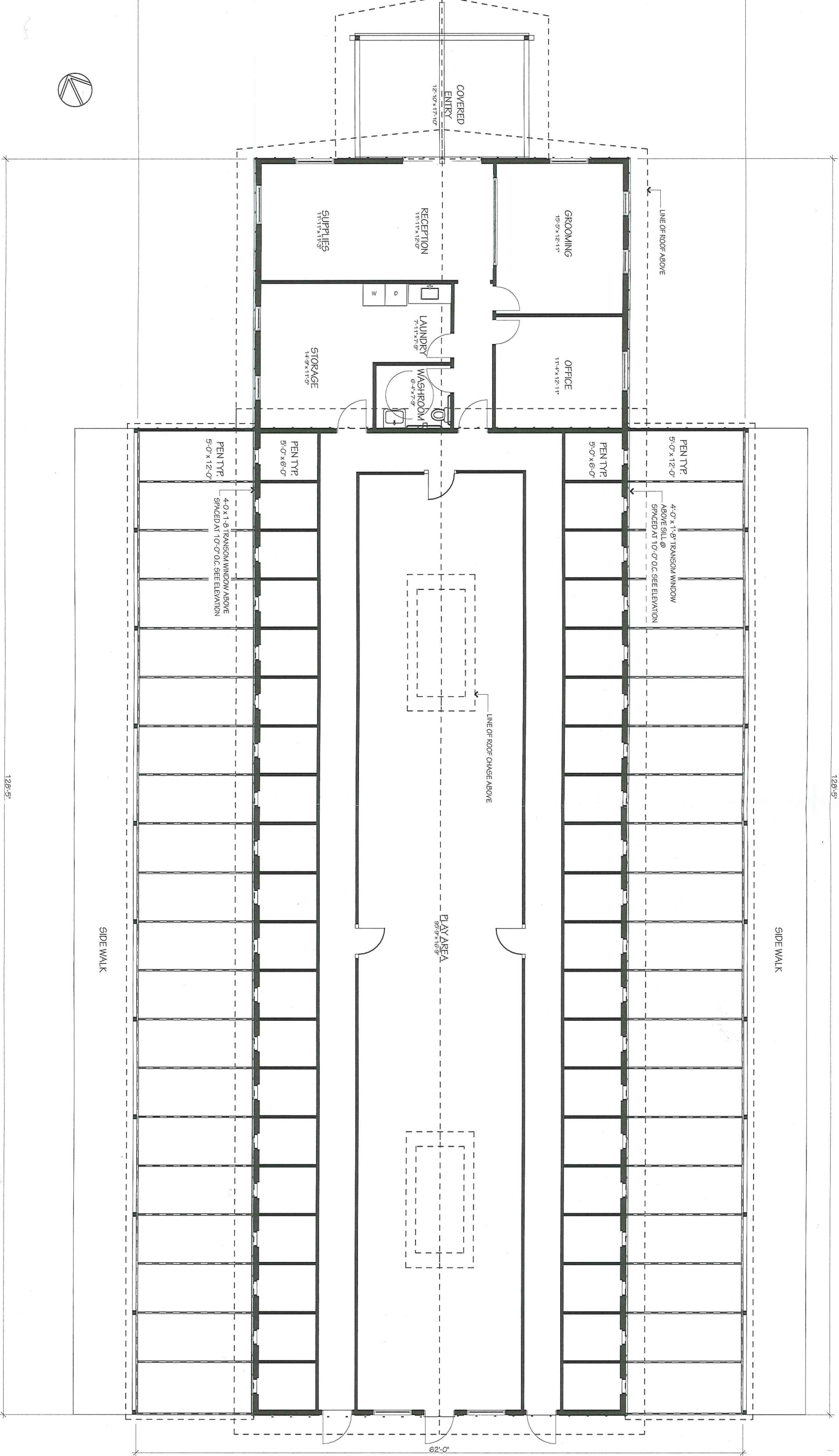
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REVISIONS

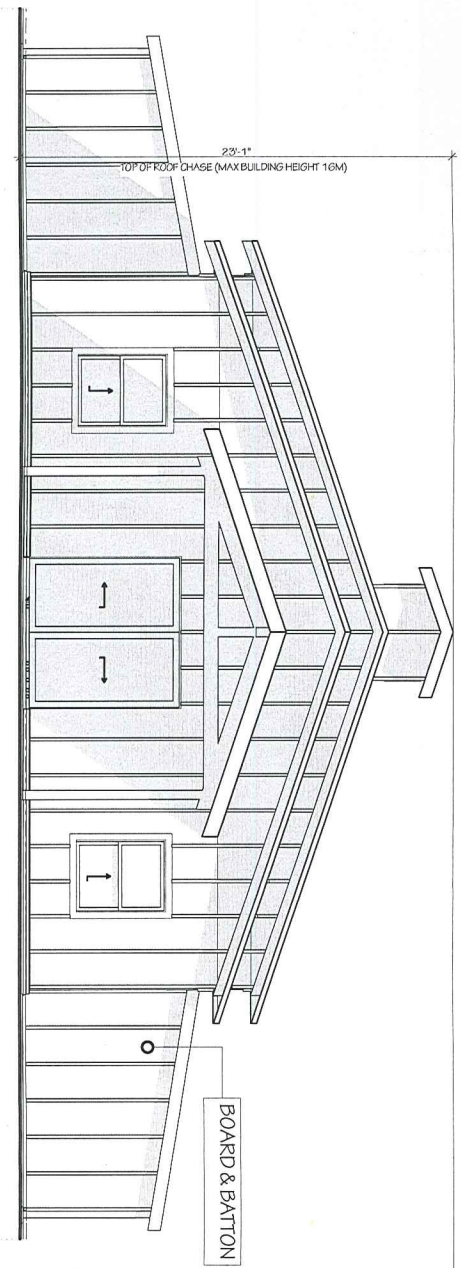
ISSUED FOR DP	09/08/2014
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PLAN

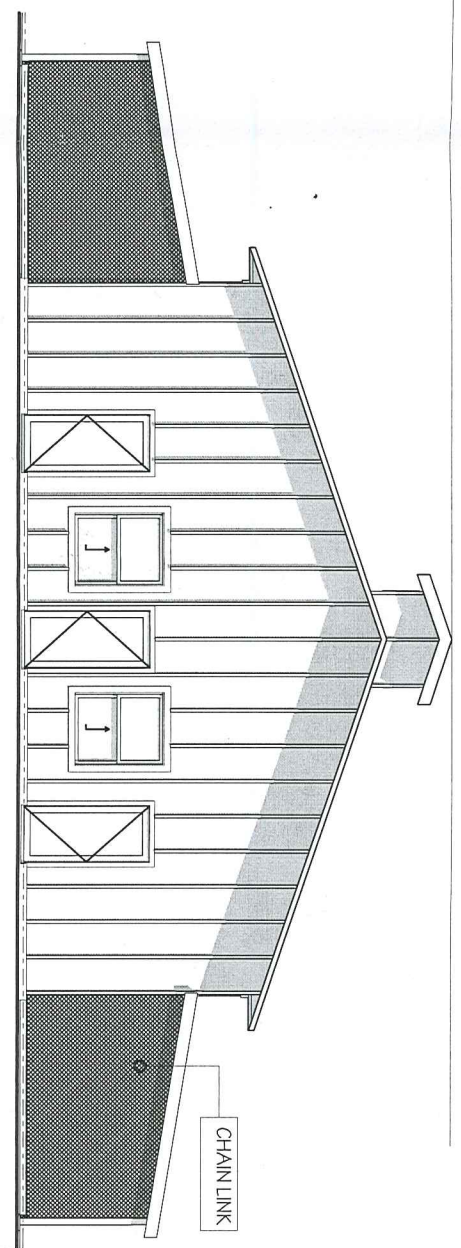


1
FLOOR PLAN



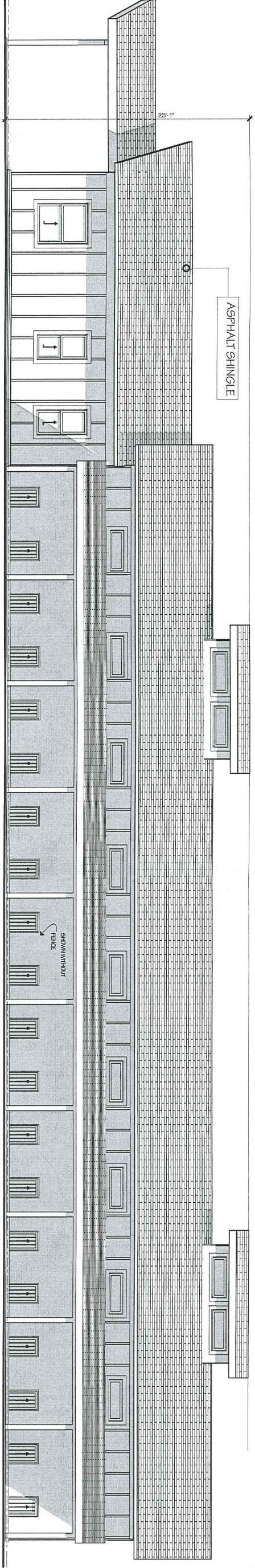
1 NORTH ELEVATION

SCALE: 3/32" = 1'-0"



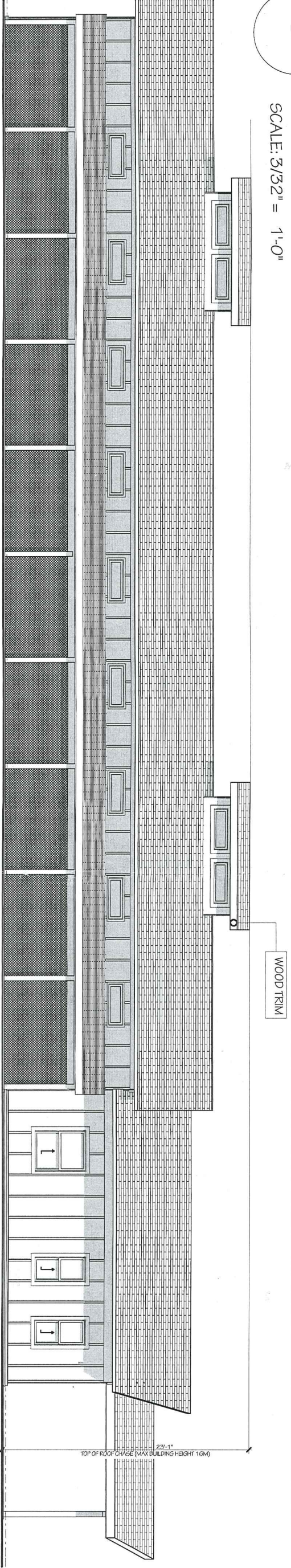
2 SOUTH ELEVATION

SCALE: 3/32" = 1'-0"

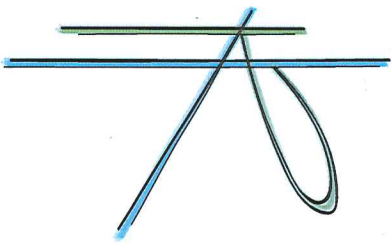


3 WEST ELEVATION

SCALE: 3/32" = 1'-0"



4 EAST ELEVATION



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DATE: SEPT 08, 2014
SCALE: AS NOTED

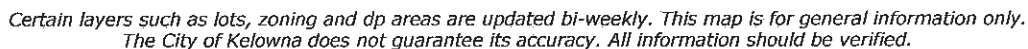
REVISIONS

ISSUED FOR DP 09/08/2014

GENERAL NOTES

1. ALL PLANS AND DIMENSIONS MUST BE REVIEWED BY CONTRACTOR BEFORE CONSTRUCTION AND MUST VERIFY ANY DISCREPANCIES BETWEEN THE DRAWING AND EXISTING CONDITIONS PRIOR TO WORK BEING DONE.
2. CONTRACTOR MUST COMPLY WITH ALL CURRENT BUILDING CODES, BY-LAWS AND REGULATIONS.
3. THESE PLANS ARE FOR A SINGLE PROJECT AND THE COPYRIGHT BELONGS TO UPRISE DESIGN + DRAFTING INC. THE DESIGN MUST NOT BE COPIED AND THESE DRAWINGS MUST NOT BE DUPLICATED BY ANY PERSONS.

ELEVATIONS



* non farm application for the mobile home for either :

② mobile home for family use ① Carriage house.

PROPOSAL (Please describe and show on plan or sketch)

* ① first choice, if not possible please consider ②

There is an existing mobile home on the property. I believe it has been there for > 30 years. I run a dog and cat kennel on the property. The mobile home would serve of significant importance in the running of the kennel operation. It is a requirement (I think) to have employees stay overnight on occasion in the mobile home to ensure safety to the animals. It is a family run business, myself, my wife, [my wife's sister & husband (live in main house)], my sister, my mum and my dad. The mobile home would be a great asset for workers to stay when the main operators are not staying in their house for the care and safety of the animals.

CURRENT USE OF LAND (Show information on plan or sketch)

List all existing uses on the parcel(s) and describe all buildings

[Dog & cat kennel business, hay revenue.]
Lap dog lodge, cats meet motel, main house, mobile home, 2 barns, shop

USES ON ADJACENT LOTS (Show information on plan or sketch)

North

~ 4 acres if any hay then single family home

East

forest

South

single family parcel on large acreage

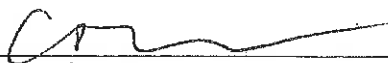
West

glenmore road then cherry harvesting facility.

DECLARATION

I/we consent to the use of the information provided in the application and all supporting documents to process the application in accordance with the Agricultural Land Commission Act and regulation. Furthermore, I/we declare that the information provided in the application and all the supporting documents are, to the best of my/our knowledge, true and correct. I/we understand that the Agricultural Land Commission will take the steps necessary to confirm the accuracy of the information and documents provided.

Oct 1/14
Date


Signature of Owner or Agent

Chad Clark
Print Name

Date

Signature of Owner or Agent

Print Name

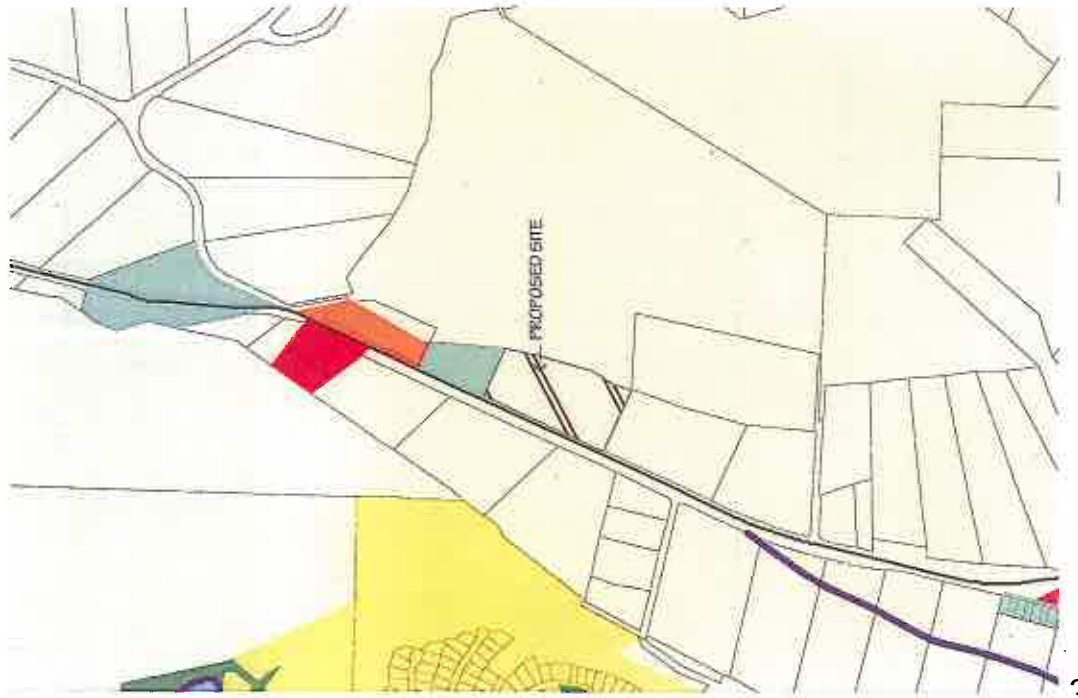
Date

Signature of Owner or Agent

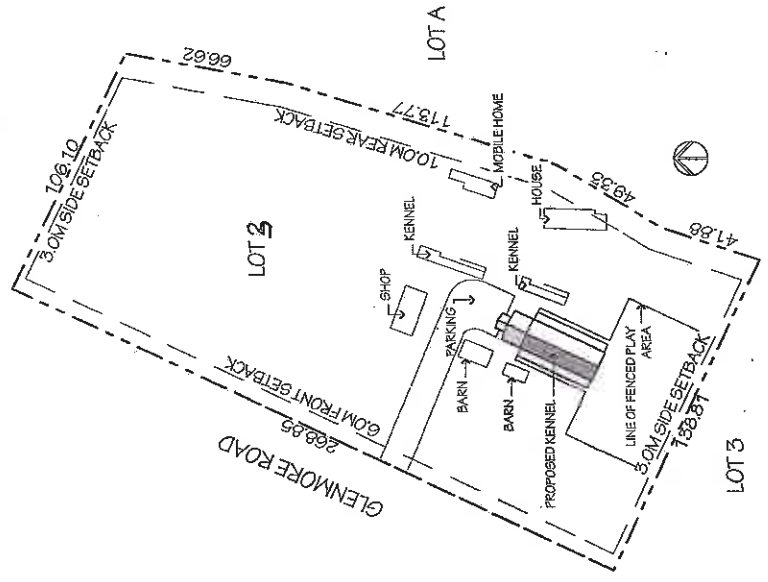
Print Name

Please ensure the following documents are enclosed with your application:

- Application fee payable to the Local Government
- Certificate of Title or Title Search Print
- Agent authorization (if using agent)
- Map or sketch showing proposal & adjacent uses
- Proof of Notice of Application *(See instructions)
- Photographs (optional)




39 1 SITE CONTEXT



2 SITE PLAN

LEGAL: LOT 3, BLOCK 10, SECTION 9 AND 16; TOWNSHIP 23, O.D.Y.D., PLAN 1068 CIVIC: 1301 GLENMORE ROAD NORTH, KELOWNA, BC	
ZONED:	AGRICULTURAL - A1
SECONDARY USES:	KENNELS AND STABLES
FOOTPRINT:	453.5 M ²
EXTERIOR COVERED:	251.7 M ²
TOTAL:	705.2 M ²
LOT AREA:	34,568 M ² (3.45 HA)
SITE COVERAGE:	2.04%



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12808 KURELINE DR. WINFIELD, BC
PH: 778.480.0341

KELOWNA PET RESORT
MALIKIN CONSTRUCTION
DEVELOPMENT PERMIT DRAWINGS
DATE: SEPT 08, 2014
SCALE: AS NOTED

REVISIONS

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	28/09/2014

GENERAL NOTES

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SITE

C. 7

1. ALL PLANS AND DIMENSIONS MUST BE REVIEWED BY CONTRACTOR BEFORE CONSTRUCTION AND MUST VERIFY ANY DISCREPANCIES BETWEEN THE DRAWING AND EXISTING CONDITIONS PRIOR TO WORK BEING DONE.

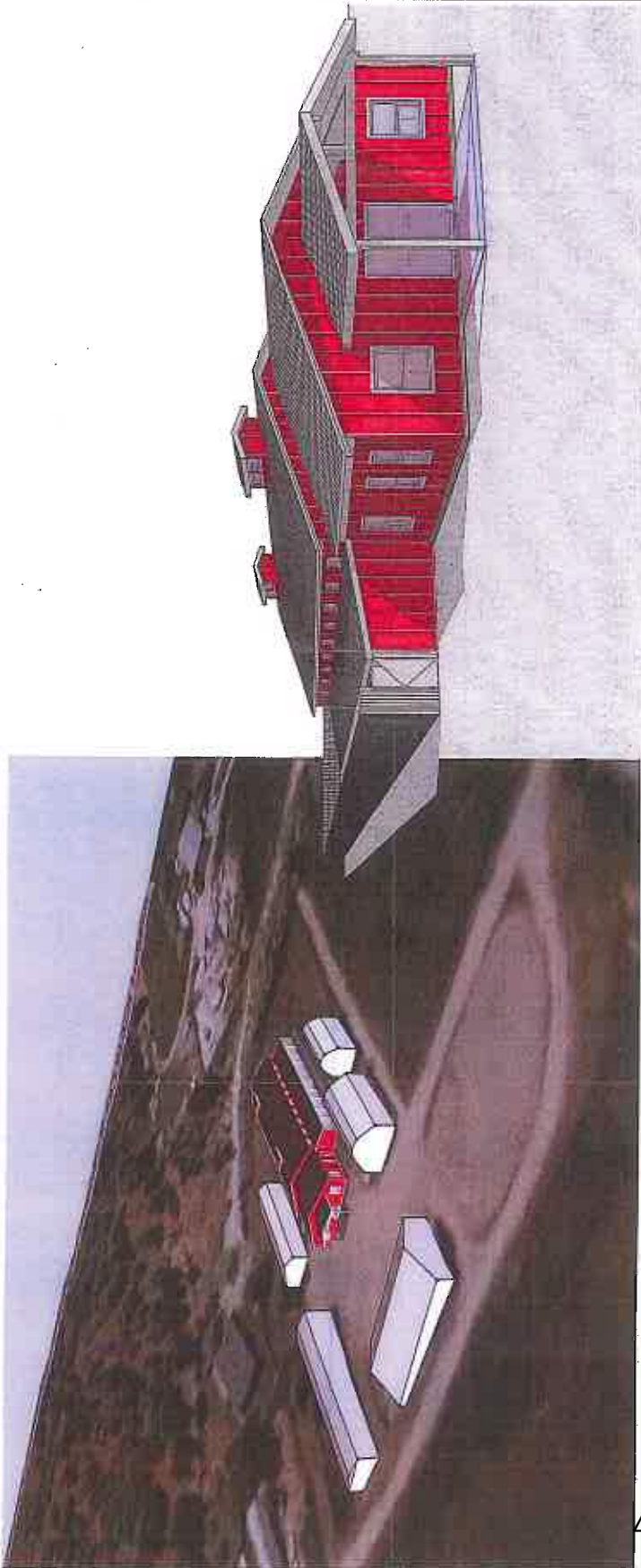
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[illegible]

KELOWNA PET RESORT
MALIKIN CONSTRUCTION
DEVELOPMENT PERMIT DRAWINGS
DATE: SEPT 08, 2014
SCALE: AS NOTED

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WEST FACING



SOUTH FACING

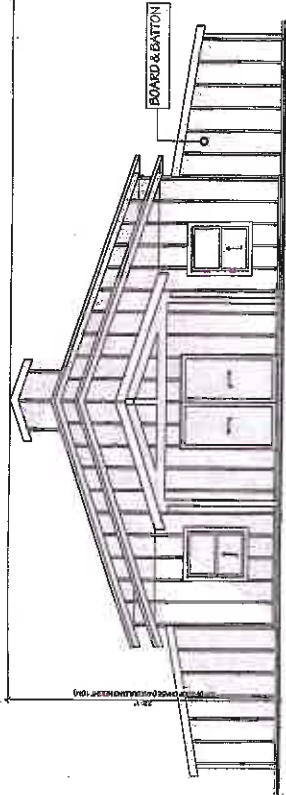


NORTH FACING



AST FACING

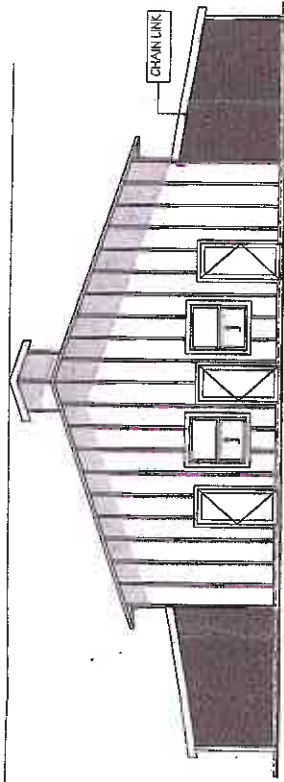




NORTH ELEVATION

1

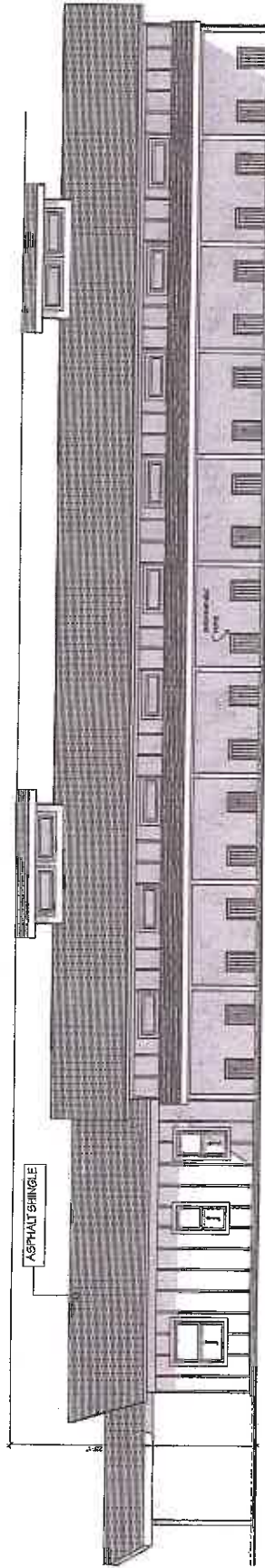
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SOUTH ELEVATION

2

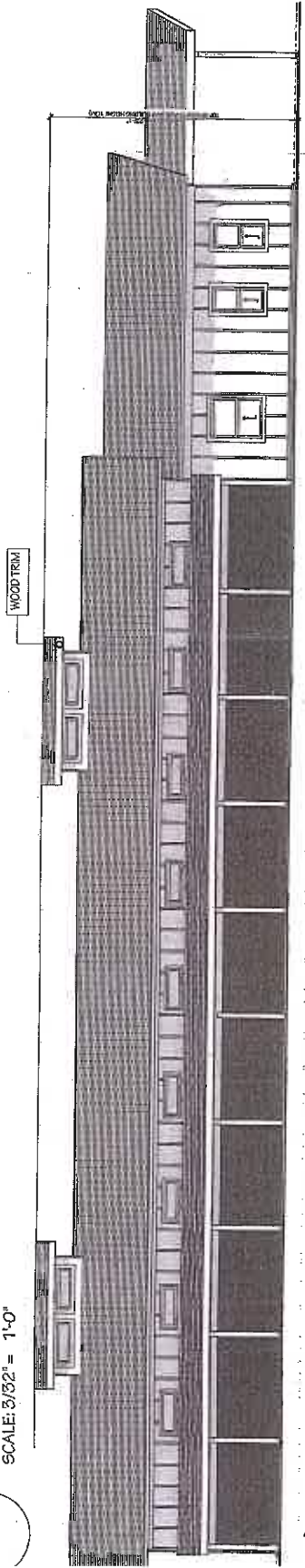
SCALE: 3/32" = 1'-0"



WEST ELEVATION

3

SCALE: 3/32" = 1'-0"



EAST ELEVATION

4

KELOWNA PET RESORT
MALIKIN CONSTRUCTION
DEVELOPMENT PERMIT DRAWINGS
DATE: SEPT 08, 2014
SCALE: AS NOTED

UPRISE DESIGN + DRAFTING INC.
12809 SHORELINE DR. WINFIELD, BC
PH: 778.480.0341



REVISIONS

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	09/08/2014

GENERAL NOTES

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ELEVATIONS

20

REPORT TO COUNCIL



Date: 12/15/2014
RIM No. 1210-21
To: City Manager
From: Subdivision, Agriculture & Environment Department (MS)
Application: Non-farm Use in the ALR - Soil Placement **Owner:** 11.2 Acre Holding Co. Ltd.
Address: 1590 Pioneer Road **Applicant:** R.G. (Bob) Holtby
Subject: Non-farm Use Application for Soil Placement in the Agricultural Land Reserve
Existing OCP Designation: Resource Protection Area
Existing Zone: A1 - Agriculture 1

1.0 Recommendation

THAT Agricultural Land Reserve Appeal Application No. A14-0005 for *Lot A, Section 8, TWP 26, ODYD Plan KAP60919 Except Plan KAP60920*, located at 1590 Pioneer Road for Non-farm Use, pursuant to Section 20(3) of the *Agricultural Land Commission Act*, NOT be supported by Municipal Council;

AND THAT the Municipal Council directs staff to forward the subject application to the Agricultural Land Commission for consideration.

2.0 Purpose

To obtain approval from the Agricultural Land Commission (ALC) under Section 20(3) of the ALC Act for a "non-farm use" within the Agricultural Land Reserve (ALR) to permit the activity of soil placement within the ALR.

3.0 Subdivision, Agriculture & Environment Department

In the Fall of 2013, the ALC was alerted to the placement of fill by a neighbour. Reportedly, 1192 cubic metres of mineral soil had been placed without the required approval of the ALC. Subsequently, the property owner hired a professional agrologist (Mr. R.G. Holtby, P.Ag.) that has made application on behalf of his client and also submitted a professional agrology report (attached).

Staff are typically supportive of soil enhancements that will result in a net benefit to agriculture. However, Staff has reviewed the information provided by the applicant and cannot support this Non-farm Use Application to deposit soil on the property as currently proposed, based on the following concerns:

- A City of Kelowna Soil Permit was not obtained for the fill placement.
- The imported soil is from an unknown school construction site and consists primarily of mineral soil with little to no organic content.
- The existing native topsoil on the property has been covered over by the imported soil.
- Fertility testing has not been conducted for either the imported soil or the native topsoil.
- Potential drainage impacts, both surface and groundwater, have not been assessed.

A drainage assessment was requested however the applicant indicated that the contouring of the fill was not yet completed, that the final grading would be completed such that the neighbouring properties would not be impacted and therefore an assessment was not required.

The Agricultural Advisory Committee identified a number of concerns with the application and felt that the following should be required:

- A drainage and groundwater impact assessment be completed that assesses the potential impacts on the neighbouring properties; and
- As a possible mitigation measure, that the fill be moved over, native topsoil salvaged, fill spread, and the topsoil replaced over the fill, as long as there are no impacts to the neighbouring properties with respect to surface or groundwater.

In addition, the Regional Agrologist (Ministry of Agriculture staff member) recommended that a peer review be completed by a second agrologist after mitigation recommendations are completed (outlined in the attached agrology report), to confirm that the desired results have been achieved. The Regional Agrologist also recommended that a performance bond be held until this is completed¹.

Staff notes that with respect to the drainage impacts the City of Kelowna Agricultural Plan states that farm drainage is not the responsibility of the City, but should involve the ALC².

4.0 Proposal

4.1 Background / Project Description

The applicants are seeking permission from the Agricultural Land Commission (ALC) to place fill on the property. A letter was written to the owner indicating that the activities were in contravention of the ALC Act³. Reportedly, 1192 cubic metres of mineral soil had been placed without approval of the ALC (see attached photos). The fill reportedly came from a school construction site but both the owner and the applicant are unsure of which school.

The owner retained an agrologist who prepared a report that outlines the conditions of the property, the nature of the fill, and the agricultural impact resulting from the fill placement. The owner has indicated that no additional fill will be placed on the subject property.⁴ According to the agrology report, the intent of the fill was to raise the ground level above the water table, to improve drainage and improve the land for pasture and grazing.

¹ Withler, C. November, 2014. Personal communication.

² City of Kelowna Agriculture Plan (1998); p. 111.

³ MacLeod, R. Feb. 26, 2014. Agricultural Land Commission, Agricultural Land Commission Compliance and Enforcement Officer. Letter to Mr. Lovig.

⁴ Lovig, B., June 19, 2014. Personal Communication.

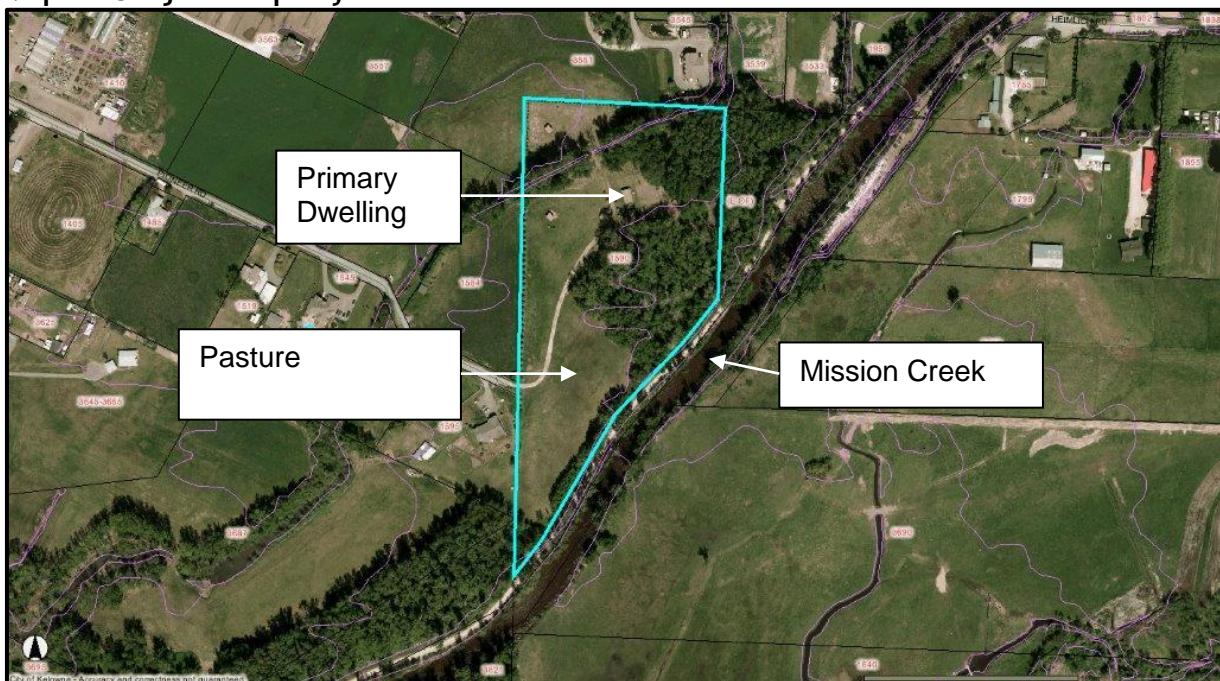
4.2 Site Context

The subject property is located in the South Pandosy / KLO Sector of the City and is within the Agricultural Land Reserve. The future land use of the property is Resource Protection Area (REP), with a ribbon of park use along the edge of Mission Creek. The property is zoned A1 - Agriculture 1 (Maps 1 - 3, below), is outside of the Permanent Growth Boundary and is located within the natural floodplain of Mission Creek. While protected by the Mission Creek dike, the area can be impacted by groundwater during periods of high water. The property is 4.54 ha (11.21 ac) and is currently farmed for hay and pasture.

Parcel Summary:

Parcel Size: 4.54 ha (11.21 ac)
Elevation: 348 - 349 metres above sea level (masl)

Map 1 - Subject Property



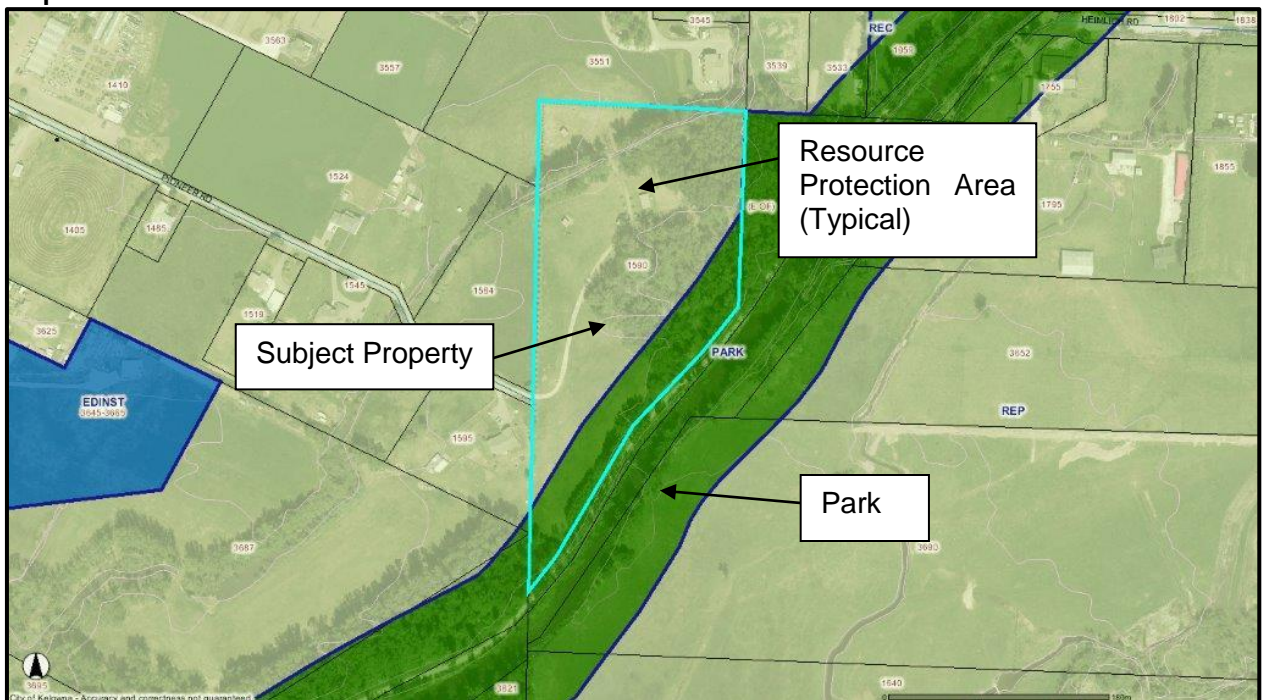
Zoning and land uses adjacent to the property are as follows:

Direction	Zoning	ALR	Land Use
North	A1 - Agriculture 1	Yes	Rural / Agricultural
South	A1 - Agriculture 1	Yes	Mission Creek Park
East	A1 - Agriculture 1	Yes	Mission Creek Park
West	A1 - Agriculture 1	Yes	Rural / Agricultural

Map 2 - ALR



Map 3 - Future Land Use



4.3 Agricultural Land and Soil Capability

A professional agrology report by Mr. R.G. Holtby, P.Ag., has been submitted as part of the application package (attached). The agrology results indicate that the Canada Land Inventory (CLI) map rated the property as having 50% Class 4, 40% Class 3 and 10% Class 2 land, all with limitations related to excessive wetness. The agrology results are consistent with the CLI mapping.

The agrology report also provides a comparison of parent materials and fill, whereby the fill material has a higher sand content and lower silt and clay content, indicating that the fill material would drain more freely than the parent material. The author has indicated that this attribute has improved the land for horse grazing, reducing the risk of foot rot⁵.

The report further notes that the fill material came from the construction of a school. It does not specifically mention if the material was topsoil or mineral soil. The agrology report does not include soil fertility testing or discuss the organic content of the fill material.

The agrology report presents the argument that the soil placement is potentially a 'normal farm practice', as provided for under the *Farm Practices Protection (Right to Farm) Act*⁶.

The report provides a number of recommendations for the fill placement that will provide improvements for the benefit of agriculture⁷. These include:

1. Removing large boulders;
2. Level and plant a green manure crop (e.g. fall rye), which should then be sown into the soil to add organic matter;
3. Plow, disk and harrow the green manure crop into the soil to provide a seed bed;
4. Seed hay and pasture grass mix; and
5. Add fertilizer.

To date, the soil piles have been spread and leveled on the property.

4.4 Surface Drainage and Groundwater

An assessment report regarding potential surface water and groundwater impacts to the property or surrounding property has not been provided. The recommendation from the Agricultural Advisory Committee to Council is that one be completed. However, the applicant has indicated that the grading of the imported fill has yet to be completed, but that it would be completed in a manner that ensures the neighbours would not be impacted by drainage and therefore, in the opinion of the applicant team, an assessment was not required.

5.0 Current Development Policies

5.1 City of Kelowna - Soil Deposit Bylaw No. 9612

Section 4 - Restrictions

Section 4.1 Except as otherwise permitted in this bylaw, no person shall **deposit or remove soil**,

⁵ Holtby, R.G., June 17, 2014. Personal Communication.

⁶ RSBC, 1996. Farm Practices Protection (Right to Farm) Act.

http://www.bclaws.ca/civix/document/id/complete/statreg/96131_01

⁷ Holtby, R.G., May 15, 2014. A Report on an Application for Fill. Client 11.2 Acre Holding Company Ltd.

or undertake any action which results in the **deposit or removal of soil**, on any **land** within the City until a Permit for such deposit or removal is approved by the Subdivision Approving Officer pursuant to the provisions of this Bylaw.

5.2 Kelowna Official Community Plan

Objective 5.33 Protect and enhance local agriculture⁸.

Policy. 1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Policy .7 Non-farm Uses. Support non-farm use applications on agricultural lands only where approved by the ALC and where the proposed uses:

- are consistent with the Zoning Bylaw and OCP;
- provide significant benefits to local agriculture;
- can be accommodated using existing municipal infrastructure;
- minimize impacts on productive agricultural lands;
- will not preclude future use of the lands for agriculture;
- will not harm adjacent farm operations.

Objective 5.34 Preserve productive agricultural land⁹.

5.3 City of Kelowna Agriculture Plan

Refer to Appendix A.

5.4 Agricultural Land Commission

Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Reg. 171/2002), the "Regulation", Section 2 (2) (o):

Section 2 (2) "the following activities are designated as farm use for the purposes of the Act and may be regulated but must not be prohibited by any local government bylaw except a bylaw under section 917 of the Local Government Act:

(o) the construction, maintenance and operation of farm buildings including, but not limited to any of the following:

- (i) a greenhouse;*
- (ii) a farm building or structure for use in an intensive livestock operation or for mushroom production;*
- (iii) an aquaculture facility;*

Section 4 - Unless permitted under the Water Act or the Waste Management Act, any use specified in subsection (2) includes soil removal or placement of fill necessary for that use as long as it does not

- (a) cause danger on or to adjacent land, structures or rights of way, or*
- (b) foul, obstruct or impede the flow of any waterway."*

⁸ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.33.

⁹ City of Kelowna 2030 Official Community Plan: Greening Our Future (2011), Development Process Chapter; p. 5.34.

Section 5 (2) The owner must notify the commission and the applicable local government or treaty first nation government of the owner's intent to remove soil or place fill for the uses described in subsection (1) at least 60 days before engaging in the intended use by filing with the commission a notice in a form acceptable to the commission.

6.0 Technical Comments

6.1 Development Engineering Department

Development Engineering comments and requirements pertaining to this application are:

- The Development Permit application to place approximately 1192 cubic meters does not compromise the City of Kelowna servicing requirements.
- Efforts must be made to ensure that tracking of materials onto City roads is kept to a minimum. Street sweeping, sediment and dust control will be the responsibility of the applicant.

6.2 Environment

Environmental staff comments pertaining to this application are:

- Groundwater and surface water issues can be compounded if land filling causes displacement of ground and surface water towards neighbouring properties. Surface and groundwater relief should not inundate neighbouring properties and there should not be a large elevation disparity between neighbouring properties.
- A drainage plan should be prepared by a professional hydrological engineer to determine impacts resulting from the fill to neighbouring properties. Should impacts to surrounding properties resulting from the fill be determined, the report should include recommendations for surface and groundwater mitigation. If the report determines that no impacts to neighbouring properties have resulted from the fill, then this needs to be clearly stated in the report.
- There should also be a fill placement buffer with neighbours to the west, the large environmentally sensitive area (e.g. Cottonwood stands along Mission Creek) and the Wilson Creek Riparian Management Area.
- Depending on results from the above, a Natural Environment Development Permit may also be required by the City of Kelowna. If a DP is triggered, it will ensure that the fill placement will not impact the environmentally sensitive areas on the property:
 - Wilson Creek Riparian Area
 - Cottonwood stands
- Should any additional fill be placed, notification to the ALC according to the ALC Regulation¹⁰ procedures.

¹⁰ BC Reg. 171/2002. Agricultural Land Reserve Use, Subdivision and Procedure Regulation (BC Reg. 171/2002), the "Regulation" http://www.alc.gov.bc.ca/legislation/policies/Pol18-03_fill-farmbuildings.htm

6.3 Ministry of Agriculture

The Ministry of Agriculture's Regional Agrologist has commented that the recommendations for agricultural soil improvements of the agrology report¹¹ be completed and that a site visit by a qualified professional be conducted at the completion of the recommended works (attached).

7.0 Application Chronology

Initial Complaint Received:	Spring 2013
Soil Permit Application Received:	July 12, 2013
ALC Correspondence Received:	Fall 2013
Date of Application Received:	May 21, 2014
Date Circulation Complete:	June 7, 2014
Agricultural Advisory Committee:	June 26, 2014
Confirmation from applicant that no additional info forthcoming:	December 3, 2014

8.0 Agricultural Advisory Committee

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting on June 26, 2014 and the following recommendations were passed:

RECOMMENDATION (ITEM 1)

MOVED BY Pierre Calissi/SECONDED BY Ed Schiller

THAT the Agricultural Advisory Committee recommends that Council NOT support Agricultural Land Reserve Appeal Application No. **A14-0005** for the property located at **1590 Pioneer Road**, Kelowna, BC for an application to the Agricultural Land Commission under Section 20(3) of the *Agricultural Land Commission Act* for a "non-farm use" within the Agricultural Land Reserve to allow the placement of fill on the property. **CARRIED**

ANECDOTAL COMMENT:

The Agricultural Advisory Committee expressed the following concerns:

- The placement of the soil was completed without a permit.
- Placement of mineral soil on top of Class 2 and 3 soils impacts the capability of the site;
- The land has been classed with moisture limitations and this soil placement does nothing to improve that.
- Soil placement could have impact on this land and adjoining agricultural land.
- Insufficient information and applicant not in attendance; and
- Agrology report was incomplete.

¹¹ Holtby, R.G., May 15, 2014. A Report on an Application for Fill. Client 11.2 Acre Holding Company Ltd.

Members felt that the following was required prior to being able to make a plan for the property:

- Drainage / Hydrological Impact Analysis, to determine if the soil placement would adversely affect adjoining lands or offsite conditions; and
- Fertility and organic analysis undertaken of both the native soil and the fill.

Members felt that it might be cheaper and more effective to strip the fill, remove the topsoil layer, put back the fill and the native topsoil on top, to restore the land to a condition that would support agriculture and preserve its capability. However, this option should only be done on the condition that a drainage / hydrological report to confirm that there would be no adverse impacts resulting from the placement. Or, if adverse impacts were determined, that mitigation measures be recommended and undertaken prior to work.

9.0 Alternate Recommendation

THAT Agricultural Land Reserve Appeal Application No. A14-0005 for *(Lot A Section 8 TWP 26 ODYD Plan KAP60919 Except Plan KAP60920, located at 1590 Pioneer Road for Non-farm Use, pursuant to Section 20(3) of the Agricultural Land Commission Act, be supported by Municipal Council;*

AND THAT the Municipal Council directs staff to forward the subject application to the Agricultural Land Commission for consideration.

Report prepared by:

Melanie Steppuhn, Land Use Planner

Reviewed by:

☐

Todd Cashin, Manager
Subdivision, Agriculture & Environment Services

Reviewed by:

☐

Shelley Gambacort, Director,
Subdivision, Agriculture & Environment Department

Attachments:

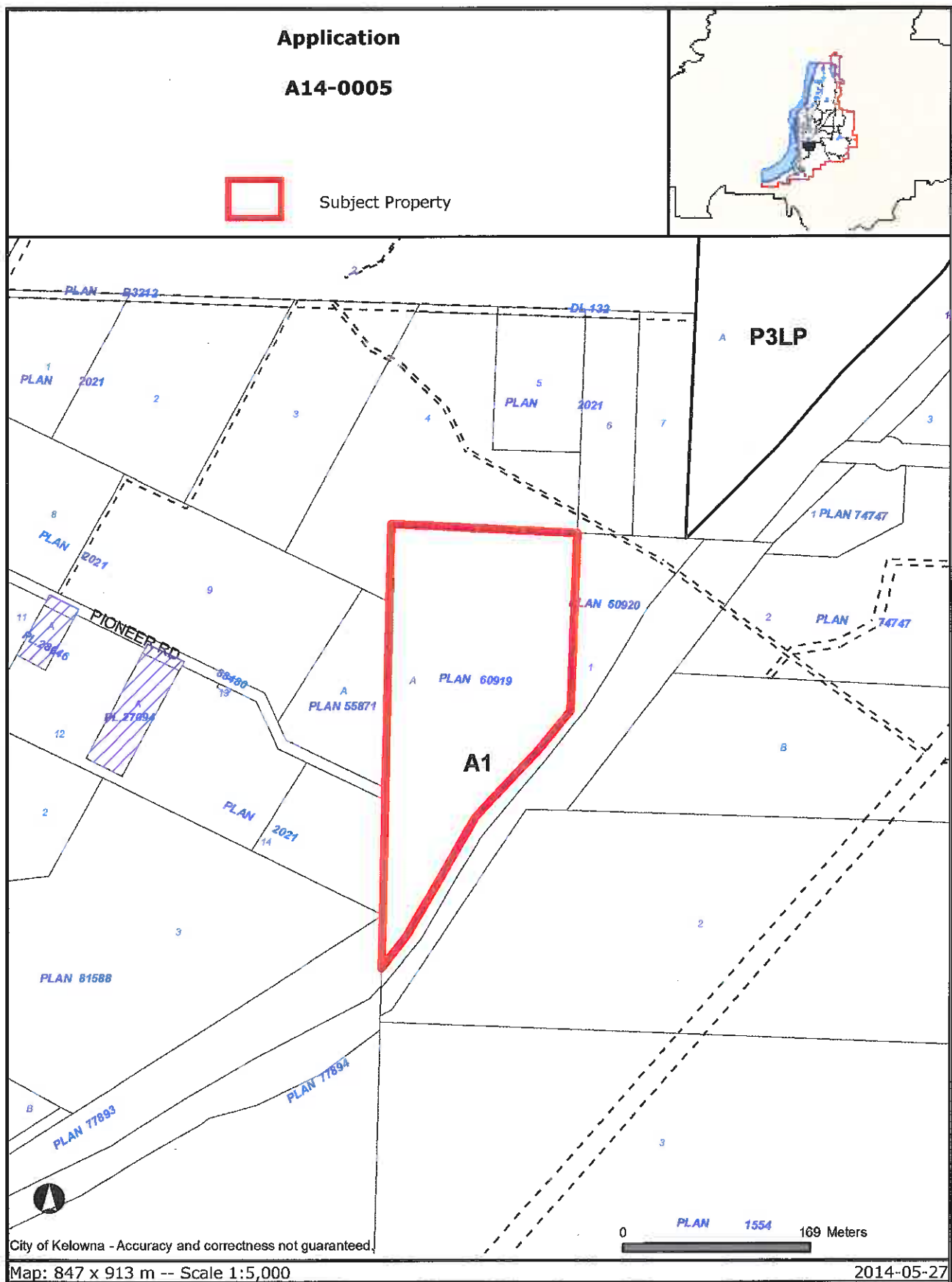
Photos

Subject Property Map

ALR Map

Holtby, R.G., A Report on an Application for Fill

Ministry of Agriculture - Response Summary



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.

Appendix A - Agriculture Plan

ALR Application Criteria¹²

Exclusion, subdivision, or non-farm use of ALR lands will generally not be supported. General non-support for ALR applications is in the interest of protecting farmland through retention of larger parcels, protection of the land base from impacts of urban encroachment, reducing land speculation and the cost of entering the farm business, and encouraging increased farm capitalization.

Drainage Problem Areas¹³

On-farm drainage is not the responsibility of the City. Drainage ditches and watercourses within public rights-of-way are a shared provincial / municipal responsibility at this time, however, and its adequacy directly impacts on the ability of individual farmers to improve their on-farm drainage. Resolution of drainage issues should include the involvement of the Land Commission. There are a number of specific problem areas where improvements may have some benefit to agriculture. Resolution of drainage issues should include the involvement of the Land Commission.

Mission-Benvoulin Flats area¹⁴

Drainage can be improved in this area by ensuring that ditches, pumping, and other infrastructure is sufficient not only to control run-off but also provide individual land owners with the ability to dispose of excess on-farm water from tile drains and on-farm ditches. This implies that ditches have the capacity to remove excess water so that on farm ground water tables can be maintained at depths that are adequate for most agricultural cropping and cultivation (a freeboard of 1 m is generally satisfactory).

Proper ditch construction (i.e. sloped sides to minimize sloughing and 'cave-ins') as well as ongoing maintenance (i.e. periodic cleaning and vegetation control) are also required. As well, sufficient pumping capacity from regional ditches to Mission Creek (or other disposal) is also needed during periods of high water so that adequate freeboards are maintained in the agricultural areas. The practice of piling materials from ditch construction/cleaning adjacent to the ditches should be discouraged since the resulting berm restricts surface water from access to the ditches.

The main areas of very poorly drained soils are located near Mission Creek and south of the creek, including an area of organic soils adjacent to, and west of Swamp Road. Organic soils are susceptible to accelerated decomposition and subsidence if over drained, therefore, special attention should be given to lowering the water table the minimum amount required for crop production. During the winter months, depending on agricultural land use (i.e. annual vs. perennial crops) the water table can be allowed to rise in the soil to minimize decomposition.

The Mission Creek Basin Study and the draft Hydrogeological and Geotechnical Assessment identifies the areas adjacent to lower Mission Creek as a discharge area for most of the Mission Creek Watershed. In particular the area south of Mission Creek and west of Swamp Road is

¹² City of Kelowna Agriculture Plan (1998); p. 130.

¹³ City of Kelowna Agriculture Plan (1998); p. 111.

¹⁴ City of Kelowna Agriculture Plan (1998); p. 113.

impacted by a combination of ground water discharge, high water table associated with Okanagan Lake, and direct contact between Mission Creek and the shallow ground water conditions. Due to the large volumes, draining the ground water is not considered a practical solution. In general the Basin Study recommends the use of detention facilities, channel improvements and ditch maintenance to manage drainage. The Study also recommends improvements in specific sub-watersheds.

During parts of the summer irrigation is required on the affected lands as well. The possibility of using the drainage ditches as distribution systems for irrigation water, at least for parts of the area, should be investigated. A system of 'baffles' in the ditches could be used, perhaps, to regulate water levels and supplementary water, as required, could be extracted from Mission Creek (or the shallow groundwater table).

PHOTOS

Photo 1: Fill on Field



Photo 2: Fill Piles



Photo 3: Fill Piles



Photo 4: Fill Spread Out



Photo 5: Fill Depth



Photo 6: Fill Adjacent Field



Photo 7: Fill Leveled near House



Photo 8: Fill Leveled



Photo 9: Fill Leveled



Photo 10: Fill in Foreground and Original Grade at Background – June 19, 2014



Photo 11: Levelled Fill with Some Remaining Piles in the Background – June 19, 2014



Photo 12: Levelled Fill looking South towards Mission Creek – June 19, 2014



Photo 15: Levelled Fill looking Northeast towards Mission Creek – June 19, 2014

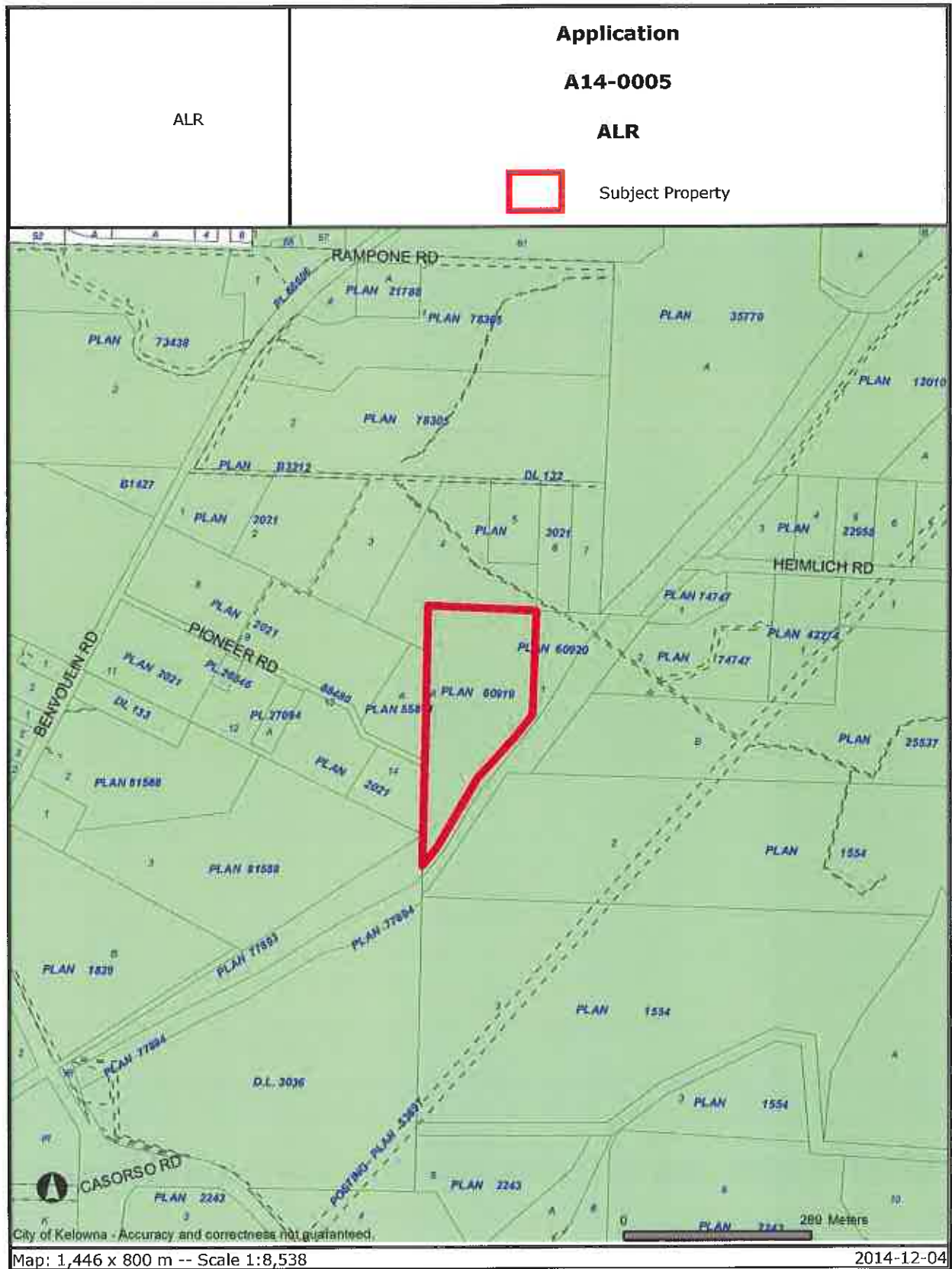


Photo 14: Some Remaining Piles and Standing Water – June 19, 2014



Photo 15: Horse with Foot Rot – June 19, 2014





Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
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A Report on an Application for Fill

Client: 11.2 Acre Holding Company Ltd.

Date: May 15, 2014

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1.0	Introduction.....	1
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1.0 Introduction

This report provides an opinion on the impact on the agricultural value of land that is the subject of an application for the placement of fill within the Agricultural Land Reserve. Specifically, the land is described as:

Lot A, Section 8, Township 26, Osoyoos Division of Yale Land District,
Plan KAP60919, except Plan KAP60920. PID 024-008-168 and is located
at 1590 Pioneer Road, Kelowna, BC.

The land is owned by 11.2 Acre Holding Company Ltd., Mr. Brian Lovig, President.

The site, outlined in blue, is viewed in Figure 1.

Figure 1: Satellite Overview of Subject Parcel



It is my understanding that Mr. Lovig arranged with a building contractor to take the fill from the excavation of a new school in the area. Some 250 loads were deposited on the land.

Neither the contractor nor Mr. Lovig made application for a permit to deposit the fill under the requirements of the *Agricultural Land Commission Act*. As a consequence, a letter¹ was written to Mr. Lovig from the ALC stating that it was the writer's consideration that he was in contravention of the Act.

¹ Ron MacLeod, Agricultural Compliance and Enforcement Officer, Agricultural Land Commission, Letter of February 26, 2014.

Mr. Lovig has stated that the purpose of the fill was to raise the surface of the pasture above the water table to allow for better utilization by horses. The fill will allow for better lateral drainage in the soils and increase the number of grass and legume species that can produce on this land.

A panorama view of the land with fill placed is shown in Photograph 1.



Photograph 1: Panoramic View of Fill Placement

Mr. Lovig has subsequently contacted me to provide an opinion on the impact of the placement of fill on the agricultural capability of the land. This opinion will become part of the Application to Place Fill.

2.0 Qualifications

I am a licensed Agrologist and have been a full member of the B.C. Institute of Agrologists since 1971 (except 2001-2002). I am a graduate from the University of British Columbia with a Bachelor of Science degree in 1967, specializing in Agriculture Economics, and a Master of Science degree in 1972, specializing in Farm Management. My thesis for my Master's degree was entitled *Resource Allocation for the Median Peace River Farm in British Columbia*

I have been involved in the work of the Agricultural Land Commission since 1974 when the reserve boundaries were proclaimed. At that time, I was District Agriculturist for the British Columbia Ministry of Agriculture in Prince George. In October 1978 I entered private practice and have provided professional opinions for clients who have sought amendments to the Agricultural Land Reserve boundaries, subdivision within the ALR, or who have needed assistance in compliance with requests from the Commission.

I have also written and spoken of the need to address the unintended consequences of the provincial land use policy.

All agricultural assessments, whether they are for feasibility or management purposes, start with the soils. Past that point one needs an understanding of plant science, animal science and farm management to properly assess the farming potential of any site. I have demonstrated that understanding throughout my career.

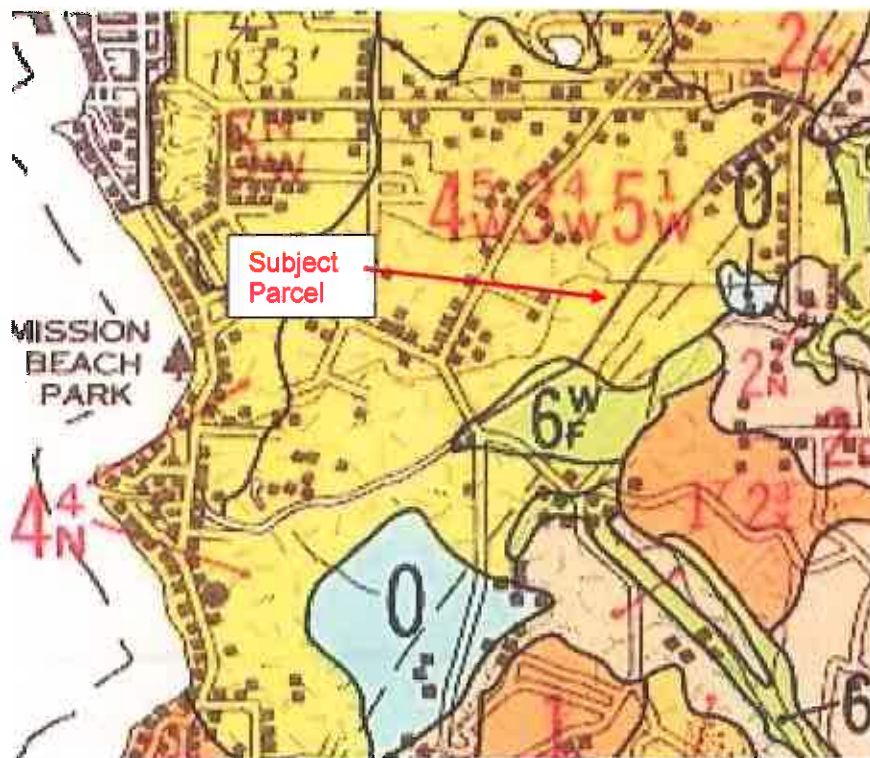
Consequently, I believe I am qualified to comment on the two main purposes of the Agricultural Land Commission. That is: to preserve agricultural land, and to encourage farming on agricultural land in collaboration with other communities of interest.

I am currently a member of the Environmental Appeal Board the Forest Appeals Commission and the Oil and Gas Appeal Tribunal. Following these appointments, I have received training in Administrative Law and the Rules of Natural Justice.

3.0 Agricultural Capability of the Land and Impact of Fill

The Canada Land Inventory Map for the subject area is shown in Figure 2. The classification is that the Land is rated as 50% Class 4, 40% Class 3, and 10% Class 5, all limited by wetness. It is assumed that irrigation is necessary for production in this area given the arid climate.

Figure 2: Canada Land Inventory Classification of Subject Area



My findings on inspection of the property are consistent with that classification. That is, the soils are heavy to silt and exhibit a high water table filled by Mission Creek to the east of the parcel. That is, the soils are limited by wetness.

A breakdown of the soil composition of the parent material and the fill is given in Table 1.²

² Pacific Soil Analysis Inc, *Soil and Plant Analyses*, May 2, 2014

Table 1: Soil Composition of Parent Materials and Fill

	Parent Material (%)	Fill (%) ³
Sand	37.3	72.5
Silt	52.0	22.6
Clay	10.7	4.9

A soil pit showing the parent material is shown in Photograph 2 and of the fill in Photograph 3.



Photograph 2: Soil Pit of Parent Material

³ In addition to these materials, 8.6% of the sample was birds eye gravels.



Photograph 3: Soil Pit of Fill

The increase in the percentage of sand and resultant decrease in silts indicates a coarser soil mix that will increase the water mobility in the soils.

It is my opinion that the application of the fill to the subject parcel will achieve the stated objective. That is, to raise the field level above the water table and to allow for an increase in grass and legume species. That is, plants with less tolerance for wetness could then be grown.

4.0 Normal Farm Practice

The Farm Industry Review Board administers *the Farm Practices Protection (Right to Farm) Act*. That Act states in Section 2:

- (1) If each of the requirements of subsection (2) is fulfilled in relation to a farm operation conducted as part of a farm business,
 - (a) the farmer is not liable in nuisance to any person for any odour, noise, dust or other disturbance resulting from the farm operation, and
 - (b) the farmer must not be prevented by injunction or other order of a court from conducting that farm operation.
- (2) The requirements referred to in subsection (1) are that the farm operation must

- (a) be conducted in accordance with normal farm practices,
- (b) be conducted on, in or over land
 - (i) that is in an agricultural land reserve,
 - (ii) on which, under the Local Government Act, farm use is allowed,
 - (iii) as permitted by a valid and subsisting licence, issued to that person under the Fisheries Act, for aquaculture, or
 - (iv) that is Crown land designated as a farming area under subsection (2.1), and
- (c) not be conducted in contravention of the Public Health Act, Integrated Pest Management Act, Environmental Management Act, the regulations under those Acts or any land use regulation.

The subject parcel lies within the Agricultural Land Reserve as shown in Figure 3 and is zoned by the City of Kelowna as A1 for agriculture as shown in Figure 4.. Sub-sections (iii) and (iv) do not apply.

Figure 3: ALR Designation of Subject area

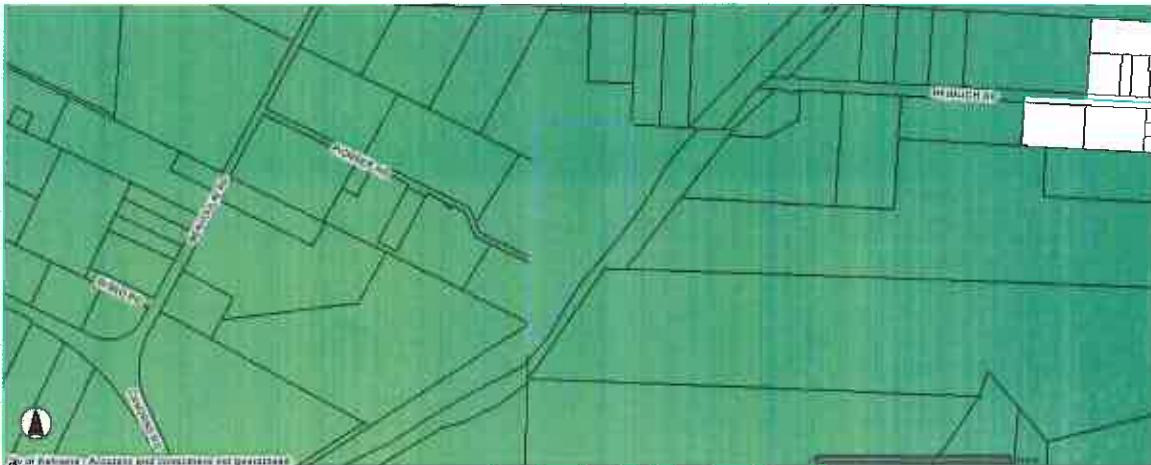
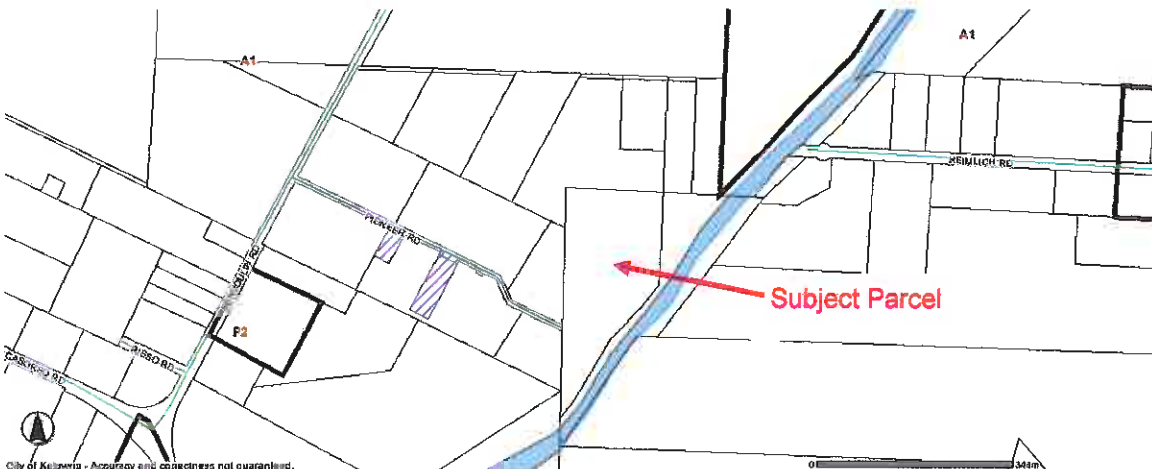


Figure 4: Zoning of Subject Area



The key for the protection of the farm practice is whether it conforms to “normal farm practice.”

On January 21, 2014, the Farm Industry Review Board issued a ruling in the case known as Baird vs Plasterer. This was a case in which the Respondent was rock blasting and filling non arable land to provide pasture for his cattle and building site. The Complainant filed a complaint regarding noise, land clearing, burning and increased rodent population from those activities.

The panel concluded that:⁴

The panel therefore accepts that the drilling, blasting, and use of fill practices undertaken by the respondent for the purposes of improving his pastures and building a barn are in accord with normal farm practices.

While the applicant in this case is not drilling or blasting, and not yet constructing a building, the use of fill corresponds to that of the Respondent in this case. Consequently, I would conclude that he is engaging in “normal farm practices” as defined in the Act.

While I am not a lawyer, it would seem to me that this description of his activities precludes the City of Kelowna and the Agricultural Land Commission from making any enforcement from either local bylaws or the Agricultural Land Commission Act according to Section 2 (1)(b) of the *Farm Practices Protection (Right to Farm) Act*.

This finding would be in spite of Section 20 of the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* which states:

- 20** (1) A person must not use agricultural land for a non-farm use unless permitted under this Act.
- (2) For the purposes of subsection (1), except as provided in the regulations, the removal of soil and the placement of fill are non-farm uses.

I leave it to others to resolve the apparent conflict between these two pieces of legislation.

5.0 Completion of Fill Improvements

The land, as I found it, has not completed the land improvements from the use of fill. In my opinion, the following steps should be taken to complete the work:

1. The large boulders must be picked and set aside for other, probably cosmetic, uses.
2. After leveling, the land should be cultivated and a green manure crop, probably Fall Rye, sown into the soil to provide a organic layer.
3. After emergence and growth, the Rye should be plowed into the soil, disked and harrowed to form a seed bed.

⁴ Farm Industry Review Board, Baird vs Plasterer,
http://www.firb.gov.bc.ca/complaints/farm_practice_complaints/baird_v_plasterer_decision_jan21_14.pdf,
page 26

4. A seed mix of a mix of species is recommended to ensure extended season pasturage. An example of such a mix would be:⁵

25% QS EARLY Tall Fescue (mar)
25% TITAN Timothy
20% Kentucky Bluegrass
15% AMBA Orchardgrass
6% Creeping Red Fescue
5% KAYAK Orchardgrass
4% NORLEA Perennial Ryegrass
Rate: 2.4 acres per 20 kg bag

5. Fertilizer should be applied according to analysis once the soil preparation is complete.

In addition to the establishment of the pasture, the elevations of the completed fill should be checked to ensure no adverse drainage to the neighbours. If such drainage is determined, the perimeter should be ditched .

6.0 Summary and Conclusion

This application is being made to correct an error made when fill was placed without a permit from the Agricultural Land Commission. Neither the contractor nor the landowner made the application.

The application for the placement of fill is being made in spite of whatever conflict may or may not exist between the *Agricultural Land Commission Act* and the *Farm Practices Protection (Right to Farm) Act*.

It is my finding that the placement of fill on the land is consistent with solving the problems of high water tables and poor soil permeability. It also appears to be consistent with normal farm practice.

As a consequence of these findings, I conclude that the allowance of the fill will benefit the land and is consistent with the objects of the Agricultural Land Commission.

I remain available for discussions on my findings and opinions.

Respectfully submitted,



R.G. (Bob) Holtby, P.Ag.

May 15, 2014

⁵ Quality Seeds West, *Spring 2014, Forage Spec Sheet*,
<http://www.qualityseedswest.ca/2014%20Field%20Star%20Interior%20Forage%20Spec%20Sheet.pdf>

RESPONSE SUMMARY

Soil placement and fill: 1590 Pioneer Road

☐ Approval Recommended for
Reasons Outlined Below

☐ Interests Unaffected by Bylaw

X ☐ Approval Recommended Subject to
Conditions Below

☐ Approval Not Recommended
Due to Reasons Outlined Below

This application appears to be intended to bring a non-compliant activity (soil placement) into compliance with the City of Kelowna soils bylaw and ALC. A review of the report submitted confirms that the classifications are correct and the intended purpose of this property meets zoning.

It is noted that no completion report is required by a qualified third party to confirm that the conditions of Section 5.0 are completed. It may be in the best interest of the City and the ALC to require independent reporting be supplied to each party to release required bonding.

Should you have questions or concerns regarding this response please call me at 250 861 7229.

Signature: Carl Withler P.Ag.

Signed By: _____

Agency: Ministry of Agriculture

Title: Regional Agrologist.

Date: June 2nd, 2014

REPORT TO COUNCIL



Date: November 26, 2014

RIM No. 1250-30

To: City Manager

From: Subdivision, Agriculture & Environment Department, Community Planning & Real Estate (LB)

Application: Z14-0043 / LUC14-0001 **Owner:** 1009440 BC Ltd., Inc. No. BC1009440

Address: 1020 Sutcliffe Court **Applicant:** Novation Design Studio (Paul Schuster)

Subject: 2014-12-08 Report - Z14-0043 - 1020 Sutcliffe Ct

Existing OCP Designation: S2RES - Single / Two Unit Residential

Existing Zone: RR3 - Rural Residential 3

Proposed Zone: RU1 - Large Lot Housing

1.0 Recommendation

THAT Application No. LUC14-0001 to discharge LUC 76-1043 from Lot 2, Section 25, Township 26, ODYD, Plan 31812, located on 1020 Sutcliffe Court, Kelowna, BC, be considered by Council;

AND THAT Rezoning Application No. Z14-0043 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 2, Section 25, Township 26, ODYD, Plan 31812, located on 1020 Sutcliffe Court, Kelowna, BC, from the RR3 - Rural Residential 3 zone to the RU1 - Large Lot Housing zone, as shown on Map "A" attached to the Report of the Urban Planning Department dated December 8, 2014, be considered by Council;

AND THAT the Land Use Contract Discharge and the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the issuance of a Preliminary Layout Review Letter by the Approving Officer;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch being completed to their satisfaction;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the discharge of the Land Use Contract.

2.0 Purpose

To consider an application to discharge the Land Use Contract and rezone the subject property from the RR3 - Rural Residential 3 zone to the RU1 - Large Lot Housing zone to facilitate a two lot subdivision.

3.0 Subdivision, Agriculture & Environment

Staff support the proposed rezoning to facilitate a two lot subdivision of the subject property. The proposal is consistent with the Official Community Plan (OCP) Future Land Use designation of S2RES - Single / Two Unit Residential for the area, and the proposed lots meet the zoning criteria for RU1.

Although the lots will have urban residential zoning in what is otherwise a rural residential area, both the lot width and depth of the proposed lots comply with that of RR3 zoning. However, the lot size will be less than what is permitted in the RR3 zone, which necessitates the rezoning to RU1. The new lots will generally be in keeping with the low density residential character of the surrounding large lots, and the area is serviced with both community sanitary sewer and water services.

The existing Land Use Contract (LUC) on the subject property was created in 1978 to allow the subdivision and development of lots on Sutcliffe Court and at the east end of Hartman Road. The LUC will be discharged through the rezoning process, in accordance with Council Policy No. 282 - Strategy for Elimination of Remaining Land Use Contracts. The applicant will need to satisfy the requirements of the Development Engineering Branch prior to completion of the rezoning. These include costs for sanitary sewer as well as frontage upgrades. Additional charges and servicing requirements to create an additional lot will be addressed at time of subdivision.

In fulfillment of Council Policy No. 367 respecting public consultation, the applicant undertook neighbour consultation by individually contacting surrounding neighbours. No major concerns were identified during this consultation. To date, staff have not been contacted with any questions or concerns.

4.0 Proposal

4.1 Project Description

The applicant is seeking to subdivide the subject property into two lots by rezoning to RU1. The property is 2,102 m² and is zoned RR3. There is an existing dwelling on the south portion of the subject property, which would be retained through rezoning and subdivision.

4.2 Site Context

The subject property is located on the west side of Sutcliffe Court at the east end of Hartman Road in the City's Rutland sector. The property is designated S2RES - Single / Two Unit Residential in the Official Community Plan and the surrounding area is low density residential and agricultural.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	LUC 76-1043 (RR3 - Rural Residential 3)	Single family residential
East	LUC 76-1043 (RR3 - Rural Residential 3)	Single family residential
South	LUC 76-1043 (RR3 - Rural Residential 3)	Single family residential
West	A1 - Agricultural 1	Single family residential

Subject Property Map: 1020 Sutcliffe Court**4.3 Zoning Analysis Table**

Zoning Analysis Table			
CRITERIA	RU1 ZONE REQUIREMENTS	PROPOSAL (NORTH PORTION)	PROPOSAL (SOUTH PORTION)
Existing Lot/Subdivision Regulations			
Lot Area	550 m ²	908 m ²	1,194 m ²
Lot Width	16.5 m	20.0 m	24.0 m
Lot Depth	30.0 m	40.08 m	59.81 m

5.0 Current Development Policies**5.1 Kelowna Official Community Plan (OCP)****Development Process**

Compact Urban Form.¹ Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

Sensitive Infill.² Encourage new development or redevelopment in existing residential areas to be sensitive to or reflect the character of the neighbourhood with respect to building design, height and siting.

¹ City of Kelowna Official Community Plan, Policy 5.2.3 (Development Process Chapter).

² City of Kelowna Official Community Plan, Policy 5.22.6 (Development Process Chapter).

6.0 Technical Comments

6.1 Building & Permitting Department

- No comments.

6.2 Development Engineering Department

- See attached memorandum, dated October 16, 2014.

6.3 FortisBC - Electric

- There are primary and secondary distribution facilities within Sutcliffe Court. An underground secondary service currently provides service to the existing improvements on the proposed south property. The applicant is responsible for costs associated with any change to the proposed lot's existing service, if any, as well as the provision of appropriate land rights where required.

6.4 Shaw Cable

- Owner/developer to supply and install an underground conduit system per Shaw Cable drawings and specifications.

6.5 Telus

- Telus will provide underground facilities to this development. Developer will be required to supply and install conduit as per Telus policy.

7.0 Application Chronology

Date of Application Received: September 17, 2014
Date Public Consultation Completed: October 7, 2014

Report prepared by:

Laura Bentley, Planner

Approved for Inclusion:



Shelley Gambacort, Director, Subdivision, Agriculture & Environment

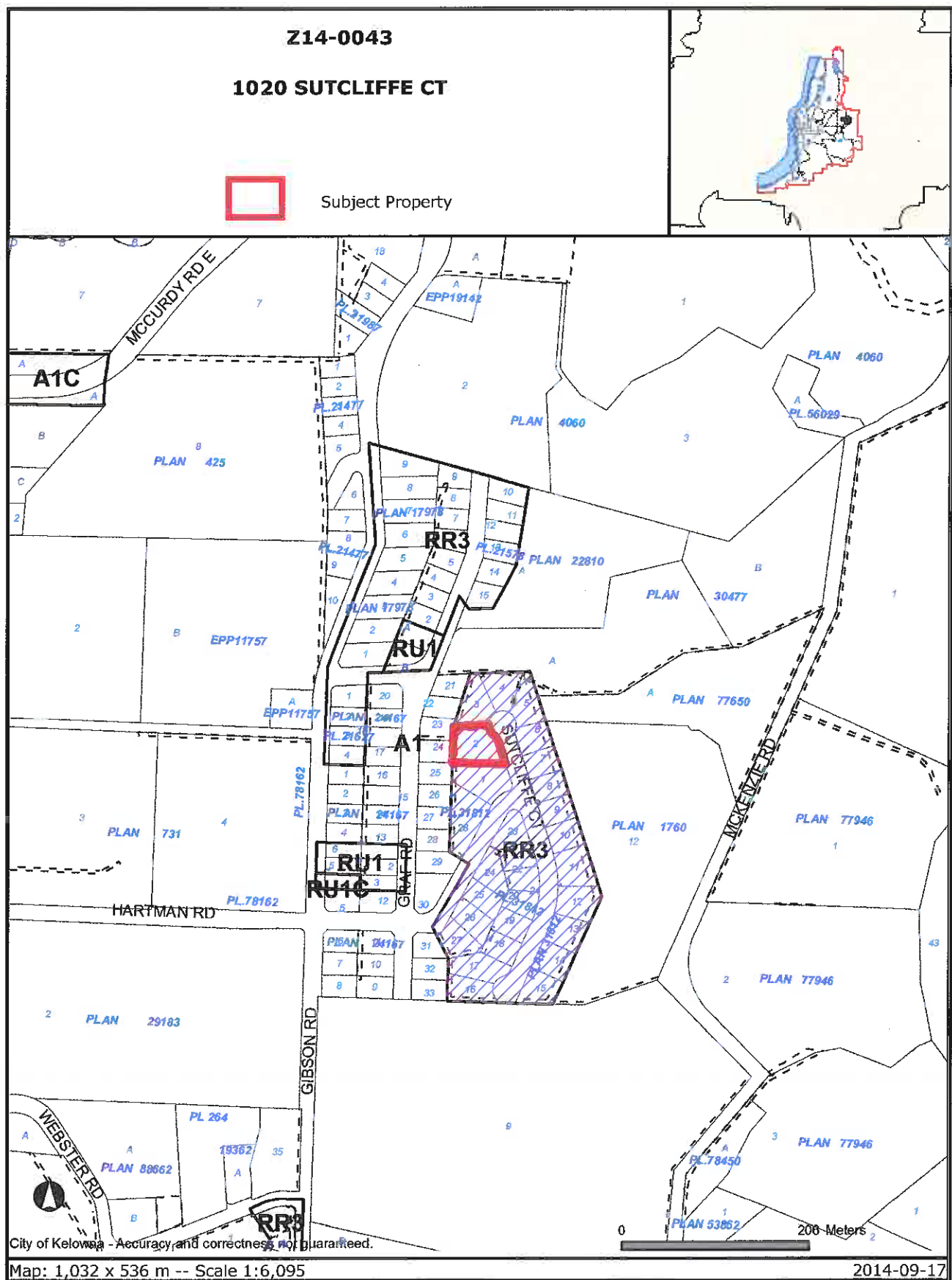
Attachments:

Subject Property Map
Map "A"

Proposed Subdivision Layout

Development Engineering Memorandum

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



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.



N

1095

1115

1040

1075

1030

1035

1310-1312

1055

Subject Property Notes:
Rezone the subject property
from RR3 Rural Residential
to RU1 Large Lot Housing.

1020

1025

1306-1308

1015

1010

SUTCLIFFE CT

1005

995

1250

HARTMAN RD

975

MAP "A" PROPOSED ZONING
File #Z14-0043

- Zoning
- Legal Parcel
- Subject Property
- RR3 to RU1

This map is for general information only.
The City of Kelowna does not guarantee its
accuracy. All information should be verified.

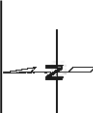
0 5 10 Metres

Rev. Oct 31, 2014



<input checked="" type="checkbox"/>	NOT notched. Revisions may be made at all times.
<input type="checkbox"/>	A CONTROLLED document. Revisions are by approval.
<input checked="" type="checkbox"/>	The definitive design document.
<input type="checkbox"/>	A complete revision. Remove previous copies from use.
<input type="checkbox"/>	A partial revision. Remove previous version of corresponding clause / pages from use.
<input type="checkbox"/>	Not for Documentation.

UNCLASSIFIED
DATE 08-11-2011 BY 60321 UCBAW



NOVATION

101 - 1845 DIXON DR. SUITE 200
KELOWNA B.C. V1Y 0T1

Original Data

LOT 2
BY 66138818

1020 Sublime Court
Kalamita, Bellingham, Columbia

Project No. 1415

9271 Hauptstadt

SITE PLAN

input	PG	u/ds	q : 100
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UNEP	8
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Chackar :

A101

2017-03-09 10:02



Revised The Name and Location

CITY OF KELOWNA

MEMORANDUM

Date: October 16, 2014
File No.: Z14-0043
To: Planning & Development Services Department (BD)
From: Development Engineer Manager (SM)
Subject: 1020 Sutcliffe Court– Lot 2, Plan 31812, Sec. 25, Twp. 26, ODYD

The Development Engineering comments and requirements regarding this application to rezone a portion of the property from RR3 to RU1 are as follows:

1. Subdivision

- a) Provide easements as may be required.
- b) Charges, fee and servicing to create additional lot will be addressed at the subdivision application.

2. Geotechnical Study.

A comprehensive geotechnical study is not required at this point in time; it can be deferred to the submission for a subdivision approval.

3. Domestic water and fire protection.

This development is within the service area of the Black Mountain Irrigation District (BMID). The developer is required to make satisfactory arrangements with the BMID for these items. All charges for service connection and upgrading costs are to be paid directly to the BMID. The developer is required to provide a confirmation that the district is capable of supplying fire flow in accordance with current requirements.

4. Sanitary Sewer.

The subject property is located within the sanitary sewer specified area #20 and is currently on the annual levy. The Specified Area #20 charges will have to be cash commuted in accordance with the City of Kelowna current policies, the charge for rezoning the property is 1 EDU (Equivalent Dwelling Unit) in the amount of \$3,268.69 (valid until April 30, 2015)

6. Road improvements.

Sutcliffe Court Road must be upgraded to a full urban standard (SS-R3) including sidewalk, curb and gutter, piped storm drainage system, fillet pavement, boulevard grading street lights, and adjustment and/or re-location of existing utility appurtenances, if required, to accommodate this construction. The cost of this frontage upgrade is estimated at \$33,400 and is inclusive of a bonding escalation.

.../2

7. Engineering.

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.

8. 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.
- f) Before any construction the owner is required to pay the 3 % Engineering and Administration fee in the amount of **\$819.00** (\$780.00 + \$39.00 GST).

9. 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 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 **\$5,000,000.00** and the City is to be named on the insurance policy as an additional insured.

10. Bonding and Levies Summary.

a) Performance security

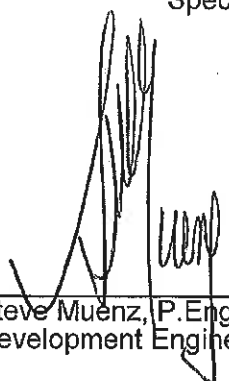
Sutcliffe Court frontage upgrade **\$33,400.00**

Note that the applicant is not required to do the construction. The construction can be deferred and the City will initiate the work later at its own construction schedule, the cost would be reduced to **\$20,465.00.** and the 3% Engineering & Admin. fee would be waived.

b) levies

Specified Area # 20 charges (1 EDU)

\$3,268.69
(valid until April 30, 2015)



Steve Muenz, P.Eng.
Development Engineering ManagerB²



City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4
250 469-8500
kelowna.ca

Council Policy

Strategy for Elimination of Remaining Land Use Contracts

APPROVED June 2, 1997

RESOLUTION: R375/10/04/26

REPLACING: R728/99/08/23; I1997/06/02

DATE OF LAST REVIEW: April 2010

Council's adoption of this policy requires:

- that a Land Use Contract be discharged for any contract where there has been a change in use or density from what was originally intended by the Land Use Contract;
- that where the City of Kelowna had entered into a Land Use Contract that contains a cancellation clause contingent on failure to develop and use the lands, the City proceed to discharge the Land Use Contract;
- 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;
- 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.

REASON FOR POLICY

To develop a strategy to eliminate Land Use Contracts.

LEGISLATIVE AUTHORITY

Sec. 930, Local Government Act

PROCEDURE FOR IMPLEMENTATION

Council will evaluate the cost benefit implications of discharging individual Land Use Contracts, prior to Land Use Management staff committing the resources required to initiate and conclude proceedings to terminate a contract.

CITY OF KELOWNA

BYLAW NO. 11043

Discharge of Land Use Contract LUC76-1043 - (P283) 1020 Sutcliffe Court

WHEREAS a land use (the "Land Use Contract") is registered at the Kamloops Land Title Office under number P283 against lands in the City of Kelowna particularly known and described as Lot 2, Section 25, Township 26, ODYD, Plan 31812 (the "Lands"), located at 1020 Sutcliffe Court, Kelowna, B.C.;

WHEREAS Section 930 of the *Local Government Act* provides that a land use contract that is registered in a Land Title Office may be discharged in the manner specified in the Land Use Contract, by bylaw following a public hearing on the proposed bylaw;

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

1. This Bylaw may be cited for all purposes as "Land Use Contract LUC76-1043 Discharge Bylaw".
2. The Land Use Contract is hereby cancelled and of no further force and effect and the City of Kelowna is hereby authorized and empowered to apply for the discharge of the Land Use Contract from the Lands.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council on the

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA
BYLAW NO. 11044
Z14-0043 - 1009440 BC Ltd., Inc. No. BC1009440
1020 Sutcliffe Court

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

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

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 2, Section 25, Township 26, ODYD, Plan 31812, located on Sutcliffe Court, Kelowna, B.C., from the RR3 - Rural Residential 3 zone to the RU1 - Large Lot Housing zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: November 26, 2014

RIM No. 1250-30

To: City Manager

From: Urban Planning, Community Planning & Real Estate (LB)

Application: Z14-0040 **Owner:** City of Kelowna

Address: 4065 Lakeshore Road **Applicant:** City of Kelowna

Subject: Rezoning Application

Existing OCP Designation: PARK - Major Park / Open Space
S2RES - Single / Two Unit Residential

Existing Zone: P1 - Major Institutional

Proposed Zone: P3 - Parks and Open Space
RU2 - Medium Lot Housing

1.0 Recommendation

THAT Rezoning Application No. Z14-0040 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of portions of That Part of the Fractional South West 1/4 of Section 6 Included in Plan Attached to D.D. 190710F; Township 26, ODYD, located on 4065 Lakeshore Road, Kelowna, BC from the P1 - Major Institutional zone to the P3 - Parks and Open Space and RU2 - Medium Lot Housing zones, as shown on Map "A" attached to the Report of the Urban Planning Department dated November 26, 2014, 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 considered subsequent to the issuance of a Preliminary Layout Review Letter by the Approving Officer

2.0 Purpose

To consider a Rezoning application to rezone the subject property from P1 - Major Institutional to P3 - Parks and Open Space and RU2 - Medium Lot Housing to facilitate a two lot subdivision.

3.0 Urban Planning

Urban Planning staff supports the proposed rezoning for the subject property, with the north portion being rezoned to P3 - Parks and Open Space and the south portion being rezoned to RU2 - Medium Lot Housing. The rezoning is consistent with the Official Community Plan (OCP) Future Land Use designations for the property, with PARK - Major Park / Open Space on the north portion and S2RES - Single / Two Unit Residential on the south portion.

Belmont Park is located east of the subject property, and the portion of the property being rezoned to P3 will be added to the park to create a connection through to Lakeshore Road. The road frontage will provide the park with an improved entrance, enhanced sightlines for surveillance and higher community profile. Rezoning the south portion of the property to RU2 will create a saleable residential lot, the proceeds of which will go towards demolishing the building and replenishing the Water Utility. The road dedication and frontage improvements along Lakeshore Road will occur at time of subdivision.

4.0 Proposal

4.1 Background

The subject property previously functioned as the Mission Community Police Station. On November 4, 2013, Council approved a new lease agreement to move the Community Police Station to space in the Regional District of Central Okanagan offices at 1450 KLO Road. Council also directed staff to bring forward rezoning and subdivision applications for the subject property. The Community Police Station has now moved to its new location and the subject property can be rezoned to proceed with subdivision.

4.2 Site Context

The subject property is located on the east side of Lakeshore Road between Lequime Road and Lexington Drive. The north portion of the property is designated PARK - Major Park / Open Space in the OCP and the south portion is designated S2RES - Single / Two Unit Residential. The property is within the Permanent Growth Boundary and the area surrounding the property is a mix of low to high density residential.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RM1 - Four Dwelling Housing	Residential
East	P3 - Parks and Open Space	Belmont Park
South	RU1 - Large Lot Housing	Residential
West	RM6 - High Rise Apartment Housing	Imperial apartments

Subject Property Map: 4065 Lakeshore Road**4.3 Zoning Analysis Table**

Zoning Analysis Table				
CRITERIA	P3 ZONE REQUIREMENTS	PROPOSAL	RU2 ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations				
Lot Area	N/A	360 m ²	400 m ²	476 m ²
Lot Width	N/A	9.4 m	13.0 m	13.3 m
Lot Depth	N/A	41.5 m	30.0 m	38.5 m

5.0 Current Development Policies**5.1 Kelowna Official Community Plan (OCP)****Development Process**

Compact Urban Form.¹ Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

¹ City of Kelowna Official Community Plan, Policy 5.2.3 (Development Process Chapter).

Social Sustainability

Distribution of Community Resources.² Appropriate distribute and locate community resources (such as libraries, parks, meeting places, community policing, recreation services etc.) so that all neighbourhoods have convenient access.

6.0 Technical Comments

6.1 Building & Permitting Department

- No comments.

6.2 Development Engineering Department

- See attached memorandum, dated September 17, 2014.

6.3 Infrastructure Planning

- Proposed P3 lot needs to be titled in favour of the City for the purposes of public open space.
- The existing asphalt pathway needs to be reconstructed through the proposed P3 parcel, to City standards, to provide pedestrian continuity.
- It is required that the proposed RU2 parcel have 1.2 m high black vinyl coated chain link fencing, to City standards, located 6" inside the north and east property lines.
- No temporary access for contractors for parking and/or storage will be permitted on either the proposed P3 lot to the north or the existing P3 lot to the east.

7.0 Application Chronology

Date of Application Received: September 16, 2014

Report prepared by:

Laura Bentley, Planner

Reviewed by:

☐

Lindsey Ganczar, Urban Planning Supervisor

Reviewed by:

☐

Ryan Smith, Urban Planning Manager

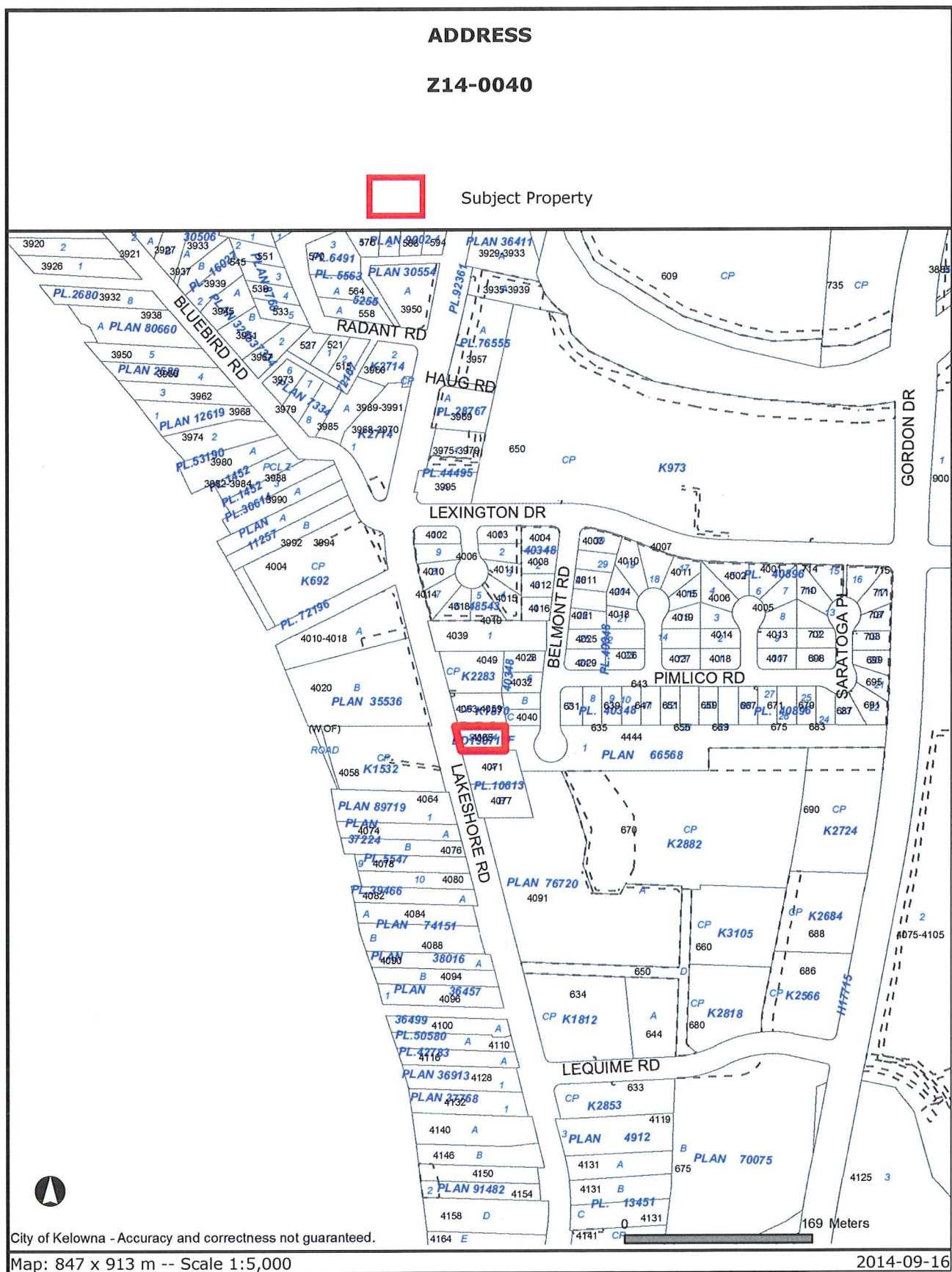
Attachments:

Subject Property Map

Map "A"

Development Engineering Memorandum

² City of Kelowna Official Community Plan, Policy 10.1.1 (Social Sustainability Chapter).



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.



RM2 4049

RU1

4032

4036

4020

RM1 4053-4059

Subject Property Notes:

Rezone a portion of the subject property from P1 Major Institutional to P3 Parks and Open Space.

P1 4065

4444

P3

LAKESHORE RD

4058

RM6

Subject Property Notes:

Rezone a portion of the subject property from P1 Major Institutional to RU2 Medium Lot Housing.

4091

4077

4064

4074

MAP "A" PROPOSED ZONING
File #Z14-0040

- | | |
|------------------|-----------|
| Legal Parcel | P1 to P3 |
| Subject Property | P1 to RU2 |
| Zoning | |

This map is for general information only.
The City of Kelowna does not guarantee its
accuracy. All information should be verified.

0 5 10
Metres

Rev. Dec 03, 2014

CITY OF KELOWNA
MEMORANDUM

Date: September 17, 2014
File No.: Z14-0040
To: Urban Planning (LB)
From: Development Engineering Manager (SM)
Subject: 4065 Lakeshore Road P1 to RU2/P3

Development Engineering has the following comments and requirements associated with this application.

1. General

Road dedication & frontage improvements are triggered by this rezoning application. The requirements include 5.0m dedication, curb and gutter, sidewalk, storm drainage system and pavement widening. Also required is a landscaped boulevard, street lighting and the re-location or adjustment of utility appurtenances if required to accommodate the upgrading construction. The cost of this construction is at the applicant's expense.

The proposed redevelopment includes the subject parcel being subdivided into one RU2 lot and the remainder to P3 and consolidated to the park two lots. A subdivision application will require service upgrades. The work will require road cuts and boulevard and pavement restoration. Development Engineering is prepared to defer the requirements of the rezoning to the subdivision stage.



Steve Muenz, P. Eng.
Development Engineering Manager

SS

CITY OF KELOWNA
BYLAW NO. 11042
Z14-0040 - City of Kelowna
4065 Lakeshore Road

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

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

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of portions of That Part of the Fractional South West $\frac{1}{4}$ of Section 6, Included in Plan Attached to D.D. 190710F, Township 26, ODYD, located on Lakeshore Road, Kelowna, B.C., from the P1 - Major Institutional zone to the P3 - Parks and Open Space zone and the RU2 - Medium Lot Housing zone as per Map "A" attached to and forming part of this bylaw.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this

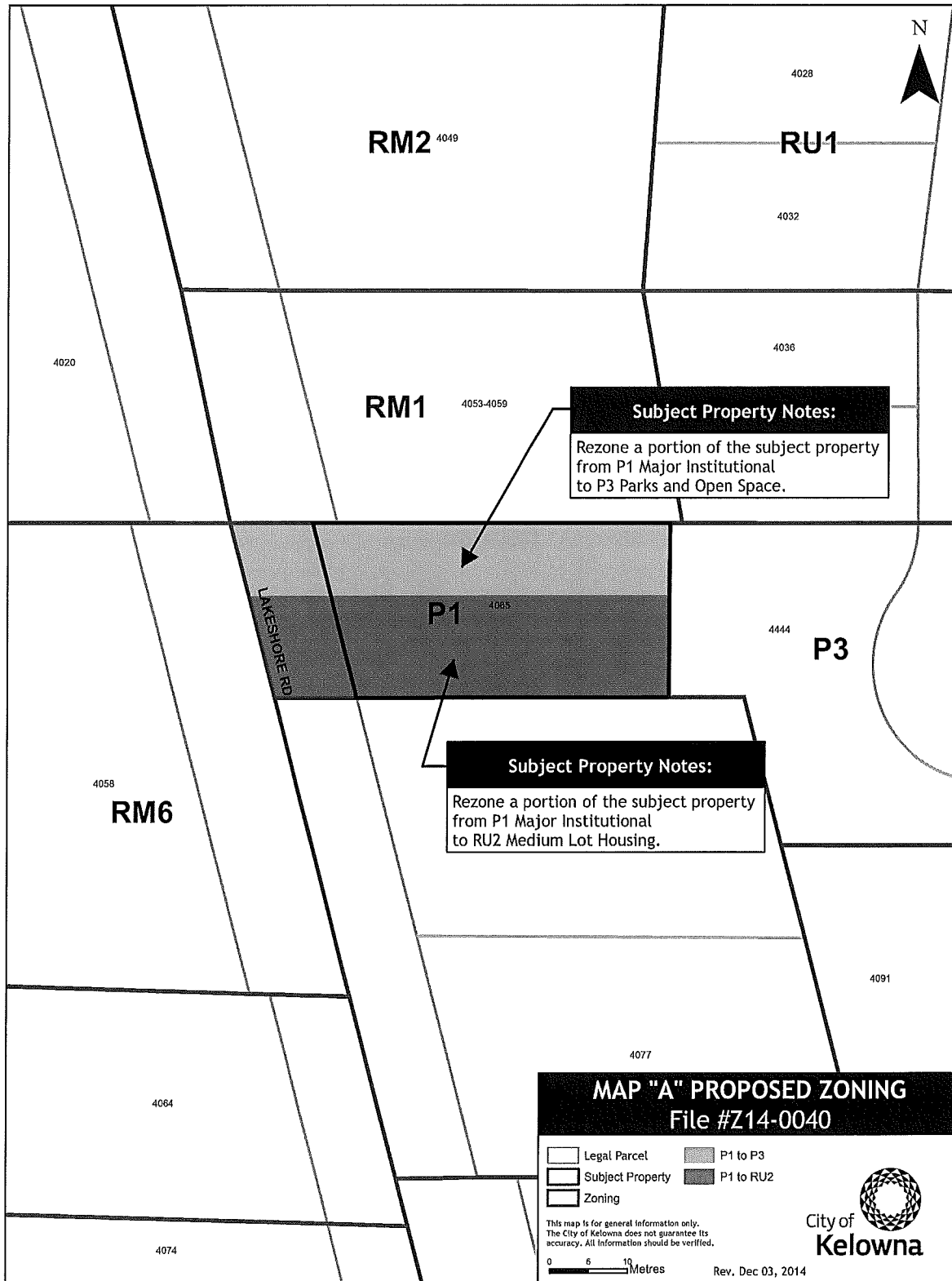
Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk



REPORT TO COUNCIL



Date: November 26, 2014

RIM No. 1250-30

To: City Manager

From: Urban Planning, Community Planning & Real Estate (LB)

Application: Z14-0046

Owner: Hyatt Auto Sales Ltd.

Address: 822 McCurdy Place

Applicant: Hyatt Auto Sales Ltd. (Gord Anton)

Subject: 2014 12 08 Report Z14-0046 822 McCurdy Pl

Existing OCP Designation: IND - Industrial

Existing Zone: I1 - Business Industrial

Proposed Zone: I2 - General Industrial

1.0 Recommendation

THAT Rezoning Application No. Z14-0046 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Strata Lot 22, District Lot 124, ODYD, Strata Plan KAS3323 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V, located on 822 McCurdy Place, Kelowna, BC from the I1 - Business Industrial zone to the I2 - General Industrial zone as shown on Map "A" attached to the Report of the Urban Planning Department dated November 26, 2014, be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration.

2.0 Purpose

To consider a Rezoning application to rezone the subject property from the I1 - Business Industrial zone to the I2 - General Industrial zone.

3.0 Urban Planning

Urban Planning staff supports the rezoning request to the I2 zone to allow general industrial uses on the subject property. The Official Community Plan supports more intensive use of under-utilized industrial sites, and encourages protection of existing industrial land. Currently, only one of the 11 inner lots zoned I1 has been developed with two multi-unit warehouse buildings, and several units remain vacant. There has been little interest in developing other lots under the I1 zone. Several of the outer lots zoned I2 have been developed and others have been sold for future development. Rezoning the subject property to the I2 zone protects the industrial land supply and supports more efficient use of industrial sites in this area.

The main differences between the I1 and I2 zones are the permitted uses and regulations regarding outdoor storage. The I1 zone allows some light industrial and office uses, with very limited outdoor storage. The I2 zone permits a greater range of industrial uses and fewer restrictions on outdoor storage. Offices are not a permitted use in the I2 zone. Should Council support the rezoning request, a Development Permit application will need to demonstrate appropriate buffers between the subject property and adjacent properties to minimize potential conflicts between uses. At time of site development, a Development Permit application to review the proposed form and character will be required.

It is important to note that a similar rezoning application has been made for 828, 834, 871 and 877 McCurdy Place, which are south of the subject property. The applicant has also requested to rezone from the I1 to the I2 zone.

In fulfillment of Council Policy No. 367 respecting public consultation, the applicant undertook neighbour consultation by individually contacting the neighbours. No major concerns were identified during this consultation. To date, staff have not been contacted with any questions or concerns.

4.0 Proposal

4.1 Background

The Marshall Business Centre was created as a bareland strata industrial park in 2007 through rezoning and subdivision of a former feedlot. The lots on the outside of McCurdy Place are zoned I2 and the inside lots are zoned I1 and are intended for light industrial and office uses with limited outdoor storage. Several of the outer lots zoned I2 have been purchased and developed with various general industrial uses, including automotive, motorcycle and minor recreational vehicle retailers, manufacturing, and equipment sales and rentals. The majority of these uses involve some outdoor storage on the property.

One inner lot zoned I1 was developed in 2012 with two multi-unit buildings, on 840-842 McCurdy Place. Some units are occupied while others remain vacant, and there has been no interest in other lots zoned I1.

4.2 Site Context

The subject property is located within the Marshall Business Centre, southwest of the intersection of McCurdy Road and Highway 97 in the City's Highway 97 Sector. The property is designated IND - Industrial in the Official Community Plan and is within the Permanent Growth Boundary. The area surrounding the property is industrial.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	I2 - General Industrial	Industrial
East	I1 - Business Industrial	Industrial (vacant)
South	I1 - Business Industrial (Rezoning application Z14-0045 to rezone from I1 to I2)	Industrial (vacant)
West	I2 - General Industrial	Industrial

Subject Property Map: 822 McCurdy Place



5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Development Process

Industrial Land Use Intensification.¹ Encourage more intensive industrial use of currently under-utilized industrial sites during site redevelopment or by permitting lot subdivision where new lots can meet the minimum lot size requirements of the Zoning Bylaw.

Industrial Supply Protection.² Protect existing industrial lands from conversion to other land uses by not supporting the rezoning of industrial land to preclude industrial activities unless there are environmental reasons for encouraging a change of use.

Discourage I1 Zoning.³ Discourage properties from being rezoned to I1 Business Industrial. Instead, applicants should be encouraged to pursue a new industrial zone which would be based on the I1 Zone, but would preclude "offices" as a permitted use.

5.2 Technical Comments

5.3 Building & Permitting Department

- No comments.

5.4 Development Engineering Department

- See attached memorandum, dated October 21, 2014.

¹ City of Kelowna Official Community Plan, Policy 5.29.1 (Development Process Chapter).

² City of Kelowna Official Community Plan, Policy 5.30.1 (Development Process Chapter).

³ City of Kelowna Official Community Plan, Policy 5.30.2 (Development Process Chapter).

5.5 Fortis BC - Electric

- There are primary distribution facilities within McCurdy Place. The applicant is responsible for costs associated with any change to the subject property's existing service, if any, as well as the provision of appropriate land rights where required.

6.0 Application Chronology

Date of Application Received: September 23, 2014
Date Public Consultation Completed: September 4, 2014

Report prepared by:

Laura Bentley, Planner

Reviewed by:



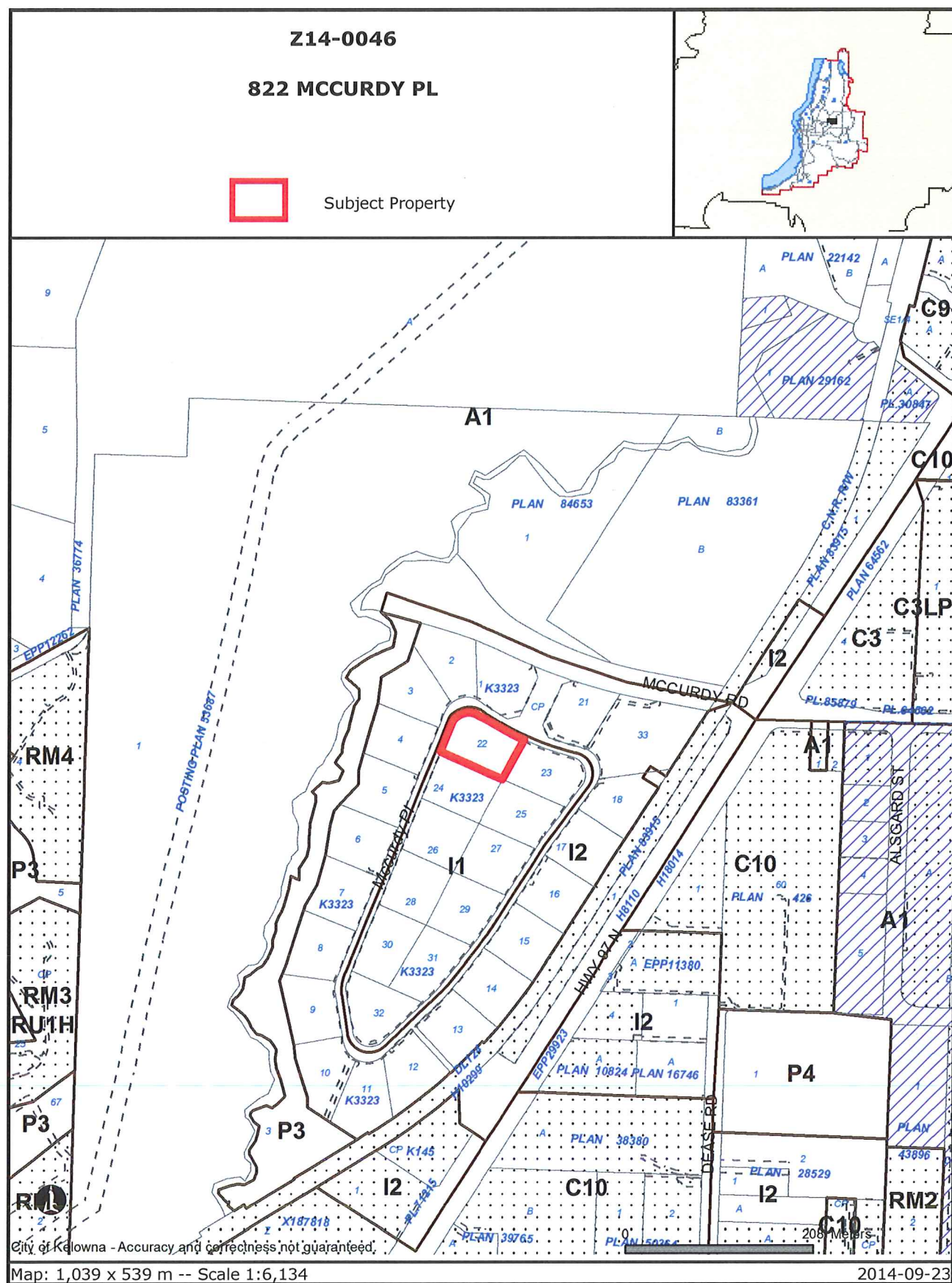
Ryan Smith, Urban Planning Manager

Attachments:

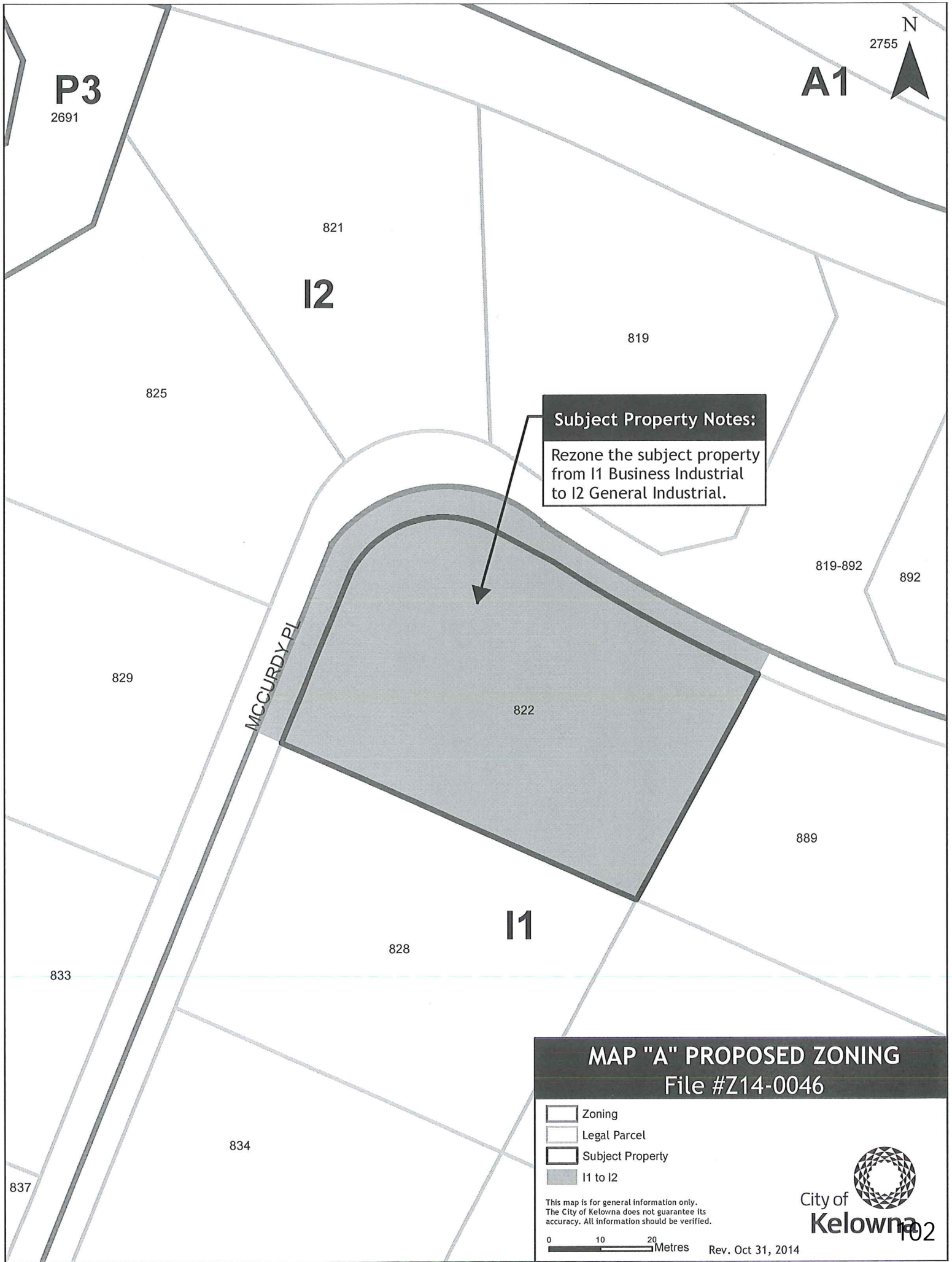
Subject Property Map

Map "A"

Development Engineering Memorandum



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.



P3
2691

A1
2755
N

821
I2

819

825

Subject Property Notes:
Rezone the subject property
from I1 Business Industrial
to I2 General Industrial.

819-892

892

829

MCCURDY PL

822

889

I1

828

833

834

837

MAP "A" PROPOSED ZONING
File #Z14-0046

- Zoning
- Legal Parcel
- Subject Property
- I1 to I2

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The City of Kelowna does not guarantee its
accuracy. All information should be verified.

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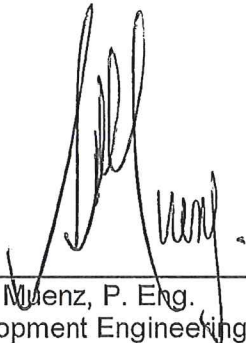
Rev. Oct 31, 2014

CITY OF KELOWNA
MEMORANDUM

Date: October 21, 2014
File No.: Z14-0046
To: Urban Planning Services (LB)
From: Development Engineer Manager (SM)
Subject: 822 McCurdy Place Lot 22, Plan K3323, DL124, ODYD

The Developments Engineering comments and requirements regarding this application to rezone the subject properties are as follows

1. General.
 - a) This development is within a strata industrial park. All Municipal services have been provided to the property line.
 - b) This application does not trigger any offsite upgrades.



Steve Muenz, P. Eng.
Development Engineering Manager

B²

CITY OF KELOWNA
BYLAW NO. 11040
Z14-0046 - Hyatt Auto Sales Ltd.
822 McCurdy Place

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

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

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Strata Lot 22, District Lot 124, ODYD, Strata Plan KAS3323, together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V, located on McCurdy Place, Kelowna, B.C., from the I1 - Business Industrial zone to the I2 - General Industrial zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Approved under the Transportation Act

(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: November 26, 2014

RIM No. 1250-30

To: City Manager

From: Urban Planning, Community Planning & Real Estate (LB)

Application: Z14-0045 **Owner:** Harmony Holdings Limited,
Inc. No. 78095

Address: 828, 834, 871 and 877 McCurdy Place **Applicant:** DTZ Barnicke Vancouver
Limited (Murray Wills)

Subject: 2014 12 08 Report Z14-0045 828 834 871 877 McCurdy Pl

Existing OCP Designation: IND - Industrial

Existing Zone: I1 - Business Industrial

Proposed Zone: I2 - General Industrial

1.0 Recommendation

THAT Rezoning Application No. Z14-0045 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Strata Lot 24, 26, 27, and 29, District Lot 124, ODYD, Strata Plan KAS3323 together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V located on 828, 834, 871 and 877 McCurdy Place, Kelowna, BC from the I1 - Business Industrial zone to the I2 - General Industrial zone as shown on Map "A" attached to the Report of the Urban Planning Department dated November 26, 2014, be considered by Council;

AND THAT the Zone Amending Bylaw be forwarded to a Public Hearing for further consideration.

2.0 Purpose

To consider a Rezoning application to rezone the subject properties from the I1 - Business Industrial zone to the I2 - General Industrial zone.

3.0 Urban Planning

Urban Planning staff supports the rezoning request to the I2 zone to allow general industrial uses on the subject properties. The Official Community Plan supports more intensive use of under-utilized industrial sites, and encourages protection of existing industrial land. Currently, only one of the 11 inner lots zoned I1 has been developed with two multi-unit warehouse buildings, and several units remain vacant. There has been little interest in developing other lots under the I1

zone. Several of the outer lots zoned I2 have been developed and others have been sold for future development. Rezoning the subject properties to the I2 zone protects the industrial land supply and supports more efficient use of industrial sites in this area.

The main differences between the I1 and I2 zones are the permitted uses and regulations regarding outdoor storage. The I1 zone allows some light industrial and office uses, with very limited outdoor storage. The I2 zone permits a greater range of industrial uses and fewer restrictions on outdoor storage. Offices are not a permitted use in the I2 zone. Should Council support the rezoning request, applicants will need to demonstrate appropriate buffers between the subject properties and adjacent properties through the Development Permit application process to minimize potential conflicts between uses. At time of site development, Development Permit applications to review the proposed form and character will be required.

It is important to note that a similar rezoning application has been made for 822 McCurdy Place, which is immediately north of 828 McCurdy Place. The applicant has also requested to rezone from the I1 to the I2 zone.

In fulfillment of Council Policy No. 367 respecting public consultation, the applicant undertook neighbour consultation by individually contacting the neighbours. The Marshall Business Centre Strata has expressed support for the proposed rezoning. To date, staff have not been contacted with any questions or concerns.

4.0 Proposal

4.1 Background

The Marshall Business Centre was created as a bareland strata industrial park in 2007 through rezoning and subdivision of a former feedlot. The lots on the outside of McCurdy Place are zoned I2 and the inside lots are zoned I1 and are intended for light industrial and office uses with limited outdoor storage. Several of the outer lots zoned I2 have been purchased and developed with various general industrial uses, including automotive, motorcycle and minor recreational vehicle retailers, manufacturing, and equipment sales and rentals. The majority of these uses involve some outdoor storage on the property.

One inner lot zoned I1 was developed in 2012 with two multi-unit buildings, on 840-842 McCurdy Place. Some units are occupied while others remain vacant, and there has been no interest in other lots zoned I1.

4.2 Site Context

The subject properties are located within the Marshall Business Centre, southwest of the intersection of McCurdy Road and Highway 97 in the City's Highway 97 Sector. The properties are designated IND - Industrial in the Official Community Plan and are within the Permanent Growth Boundary. The area surrounding the properties is industrial.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	I1 - Business Industrial (Rezoning application Z14-0046 to rezone from I1 to I2)	Industrial (vacant)
East	I2 - General Industrial	Industrial
South	I1 - Business Industrial	Industrial (multi-unit buildings, some vacant)
West	I2 - General Industrial	Industrial

Subject Property Map: 828, 834, 871 and 877 McCurdy Place



5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Development Process

Industrial Land Use Intensification.¹ Encourage more intensive industrial use of currently under-utilized industrial sites during site redevelopment or by permitting lot subdivision where new lots can meet the minimum lot size requirements of the Zoning Bylaw.

Industrial Supply Protection.² Protect existing industrial lands from conversion to other land uses by not supporting the rezoning of industrial land to preclude industrial activities unless there are environmental reasons for encouraging a change of use.

Discourage I1 Zoning.³ Discourage properties from being rezoned to I1 Business Industrial. Instead, applicants should be encouraged to pursue a new industrial zone which would be based on the I1 Zone, but would preclude “offices” as a permitted use.

6.0 Technical Comments

6.1 Building & Permitting Department

- No comments.

¹ City of Kelowna Official Community Plan, Policy 5.29.1 (Development Process Chapter).

² City of Kelowna Official Community Plan, Policy 5.30.1 (Development Process Chapter).

³ City of Kelowna Official Community Plan, Policy 5.30.2 (Development Process Chapter).

6.2 Development Engineering Department

- See attached memorandum, dated October 21, 2014.

6.3 Fortis BC - Electric

- There are primary distribution facilities within McCurdy Place. The applicant is responsible for costs associated with any change to the subject property's existing service, if any, as well as the provision of appropriate land rights where required.

7.0 Application Chronology

Date of Application Received: September 23, 2014

Date Public Consultation Completed: September 15, 2014

Report prepared by:

Laura Bentley, Planner

Reviewed by:



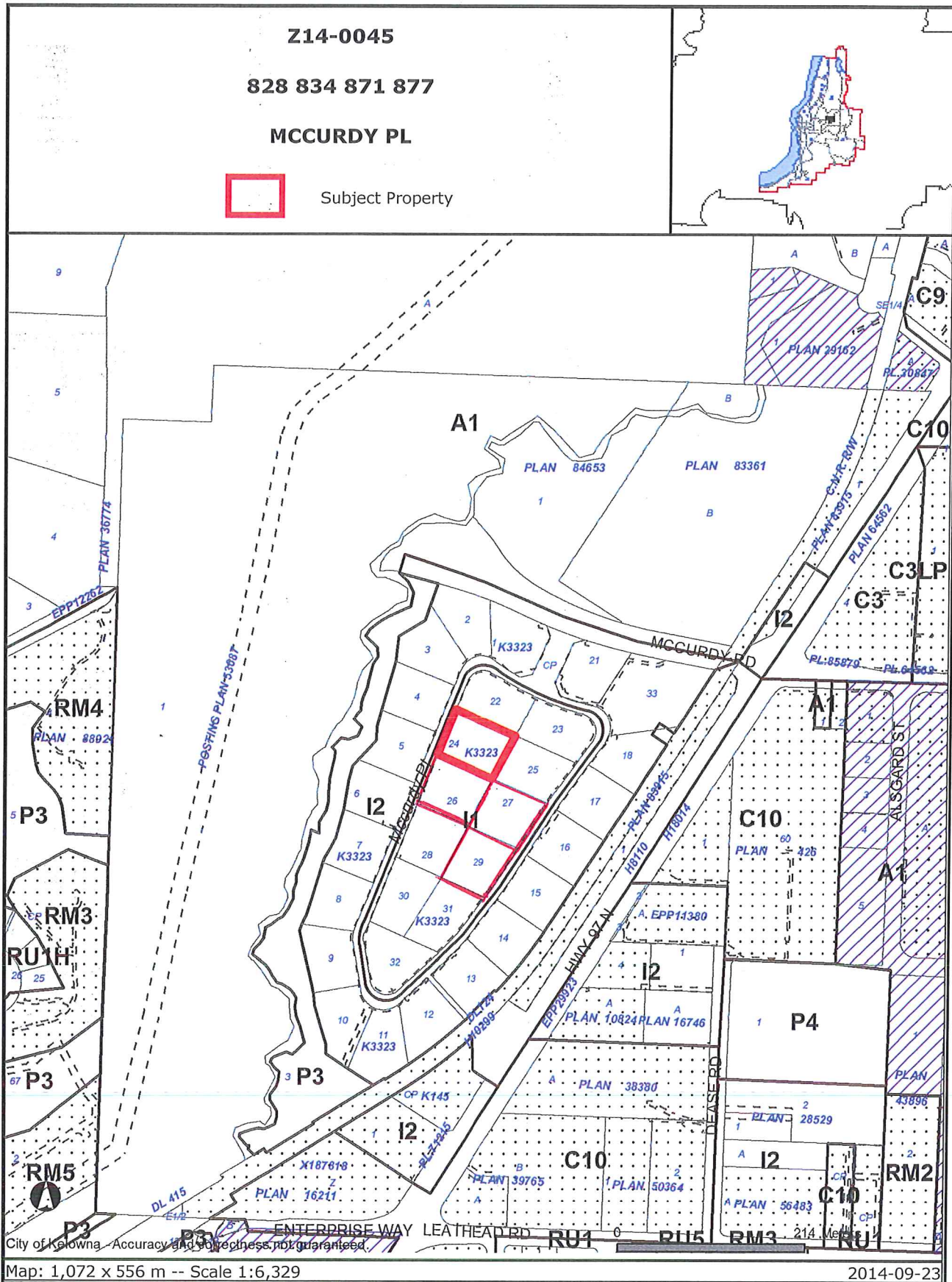
Ryan Smith, Urban Planning Manager

Attachments:

Subject Property Map

Map "A"

Development Engineering Memorandum



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.

P3

N



Subject Properties Notes:

Rezone the subject properties from I1 Business Industrial to I2 General Industrial.

I1

I2

MAP "A" PROPOSED ZONING
File #Z14-0045

- Zoning
- Legal Parcel
- Subject Properties
- I1 to I2

This map is for general information only.
The City of Kelowna does not guarantee its
accuracy. All information should be verified.

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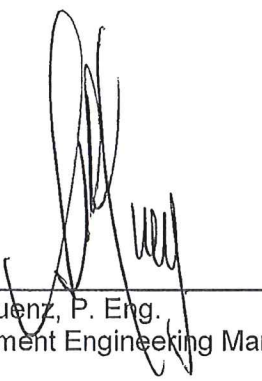
Rev. Oct 31, 2014

CITY OF KELOWNA
MEMORANDUM

Date: October 21, 2014
File No.: Z14-0045
To: Urban Planning Services (LB)
From: Development Engineer Manager (SM)
Subject: 828-834-877 and 871, McCurdy Pl. Lots 24, 26, 27 and 29, Plan K3323, DL124, ODYD

The Developments Engineering comments and requirements regarding this application to rezone the subject property are as follows

1. General.
 - a) This development is within a strata industrial park. All Municipal services have been provided to the property line.
 - b) This application does not trigger any offsite upgrades.



Steve Muenz, P. Eng.
Development Engineering Manager

B²

CITY OF KELOWNA
BYLAW NO. 11039
Z14-0045 - Harmony Holdings Limited Inc. No. 78095
828, 834, 871 and 877 McCurdy Place

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

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

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Strata Lots 24, 26, 27 and 29, District Lot 124, ODYD, Strata Plan KAS3323, together with an interest in the common property in proportion to the unit entitlement of the strata lot as shown on Form V, located on McCurdy Place, Kelowna, B.C., from the I1 - Business Industrial zone to the I2 - General Industrial zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Approved under the Transportation Act

(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: December 3, 2014

RIM No. 1250-30

To: City Manager

From: Urban Planning, Community Planning & Real Estate (LB)

Application: Z14-0042 **Owner:** Strandhaus Developments Inc., Inc. No. BC1005533

Address: 2210 Abbott Street **Applicant:** Steve & Loretta Nicholson

Subject: 2014 12 15 Report Z14-0042 2210 Abbott St

Existing OCP Designation: S2RES - Single / Two Unit Residential

Existing Zone: RU1 - Large Lot Housing

Proposed Zone: RU6 - Two Dwelling Housing

1.0 Recommendation

THAT Rezoning Application No. Z14-0042 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 27, District Lot 14, ODYD, Plan 535, located on 2210 Abbott Street, Kelowna, BC from the RU1 - Large Lot Housing zone to the RU6 - Two Dwelling Housing zone, as shown on Map "A" attached to the Report of the Urban Planning Department dated December 3, 2014, 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 considered in conjunction with Council's consideration of a Heritage Alteration Permit for the subject property;

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch being completed to their satisfaction.

2.0 Purpose

To consider a Rezoning application to rezone the subject property from the RU1 - Large Lot Housing zone to the RU6 - Two Dwelling Housing zone to allow a semi-detached dwelling to be built.

3.0 Urban Planning

Urban Planning staff supports the request to rezone the subject property to the RU6 - Two Dwelling Housing zone to facilitate a semi-detached dwelling. The proposal is consistent with the Official Community Plan (OCP) Future Land Use designation for the property and a nearby

property at 2248 Abbott Street was rezoned to RU6 for the construction of a semi-detached dwelling following Council adoption of the Zone Amending Bylaw on July 14, 2014.

A new waterfront pathway is proposed to connect Strathcona Park to the pocket park at Royal Avenue, and would run along the rear of the subject property. As part of the rezoning, the applicant will be required to provide for a sidewalk along the south side of Royal Avenue between the pocket park and Abbott Street. This presents an opportunity for improved pedestrian connectivity between the waterfront and the Abbott Street recreational corridor.

The subject property is located within the Abbott Street Heritage Conservation Area, but is not listed on the City's Heritage Register. The application requires a Heritage Alteration Permit (HAP) to address the demolition of the existing dwelling as well as the form and character and requested variances for the proposed development. The requested variances are to: increase the accessory building height, reduce the front yard setback, and reduce the north side yard setback. Following some changes to the original design submission, the Community Heritage Committee (CHC) reviewed the HAP on November 6, 2014 and passed a resolution supporting the demolition, form and character and variances given the site context. Should Council choose to support the Rezoning application, the HAP will be presented for Council's consideration once the other conditions of rezoning have been met.

In fulfillment of Council Policy No. 367 respecting public consultation, the applicant undertook neighbour consultation by individually contacting the neighbours. No major concerns were identified during this consultation. To date, staff received correspondence from one area resident who expressed some concerns with the proposed design.

4.0 Proposal

4.1 Project Description

The applicant recently acquired the subject property and is seeking to rezone it to develop a semi-detached dwelling in place of the existing single detached dwelling, which is in a state of disrepair. The proposed development interfaces with residential properties, hospital-related uses and the waterfront, and has been designed with open spaces that address the public realm. The architectural style is based on the Frank Lloyd Wright / Prairie style, and the form and character as well as requested variances will be considered through the HAP.

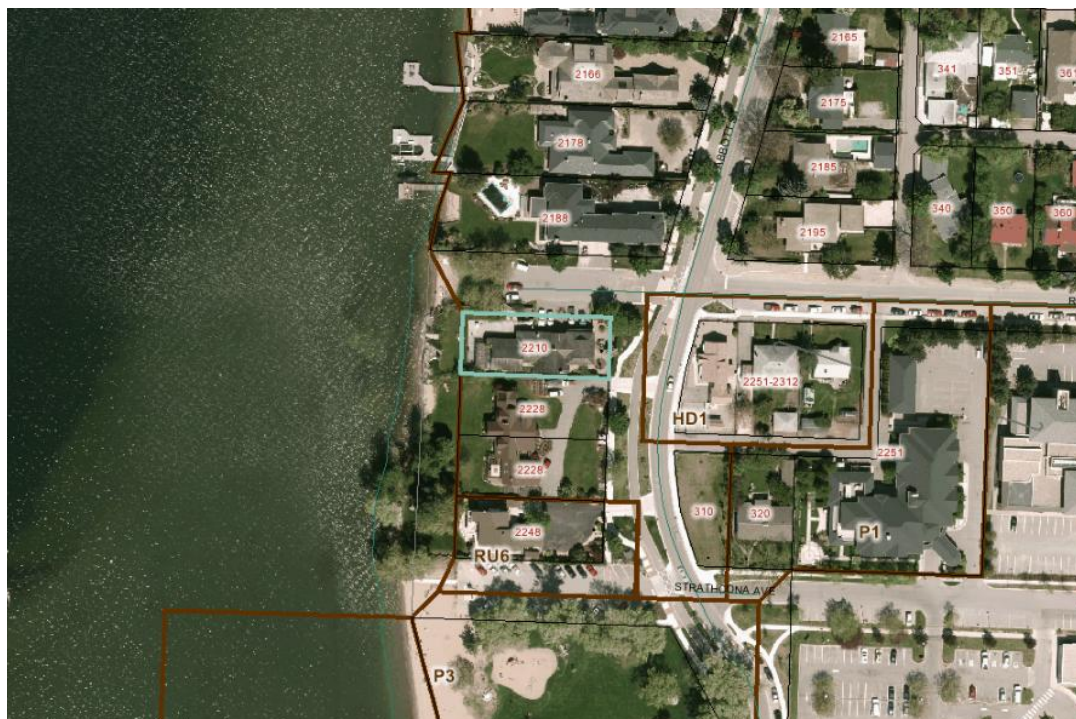
4.2 Site Context

The subject property is located at the southwest corner of the intersection of Abbott Street and Royal Avenue in the Abbott Street Heritage Conservation Area. The property is designated S2RES - Single / Two Unit Residential in the Official Community Plan and is within the Permanent Growth Boundary. Bordering the property are residential areas to the north and south, a parking lot for Kelowna General Hospital to the east and Okanagan Lake to the west.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RU1 - Large Lot Housing	Single detached dwelling
East	HD1 - Kelowna General Hospital	Kelowna General Hospital parking lot
South	RU1 - Large Lot Housing	Single detached dwelling
West	W1 - Recreational Water Use	Okanagan Lake and future public trail

Subject Property Map: 2210 Abbott Street



4.3 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	RU6 ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Lot Area	800 m ²	968.58 m ²
Lot Width	20.0 m	20.07 m
Lot Depth	30.0 m	48.26 m
Development Regulations		
Site Coverage (buildings)	40%	38.3%
Site Coverage (buildings, driveways & parking)	50%	38.3%
Height	9.5 m or 2 ½ storeys (principal building) 4.5 m (accessory building)	6.32 m 5.64 m ❶
Front Yard	4.5 m	1.21 m ❷
Side Yard (south)	2.0 m (1-1 ½ storeys) 2.3 m (2-2 ½ storeys)	Varies between 2.03 and 6.85 m
Side Yard (north)	4.5 m (flanking street)	
Rear Yard	7.5 m	9.064 m ❸
Other Regulations		
Private Open Space	60 m ² (30 m ² / dwelling)	Meets requirements
Minimum Parking	4 (2 stalls / dwelling)	4
Okanagan Lake Sightlines	120°	Meets requirements

- ❶ Requested variance to increase the accessory building height from 4.5 m permitted to 5.64 m proposed
- ❷ Requested variance to reduce the front yard from 4.5 m permitted to 1.21 m proposed
- ❸ Requested variance to reduce the north side yard from 4.5 m permitted to 2.03 m / 2.34 m proposed

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Development Process

Compact Urban Form.¹ Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

Sensitive Infill.² Encourage new development or redevelopment in existing residential areas to be sensitive to or reflect the character of the neighbourhood with respect to building design, height and siting.

Heritage Conservation Area Guidelines

Objectives:³

- Maintain the residential and historical character of the Marshall Street and the Abbott Street Heritage Conservation Areas;
- Encourage new development, additions and renovations to existing development which are compatible with the form and character of the existing context;
- Ensure that changes to buildings and streetscapes will be undertaken in ways which offer continuity of the 'sense-of-place' for neighbours, the broader community; and
- Provide historical interest for visitors through context sensitive development.

6.0 Technical Comments

6.1 Building & Permitting Department

- Full Plan check for Building Code related issues will be done at time of Building Permit applications.

6.2 Development Engineering

- See attached memorandum, dated September 29, 2014.

6.3 Fire Department

- Requirements of Section 9.10.19 Smoke Alarms of the BC Building Code 2012 are to be met.

6.4 FortisBC - Electric

¹ City of Kelowna Official Community Plan, Policy 5.2.3 (Development Process Chapter).

² City of Kelowna Official Community Plan, Policy 5.22.6 (Development Process Chapter).

³ City of Kelowna Official Community Plan, Objectives (Heritage Conservation Area Guidelines Chapter).

- There are primary distribution facilities within Abbott Street. The applicant is responsible for costs associated with any change to the subject property's existing service, if any, as well as the provision of appropriate land rights where required.

6.5 Parks & Public Places

- The applicant is required to provide a section and details regarding any proposed retaining walls on this property adjacent to the west and north property lines, i.e. the common property lines with the future waterfront walkway. How the wall works with proposed fencing / railings should be addressed in these details.
- Construction of a public sidewalk within the Royal Avenue road right-of-way be considered to connect the proposed waterfront walkway with the Abbott Street recreational corridor and the existing Royal Avenue sidewalk across Abbott Street.

6.6 Telus

- Telus will provide underground facilities to this development. Developer will be required to supply and install conduit as per Telus policy.

7.0 Application Chronology

Date of Application Received: September 16, 2014
Date Public Consultation Completed: August 28, 2014

Community Heritage Committee: November 6, 2014

The above noted application was reviewed by the Community Heritage Committee at the meeting held on November 6, 2014 and the following recommendations were passed:

THAT the Community Heritage Committee does support Heritage Alteration Permit Application No. HAP14-0014 for the property located at 2210 Abbott Street in order to allow the demolition of the existing dwelling and the form and character of a new semi-detached dwelling with variances.

Anecdotal Comments:

The Community Heritage Committee acceptance of the variances is largely due to the contextual situation of this property, bearing in mind the buffer zone of the recreational corridor on Abbott Street.

Report prepared by:

Laura Bentley, Planner

Reviewed by:



Lindsey Ganczar, Urban Planning Supervisor

Approved for Inclusion by:  Ryan Smith, Urban Planning Manager

Attachments:

Subject Property Map

Map "A"

Proposed Site Plan

Proposed Floor Plans

Proposed Elevations

Development Engineering Memorandum



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.

N
2165

2175

2185

2195

2166

2178

RU1

2188

Subject Property Notes:

Rezone the subject property
from RU1 Large Lot Housing
to RU6 Two Dwelling Housing.

W1

ROYAL AVE

2210

HD1

ABBOTT ST

2228

310

320

2251

P1

2248

RU6


STRATHCONA

W2

2290

P3

MAP "A" PROPOSED ZONING
File #Z14-0042

-  Zoning
-  Legal Parcel
-  Subject Property
-  RU1 to RU6

This map is for general information only.
The City of Kelowna does not guarantee its
accuracy. All information should be verified.

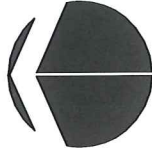
0 10 20 Metres Rev. Oct 31, 2014





INS DESIGN
644 ARROWLEAF LANE
KELOWNA, BC
V1Y 1Y5

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PROJECT NORTH

REVISION DATE DESCRIPTION

PROJECT

MULTIFAMILY DEVELOPMENT
2210 ABBOTT STREET
KELOWNA, BC V1Y 1E1
LOT 27 PLAN 535

DRAWING TITLE

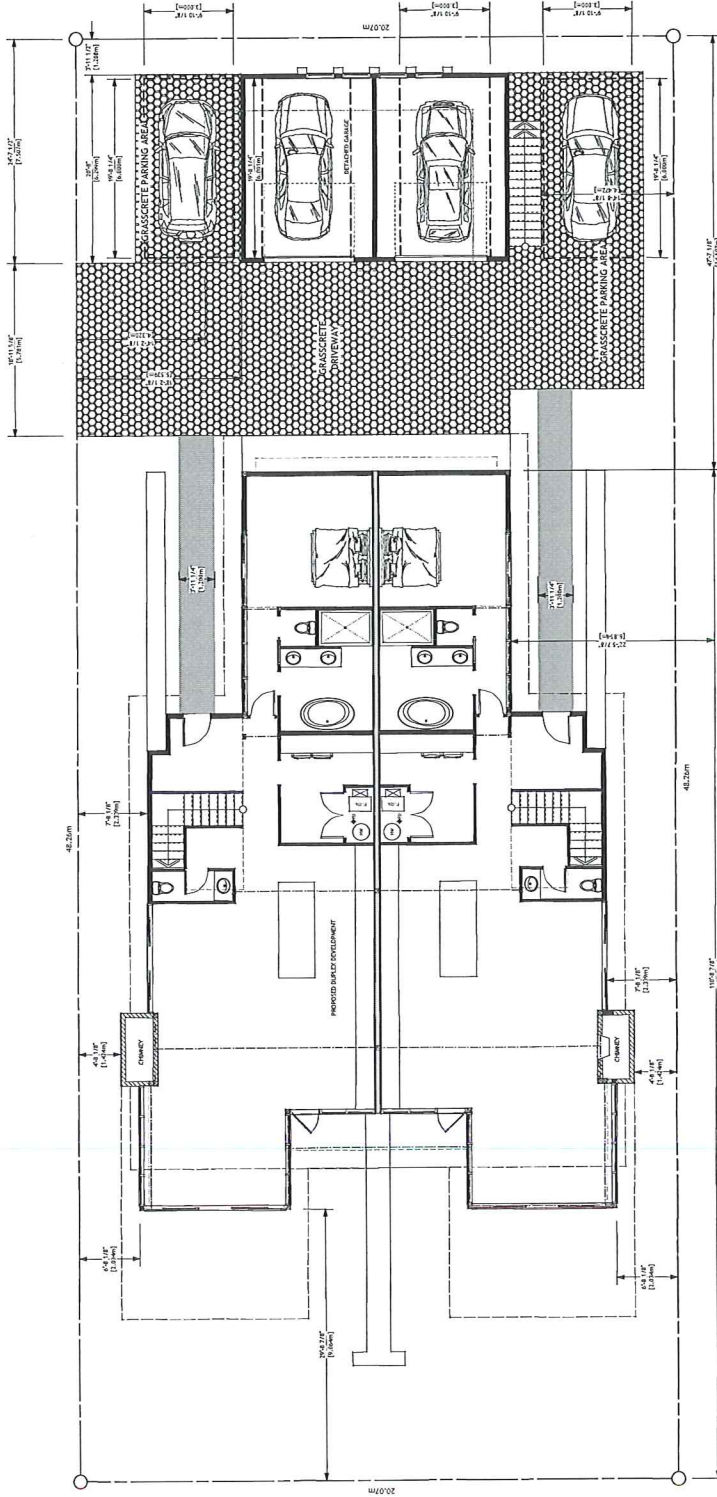
SITE/SECTION

DATE
SEPTEMBER 8, 2014

DRAWING NUMBER

5 of 6

ROYAL AVENUE



PEAK OF ROOF
30'-2 3/8" (9.21m)

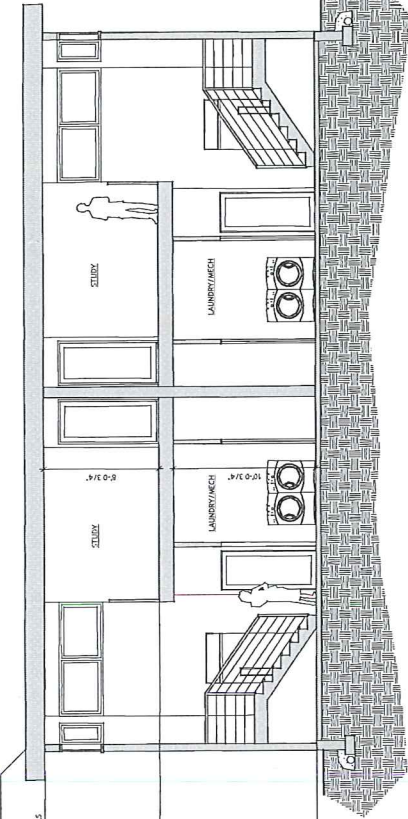
TOP OF SECOND FLOOR WALLS
19'-2 1/8" (5.84m)

TOP OF SECOND FLOOR
11'-1 3/8" (3.38m)

TOP OF SLAB
0'-0" (0.00m)

1 SITE PLAN
Scale: 1/8" = 1'-0"

0 5 10 15 20 25 30 FT
0 1.5 3 4.5 6 7.5 9 M

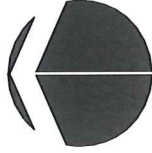


A SECTION
Scale: 1/8" = 1'-0"



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PROJECT NORTH

REVISION DATE DESCRIPTION

PROJECT

MULTIFAMILY DEVELOPMENT
2210 ABBOTT STREET
KELOWNA, BC V1Y 1E1
LOT 27 PLAN 535

DRAWING TITLE

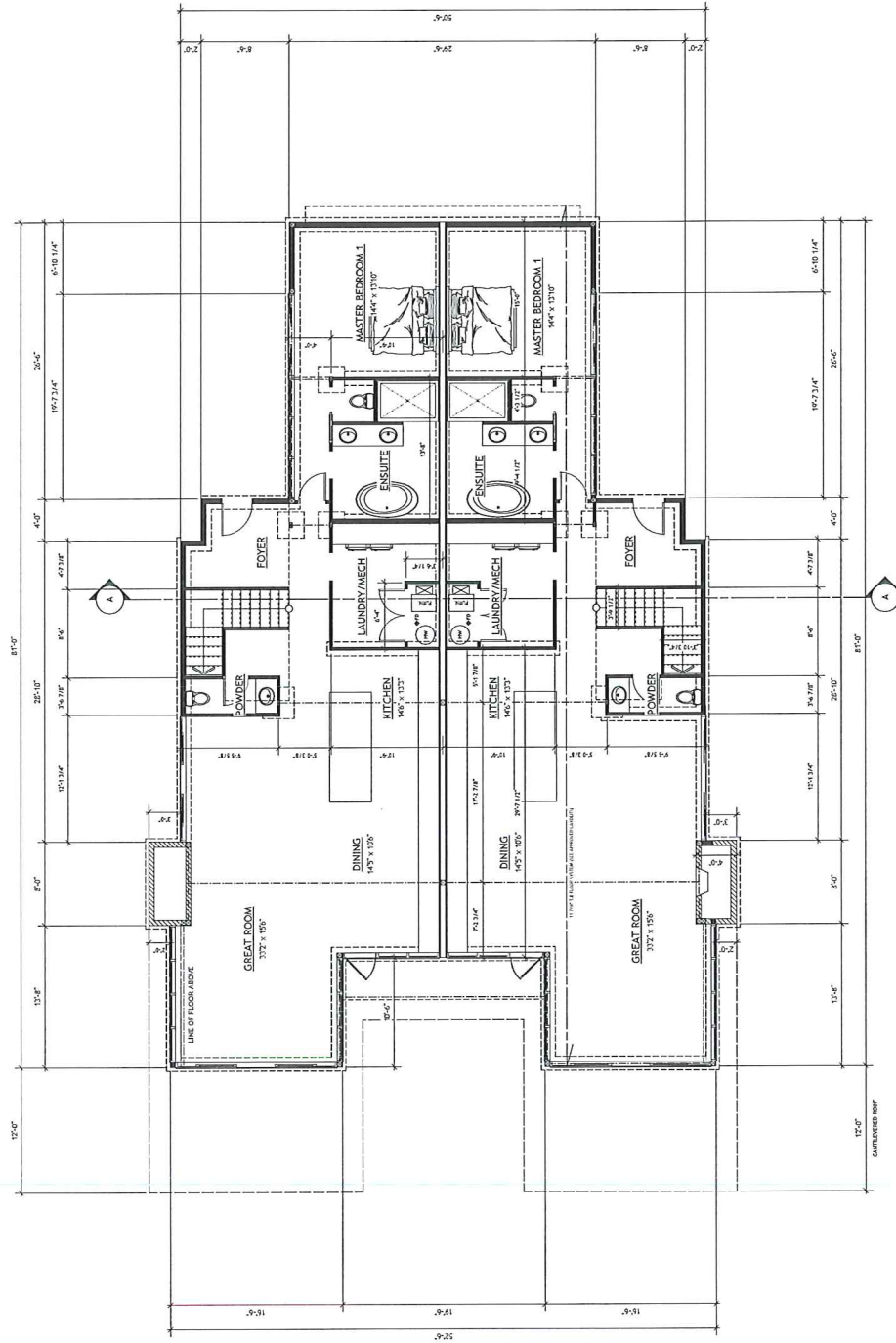
MAIN FLOOR PLAN

DATE

SEPTEMBER 8, 2014

DRAWING NUMBER

3 of 6

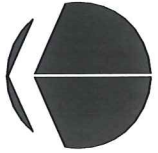


1 MAIN FLOOR
SCALE: 1/8" = 1'-0" UNIT FPA = 1621 SQ. FT.



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644 ARROWLEAF LANE
KELOWNA, BC
V1Y 4T3

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PROJECT NORTH

REVISION	DATE	DESCRIPTION

PROJECT

MULTIFAMILY DEVELOPMENT
2210 ABBOTT STREET
KELOWNA, BC V1Y 1E1
LOT 27 PLAN 535

DRAWING TITLE

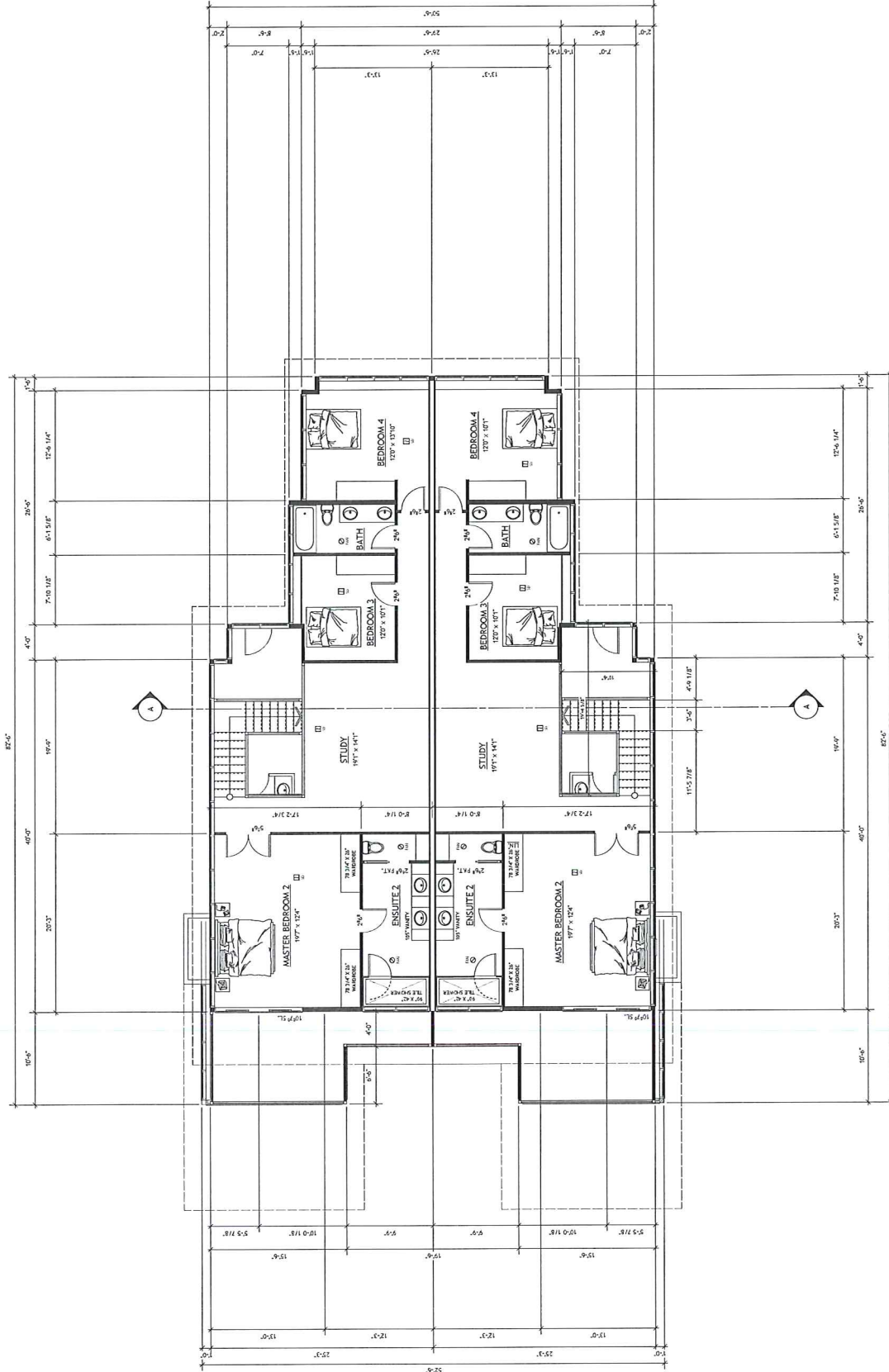
SECOND FLOOR PLAN

DATE

SEPTEMBER 8, 2014

DRAWING NUMBER

4 of 6

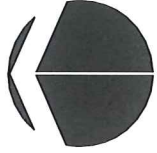


1 SECOND FLOOR
SCALE: 3/16" = 1'-0"
UNIT FFA = 1296 SQ. FT.



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PROJECT NORTH

REVISION	DATE	DESCRIPTION

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MULTIFAMILY DEVELOPMENT
2210 ABBOTT STREET
KELOWNA, BC V1Y 1E1
LOT 27 PLAN 535

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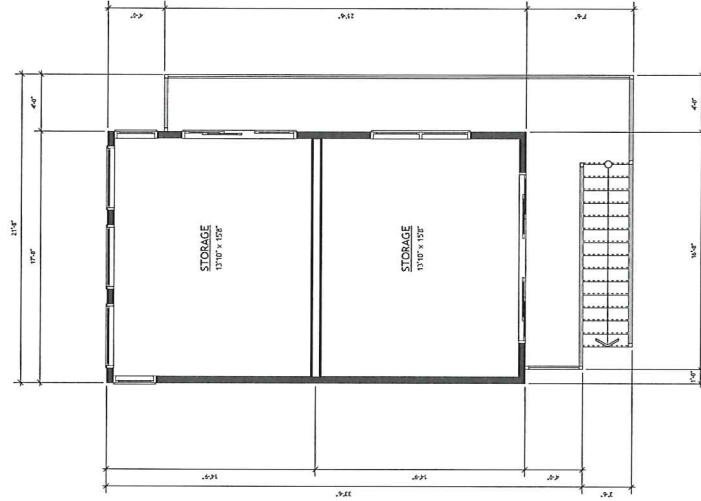
DETACHED GARAGE

DATE

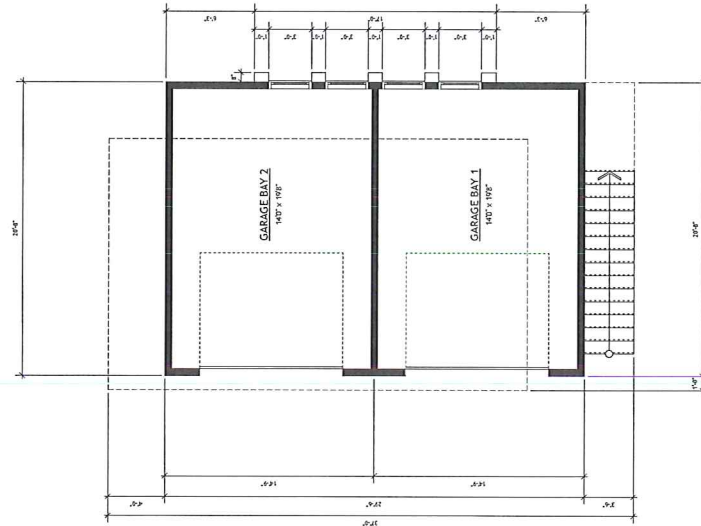
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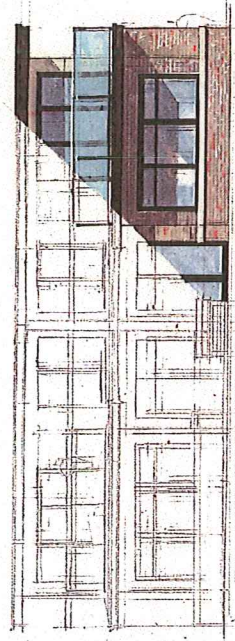
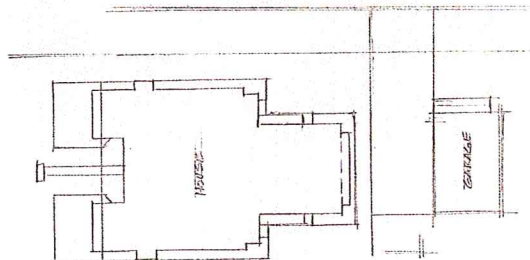
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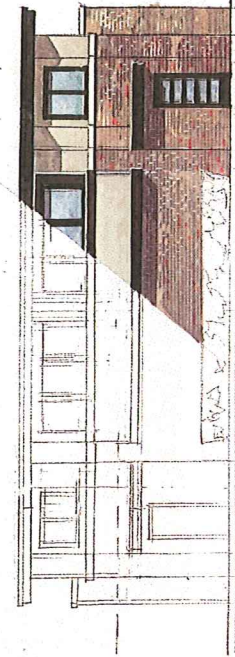
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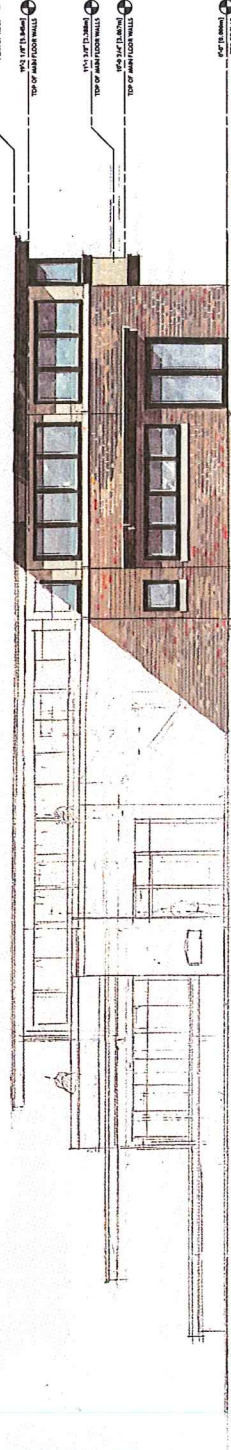
ROOF PLAN
NORTH



WEST ELEVATION (WEST)



EAST ELEVATION (EAST)



THIRD SIDE ELEVATION (SOUTH)

SCALE: 3/16" = 1'-0"

2210 ABBOTT STREET, KELLOWA, BC



ARCHITECTURAL FIRM
KELLOWA, BC V1P 4V1
2210 ABBOTT STREET
KELLOWA, BC V1P 4V1

PRINCIPAL DWELLING ELEVATIONS

SEPTEMBER 17, 2014

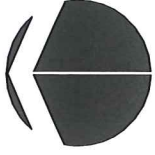
SCALE: 3/16" = 1'-0"

1 OF 1



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PROJECT NORTH

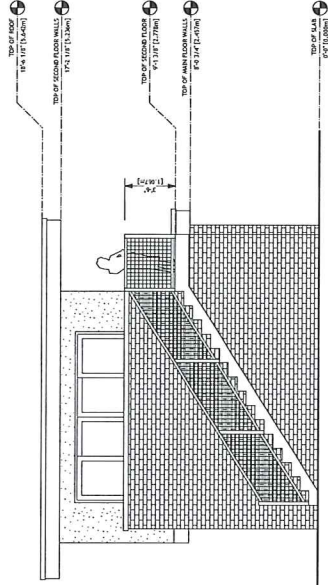
REVISION DATE DESCRIPTION

PROJECT
MULTIFAMILY DEVELOPMENT
2210 ABBOTT STREET
KELOWNA, BC V1Y 1E1
LOT 27 PLAN 535

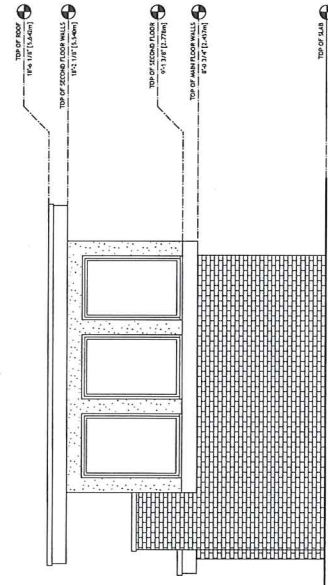
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GARAGE ELEVATIONS

DATE
SEPTEMBER 8, 2014

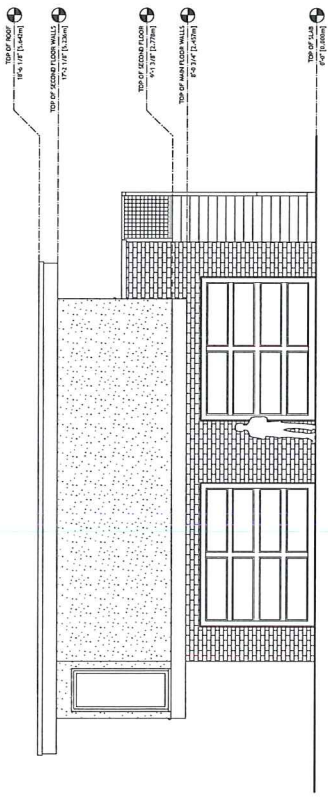
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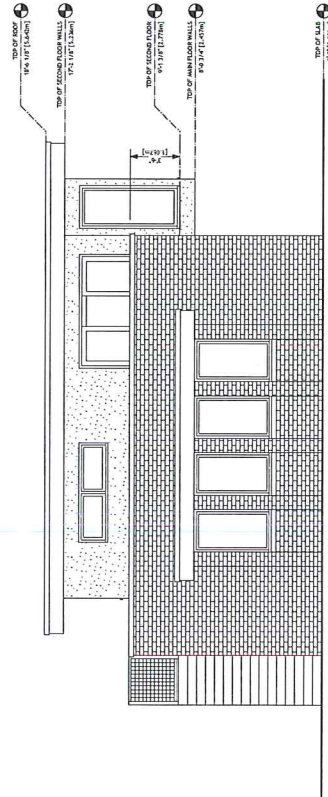
2 SOUTH ELEVATION
Scale: 1/4" = 1'-0"



4 NORTH ELEVATION
Scale: 1/4" = 1'-0"



1 WEST ELEVATION
Scale: 1/4" = 1'-0"



3 EAST ELEVATION
Scale: 1/4" = 1'-0"



CITY OF KELOWNA
MEMORANDUM

Date: September 29, 2014
File No.: Z14-0042
To: Urban Planning (LB)
From: Development Engineering Manager
Subject: 2210 Abbott Street

RU6

Development Engineering has the following comments and requirements associated with this application to rezone from RU1 to RU6.

1. Domestic Water and Fire Protection

Our records indicate this property is currently serviced with a 19mm-diameter water service. An additional water service will be required and can be provided by City forces at the developer's expense. The applicant will be required to sign a Third Party Work Order for the cost of the water service upgrade. For estimate inquiry's please contact Sergio Sartori by email ssartori@kelowna.ca or phone 250-469-8589.

2. Sanitary Sewer

Our records indicate that this property is serviced with a 100mm-diameter sanitary sewer service complete with inspection chamber. The service is adequate for the proposed application.

3. Road Improvements

- a) Abbott Street has been upgraded along the full frontage of this property, and no further upgrades are required.
- b) Royal Ave has been upgraded along the full frontage of this property with the exception of sidewalk; therefore a sidewalk is a requirement of this application.

4. Access, Manoeuvrability and Parking Requirements

The Parking Area shall be designed so as to allow vehicles to turn-around on-site and exit onto Royal Ave in a forward direction.

Driveway access is limited to Royal Ave only and should be a maximum of 6m in width.

5. Electric Power and Telecommunication Services

It is the applicant's responsibility to make a servicing application with the respective electric power, telephone and cable transmission companies to arrange for service upgrades to these services which would be at the applicant's cost.



Steve Muenz, P. Eng.
Development Engineering Manager

SS

CITY OF KELOWNA

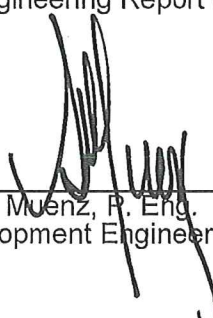
MEMORANDUM

Date: September 29, 2014
File No.: HAP14-0014
To: Urban Planning (LB)
From: Development Engineer Manager (SM)
Subject: 2210 Abbott Street

The Development Engineering comments and requirements regarding this Development Permit application are as follows:

1. General.

- a) All the offsite infrastructure and services upgrades are addressed in the Development Engineering Report under file Z14-0042.



Steve Muenz, R. Eng.
Development Engineering Manager

SS

CITY OF KELOWNA
BYLAW NO. 11045
Z14-0042 - Strandhaus Developments Inc., Inc. No.
BC1005533 and Steven & Loretta Nicholson
2210 Abbott Street

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

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

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 27, District Lot 14, ODYD, Plan 535, located on Abbott Street, Kelowna, B.C., from the RU1 - Large Lot Housing zone to the RU6 - Two Dwelling Housing zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this

Considered at a Public Hearing on the

Read a second and third time by the Municipal Council this

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA
BYLAW NO. 10757
Z12-0046 - 564913 BC Ltd. Inc. No. 564913
1350 St. Paul Street

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

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

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 1, District Lot 139 ODYD, Plan KAP68461 located on St. Paul Street, Kelowna, B.C., from the I2 - General Industrial zone to the C7 - Central Business Commercial zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this 10th day of September, 2012.

Considered at a Public Hearing on the 2nd day of October, 2012.

Read a second and third time by the Municipal Council this 2nd day of October, 2012.

Approved under the Transportation Act this 15th day of November, 2012.

Lynda Lochhead
(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: December 3, 2014

RIM No. 0940-40

To: City Manager

From: Urban Planning, Community Planning & Real Estate (LB)

Application: Z12-0046 / DP14-0169 **Owner:** 564913 BC Ltd., Inc. No. 564913

Address: 1350 St. Paul Street **Applicant:** 564913 BC Ltd. (Joe Higgins)

Subject: 2014 12 08 Report DP14-0169 Z12-0046 1350 St Paul St

Existing OCP Designation: MXR - Mixed Use (Residential / Commercial)

Existing Zone: I2 - General Industrial

Proposed Zone: C7 - Central Business Commercial

1.0 Recommendation

THAT final adoption of Zone Amending Bylaw No. 10757 be considered by Council;

AND THAT Council authorizes the issuance of Development Permit No. DP14-0169 for Lot 1, District Lot 139, ODYD, Plan KAP68461 located on 1350 St. Paul Street, Kelowna, BC subject to the following:

1. The dimensions and siting of the parking lot to be constructed on the land be in general accordance with Schedule "A";
2. Landscaping to be provided on the land be in general accordance with Schedule "C";
3. The applicant be required to post with the City, a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a professional landscaper;

AND FURTHER THAT the applicant be required to complete the above-noted conditions within 180 days of Council's approval of the Development Permit Application in order for the permit to be issued.

2.0 Purpose

To consider a Development Permit application for the development of a surface parking lot on the subject property.

3.0 Urban Planning

Urban Planning staff support the Development Permit application for a 46 stall surface parking lot on the subject property. Although this is not the highest and most efficient use of the property, the proposed development and rezoning will formalize its use and allow for future redevelopment of the site that is consistent with the vision for the City Centre (Downtown) Urban Centre.

In 2014, the applicant completed a Transportation Impact Assessment (TIA) to determine possible transportation impacts and associated mitigation measures needed to address the property's potential future build-out and its use as a parking lot. The TIA showed minimal impacts resulting from the potential development of the property and did not recommend additional improvements to existing or planned transportation infrastructure in the immediate vicinity. Specifically, construction of a midblock lane connection through the subject property was not recommended.

Based on staff feedback, the applicant added two pedestrian connections between the parking lot and the existing sidewalk along St. Paul Street. This addresses the need for emergency access from St. Paul Street and enables pedestrian connectivity to the property. The applicant will also complete the boulevard landscaping between the property line and the sidewalk by planting shrubs and street trees, in addition to the 3 m landscaped buffer on the subject property.

4.0 Proposal

4.1 Background

Rezoning application Z12-0046 was submitted in 2012 to rezone the subject property from the I2 - General Industrial zone to the C7 - Central Business Commercial zone in order to accommodate the non-accessory parking use that operated on the subject property for several years. This application was given first reading on September 10, 2012, and second and third readings were given following the Public Hearing on October 2, 2012.

Council approved an extension on September 30, 2013 to extend the Rezoning application to October 2, 2014 to allow the applicant additional time to consider options for site development. The applicant intended to either come forward with a development concept or formalize the property's use as a surface parking lot. A Development Permit application for a surface parking lot was submitted in September 2014 and a final extension request to February 2, 2015 was approved on September 29, 2014 to provide sufficient time to review and finalize the proposed plans.

The applicant is seeking approval to develop a 46 stall surface parking lot on the subject property to formalize its use as a parking lot.

4.2 Site Context

The subject property is located on the west side of St. Paul Street between Doyle Avenue and Cawston Avenue. The property is designated MXR - Mixed Use (Residential / Commercial) in the Official Community Plan and is within the City Centre (Downtown) Urban Centre as well as the Permanent Growth Boundary. The surrounding area is a mix of commercial and residential uses, most of which are under the C7 zone.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	C7 - Central Business Commercial	Various commercial
East	C7 - Central Business Commercial	Public Guardian and Trustee of British Columbia Kelowna Daily Courier
South	C7 - Central Business Commercial	Various commercial offices
West	C7 - Central Business Commercial	Ellis Court condominiums

Subject Property Map: 1350 St. Paul Street



4.3 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	C7 ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Lot Area	200 m ²	1,499.6 m ²
Lot Width	6.0 m	33.37 m
Lot Depth	30.0 m	44.59 m

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Development Process

Downtown Development.¹ Support rezoning to C7 use in the downtown Urban Centre area only where properties are surrounded on a minimum of 3 sides by existing C7 zoning. The intent of this policy is to support intensification within the existing core areas of Downtown.

Streetscaping.² Urban Centre roads should be considered as part of the public space and streetscaped with full amenities (i.e. sidewalks, trees and other planting, furniture, bike facilities, boulevards, etc.).

6.0 Technical Comments

6.1 Building & Permitting Department

- Plumbing Permit required for on-site civil work.

6.2 Development Engineering Department

- See attached memorandums, dated September 16, 2014 and October 28, 2014.

6.3 Fire Department

- Lane does not provide proper access for fire department vehicles into this parking lot. Access is required off of St. Paul Street should there be a vehicle fire.

6.4 FortisBC - Electric

- There are primary distribution facilities along St. Paul Street and within the lane adjacent to the subject's west property line. The applicant is responsible for costs associated with any change to the subject's existing service, if any, as well as the provision of appropriate land rights where required.

7.0 Application Chronology

Date of Application Received: September 8, 2014

¹ City of Kelowna Official Community Plan, Policy 5.3.4 (Development Process Chapter).

² City of Kelowna Official Community Plan, Policy 5.8.2 (Development Process Chapter).

Report prepared by:

Laura Bentley, Planner

Reviewed by:

☐

Lindsey Ganczar, Urban Planning Supervisor

Approved for Inclusion:

☐

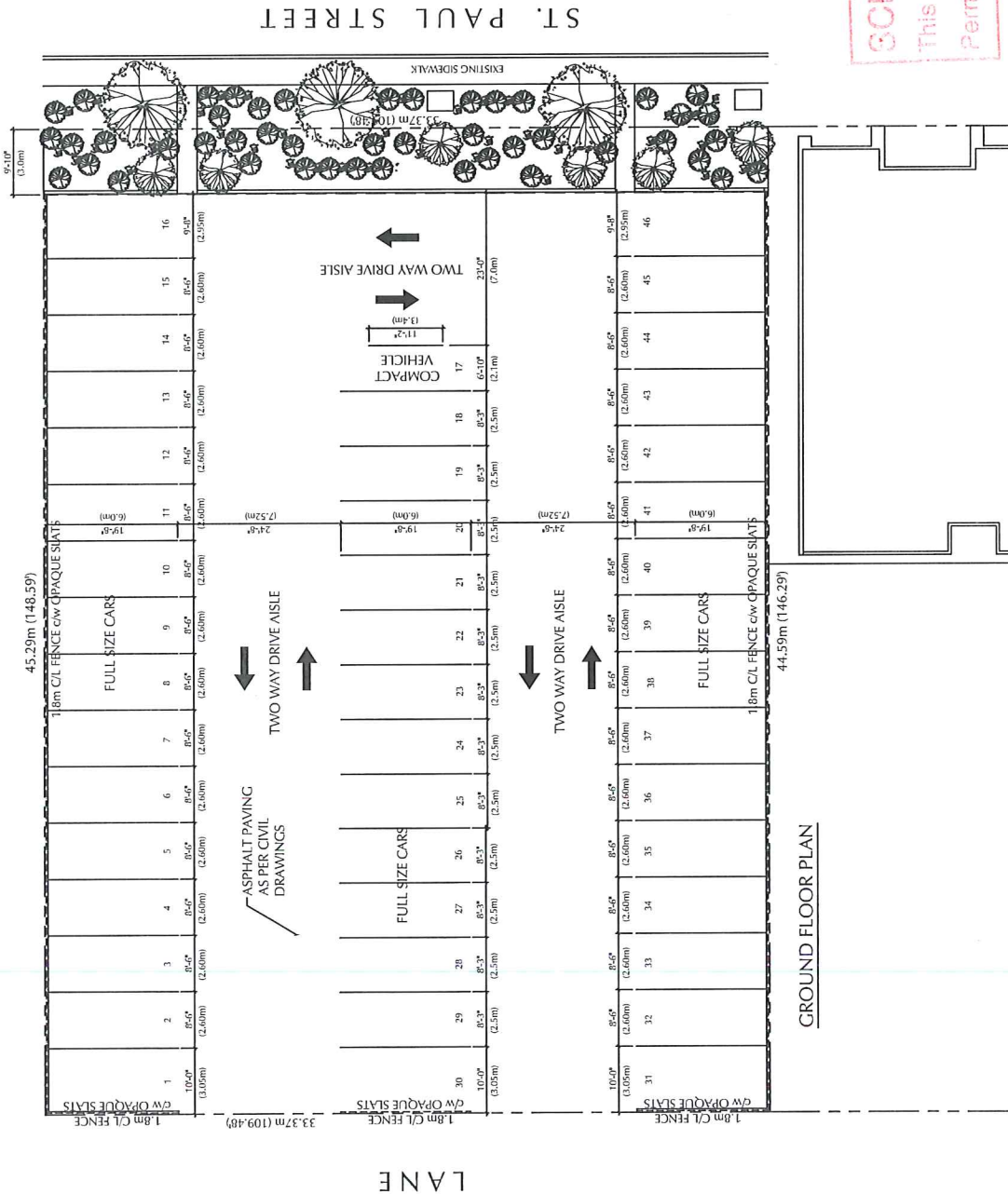
Ryan Smith, Urban Planning Manager

Attachments:

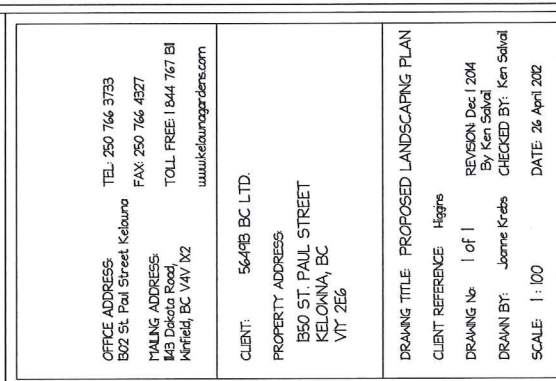
Subject Property Map
Site and Landscaping Plan - Schedule A & C
Development Engineering Memorandum
Draft Development Permit DP14-0169









PROJECT DATA	
OWNER ADDRESS:	1330 ST. PAUL ST., KELOWNA, BC
LEGAL DESCRIPTION:	PLAN K476451, LOT 1, DL 139, O.D.V.D.
CURRENT ZONING:	I2 - GENERAL INDUSTRIAL
ZONING BYLAW REQUIREMENTS	
PROPOSED ZONE C7 - CENTRAL BUSINESS COMMERCIAL	
PROPOSED USE - NON-ACCESSORY PARKING	
SITE AREA = 16,143 SQ.FT. (1,499.6 SQ.M.)	
PROPOSED	PERMITTED
LOT WIDTH	33.37m
LOT DEPTH	30.0m
LOT AREA	1,499.6 sq.m.
FLOOR AREA RATIO (FAR)	0.0 (0 sq.m.)
HEIGHT (m)	0m
SETBACKS (m)	0m
FRONT (ST. PAUL STREET)	0m
SIDE (NORTH)	0m
SIDE (SOUTH)	0m
REAR (WEST - LANE)	0m
PARKING	0 STALLS
COMMERCIAL @ 1,370 SQ.M. CFA X 0.9 sq.m. =	0 STALLS
LANDSCAPE BUFFERS (m)	2.0m
FRONT (ST. PAUL STREET)	0.0m
SIDE (NORTH)	0.0m
SIDE (SOUTH)	0.0m
REAR (WEST - LANE)	0.0m
LANDSCAPE TREATMENT LEVELS	
FRONT (ST. PAUL STREET)	2
SIDE (NORTH)	3*
SIDE (SOUTH)	3*
REAR (WEST - LANE)	3*
	* OR OPAQUE FENCING



	HANS P. NEUMANN ARCHITECT INC.			SCALE: 1/8" = 1' 0"	
	PROPOSED SITE RE-DEVELOPMENT 1330 ST. PAUL STREET KELOWNA, BC			DATE: AUGUST 22, 2014	
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PROJECT		PROPOSED SITE RE-DEVELOPMENT 1330 ST. PAUL STREET KELOWNA, BC		DRAWING NO.: DP1	
DRAWING TITLE		SITE PLAN		REVISION No. 1	
PROJECT		PROPOSED SITE RE-DEVELOPMENT 1330 ST. PAUL STREET KELOWNA, BC		DRAWING NO.: DP1	
DRAWING TITLE		SITE PLAN		REVISION No. 1	
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DRAWING TITLE		SITE PLAN		REVISION No. 1	
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DRAWING TITLE		SITE PLAN		REVISION No. 1	
PROJECT		PROPOSED SITE RE-DEVELOPMENT 1330 ST. PAUL STREET KELOWNA, BC		DRAWING NO.: DP1	
DRAWING TITLE		SITE PLAN		REVISION No. 1	
PROJECT		PROPOSED SITE RE-DEVELOPMENT			



PLANT LEGEND	QUANTITY
 Yucca filamentosa ADAMS' NEEDLE	6
 Artemisia ludoviciana Valere Finel VALERE FINES SILVER SAGE	8
 Juniperus chinensis Purzel GOLD COAST JUNPER	6
 Juniperus virginiana 'Seyoudek' SKYROCKET JUNPER	5
 Juniperus Sabina Purzel CALGARY CARPET JUNPER	6
 Rhus aromatica 'Gro-Land' FRAGRANT SUMAC	6

DRAWING NOTES

WE RECOMMEND THE FOLLOWING:

ALL PLANTING BEDS TO BE BERMED TO APPROX. 1 FT
IN HEIGHT PER 8 FT OF WIDTH.

NO PLANTS TO BE PLANTED WITHIN 8' OF THE
EDGE OF THE PLANTING BED.

ALL PLANTING BEDS TO BE MULCHED WITH NATURE'S GOLD ORGANIC MULCH.

IF POSSIBLE PLANT THE BED IN THE AUTUMN AND HAND WATER ALL PLANTS FOR THE REMAINDER OF THE GROWING SEASON FOR EASY ESTABLISHMENT.

SCHEDULE

the forms part of development

09/14-0109

CITY OF KELOWNA
MEMORANDUM

Date: September 12, 2014
File No.: Z12-0046
To: Urban Planning (AW & LB)
From: Development Engineering Manager (SM)
Subject: 1350 St Paul Street - Revised Comments II - Lot 1 Plan 68461 Parking Lot

Development Engineering Services have the following comments and requirements associated with this application to rezone to C7.

1. General

- (a) The subject property is located on St Paul Street between Doyle Avenue and Cawston Avenue. The subject property has a no-build restrictive covenant (Filed under 2450-20 - RC05-04) that is secured in favour of the City as part of the subdivision process (File S99-109). Therefore the requirement for the applicant to prepare and submit an impact assessment which addresses the transportation requirements which will result from this property being fully developed can be deferred to the development permit stage. The owner is advised that the requirements for off-site improvements that will be identified in the impact assessment will be at the developer's costs. The developer will be required to provide securities for the off-site improvement and enter into a servicing agreement with the City.
- (b) The applicant has indicated that there are no immediate plans to develop and that the present parking lot use will remain, current application will trigger the following requirements.

2. Domestic Water and Fire Protection

- (a) The subject property is currently serviced with a small diameter water service. Servicing requirements will be determined by the developer's consulting engineer at the development permit stage. Service upgrades will be at the developer's cost.
- (b) The existing service may be utilized for boulevard landscaping and shall be integrated with the on-site irrigation systems.

3. Sanitary Sewer

- (a) Our records indicate that the subject property is connected with a 150mm diameter sewer service. Servicing requirements will be determined by the developer's consulting engineer at the development permit stage. Service upgrades will be at the developer's cost.

4. Storm Drainage

- (a) Provide a storm water management plan which meets the requirements of the City Storm Water Management Policy and Design Manual. The storm water management plan must include provision of a Lot Grading Plan.
- (b) The development will be required to contain and dispose of site generated storm water on the site by installing a ground recharge system consisting of drywells and perforated pipe bedded in drain rock.

5. Road Improvements

- (a) The St. Paul Street frontage is urbanized. It will be necessary to provide boulevard landscaping between the back of sidewalk and the property line. The applicant will be required to include the details for this required improvement on the Landscape Design Drawing

6. Site Related Issues

- (a) Site access shall be provided from the lane. *It should be noted the requirement that lane movements onto Doyle Ave will be limited to right-in / right out only.*
- (b) It will be necessary to provide a parking lot layout that meets the current bylaw requirements.



Steve Muenz, P. Eng.
Development Engineering Manager

SS & JF

CITY OF KELOWNA

APPROVED ISSUANCE OF A:

☐ Development Permit No.: DP14-0169

EXISTING ZONING DESIGNATION: C7 – Central Business Commercial
WITHIN DEVELOPMENT PERMIT AREA: Revitalization Development Permit Area

ISSUED TO: Joe Higgins
LOCATION OF SUBJECT SITE: 1350 St. Paul Street

	LOT	SECTION	D.L.	TOWNSHIP	DISTRICT	PLAN
LEGAL DESCRIPTION:	1	-	139	-	ODYD	KAP68461

SCOPE OF APPROVAL

- ☐ This Permit applies to and only to those lands within the Municipality as described above, and any and all buildings, structures and other development thereon.
- ☐ This Permit is issued subject to compliance with all of the Bylaws of the Municipality applicable thereto, except as specifically varied or supplemented by this Permit, noted in the Terms and Conditions below.
- ☐ Applicants for Development and Development Variance Permit should be aware that the issuance of a Permit limits the applicant to be in strict compliance with regulations of the Zoning Bylaw or Subdivision Control Bylaw unless specific Variances have been authorized by the Permit. No implied Variances from bylaw provisions shall be granted by virtue of drawing notations which are inconsistent with bylaw provisions and which may not have been identified as required Variances by the applicant or City staff.

1. TERMS AND CONDITIONS:

- a) The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A";
- b) Landscaping to be provided on the land be in general accordance with Schedule "C";

2. PERFORMANCE SECURITY:

As a condition of the issuance of this Permit, Council is holding the security set out below to ensure that development is carried out in accordance with the terms and conditions of this Permit. Should any interest be earned upon the security, it shall accrue to the Permittee and be paid to the Permittee if the security is returned. The condition of the posting of the security is that should the Permittee fail to carry out the development hereby authorized, according to the terms and conditions of this Permit within the time provided, the Municipality may use the security to carry out the work by its servants, agents or contractors, and any surplus shall be paid over to the Permittee, or should the Permittee carry out the development Permitted by this Permit within the time set out above, the security shall be returned to the Permittee. There is filed accordingly:

- (a) Cash in the amount of \$ 25,000 OR
- (b) A Certified Cheque in the amount of \$ 25,000 OR
- (c) An Irrevocable Letter of Credit in the amount of \$ 25,000 .

Before any bond or security required under this Permit is reduced or released, the Developer will provide the City with a statutory declaration certifying that all labour, material, workers' compensation and other taxes and costs have been paid.

4. DEVELOPMENT:

The land described herein shall be developed strictly in accordance with the terms and conditions and provisions of this Permit and any plans and specifications attached to this Permit which shall form a part hereof.

If the Permittee does not commence the development Permitted by this Permit within one year of the date of this Permit, this Permit shall lapse.

This Permit is not transferable unless specifically permitted by the Municipality. The authorization to transfer the Permit shall, if deemed acceptable, be granted by Council resolution.

THIS Permit IS NOT A BUILDING Permit.

5. APPLICANT'S AGREEMENT:

I hereby declare that all the above statements and the information contained in the material submitted in support of this Permit are to the best of my belief, true and correct in all respects. Upon issuance of the Permit for me by the Municipality, then in such case, I covenant and agree to save harmless and effectually indemnify the Municipality against:

- (a) All actions and proceedings, costs, damages, expenses, claims, and demands whatsoever and by whomsoever brought, by reason of the Municipality granting to me the said Permit.
- (b) All costs, expenses, claims that may be incurred by the Municipality if the construction by me of engineering or other types of works as called for by the Permit results in damages to any property owned in whole or in part by the Municipality or which the Municipality by duty or custom is obliged, directly or indirectly in any way or to any degree, to construct, repair, or maintain.

I further covenant and agree that should I be granted a Development Permit or Development Variance Permit, the Municipality may withhold the granting of any occupancy Permit for the occupancy and/or use of any building or part thereof constructed upon the hereinbefore referred to land until all of the engineering works or other works called for by the Permit have been completed to the satisfaction of the Municipal Engineer and Divisional Director of Community Planning & Real Estate.

Should there be any change in ownership or legal description of the property, I undertake to notify the Community Planning & Real Estate Department immediately to avoid any unnecessary delay in processing the application.

I HEREBY UNDERSTAND AND AGREE TO ALL THE TERMS AND CONDITIONS SPECIFIED IN THIS PERMIT.

Signature of Owner/Authorized Agent

Date

Print Name in Bold Letters

Telephone No.

6. APPROVALS:

ISSUED BY THE COMMUNITY PLANNING & REAL ESTATE DIVISION OF THE CITY OF KELOWNA THE ____ DAY OF DECEMBER 2014,
BY THE URBAN PLANNING MANAGER.

Ryan Smith
Urban Planning Manager

CITY OF KELOWNA
BYLAW NO. 10979
Z14-0019 - Alexander Ryan Tull
260 Ponto Road

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

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

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 17, Section 26, Township 26, ODYD, Plan 4414, located on 260 Ponto Road, Kelowna, B.C., from the RU1 - Large Lot Housing zone to the RM1 - Four Dwelling Housing zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this 14th day of July, 2014.

Considered at a Public Hearing on the 29th day of July, 2014.

Read a second and third time by the Municipal Council this 29th day of July, 2014.

Approved under the Transportation Act this 8th day of December, 2014

Audrie L. Henry

(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: November 17, 2014

RIM No. 0940-40

To: City Manager

From: Urban Planning, Community Planning & Real Estate (LM)

Application: DP14-0084 **Owner:** Alexander Ryan Tull

Address: 260 Ponto Road **Applicant:** Alexander Ryan Tull

Subject: Development Application Proposal for a Four Plex Dwelling

Existing OCP Designation: Multi Unit Residential Low Density

Existing Zone: RU1 - Large Lot Housing

Proposed Zone: RM1 - Four Dwelling Housing

1.0 Recommendation

THAT Council authorize the issuance of DP14-0084 on Lot 17, Section 26, Township 26, ODYD, Plan 4414 located on 260 Ponto Road, Kelowna, BC subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A"
2. The exterior design and finish of the building to be constructed on the land, be in general accordance with Schedule "B"
3. Landscaping to be provided on the land be in general accordance with Schedule "C"
4. The applicant be required to post with the City, a Landscape Performance Security Deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a professional landscaper;

AND FURTHER THAT the applicant be required to complete the above-noted conditions within 180 days of Council's approval of the Development Permit Application in order for the permit to be issued.

2.0 Purpose

To consider a development permit for a Fourplex dwelling located on 260 Ponto Road.

3.0 Proposal

3.1 Project Description

The current single detached home resembles a rancher style bungalow on a wide lot with carport parking accessed from a front driveway. The proposal will convert the existing home into two up/down units and add an addition to the rear of the home where the other two up/down units will be incorporated.

The proposed fourplex will match the existing dwelling. It will use the same stucco façade and will be painted in a dark charcoal with cedar coloured trim. Parking will be accessed via the rear lane where six parking stalls are provided for residents and visitors.

3.2 Site Context

The subject property is approximately 716 m² in area. Specifically, the adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RU1 - Large Lot Housing	Residential
East	RU1 - Large Lot Housing	Residential
South	RU1 - Large Lot Housing	Residential
West	RU1 - Large Lot Housing	Residential

Subject Property Map: 260 Ponto Road



3.3 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	RM1 ZONE REQUIREMENTS	PROPOSAL
Development Regulations		
Max Height	9.5 m or 2.5 storeys	5.3 m (1.5 stories)
Min Front Yard	4.5 m	7.5 m
Min Side Yard (e)	2.0 m	2.6 m
Min Side Yard (w)	2.0 m	2.0 m
Min Rear Yard	6.0 m	7.7 m
Max site coverage of buildings	40 %	32 %
Max site coverage of buildings, driveways & parking	50 %	45 %
Subdivision Regulations		
Lot Area	700 m ²	716 m ²
Lot Width	20.0 m	20.9 m
Lot Depth	30.0 m	34.2 m
Other Regulations		
Max FAR	0.6	0.58
Min Parking Requirements	6 stalls	6 stalls
Min Private Open Space	25 m ² / dwelling unit	30 m ² / dwelling unit

4.0 Urban Planning

Staff support the proposed development permit for a fourplex on the subject property as it is consistent with the Official Community Plan (OCP) Future Land Use designation for the area. The subject property is surrounded by RU1 zoned single family homes and is located within the Rutland Urban Centre. The proposed fourplex would be the first property on the block to develop to the OCP's low density multifamily designation and does not require any variances to the Zoning Bylaw.

The block face of Ponto Road is made up of single detached homes in a variety of architectural styles and building materials which are typically one storey or split level homes. The fourplex will respect the existing context of the block face by incorporating the added density into the existing dwelling and an addition which matches the massing and character of the original home.

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Compact Urban Form.¹ Develop a compact urban form that maximizes the use of existing infrastructure and contributes to energy efficient settlement patterns. This will be done by increasing densities (approximately 75 - 100 people and/or jobs located within a 400 metre walking distance of transit stops is required to support the level of transit service) through development, conversion, and re-development within Urban Centres (see Map 5.3) in particular and existing areas as per the provisions of the Generalized Future Land Use Map 4.1.

Sensitive Infill.² Encourage new development or redevelopment in existing residential areas to be sensitive to or reflect the character of the neighbourhood with respect to building design, height, and siting.

6.0 Technical Comments

6.1 Building & Permitting Department

- As a multi family dwelling (4 plex) all the upgraded code requirements from a single family dwelling will apply. This will be required to be provided at time of building permit. This will include an upgrade to the water, sewer and fire separations as well as electrical and heating systems. Development Engineering Department

6.2 Engineering Department (see attached)

- Completed with Re-zoning application Z14-0019.

6.3 Fire Department

- Requirements of section 9.10.19 Smoke Alarms of the BCBC 2012 are to be met. Ensure proper addressing off of Abbott Street.\

¹ City of Kelowna Official Community Plan, Policy 5.3.2 (Development Process Chapter).

² City of Kelowna Official Community Plan, Policy 5.22.6 (Development Process Chapter).

7.0 Application Chronology

Date of Application Received: May 8th 2014

Report prepared by:

Adam Cseke, Planner

Reviewed by:



Lindsey Ganczar, Urban Planning Supervisor

Reviewed by:



Ryan Smith, Urban Planning Manager

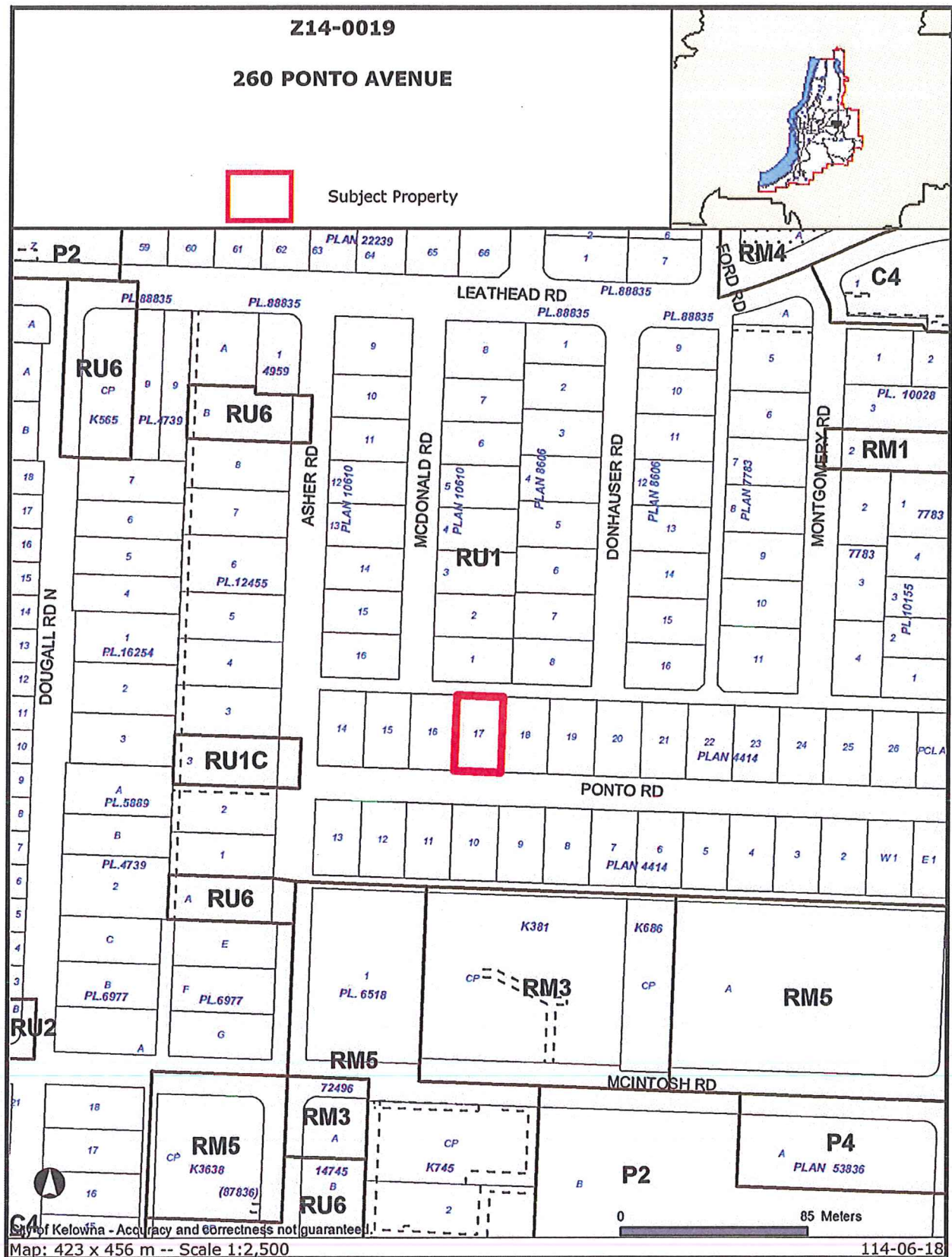
Attachments

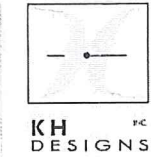
Site Plan/Landscape Plan (Schedule "A,C")

Conceptual Elevations (Schedule "B")

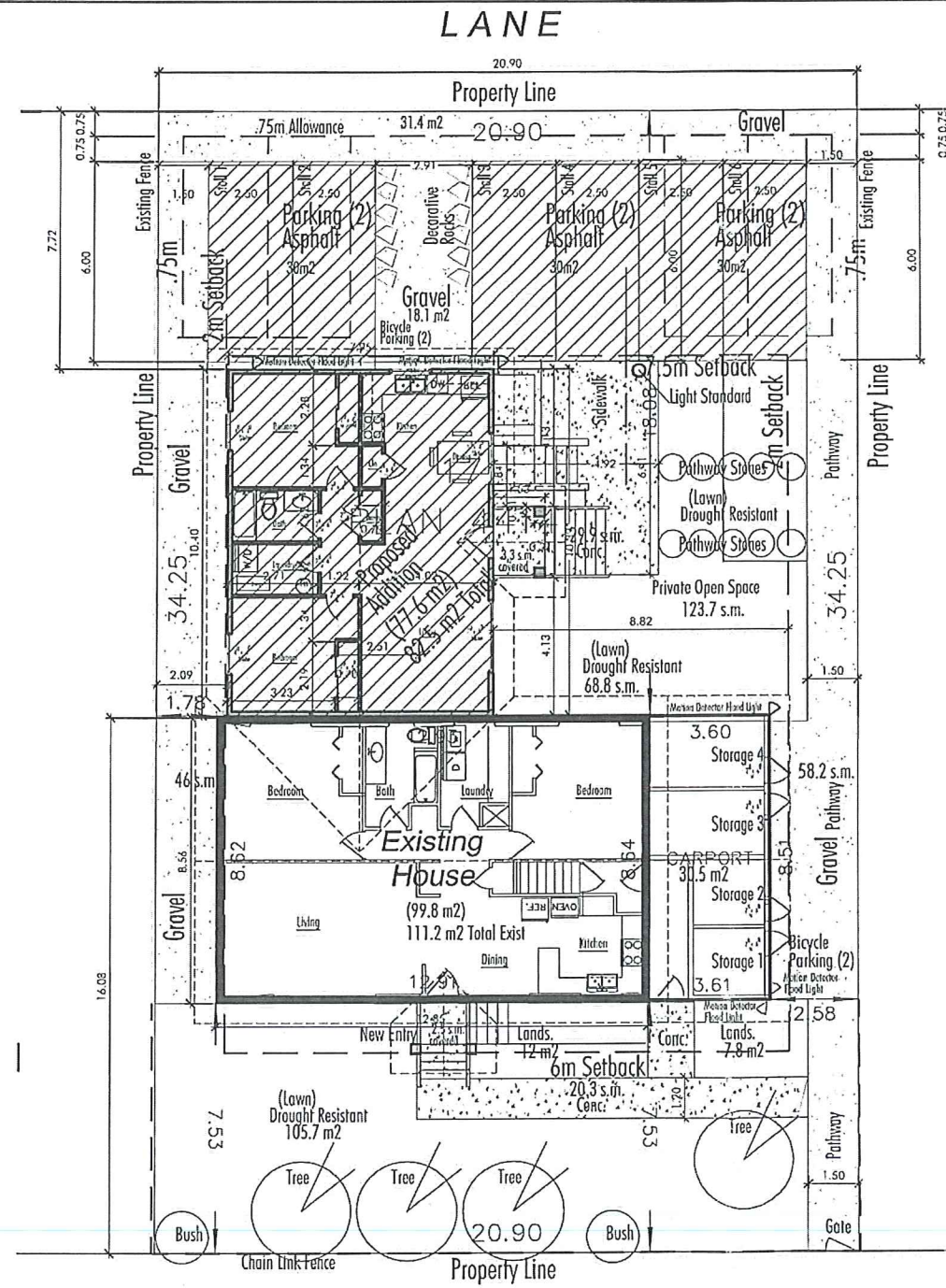
Subject Property Map

Development Engineering Memo





2416 Mountain Hollow Lane
 West Kelowna
 B.C. V4T 3H5
 250-575-0590



Lot 715.82 m2

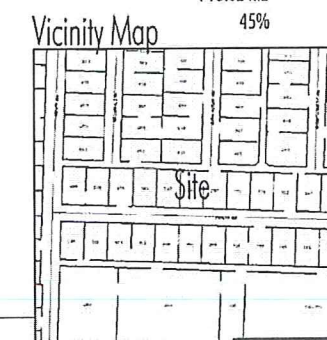
Impermeable Landscape	Permeable Landscape
Existing House 109 m2	South Lawn 105.7 m2
Existing Carport 30.5 m2	South Landscaped Areas 19.8 m2
Existing House Entry 2.4 m2	North Lawn 68.8 m2
Proposed Addition 85.2 m2	Gravel 141.5 m2
Proposed Add. Entry 3.3 m2	
Proposed Asphalt (Pkg) 90 m2	
	Total 335.8 m2

18

F.A.R.	
Existing House	(2) 111.2 m2
Proposed Addition	(2) 82.5 m2
Existing Carport	30.5 m2
Proposed Concrete North	29.9 m2
Proposed Concrete South	20.3 m2
	417.9 m2
	715.82 m2
	58%

Private Open Space	123.7 m2	Total Site Coverage
Bicycle Parking Spots	4	Existing House
		Existing Carport
		Existing House Entry
		Proposed Addition
		Proposed Add. Entry
		Proposed PKG (6)
		322.6 m2
		715.82 m2
		45%

- List Of Drawings**
- A-0 Site Plan
 - A-2 Main Plan
 - A-3 Upper Plan
 - A-4 Roof Plan
 - A-5 Elevations
 - A-6 Elevations
 - A-6.1 Elevations



PONTO ROAD

1 SITE
 A-0 1:100

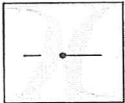
NORTH

260
 Ponto Road
 Rutland BC

DRAWN BY: KJH
 PROJECT: 10-14
 FILE:
 ISSUE DATE
 Drawing Issued 04/02/14

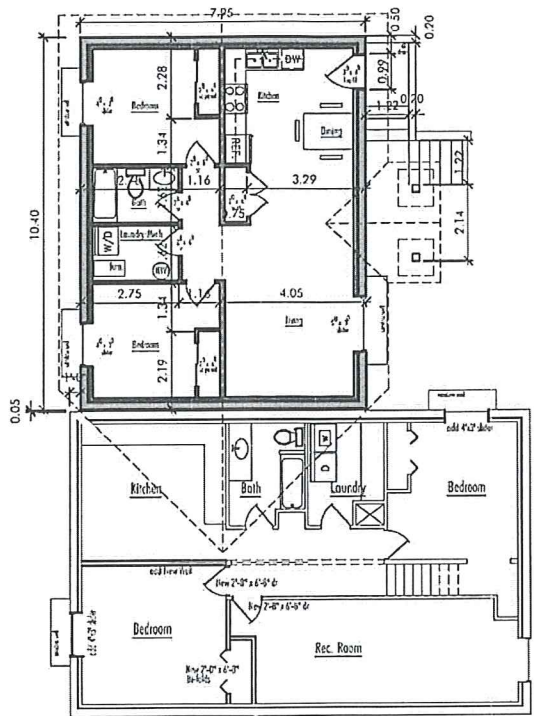
Site Plan

A-0



KH
DESIGNS

2416 Mountains Hollow Lane
West Kelowna
BC V4T 3H5
250-575-0590



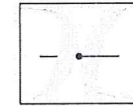
1 LOWER
A-2 1:200

260
Ponto Road
Rutland BC

DRAWN BY: KJH
PROJECT: 10-14
FILE:
ISSUE DATE
Drawing Issued 03/24/14

Lower
Plan

A-2



KH
DESIGNS

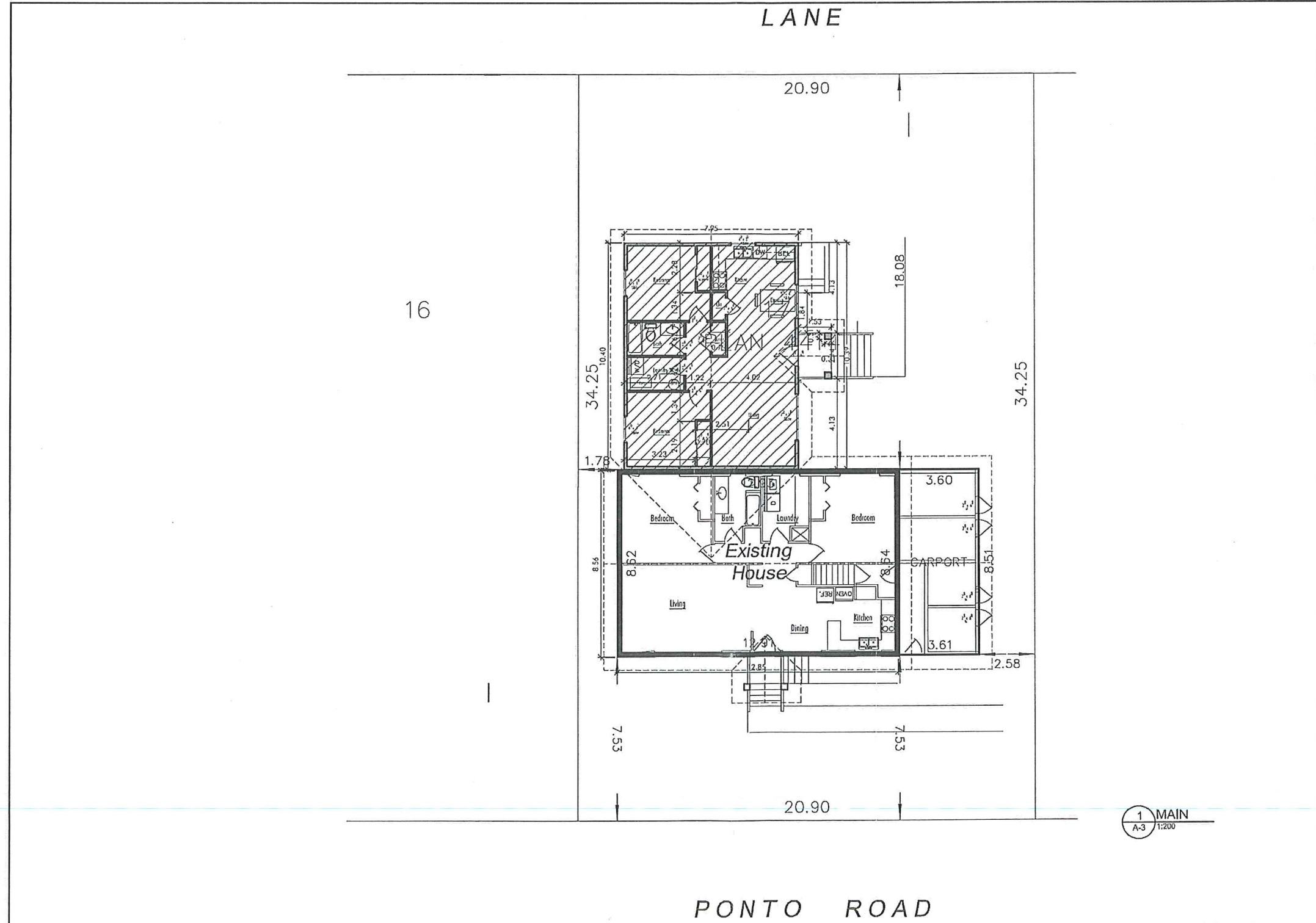
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 250-575-0590

260
 Ponto Road
 Rutland BC

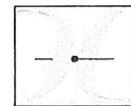
DRAWN BY: KJH
 PROJECT: 10-14
 FILE:
 ISSUE DATE
 Drawing Issued 03/24/14

Main
 Plan

A-3



1 MAIN
 A-3 1:200



KH
DESIGNS

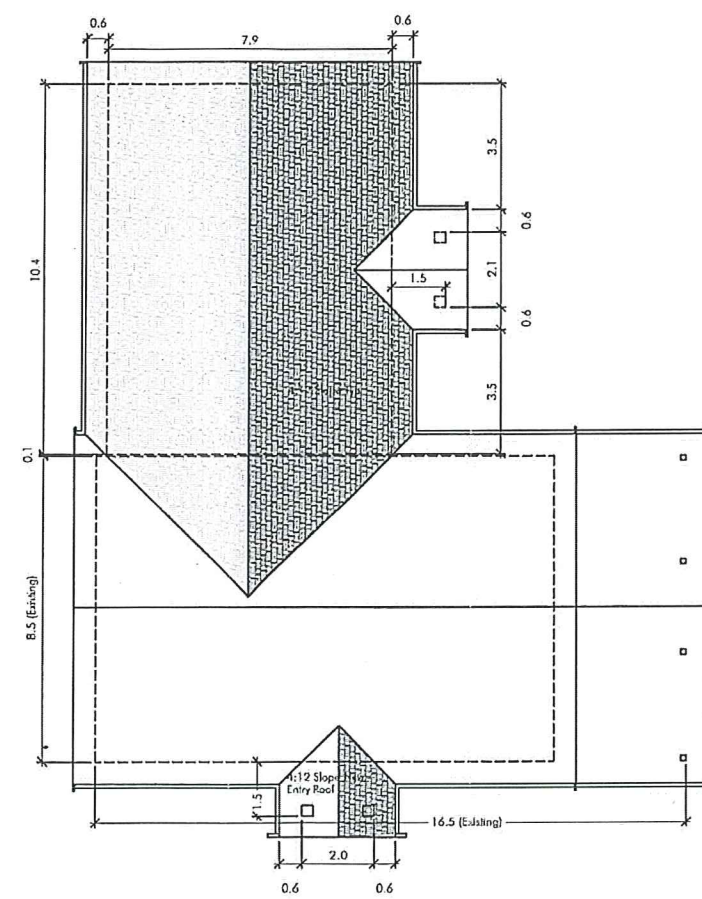
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 West Kelowna
 BC V4T 3H5
 250-575-0590

260
 Ponto Road
 Rutland BC

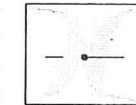
DRAWN BY: KJH
 PROJECT: 10-14
 FILE:
 ISSUE DATE
 Drawing Issued 03/24/14

Roof
 Plan

A-4

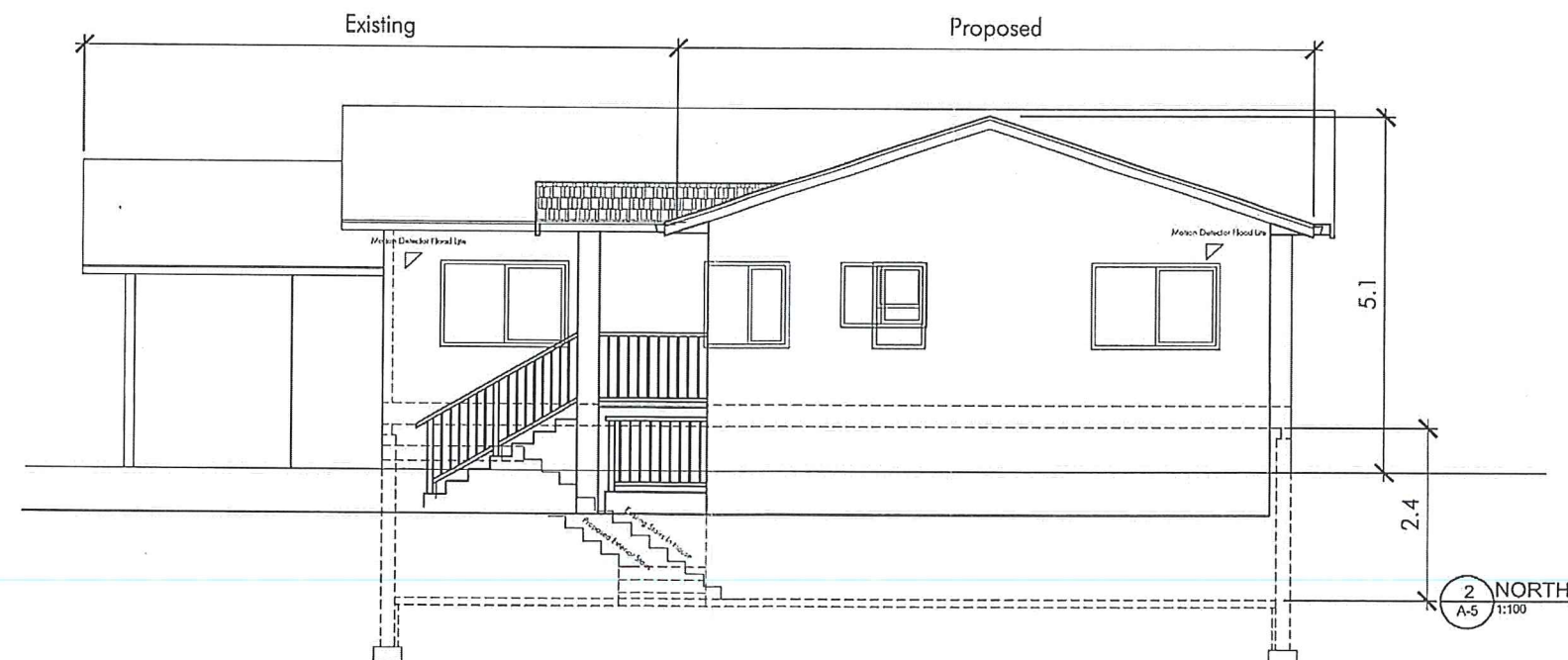
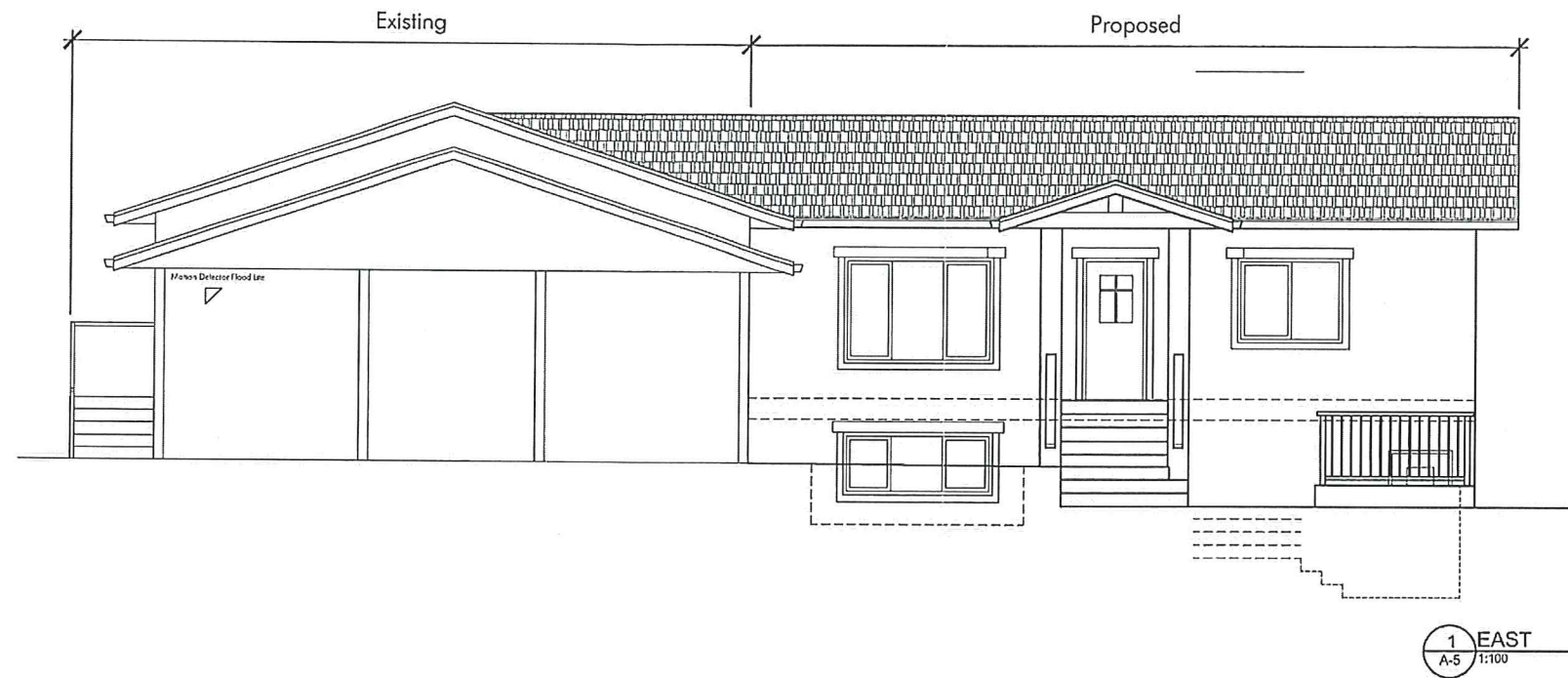


1 ROOF
 A-4 1:20



KH PC
DESIGNS

2416 Marston Hollow Lane
 West Kelowna
 B.C. V4T 3H5
 250-575-0590



260
 Ponto Road
 Rutland BC

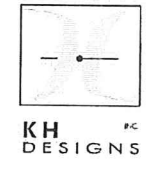
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PROJECT: 10-14
 FILE:

ISSUE DATE
 Drawing Issued 03/24/14

Elevations

A-5



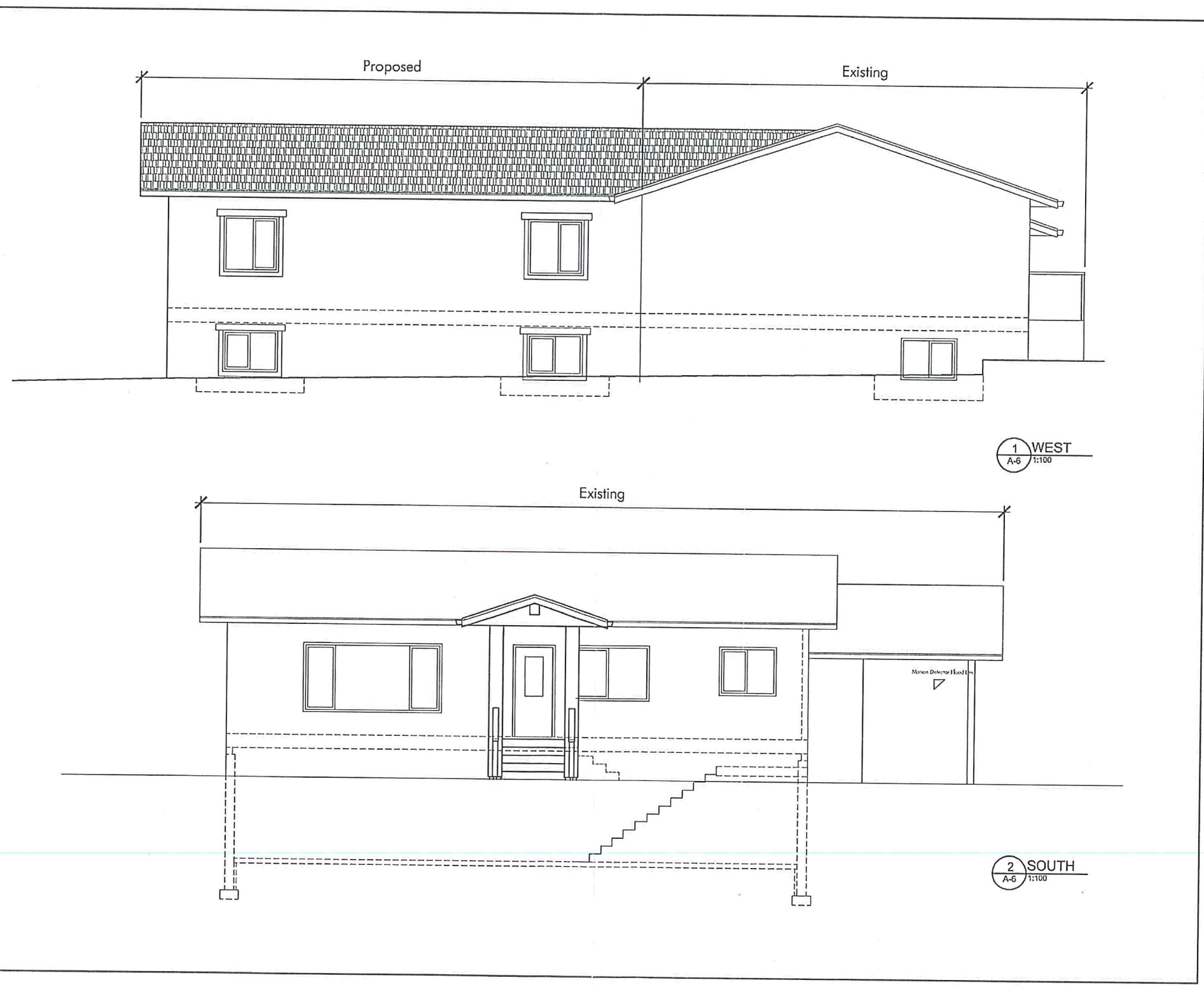
2416 Mountain Hollow Lane
West Kelowna
B.C. V4T 3H5
250.575.0590

260
Ponto Road
Rutland BC

DRAWN BY: KJH
PROJECT: 10-14
FILE:
ISSUE DATE
Drawing Issued 03/24/14

Elevations

A-6



1 WEST
A-6 1:100

2 SOUTH
A-6 1:100

CITY OF KELOWNA

APPROVED ISSUANCE OF A:

☐ Development Permit No.: DP14-0084

EXISTING ZONING DESIGNATION:	RU1 - Large Lot Housing
WITHIN DEVELOPMENT PERMIT AREA:	Revitalization Development Permit Area

ISSUED TO: Alexander Ryan Tull

LOCATION OF SUBJECT SITE: 260 Ponto Road

	LOT	SECTION	D.L.	TOWNSHIP	DISTRICT	PLAN
LEGAL DESCRIPTION:	17	26		26	ODYD	4144

SCOPE OF APPROVAL

- ☐ This Permit applies to and only to those lands within the Municipality as described above, and any and all buildings, structures and other development thereon.
- ☐ This Permit is issued subject to compliance with all of the Bylaws of the Municipality applicable thereto, except as specifically varied or supplemented by this Permit, noted in the Terms and Conditions below.
- ☐ Applicants for Development and Development Variance Permit should be aware that the issuance of a Permit limits the applicant to be in strict compliance with regulations of the Zoning Bylaw or Subdivision Control Bylaw unless specific Variances have been authorized by the Permit. No implied Variances from bylaw provisions shall be granted by virtue of drawing notations which are inconsistent with bylaw provisions and which may not have been identified as required Variances by the applicant or City staff.

1. TERMS AND CONDITIONS:

- a) The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A";
- b) The exterior design and finish of the building to be constructed on the land be in general accordance with Schedule "B";
- c) Landscaping to be provided on the land be in general accordance with Schedule "C";

2. PERFORMANCE SECURITY:

As a condition of the issuance of this Permit, Council is holding the security set out below to ensure that development is carried out in accordance with the terms and conditions of this Permit. Should any interest be earned upon the security, it shall accrue to the Permittee and be paid to the Permittee if the security is returned. The condition of the posting of the security is that should the Permittee fail to carry out the development hereby authorized, according to the terms and conditions of this Permit within the time provided, the Municipality may use the security to carry out the work by its servants, agents or contractors, and any surplus shall be paid over to the Permittee, or should the Permittee carry out the development Permitted by this Permit within the time set out above, the security shall be returned to the Permittee. There is filed accordingly:

- (a) Cash in the amount of \$ N/A.

- (b) A Certified Cheque in the amount of N/A .
(c) An Irrevocable Letter of Credit in the amount of N/A .

Before any bond or security required under this Permit is reduced or released, the Developer will provide the City with a statutory declaration certifying that all labour, material, workers' compensation and other taxes and costs have been paid.

4. DEVELOPMENT:

The land described herein shall be developed strictly in accordance with the terms and conditions and provisions of this Permit and any plans and specifications attached to this Permit which shall form a part hereof.

If the Permittee does not commence the development Permitted by this Permit within one year of the date of this Permit, this Permit shall lapse.

This Permit is not transferable unless specifically permitted by the Municipality. The authorization to transfer the Permit shall, if deemed acceptable, be granted by Council resolution.

THIS Permit IS NOT A BUILDING Permit.

5. APPLICANT'S AGREEMENT:

I hereby declare that all the above statements and the information contained in the material submitted in support of this Permit are to the best of my belief, true and correct in all respects. Upon issuance of the Permit for me by the Municipality, then in such case, I covenant and agree to save harmless and effectually indemnify the Municipality against:

- (a) All actions and proceedings, costs, damages, expenses, claims, and demands whatsoever and by whomsoever brought, by reason of the Municipality granting to me the said Permit.
- (b) All costs, expenses, claims that may be incurred by the Municipality if the construction by me of engineering or other types of works as called for by the Permit results in damages to any property owned in whole or in part by the Municipality or which the Municipality by duty or custom is obliged, directly or indirectly in any way or to any degree, to construct, repair, or maintain.

I further covenant and agree that should I be granted a Development Permit or Development Variance Permit, the Municipality may withhold the granting of any occupancy Permit for the occupancy and/or use of any building or part thereof constructed upon the hereinbefore referred to land until all of the engineering works or other works called for by the Permit have been completed to the satisfaction of the Municipal Engineer and Divisional Director of Community Planning & Real Estate.

Should there be any change in ownership or legal description of the property, I undertake to notify the Community Planning & Real Estate Department immediately to avoid any unnecessary delay in processing the application.

I HEREBY UNDERSTAND AND AGREE TO ALL THE TERMS AND CONDITIONS SPECIFIED IN THIS PERMIT.

Signature of Owner/Authorized Agent

Date

Print Name in Bold Letters

Telephone No.

6. APPROVALS:

ISSUED BY THE URBAN PLANNING DEPARTMENT OF THE CITY OF KELOWNA THE ____ DAY OF _____, 2014 BY THE
DIVISIONAL DIRECTOR OF COMMUNITY PLANNING & REAL ESTATE.

Doug Gilchrist
Divisional Director of Community Planning & Real Estate

CITY OF KELOWNA
MEMORANDUM

Date: June 5, 2014
File No.: Z14-0019
To: Subdivision approvals (AC)
From: Development Engineering Manager (SM)
Subject: 260 Ponto Road, lot 17 plan 4414, Section 26, Township 26, ODYD

Development Engineering Services comments and requirements pertaining to this application to rezone the subject property from RU1 to RM3 are as follows:

.1) General

- a) Provide easement as may be required.
- b) Dedicate 0.75 m. at the rear lane for a future lane width of 7.5 m.
- c) Dedicate approx. 1.38 m. along the front of the property to provide an 18.0 m. multi-family standard ROW instead of the existing 15.24 m. ROW

.2) Water

The property is located within the Rutland Waterworks District (RWD) service area. All the fees and charges pertaining to this application are to be dealt directly with the RWD. The existing hydrant will require relocation behind the sidewalk extension.

.3) Sanitary Sewer

- a) The subject property is connected to the Municipal wastewater collection system and a 100 mm. service is provided to the property line. The size should be adequate for the proposed development.
- b) The subject property is located within the Local Area Service (LAS) #20 and the current Policy requires that all the LAS charges be cash commuted when the property is rezoned. The pay-out charge for a RM1 zone is **0.7 SFE** (Single Family Equivalent) per Unit for a total of **2.8 SFE** (4 Units x 0.7). The current LAS #20 payout rate is **\$3,268.69** per SFE and the total charge is in the amount of **\$9,152.33**. The charge is valid until April 30, 2015.

.../2

.8) 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 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.

.9) Bonding and Levies Summary.

a) Performance security

Ponto Road frontage upgrade	\$11,200.00
Lane widening	\$ 900.00
TOTAL performance	<u>\$12,100.00</u>

Note that the applicant is not required to do the construction. The construction can be deferred and the City will initiate the work later at its own construction schedule, the cost would be reduced to **\$8,190.00.** (\$7,425.00 and \$765.00 respectively) and the 3% Engineering & Admin. fee would be waived.

b) Levies

3% Engineering and Administration fee	\$ 315.00 (300.00 + 15.00 GST)
Specified Area #20 charges	<u>\$9,152.33</u>
	(Valid until April 30, 2015)

TOTAL Levies **\$9,467.33**



Steve Muenz, P. Eng.
Development Engineering ManagerB²

REPORT TO COUNCIL



Date: November 28, 2014

RIM No. 1250-30

To: City Manager

From: Urban Planning, Community Planning & Real Estate (AC)

Application: Z11-0018 **Owner:** Gwynne Johnson

Address: 1500 Friesen Road **Applicant:** Gwynne Johnson

Subject: Rezoning Application Rescind and Closure

Existing OCP Designation: Single/Two unit Residential

Existing Zone: RR3 - Rural Residential 3

Proposed Zone: RU6 - Two Dwelling Housing

1.0 Recommendation

THAT Council receives, for information, the report from the Community Planning & Real Estate Division, dated November 28, 2014 with respect to Rezoning Bylaw Application 10536 (Z11-0018 - Gwynne Johnson - 1500 Friesen Road - Lot14 Section 35 Township 26 ODYD Plan 18660);

AND THAT Bylaw No. 10536 be forwarded for rescindment consideration and Staff be directed to close the related files.

2.0 Purpose

To consider the rescindment of the rezoning bylaw for the subject property from RR3 - Rural Residential 3 to RU6 - Two Dwelling Housing

3.0 Urban Planning

Zone Amending Bylaw No. 10536 to rezone the subject property from the RR3 to the RU6 zone received second and third readings on May 31, 2011. Final adoption of the bylaws was withheld pending Development Engineering and Black Mountain Irrigation District requirements being met, as well as Development Permit/Development Variance Permit consideration.

The applicant had originally proposed the development of a two family housing project (duplex). Two six-month extensions and a one year extension have been granted for the development, most recently extending Third Reading to May 31, 2014. However, the applicant has chosen not to proceed with any further extension requests, and to abandon the project. Confirmation has been received by the applicant indicating their intention to withdraw and close this application.

Report prepared by:

Adam Cseke - Planner

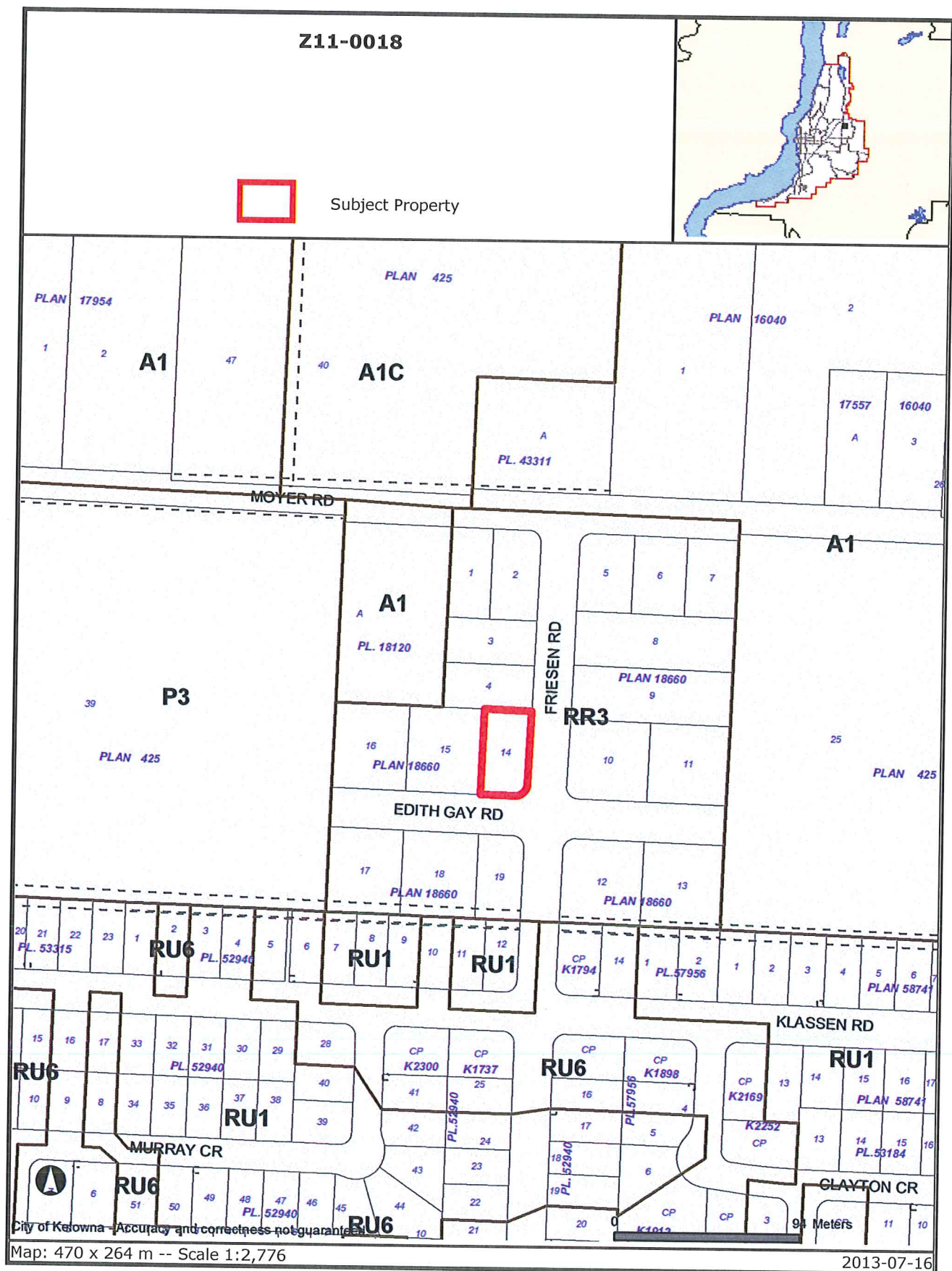
Approved for Inclusion:



Ryan Smith, Urban Planning Manager

Attachments:

none



*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.*

CITY OF KELOWNA
BYLAW NO. 10536
Z11-0018 - Gwynne Johnson
1500 Friesen Road

A bylaw to amend the "City of Kelowna Zoning Bylaw No. 8000".

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

1. THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 14, Section 35, Township 26, ODYD, Plan 18660 located on Friesen Road, Kelowna, B.C., from the RR3 - Rural Residential 3 zone to the RU6 - Two Dwelling Housing zone.
2. This bylaw shall come into full force and effect and is binding on all persons as and from the date of adoption.

Read a first time by the Municipal Council this 9th day of May, 2011.

Considered at a Public Hearing on the 31st day of May, 2011.

Read a second and third time by the Municipal Council this 31st day of May, 2011.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

Report to Council



Date: 12/15/2014
File: 1140-40
To: City Manager
From: Johannes Säufferer, Manager, Property Management
Subject: Property Leased to City of Kelowna - #105 1014 Glenmore Road

Recommendation:

THAT Council approve the City entering into a two (2) year Lease Agreement with Glenmore Store Limited for office space at 1014 Glenmore Road, with the option to renew for an additional one (1) year term (for a total potential lease period of three years), in the form attached to the Report of the Manager, Property Management, dated December 15, 2014;

AND THAT the Mayor and City Clerk be authorized to execute the Lease Agreement;

AND THAT all costs associated with the Lease Agreement be charged to the Property Management Leased Building (General) Budget;

AND FURTHER THAT the 2015 and 2016 Financial Plan be amended accordingly.

Purpose:

To obtain Council support to enter into a two (2) year Lease Agreement for office space with Glenmore Store Limited.

Background:

In 2004, the City entered into a Lease Agreement with Glenmore Store Limited for a Community Police Office to be located at 1014 Glenmore Road. With the eventual closure of the Community Police Office at this location in 2009, the office space was transferred to the City's Active Living and Culture Department, which has utilized the space since that time to compensate for a shortage of office space at the Parkinson Recreation Centre.

Staff recommends renewing the agreement for the existing space at 1014 Glenmore Road, which is due to expire December 31, 2014, for an additional two years. Following the expiration of this agreement, Staff will review the suitability of this location in light of the City's overall office space requirements.

Financial/Budgetary Considerations:

While the current lease rate for the property is \$21.66 per square foot, Staff was able to negotiate a reduction to \$21.00 per square foot for the first year of the two-year term of the new lease agreement. Other particulars of the lease agreement are summarized below:

#105 - 1014 Glenmore Road - Lease Summary			
	2015	2016	2017*
Area	2,088 sf	2,088 sf	2,088 sf
Lease Rate	\$21.00	\$22.00	\$23.00
Annual Lease Rate	\$43,848	\$45,936	\$48,024
Est. Triple Net Costs	\$7.50/sf	\$7.50/sf	\$7.50/sf
Est. Annual Triple Net Costs	\$15,660	\$15,660	\$15,660
Total Annual Costs	\$59,508	\$61,596	\$63,684
<i>*Optional 1-year extension period</i>			

In-budget, pre-approved leasing costs for the subject property are \$58,900 per year; as such, a budget amendment of approximately \$608 and \$2,696 for Year 1 and Year 2, respectively, will be required.

Internal Circulation:

Divisional Director, Active Living & Culture
Director, Financial Services
Manager, Park & Building Planning

Considerations not applicable to this report:

Legal/Statutory Authority:
Legal/Statutory Procedural Requirements:
Existing Policy:
Personnel Implications:
External Agency/Public Comments:
Communications Comments:
Alternate Recommendation:

Submitted by: J. Säufferer, Manager, Property Management

Approved for inclusion: D. Edstrom, Director, Real Estate Services

Attachments: Schedule A - Lease Agreement

cc: J. Gabriel, Divisional Director, Regional Services
G. Davidson, Director, Financial Services
T. Barton, Manager, Park & Building Planning

TRIPLE NET LEASE

Dated the _____ day of _____, 2014

BETWEEN:

**Glenmore Store Limited
1130 Richter Street
Kelowna, B.C.
V1Y 2K7**

(the "Landlord")

AND:

**City of Kelowna
1435 Water Street
Kelowna, B.C.
V1Y 1J4**

(the "Tenant")

1. DEFINITIONS

1.1 In this Lease:

- (a) "Building" means the building which is located on the Lands with the civic address of 1014 Glenmore Drive, Kelowna, B.C. V1Y 4P2;
- (b) "Common Areas" means all those parts of the Lands, Parking Areas and Building not set aside by the Landlord for the exclusive use by a Tenant;
- (c) "Lands" means the property legally described as Lot A, Section 29, Township 26, ODYD, Plan KAP73232;
- (d) "Leased Premises" means that part of the Building described as unit 105 and shown on the plan attached hereto as Schedule B;
- (e) "Proportionate Share" shall be calculated by dividing the area of the Leased Premises by the total rentable area of the Building, which rentable area is outlined on Schedule A;
- (f) "Rent" means the rental described in paragraph 5 herein;
- (g) "Triple Net Costs" means all costs and expenses in connection with the operation, maintenance and repair of, or in any way pertaining to, the Building or the Lands, including, without limiting the generality of the foregoing, the following operating costs:

- (i) all costs and expenses from time to time incurred by or levied on the Landlord in respect of repairing, maintaining, cleaning, heating, lighting, air conditioning and ventilating the Building (or: any building located on the Lands including, without limitation, the Building) and any fixtures and appurtenances thereof and any improvements thereto;
- (ii) all premiums from time to time paid by the Landlord for fire, casualty, liability, loss of rental revenue, plate glass and other insurance in respect of the Building, the Lands and all fixtures and appurtenances thereof and improvements thereto;
- (iii) all costs and expenses from time to time incurred by or levied on the Landlord in respect of services and garbage disposal for the Building and the said Lands;
- (iv) all taxes from time to time levied by any taxing authority on the Building and the Lands or either of them or on the Landlord in respect of the Building and the Lands or either of them;
- (v) all utility charges from time to time levied on the Building and the Lands or either of them or on the Landlord in respect of the Building and the Lands or either of them;
- (vi) all costs of landscaping and maintaining the Lands and of cleaning and snow and ice removal in the parking areas; and,
- (vii) a management fee equal to 4% per cent of the basic rent.

2. NET LEASE

2.1 The Tenant agrees that this Lease shall be a completely carefree net lease for the Landlord, except as expressly hereinafter set out, and the Tenant shall pay all costs and expenses relating to the Leased Premises and the Tenant's Proportionate Share of the Triple Net Costs.

3. DEMISE

3.1 In consideration of the rents, covenants, warranties and representations herein contained, the Landlord does lease to the Tenant the Leased Premises containing a rentable area as outlined on Schedule A, together with the non-exclusive right to use the Common Areas.

4. TERM

4.1 The Tenant may occupy the Leased Premises for the term (the "Term") as outlined on Schedule A.

5. RENT

5.1 The Rent shall be the total sum as outlined on Schedule A, plus all applicable provincial and federal taxes, in lawful money of Canada, payable in consecutive monthly instalments payable on the first day of each month during the Term commencing as set out in Schedule "A".

5.2 The Tenant shall, upon execution of this Lease, pay to the Landlord the sum as outlined on Schedule "A", which sum shall be applied by the Landlord towards payment of the first month's Rent of the Term.

6. TENANT'S COVENANTS

6.1 The Tenant covenants with the Landlord as follows:

- (a) To pay the Rent without deduction or set-off;
- (b) To pay immediately that they become due any taxes levied on the Tenant including, without limitation, any Goods and Services Tax levied on the Rent, the Triple Net Costs and all utility charges billed to the Tenant and all Corporation Capital Tax that may be payable by the Tenant;
- (c) To pay immediately on demand by the Landlord as additional rent the Tenant's Proportionate Share of all Triple Net Costs including, without limitation, the Tenant's Proportionate Share of all Real Property Taxes levied on the Lands. The Landlord may estimate for any lease year the amount payable by the Tenant as Triple Net Costs and the Tenant shall, upon notice by the Landlord, pay to the Landlord on the first day of each month, one-twelfth of the Landlord's estimate.
- (d) Not to cause a nuisance or disturbance to the Landlord or other tenants of the Building;
- (e) To keep the Leased Premises in a neat and tidy condition and free from pests, insects and vermin and to provide the Tenant's own janitorial services for maintaining the condition of the Leased Premises;
- (f) To keep and maintain in good repair the Leased Premises and all fixtures, fittings and improvements therein from time to time and the Landlord may enter and view the state of repair. The Tenant will repair according to notice; however, failure of the Landlord to give notice shall not relieve the Tenant from its obligation to keep and maintain in good repair;
- (g) To pay promptly all charges for gas, electricity, telephone service, fuel and any other utilities supplied to or used by the Tenant or consumed in the Leased Premises;
- (h) To keep the Leased Premises adequately heated to prevent damage from frost or freezing;
- (i) Not to allow any waste or damage, disfiguration or injury to the Leased Premises, the Building or the Lands;

- (j) Not to allow on to the Leased Premises, the Building or the Lands any land fill, environmentally sensitive substances, P.C.B.'s, toxins or any other materials or substances which will or may materially affect the development, use or marketability of the Leased Premises, or the Lands or the Building;
- (k) Not to make any alterations, additions, decorations or improvements to the Leased Premises without obtaining the Landlord's prior written consent;
- (l) To replace immediately any broken glass in or bordering the Leased Premises with glass of the same colour and quality;
- (m) Not to place or affix any sign or advertisement on the Lands or the Building outside of the Leased Premises or on windows of the Building that are visible from the outside of the Building, without the prior written consent of the Landlord, such consent not to be unreasonably withheld. The Landlord has the right to designate size, type and location of any such sign or advertisement;
- (n) Not to sublet or assign or grant a licence of occupation to the Leased Premises, in whole or in part, without first obtaining the Landlord's prior written consent, such consent not to be unreasonably withheld. Subletting or assignment shall include, in the case of a Tenant which is a corporation, a transfer of a portion of the shares of the Tenant which changes the voting control of the Tenant. In no event shall any assignment or subletting to which the Landlord has consented release or relieve the Tenant or the Indemnifier from its obligations to perform all the terms and conditions of this Lease. The Tenant shall be liable for the Landlord's reasonable costs incurred in connection with the Tenant's request for consent. Such consent shall not be deemed to be unreasonably withheld in the event that the Tenant desires to assign, sublet or grant a licence to any party whose use would in the Landlord's opinion conflict with business of other tenants in the Building or with any restrictive covenants held by any other tenants;
- (o) To comply at its own expense with all the requirements of federal, provincial and municipal laws and by-laws relating to the Leased Premises and all reasonable rules and regulations of the Landlord pertaining to the Building and the Common Areas, including, but without limiting the generality of the foregoing, hours of operation of business;
- (p) To indemnify and save harmless the Landlord from and against any and all actions, claims, costs, expenses, damages, losses or fines incurred or suffered by the Landlord by reason of:
 - (i) any breach, violation, non-observance or non-performance by the Tenant of any of the Tenant's obligations set out in this Lease;

- (ii) damage or injury to persons or property arising from any acts or omission of the Tenant or any sub-tenant, agent, contractor, employee, invitee or licensee of the Tenant;
 - (iii) the Landlord observing, performing, exercising or enforcing any covenant, agreement, right or remedy of the Landlord hereunder;
- (q) Not to allow any liens to attach to the Lands. The Tenant will indemnify and save harmless the Landlord against all claims or liability for liens filed or claimed under the **Builder's Lien Act** of British Columbia, as amended from time to time, the **Workers' Compensation Act** of British Columbia, as amended from time to time, and any similar acts of the Province of British Columbia, which may be filed in respect of labour or materials supplied at the request of or for the Tenant or any other notification or encumbrance arising from the Tenant either directly or indirectly, against the Lands whatsoever or the Building;
- (r) To notify the Landlord immediately if the Tenant becomes aware of any damage by fire or accident in the Leased Premises or the Building or the Lands or any malfunctioning of any heating, electrical, plumbing, mechanical or ventilating system in the Building;
- (s) To provide the Landlord with a key to the Leased Premises. In the event that the Tenant changes the locks, the Tenant shall forthwith provide the Landlord with a replacement key so that the Landlord shall at all times have proper access to the Leased Premises on the terms and conditions hereafter set out;
- (t) To deliver up the Leased Premises upon the expiry of the Term, or any renewals thereof, or such other earlier termination of this Lease;
- (u) The Tenant agrees that all goods, chattels and Tenant's trade fixtures when moved into the Leased Premises shall not, except in the normal course of business, be removed from the Leased Premises until all Rent due or to become due under the Term of this Lease and all utility and other charges or monies payable under the terms of this Lease are fully paid;
- (v) The Tenant further covenants that it will not, upon expiration or sooner termination of this Lease, leave upon the Premises any rubbish or waste material and will leave the Premises in a clean and tidy condition;
- (w) Not to place on the Leased Premises any safe, heavy equipment or other heavy thing, which may exceed the specifications for the Building relating to bearing loads, without obtaining the prior written consent of the Landlord;
- (x) The Tenant shall be responsible for any loss or damage whatsoever caused to the Building or to the Leased Premises owing to the leakage or escape or any water, gas or other substance from any pipes, machinery or

equipment used for the purposes of servicing the Lands or any machinery or equipment installed or put therein by the Tenant whatsoever; and

- (y) If the Tenant fails to repair in accordance with these provisions, the Landlord, its agents or employees may enter the Leased Premises and make the required repairs and for that purpose the Landlord may bring and leave upon the Leased Premises all necessary tools, materials and equipment and the Landlord shall not be liable to the Tenant for inconvenience, annoyance or loss of business or any injury or damages suffered by the Tenant by reason of the Landlord effecting such repairs, unless caused by the negligence of the Landlord, and the cost of such repairs shall be borne by the Tenant, who shall pay such costs to the Landlord forthwith upon demand.

7. LANDLORD'S COVENANTS

7.1 Subject to the terms and provisions of this Lease, the Landlord covenants with the Tenant as follows:

- (a) That provided the Tenant pays the Rent hereby reserved and observes and performs all the Tenant's obligations herein and subject to the other provisions herein contained the Tenant may peaceably possess and enjoy the Leased Premises for the Term herein granted;
- (b) To arrange for, at the Landlord's cost, any required structural repairs, which shall be part of the Triple Net Costs;
- (c) To pay all real property taxes levied on the Lands, which shall be part of the Triple Net Costs;
- (d) To adequately light and maintain the parking lot in a clean condition clear of snow and ice, which shall be part of the Triple Net Costs;
- (e) To adequately repair and maintain the heating, ventilating, air-conditioning and distribution of such, which shall be part of the Triple Net Costs;
- (f) To maintain all landscaping, which shall be part of Triple Net Costs;
- (g) To maintain the exterior of the Building and all common areas, which shall be part of Triple Net Cost;
- (h) To maintain and administer all service contracts for the Building and Lands, which shall be part of Triple Net Costs.

8. LIMITATION OF LANDLORD'S COVENANTS

8.1 The Landlord shall not be responsible or liable for any direct, indirect or consequential loss, damage, injury or expense which may be caused, nor shall the Tenant be entitled to claim any diminution of Rent or other compensation:

- (a) for any interruption for any reason of any service utility provided to the Leased Premises or the Lands or the stoppage the operation of any heating or any of the engines, boilers or machinery for such heating, but in such case the Landlord shall use its best efforts to recommence any such operations as may have been affected and the Landlord shall not be liable for any damage which may be caused to the Tenant or to the employees of the Tenant as a result of any such stoppages;
- (b) for any damage in or upon the Premises, arising from any reason or cause whatsoever, or for any personal injuries sustained by the Tenant, its officers or employees or other persons, or for any property loss, howsoever occurring and without restricting the generality of the foregoing, the Landlord shall not be liable for any injury or damage to person or property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain, or snow or leaks from any part of the Leased Premises or Building or any building located on the Lands, or from pipes, appliances or plumbing works or from the roof, street, or sub-service, or from any other place or by dampness, or for any such injury or damage by any cause of any nature;
- (c) the Landlord observing, performing, exercising or enforcing any covenant, agreement, right or remedy of the Landlord;
- (d) any other cause beyond the reasonable control of the Landlord;

provided such injury or damage is not caused by the negligence of the Landlord or its servants or agents.

9. LANDLORD INSURANCE

9.1 The Landlord covenants to effect and maintain insurance on the Building and the Lands, for insurable risks against which and in amounts for which a prudent landlord would protect itself but excluding all tenants' fixtures, machinery, and equipment and including plate glass insurance. Such costs of insurance shall be paid by the Tenant as Triple Net Costs.

10. TENANT INSURANCE

The Tenant shall without limiting its obligations or liabilities under this Lease, shall procure and maintain, at its own expense and cost, the insurance for Comprehensive General Liability, Tenants Legal Liability and tenant owned contents. The insurance policies shall be maintained continuously from the date of commencement of this Lease until the date of termination of the Lease.

11. NO EFFECT ON INSURANCE

11.1 The Tenant covenants not to do or omit, or permit to be done or omitted, upon the Leased Premises anything whereby any policy of insurance effected by the Landlord or the Tenant pursuant to this Lease may be invalidated, or the coverage thereunder reduced or the premium thereon may be increased.

12. USE OF LEASED PREMISES

12.1 The Tenant covenants to use the Leased Premises solely for the purpose as outlined on Schedule "A".

13. ACCESS TO LEASED PREMISES TO REPAIR, ETC.

13.1 The Landlord shall have the right at all reasonable times to enter on the Leased Premises to effect repairs, alterations, improvements or additions to the Leased Premises, the Building or the Lands, or to preserve any of them from injury or damage. No such entry or work shall constitute an eviction of the Tenant.

14. LANDLORD MAY SHOW LEASED PREMISES

14.1 The Landlord or its agents shall have the right at all reasonable times to enter the Leased Premises to show them to prospective purchasers, lessees or mortgagees, and may place on the Leased Premises within six months of the end of the Term, the usual notices to let or for sale which notices the Tenant shall permit to remain thereon without molestation.

15. LANDLORD MAY ENTER FORCIBLY

15.1 If the Tenant shall not be personally present to open and permit entry or does not permit entry to the Leased Premises at any time, when for any reason entry therein shall be necessary or permissible, the Landlord, its agents, employees or contractors may enter the Leased Premises by a master key or forcibly without rendering the Landlord or such agents, employees or contractors liable therefore and without in any manner affecting the obligations or covenants of the Tenant herein. The Landlord shall, however, prior to such forcible entry make reasonable efforts to contact and notify the Tenant.

16. NO REPRESENTATIONS

16.1 The Tenant agrees that no representation, warranties or conditions have been made other than those expressed herein, and that no agreement collateral hereto shall be binding upon the Landlord unless in writing and signed on behalf of the Landlord.

17. SUBORDINATION

17.1 This Lease and all of the rights of the Tenant hereunder shall be subject to and subordinate to any and all mortgages, trust deeds and debentures, and all renewals, extensions and modifications thereof now or hereafter in force or registered against the Lands. The Tenant covenants to execute in registerable form immediately on request from time to time, any assurances that the Landlord may require to confirm this subordination, and will if requested attorn as Tenant to the holder of any such mortgages, trust deeds and debentures. Provided that any such subordination shall reserve to the Tenant the right to continue in possession of the Leased Premises under the terms of this Lease so long as the Tenant is not in default of the terms herein.

18. DAMAGE OR DESTRUCTION

18.1 If the Leased Premises are damaged by fire or other casualty, then:

- (a) the Rent, but not the Tenant's Proportionate share of Triple Net Costs, shall be abated in whole or in part in the proportion that the area of the non-useable portion of the Leased Premises is to the total Leased Premises until such damage is repaired;
- (b) if the Leased Premises are so damaged that the Landlord decides not to restore the Leased Premises, the Landlord shall within 60 days after such damage give to the Tenant a notice in writing of such decision, and the Term of this Lease shall be deemed to have ended at the time of the damage, and the Tenant shall vacate the Leased Premises and surrender them to the Landlord as soon as reasonably possible.

19. DEFAULT OF TENANT

19.1 If:

- (a) the Rent or any part thereof shall not be paid on the day appointed for payment whether lawfully demanded or not, and such non-payment shall continue for seven days;
- (b) there is breach or non-observance or non-performance of any of the obligations on the part of the Tenant to be kept, observed or performed, and such breach is not remedied or the Tenant has not commenced action to so remedy within 10 days of the Tenant's receipt of written notice of the breach;
- (c) the Leased Premises shall be vacated or remain unoccupied for 10 days;
- (d) the Leased Premises or any part thereof shall be used by any person other than the Tenant or for any other purpose than that for which the same were let without the prior consent of the Landlord;
- (e) the Term or any of the goods and chattels of the Tenant shall be at any time seized in execution or attachment by a creditor of the Tenant;
- (f) the Tenant shall make any assignment for the benefit of creditors, or become bankrupt or insolvent or take the benefit of any Act now or hereafter in force for bankrupt or insolvent debtors;
- (g) any order shall be made for the winding up of the Tenant;

then and in every such case, it shall be lawful for the Landlord without notice to either:

- (h) terminate this Lease and claim against the Tenant the current month's Rent and the next ensuing three months Rent, in which case such amount shall immediately become due and be paid; or

- (i) terminate this Lease and claim against the Tenant for all costs and expenses and all lost rentals for the remainder of the Term, in which case such amount shall immediately become due and payable; or
- (j) re-enter the Leased Premises and to relet same on behalf of the Tenant in which case the Landlord shall receive all rents and apply them towards the Rent and other amounts owing by the Tenant to the Landlord hereunder for the balance of the Term for which the Tenant shall continue to be liable to the Landlord and the Tenant shall pay to the Landlord any shortfalls and the Landlord shall pay to the Tenant any surplus.

20. DISTRESS

20.1 The Landlord shall have the right to distrain for Rent in arrears against the goods and chattels of the Tenant and may use such force as may be necessary for that purpose and for gaining admittance to the Leased Premises without being liable for any action in respect thereof, or for any loss or damage occasioned thereby and the Tenant hereby expressly releases the Landlord for all actions, proceeding, claims or demand whatsoever for or on account of or in respect of any such forcible entry or any loss or damage sustained by the Tenant in connection therewith.

21. NON-WAIVER

21.1 No condoning, excusing or overlooking by the Landlord of any default, breach or non-observance by the Tenant at any time or times in respect of any obligation of the Tenant herein contained shall operate as a waiver of the Landlord's rights hereunder in respect of any continuing or subsequent default, breach or non-observance.

22. HOLDING OVER

22.1 If the Tenant shall continue to occupy the Leased Premises after the expiration of the Term without any further written agreement, the Tenant shall be a monthly Tenant on the terms and conditions herein set out, except as to length of tenancy and except that:

- (a) The Rent shall be such amount as may be agreed upon between the parties hereto or failing such agreement, the Rent shall the same as provided for in this Lease on a monthly basis plus 10%.

23. PAYMENTS BY TENANT

23.1 Without prejudice to any of the remedies of the Landlord herein, any money payable by the Tenant to the Landlord hereunder, other than the Rent referred to in paragraph 5 hereof, and without limiting the generality of the foregoing, including all money payable under paragraph 6 hereof, shall be deemed to be Rent and shall be paid as additional rent and shall be collectable as Rent and unless otherwise provided for in this Lease shall be payable either on demand or when stated herein to be due or if not so

stated and arising from payments made by the Landlord, then the same shall be due and be paid with the monthly instalment of Rent following the date that payment was made by the Landlord. If required by the Landlord, the Tenant will supply to the Landlord post-dated cheques to cover all payments under paragraph 4 herein.

24. INTEREST ON OVERDUE RENT AND TRIPLE NET COSTS

24.1 The Tenant shall pay to the Landlord interest on any Rent or Triple Net Costs or any monies payable whatsoever by the Tenant to the Landlord hereunder not paid when due at the rate of 12% per annum, which interest shall be recoverable in the same manner as Rent herein.

25. LANDLORD MAY CURE TENANT'S DEFAULT

25.1 If the Tenant shall fail to perform or cause to be performed each and every of the obligations of the Tenant hereunder, the Landlord shall have the right (but shall not be obligated) to perform or cause to be performed the same and all payments, expenses, costs and levies incurred or paid by the Landlord in respect thereof shall be paid to the Landlord immediately on demand.

26. NOTICE AND PAYMENTS

26.1 Any notice required by this Lease shall be given to the Landlord at its address herein set out, and to the Tenant at the Leased Premises. The time of receipt of such notice shall be conclusively deemed to be the third business day after the day of mailing or if delivered by hand then when delivered. Provided that any party may, by notice to the other, from time to time designate another address to which notices shall be addressed.

27. ENTIRE AGREEMENT

27.1 The provisions herein contained constitute the entire Lease between the parties and supersede all previous communications, representations, understandings, and agreements, whether verbal or written between the parties with respect to the subject matter hereof.

28. HEADINGS

28.1 The headings to the clauses of this Lease are for convenience only and shall not constitute part of this Lease.

29. TIME

29.1 Time shall be of the essence of this Lease.

30. SUCCESSORS

30.1 All rights and liabilities herein given to or imposed upon, the respective parties hereto shall extend to and be binding on their respective heirs, executors, administrators, successors and permitted assigns.

31. JOINT AND SEVERAL OBLIGATIONS

31.1 Any covenant, agreement, condition, or proviso made by two or more persons shall be construed as several as well as joint.

32. INTERPRETATION

32.1 In this Lease, except where otherwise expressly provided or unless the contract otherwise requires, words importing the masculine gender include the feminine and neuter gender and vice versa and words in the singular include the plural and vice versa.

Signed by the parties as of the date on the first page.

GLENMORE STORE LIMITED

Per: K. No.
Authorized Signatory

Per: _____
Authorized Signatory

CITY OF KELOWNA

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

Schedule "A"

The Leased Premises

Unit 105 – 1014 Glenmore Drive, Kelowna, B.C. and being 2,088 +/- (not to exceed 5% variance) square feet and shown in more detail on the plan attached as Schedule B. The exact area of the Leased Premises shall be determined by the Landlord's architect or surveyor which determination shall be final and binding on all parties and if greater or less than 2088 square feet, then the Rent shall be adjusted accordingly.

The Term

The Term of this Lease shall be for a period of 2 years and shall commence on the 1st day of January 1, 2015 (the "Commencement Date").

The Rent

Basic Rent for the entire Term of this Lease is the total sum of \$89,784.00 being \$21.00 per square foot per annum for 2088 square feet in year one and \$22.00 per square foot per annum for 2088 square feet in year two which is payable in advance without set-off or deduction, in consecutive instalments of \$3,654.00 plus G.S.T. for months 1-12 and \$3,828.00 plus G.S.T. for months 13-24 and due on the first day of each calendar month during the Term of this Lease. Basic Rent will be prorated on a daily basis for any fractional month at the beginning or end of the Term.

Use of the Leased Premises

Parks & Recreations Offices

Security Deposit

NIL

Prepaid Rent

NIL

Parking

The Tenant shall have the exclusive use of three (3) parking stalls. The Landlord shall provide a loading area at the side the building for the common use of all tenants.

Option to Renew

The Landlord agrees to a 1 - 1 year option at \$23.00 per square foot annum to renew this Lease as long as the Tenants are not in default.

Additional Terms

NIL

**Schedule “B”
Leased Premises**

LEASE AGREEMENT

1014 Glenmore Drive



LOCATION



LOCATION



LEASE DETAILS

- ▶ Area: +/- 2,088sf
- ▶ Term of Lease: Jan 1, 2015 - Dec 31, 2016
- ▶ Lease rate:
 - ▶ \$21.00/sf in Year 1
 - ▶ \$22.00/sf in Year 2
- ▶ Operating Costs: +/- \$7.50/sf
- ▶ Total term lease costs: \$121,104
- ▶ Renewals: one 1-year renewal

Report to Council



Date: December 15, 2014
File: 1140-40
To: City Manager
From: J. Saufferer, Manager, Property Management
Subject: 2014-12-15 Report - SIDIT Sublease Lawrence Ave 346

Report Prepared by: T. Abrahamson, Property Officer

Recommendation:

THAT Council approves the City entering into a one (1) year Sublease Agreement, with Southern Interior Development Initiative Trust, for office use, with the option to renew for an additional one (1) year term, in the form attached to the Report of the Property Manager, dated December 15, 2014;

AND THAT the Mayor and City Clerk be authorized to execute the Sublease Agreement.

Purpose:

To approve the sublease of surplus office space at 209 - 346 Lawrence Avenue for a term of one (1) year with a one (1) year option to renew.

Background:

Southern Interior Development Initiative Trust ("SIDIT") (<http://www.sidit-bc.ca/>) is a local organization whose mission is to "support regionally strategic investments in economic development projects" and whose objective is to "help grow and diversify the economy of the Southern Interior of British Columbia". While the current SIDIT head office is located in Vernon, a number of its employees live in Kelowna. As a result, SIDIT management approached City Staff to explore the possibility of renting a one-person satellite office location in Kelowna. Given the opportunity of strengthening the City's partnership with SIDIT, Staff conducted a review of City facilities and determined the availability of subleaseable office space (+/-140 s.f.) in the Regional Services Department office located at 209 - 346 Lawrence Avenue.

As per the proposed sublease agreement, which would be valid until the end of December 2015, SIDIT staff will have access to the office space during regular municipal business hours. Compensation for SIDIT staff use of City utilities is included in the monthly rent recovery of \$500.

Both Regional Services and the head leasee have provided their consent to the sublease agreement, which is intended to be on an interim basis to give SIDIT the opportunity to evaluate the merit of a Kelowna office location.

Internal Circulation:

Director, Regional Services
Manager, Park & Building Planning
Director, Financial Services

Legal/Statutory Authority:

Section 26(3) - Community Charter

Legal/Statutory Procedural Requirements:

Disposition must be published in a weekly newspaper for two (2) consecutive weeks and posted on the public notice posting place.

Financial/Budgetary Considerations:

Annual Base Rent is \$6,000 + GST per annum. Revenues collected via the sublease agreement will be transferred to Regional Services' operating budget.

Considerations not applicable to this report:

Existing Policy:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:

Alternate Recommendation:

Submitted by: J. Saufferer, Manager, Property Management

Approved for inclusion: D. Edstrom, Director, Real Estate & Property Services

Attachments: Schedule A: Sublease Agreement

cc: Director, Regional Services
Manager, Park & Building Planning
Director, Financial Services

DOCUMENT APPROVAL			
Facility Sublease			
Cir.	Dept.	Date	Int.
	Parks/Bldg Planning		
	Regional Transp.		

BETWEEN:

CITY OF KELOWNA, a municipal corporation having
Offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the “Lessee”)

OF THE FIRST PART

AND:

SOUTHERN INTERIOR DEVELOPMENT INITIATIVE TRUST
#103 - 2802 30th Street, Vernon, B.C. V1T 8G7

(the “Sublessee”)

OF THE SECOND PART

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THIS SUBLEASE, dated the 15th day of December 2014, is made and entered into by the Lessee and the Sublessee named herein who, in consideration of the covenants herein contained, agree as follows:

1. BASIC TERMS, SCHEDULES, AND DEFINITIONS

Basic Terms:

- | | | |
|-----|-------------------------------|--|
| (a) | Lessee: | CITY OF KELOWNA |
| | Address of Lessee: | City Hall, 1435 Water Street
Kelowna, B.C. V1Y 1J4
Fax: 250-862-3349
Email: jsaufferer@kelowna.ca |
| (b) | Sublessee: | Southern Interior Development Initiative Trust |
| | Address of Sublessee: | #103 - 2802 30 th Street, Vernon B.C. V1T 8G7
Fax: 250-545-6896
Email: LChore@sinit-bc.ca |
| (c) | Premises: | 209-346 Lawrence Avenue
Kelowna, B.C. V1Y 6L4
(outlined in green on Schedule A) |
| (d) | License Area: | N/A |
| (e) | Initial Term: | 1 Year |
| | Commencement Date: | January 1, 2015 |
| | Occupancy: | December 15, 2014 (expiry Dec. 31/15) |
| (f) | Renewal Term (if any): | 1 Year at the City's sole discretion |
| (g) | Annual Base Rent + Tax: | \$6,000 plus GST |
| (h) | Security/Performance Deposit: | \$500.00 |
| (h) | Property Taxes: | Included in rent |
| (i) | Utilities: | Included in rent |
| (j) | Permitted Use: | Office use |

The foregoing Basic Terms are approved by the parties. Each reference in this Sublease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Sublease where such Basic Terms are more fully set forth.

1.2 Schedules

All Schedules to this Sublease are incorporated into and form an integral part of this Sublease and are as follows:

SCHEDULE	SUBJECT
A	Map of Premises
B	Definitions
C	Lessee & Sublessee Responsibility Checklist
D	Certificate of Insurance

1.3 Definitions

In this Sublease, the words, phrases and expressions set forth in Schedule B are used with the meanings defined therein.

2. PREMISES

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Sublessee to be paid, observed, and performed, the Lessee hereby demises and subleases to the Sublessee, and the Sublessee subleases from the Lessee, the Premises.

3. TERM

3.1 Term

The Term of this Sublease shall be for the initial term of one (1) year beginning on the Commencement Date, and subject to earlier termination or renewal on the terms and conditions as set out herein.

3.2 Option to Renew

The Lessee covenants with the Sublessee that if:

- (a) the Sublessee gives notice to the Lessee that the Sublessee wishes to obtain renewal of this Sublease, such notice to be given not later than 2 months prior to the expiration of the initial Term; and
- (b) at the time of giving such notice, the Sublessee is not in breach of any covenant or condition herein contained and which has not been remedied within the time provided for in this Sublease; and
- (c) the Sublessee has duly and regularly throughout the initial Term observed and performed the covenants and conditions herein contained

then the Lessee shall grant to the Sublessee at the Sublessee's expense a renewal Sublease of the Premises for the Renewal Term(s) of one (1) year upon the same terms and conditions, excluding Annual Base Rent and Additional Rent as are herein contained.

4. RENT

4.1 Rent

The Sublessee shall yield and pay to the Lessee, in the manner outlined in clause 4.2, at the office of the Lessee's accounts payable division, or at such other place as the Lessee may direct in writing, during the Term in lawful money of Canada without any set-off, abatement, compensation, or deduction whatsoever on the days and at the times hereinafter specified, Rent which shall include the aggregate of the sums specified in sub-clauses (a) and (b) below:

- (a) Annual Base Rent

Annual Base Rent in the amount per annum set out in sub-clause 1.1(g) for each respective Sublease Year.

(b) Additional Rent

All operating costs, as defined in Schedule B, are included in the Annual Base Rent with the exception of computer, phone and fax.

4.2 Payment of Rent

The Rent provided for in this Article shall be paid by the Sublessee as follows:

(a) Annual Base Rent

The Annual Base Rent shall be paid in equal consecutive monthly instalments, in the amounts set out in sub-clause 1.1(g), in advance on the first day of each and every month during the Term. The first monthly instalment of the Annual Base Rent shall be paid by the Sublessee on the Commencement Date. Where the Commencement Date is the first day of a month such instalment shall be in respect of such month; where the Commencement Date is not the first day of a calendar month, the Annual Base Rent for the period from the Commencement Date to the first day of the next ensuing calendar month shall be pro-rated on a per diem basis and paid on the Commencement Date and the first regular instalment of the Annual Base Rent shall be paid on the first day of the first full calendar month of the Term. Thereafter, subsequent monthly instalments shall each be paid in advance on the first day of each ensuing calendar month during the Term.

(b) Payment Format

The Sublessee agrees to pay the Annual Base rent via cheque on a monthly basis.

4.3 Rent for Irregular Periods

All Rent reserved herein shall be deemed to accrue from day-to-day, and if for any reason it shall become necessary to calculate the Annual Base Rent for irregular periods of less than one year an appropriate pro-rata adjustment shall be made on a daily basis in order to compute the Annual Base Rent for such irregular period.

4.4 Waiver of Offset

The Sublessee hereby waives and renounces any and all existing and future claims, offsets, and compensation against any Rent and agrees to pay such Rent regardless of any claim, offset, or compensation which may be asserted by the Sublessee or on its behalf.

4.5 Application of Payments

All payments by the Sublessee to the Lessee under this Sublease shall be applied toward such amounts then outstanding hereunder as the Lessee determines and the Lessee may subsequently alter the application of any such payment.

4.6 Gross Sublease

The sublease is intended to be a gross sublease unless otherwise provided in the specific provisions contained in this Sublease.

4.7 Interest on Overdue Rent

Overdue Rent payments shall be interest at the current Bank of Canada lending rate effective from the date the amount is due.

5. SUBLESSEE'S COVENANTS

5.1 Sublessee's Covenants

The Sublessee covenants with the Lessee as follows:

(a) Rent

To pay the Rent on the days and in the manner provided herein and to pay all other amounts, charges, costs, and expenses as are required to be paid by the Sublessee to the Lessee or to others under this Sublease.

(b) Occupancy and Permitted Use

To take possession of and occupy the Premises and commence to carry on business in all or substantially all of the Premises no later than 30 days after the Commencement Date, to use the Premises only for the purpose set out in clause 1(j) herein and not for any other purpose.

(c) Waste and Nuisance

Not to commit or permit: any waste or injury to the Premises including the Subleasehold Improvements and the trade fixtures therein; any overloading of the floors thereof; any conduct which impedes or, in the opinion of the Lessee acting reasonably, could constitute a nuisance to the Lessee or anyone else; any other use or manner of use which, in the opinion of the Lessee acting reasonably, may have an adverse impact on the reputation of the Premises.

(d) Insurance Risks

Not to do, omit to do, or permit to be done or omitted to be done upon the Premises anything which would cause the Lessee's cost of insurance to be increased (and, without waiving the foregoing prohibition, the Lessee may demand, and the Sublessee shall pay to the Lessee upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of insurance to be subject to cancellation.

(e) Cleanliness

Not to permit the Premises to become untidy, unsightly, or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein, and at the end of each business day to leave the Premises in a clean and neat condition, to the satisfaction of the Lessee.

(f) Compliance with Laws

To comply at its own expense with all municipal, provincial, and federal laws, bylaws, regulations, and requirements pertaining to the operation and use of the Premises, the condition of the Subleasehold Improvements, trade fixtures

and equipment installed therein, and the making by the Sublessee of any repairs, changes or improvements therein.

(g) Installations

To permit the Lessee during the Term, at the Sublessee's cost, to install any equipment in or make alterations to the Premises necessary to comply with the requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in sub-clause 5.1(f) and imposed after completion of the Lessee's original construction of the Premises.

(h) Overholding

That if the Sublessee shall continue to occupy the Premises after the expiration of this Sublease without any further written agreement and without objection by the Lessee, the Sublessee shall be a monthly Sublessee at a monthly base rent equal to 125% of the Annual Base Rent payable by the Sublessee as set forth in Article 4 during the last month of the Term. The monthly tenancy shall be (except as to the length of tenancy) subject to the provisions and conditions herein set out.

(i) Signs

Not to display, place, or affix any sign except in accordance with the regulations of the Lessee.

(j) Inspection and Access

To permit the Lessee at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Premises for the purpose of inspection or making repairs, alterations, or improvements to the Premises as the Lessee may deem necessary or desirable, or as the Lessee may be required to make by law. The Lessee shall be allowed to take into the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations or improvements are being made by reason of interruption of the business of the Sublessee. The Lessee shall exercise reasonable diligence as to minimize the disturbance or interruption of the Sublessee's operation.

(k) Conduct of Business

- i) The Sublessee shall have access to the Premises, including entrance to the building, stairwell, hallway and washrooms, during regular City hours of 8:00am to 4:00pm Monday to Friday weekly;
- ii) The Sublessee shall have access to the City Wi-Fi network; all other IS requirements (computer, phone, fax, etc.) are the Sublessee's responsibility. Access to the City's WiFi network may be terminated upon 30 days written notice from the Lessee to the Sublessee for any reason;
- iii) The Sublessee shall have occasional access to the on-site meeting room depending upon availability, which access may be terminated upon 30 days written notice from the Lessee to the Sublessee for any reason.

6. LESSEE'S COVENANTS

6.1 Lessee's Covenants

The Lessee covenants with the Sublessee as follows:

(a) Quiet Enjoyment

Provided the Sublessee pays the Rent hereby reserved and performs its other covenants herein contained, the Sublessee shall and may peaceably possess and enjoy the Premises for the Term hereby granted, without any interruption or disturbance from the Lessee or its assigns, or any other person or persons lawfully, claiming by, from, through, or under the Lessee.

7. REPAIR, DAMAGE, AND DESTRUCTION

7.1 Lessee's Repairs

The Lessee covenants with the Sublessee that the Lessee will maintain the Premises according to the terms set out in the Lessee & Sublessee Responsibility Checklist attached as Schedule C.

7.2 Abatement and Termination

It is agreed between the Lessee and the Sublessee that in the event of damage to the Premises:

- (a) if the damage is such that the Premises or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Sublessee for the purposes of its business for any period of time in excess of 10 days, then:
 - (i) unless the damage was caused by the fault of negligence of the Sublessee or its employees, invitees, or others under its control and the damage is not covered by insurance, from and after the date of occurrence of the damage and until the Premises are again reasonably capable of use and occupancy as aforesaid, Rent shall abate from time to time in proportion to the part or parts of the Premises not reasonably capable of use and occupancy; and
 - (ii) unless this SubSublease is terminated as hereinafter provided, the Lessee or the Sublessee, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with all reasonable diligence, but to the extent that any part of the Premises is not reasonably capable of such use and occupancy by reason of damage which the Sublessee is obligated to repair hereunder, any abatement of Rent to which the Sublessee is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Lessee, repairs by the Sublessee ought to have been completed with reasonable diligence; and
- (b) if the Premises are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Lessee they cannot be repaired or rebuilt (based on standard hours of construction work) within 90 days after the occurrence of the damage or destruction, then either the Lessee or Sublessee may at its option, exercisable by written notice to the Sublessee

or Lessee, given within 60 days after the occurrence of such damage or destruction, terminate this Sublease, in which event neither the Lessee nor the Sublessee shall be bound to repair as provided in clauses 7.1 and 7.2, and the Sublessee shall instead deliver up possession of the Premises and License Area to the Lessee with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Sublessee may be entitled under sub-clause 7.3(a) by reason of the Premises having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Lessee or the Sublessee as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence.

7.3 Service Interruptions

The Sublessee acknowledges to the Lessee that the operation of systems and the availability of facilities for which the Lessee is responsible under clause 7.1 may be interrupted from time to time in cases of accident and emergency, in order to carry out maintenance, repairs, alterations, replacements, and upgrading, or for any other reasonable reason required by the Lessee.

8. TAXES AND OTHER COSTS

8.1 Sublessee Tax Obligation

The Sublessee covenants with the Lessee:

- (a) to pay when due, all business Taxes, business license fees, and other Taxes, rates, duties or charges levied, imposed, or assessed by lawful authority in respect of the use and occupancy of the Subleased Premises by the Lessee, the business or businesses carried on therein, or the equipment, machinery, or fixtures brought therein by or belonging to the Sublessee, or to anyone occupying the Subleased Premises with the Sublessee's consent, or from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, and to pay the Lessee upon demand the portion of any tax, rate, duty, or charge levied or assessed upon the Premises that is attributable to any equipment, machinery, or fixtures on the Premises which are not the property of the Lessee or which may be removed by the Sublessee;
- (b) to pay promptly to the Lessee when demanded or otherwise due hereunder all Taxes in respect of all Subleasehold Improvements in the Premises; and

8.2 Goods and Services Tax

In accordance with the applicable legislation the Goods and Services Tax applies to this Sublease as per the terms contained herein.

9. UTILITIES AND ADDITIONAL SERVICES

9.1 Utilities

Utility costs are included in the monthly rental payments. Telephone costs are to be paid by the Sublessee.

10. LICENSES, ASSIGNMENTS, AND SUBLETTING

10.1 General

It is understood and agreed that the Sublessee may not assign this Sublease, or Sublease the Premises, to another party.

11. FIXTURES AND IMPROVEMENTS

11.1 Installation of Fixtures and Improvements

The Sublessee will not make, erect, install, or alter any Subleasehold Improvements in the Premises, any safe or special lock in the Premises, or any apparatus for illumination, air conditioning, cooling, heating, refrigerating, or ventilating the Premises, in any case without having requested and obtained the Lessee's prior written approval, which the Lessee shall not unreasonably withhold. In making, erecting, installing, or altering any Subleasehold Improvements the Sublessee shall comply with the Sublessee construction guidelines as established by the Lessee from time to time, and shall obtain all required building and occupancy permits and comply with all laws of all authorities having jurisdiction. The Sublessee's request for any approval hereunder shall be in writing and be accompanied by a reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications. All work to be performed in the Premises shall be performed by competent contractors and subcontractors and shall be performed and completed in a good and workmanlike manner.

11.2 Liens and Encumbrances on Fixtures and Improvements

In connection with the making, erection, installation, or alteration of Subleasehold Improvements and trade fixtures, and all other work or installations made by or for the Sublessee in the Premises, the Sublessee shall comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c. 45 and amendments thereto, and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks), shall permit the Lessee to take all steps to enable the Lessee to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, shall promptly pay all accounts relating thereto. The Sublessee shall not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 and amendments thereto, or other encumbrance in respect of its Subleasehold Improvements or trade fixtures, or permit any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Premise.

11.3 Discharge of Liens and Encumbrances

If and when any builders' or other lien for work, labour, service, or materials supplied to or for the Sublessee or for the cost of which the Sublessee may be in any way liable or claims therefore shall arise or be filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance shall attach, the Sublessee shall within 20 days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Lessee may in addition to all other remedies hereunder avail itself of its remedy under clause 16.1 and may make any payments required to procure the discharge of any such liens or encumbrances, and shall be entitled to be reimbursed by the Sublessee as provided in clause 16.1, and its right to reimbursement shall not be affected or impaired if the Sublessee

shall then or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off, or defence.

11.4 Removal of Fixtures and Improvements

All Subleasehold Improvements in or upon the Premises shall immediately upon affixation be and become the Lessee's property without compensation therefore to the Sublessee. Except to the extent otherwise expressly agreed by the Lessee in writing, no Subleasehold Improvements shall be removed by the Sublessee from the Premises either during or at the expiration or sooner termination of the Term, except that:

- (a) the Sublessee may at the end of the Term remove its trade fixtures;
- (b) the Sublessee shall at the end of the Term remove such of the Subleasehold Improvements and trade fixtures as the Lessee shall require to be removed; and
- (c) the Sublessee shall remove its furniture and equipment at the end of the Term, and also during the Term in the usual and normal course of its business where such furniture or equipment has become excess for the Sublessee's purposes or the Sublessee is substituting therefore new furniture and equipment.
- (d) all Subleasehold Improvements shall be insured by the Sublessee as described in Section 12.2 (b) unless otherwise agreed in writing by the Lessee.

The Sublessee shall, in the case of every removal either during or at the end of the Term, immediately make good any damage caused to the Premises by the installation and removal.

11.5 Alterations by Lessee

The Lessee reserves the right from time to time to make alterations and additions to the Premises, provided that in exercising any such rights, the Lessee will take reasonable steps to minimize any interference cause to the Sublessee's operations in the Premises , but by exercising any such rights, the Lessee shall not be deemed to have constructively evicted the Sublessee or otherwise to be in breach of this Sublease, nor shall the Sublessee be entitled to any abatement of Rent or other compensation from the Lessee.

12. INSURANCE AND LIABILITY

12.1 Lessee's Insurance

The Lessee shall be deemed to have insured (for which purpose it shall be a co-insurer, if and to the extent that it shall not have insured) the Premises and all improvements and installations made by the Lessee in the Premises, except to the extent hereinafter specified, in respect of perils and to amounts and on terms and conditions which from time to time are insurable at a reasonable premium and which are normally insured by reasonably prudent owners of properties similar to the Premises, as from time to time determined at reasonable intervals (but which need not be determined more often than annually) by insurance advisors selected by the Lessee, and whose written opinion shall be conclusive. Upon the request of the Sublessee from time to time the Lessee will furnish a statement as to the perils in respect of which and the amounts to which it has insured the Premises. The Lessee may maintain such other insurance in such amounts and upon such Terms as would normally be carried by a prudent owner.

12.2 Sublessee's Insurance

The Sublessee shall take out and keep in force during the Term:

- (a) comprehensive general liability (including bodily injury, death and property damage) insurance on an occurrence basis with respect to the business carried on, in, or from the Premises and the Sublessee's use and occupancy thereof, of not less than \$2,000,000 per occurrence, which insurance shall include the Lessee as a named insured and shall protect the Lessee in respect of claims by the Sublessee as if the Lessee were separately insured, shall include a cross liability clause and have a deductible of not more than \$5,000 per occurrence or claim; and
- (b) insurance in such amounts as may be reasonably required by the Lessee in respect of fire and other such perils, including sprinkler leakage, as are from time to time defined in the usual extended coverage endorsement covering the Sublessee's trade fixtures and the furniture and equipment of the Sublessee and (except as to Insured Damage) all Subleasehold Improvements in the Premises, and which insurance shall include the Lessee as a named insured as the Lessee's interest may appear with respect to the insured Subleasehold Improvements and provided that any proceeds recoverable in the event of loss to Subleasehold Improvements;

and if the Lessee shall require the same from time to time, then also:

- (c) Sublessee's fire legal liability insurance in an amount not less than the actual cash value of the Premises; and
- (d) insurance upon all plate glass in or which forms a boundary of the Premises in an amount sufficient to replace all such glass; and
- (e) motor vehicle insurance for all motor vehicles used by the Sublessee in the conduct of its business shall have a minimum public liability and third party property damage insurance coverage of at least \$2,000,000.

All insurance required to be maintained by the Sublessee hereunder shall be on terms and with insurers to which the Lessee has no reasonable objection and shall provide that such insurers shall provide to the Lessee 30 days' prior written notice of cancellation or material alteration of such terms.

The Sublessee shall furnish to the Lessee the completed certificate as set out in Schedule D or other evidence acceptable to the Lessee as to the insurance within 14 days of the execution of this agreement. Failure to provide such documents shall constitute default resulting in termination of this agreement. The Sublessee shall also furnish to the Lessee certificates of other evidence acceptable to the Lessee as to the insurance from time to time required to be effected by the Sublessee and its renewal or continuation in force, either by means of a certified copy of the policy or policies which, in the case of comprehensive general liability insurance, shall provide such information as the Lessee reasonably requires. If the Sublessee shall fail to take out, renew and keep in force such insurance the Lessee may do so as the agent of the Sublessee and the Sublessee shall repay to the Lessee any amounts paid by the Lessee as premiums forthwith upon demand.

12.3 Limitation of Lessee's Liability

The Sublessee agrees that:

- (a) the Lessee shall not be liable for any bodily injury to or death of, or loss or damage to any property belonging to, the Sublessee or its employees, invitees, or licensees or any other person in, on, or about the Premises, or for any interruption of any business carried on in the Premises, and, without limiting the generality of the foregoing, in no event shall the Lessee be liable:
 - (i) for any damage other than Insured Damage or for bodily injury or death of anyone which results from fire, explosion, earthquake, flood, falling plaster, steam, gas, electricity, water, rain, snow, dampness, or leaks from any part of the Premises or from the pipes, appliances, electrical system, plumbing works, roof, sub-surface, or other part or parts of the Premises of property, or from the streets, lanes, and other properties adjacent thereto;
 - (ii) for any damage, injury, or death caused by anything done or omitted by the Sublessee or any of its servants or agents or by any other person;
 - (iii) for the non-observance or the violation of any provision of any of the rules and regulations of the Lessee in effect from time to time or of any Sublease by another Sublessee or premises in the same building or on the same property or any concessionaire, employee, licensee, agent, customer, officer, contractor, or other invitee of any of them, or by anyone else;
 - (iv) for any act or omission (including theft, malfeasance, or negligence) on the part of any agent, contractor, or person from time to time employed by it to perform janitorial services, security services, supervision, or any other work in or about the Premises or the property;
 - (v) for the failure to do anything required to be done by the Lessee.
- (b) The Sublessee reSubleases and discharges the Lessee from any and all action, causes of action, claims, damages, demands, expenses, and liabilities which the Sublessee now or hereafter may have, suffer, or incur which arise from any matter for which the Lessee is not liable under sub-clause 12.3(a), notwithstanding that negligence or other conduct of the Lessee or anyone for whose conduct the Lessee is responsible may have caused or contributed to such matter.

12.4 Indemnity of Lessee

The Sublessee agrees to indemnify and save harmless the Lessee in respect of all claims for bodily injury or death, property damage, or other loss or damage arising from the conduct of any work by or any act or omission of the Sublessee or any assignee, agent, employee, contractor, invitee, or licensee of the Sublessee, and in respect of all costs, expenses, and liabilities incurred by the Lessee in connection with or arising out of all such claims including the expenses of any action or proceeding pertaining thereto, and in respect of any loss, costs, expense, or damage suffered or incurred by the Lessee arising from any breach by the Sublessee of any of its covenants and obligations under this Sublease. This indemnity shall survive the expiry or termination of this Sublease.

13.0 SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES

13.1 Sublessee's Covenants

The Sublessee agrees with the Lessee that:

(a) Sale or Financing of Building

The rights of the Lessee under this Sublease may be mortgaged, charged, transferred, or assigned to a purchaser or purchasers, or to a mortgagee or trustee for bond holders, and in the event of a sale or of default by the Lessee under any mortgage, trust deed, or trust indenture and the purchaser, mortgagee, or trustee, as the case may be, duly entering into possession of the Premises, the Sublessee agrees to attorn to and become the Sublessee of such purchaser or purchasers, mortgagee, or trustee under the terms of this Sublease.

(b) Registration

The Sublessee agrees that the Lessee shall not be obliged to deliver this Sublease in form registrable under the *Land Title Act*, R.S.B.C. 1996, c. 250 and covenants and agrees with the Lessee not to register this Sublease. If the Sublessee desires to register under the *Land Title Act*, then all costs of preparing and registering all documents in connection therewith are to be borne by the Sublessee.

(c) Certificates

The Sublessee agrees with the Lessee that the Sublessee shall promptly whenever requested by the Lessee from time to time execute and deliver to the Lessee and, if required by the Lessee, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the Lessee) a certificate in writing as to the status of this Sublease at that time, including as to whether it is in full force and effect, is modified or unmodified, confirming the rental payable hereunder and the state of the accounts between the Lessee and Sublessee, the existence or non-existence of defaults, and any other matters pertaining to this Sublease as to which the Lessee shall request a certificate. If the Sublessee fails to do so within seven days after the Sublessee receives the form of certificate, the Sublessee hereby irrevocably and conclusively authorizes the Lessee to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Sublessee.

(d) Assignment by Lessee

In the event of the sale by the Lessee of the Premises or the assignment by the Lessee of this Sublease or any interest of the Lessee hereunder, and to the extent that such purchaser or assignee has assumed the covenants and obligations of the Lessee hereunder, the Lessee shall, without further written agreement, be freed and relieved of liability upon such covenants and obligations.

14. OCCURRENCE OF DEFAULT

14.1 Unavoidable Delay

Except as herein otherwise expressly provided, if and whenever and to the extent that either the Lessee or the Sublessee shall be prevented, delayed, or restricted in the fulfilment of any obligations hereunder in respect of the supply or provision of any service or utility, the making any repair, the doing of any work or any other thing (other than the payment of Rent) by reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfill such obligation or by reason of any statute, law, or regulation of or inability to obtain permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfilment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfilment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfilment thereof, and the other party to this Sublease shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor shall Rent abate; but nevertheless the Lessee will use reasonable efforts to maintain services essential to the use and enjoyment of the Premises .

14.2 No Admission

The acceptance of any Rent from or the performance of any obligation hereunder by a person other than the Sublessee shall not be construed as an admission by the Lessee of any right, title, or interest of such person as a sub-Sublessee, assignee, transferee, or otherwise in the place and stead of the Sublessee.

14.3 Part Payment

The acceptance by the Lessee of a part payment of any sums required to be paid hereunder shall not constitute waiver or re-sublease of the right of the Lessee to payment in full of such sums.

15. SUBLESSEE'S DEFAULT, REMEDIES OF LESSEE, AND SURRENDER

15.1 Remedying by Lessee, Non-payment, and Interest

In addition to all the rights and remedies of the Lessee available to it in the event of any default hereunder by the Sublessee, either by any other provision of this Sublease or by statute or the general law, and the event of default is not remedied within the respective time period for doing so, the Lessee:

- (a) shall have the right at all times to remedy or attempt to remedy any default of the Sublessee, and in so doing may make any payments due or alleged to be due by the Sublessee to third parties and may enter upon the Premises to do any work or other things therein, and in such event all expenses of the Lessee in remedying or attempting to remedy such default together with an administrative charge equal to 15% of the total of such expenses shall be payable by the Sublessee to the Lessee forthwith upon demand;
- (b) shall have the same rights and remedies in the event of any non-payment by the Sublessee of any amounts payable by the Sublessee under any provision of this Sublease as in the case of non-payment of Rent; and
- (c) shall be entitled to be reimbursed by the Sublessee, and the Sublessee shall forthwith pay the Lessee, the amount of all costs and expenses (including, without limitation, legal costs on a solicitor and own-client basis) incurred by the Lessee in connection with the default or in efforts to enforce any of the

rights, or to seek any of the remedies, to which the Lessee is or may be entitled hereunder.

16.1 Remedies Cumulative

The Lessee and the Sublessee may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Sublessee or the Lessee, as the case may be, either by any provision of this Sublease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Lessee or the Sublessee, as the case may be, by statute or the general law.

16.2 Right of Re-entry on Default

Provided and it is expressly agreed that:

- (a) if and whenever the Rent hereby reserved or other moneys payable by the Sublessee or any part thereof, whether lawfully demanded or not, are unpaid and the Sublessee shall have failed to pay such Rent or other moneys within five days after the Lessee has given to the Sublessee notice requiring such payment; or
- (b) if the Sublessee shall breach or fail to observe and perform any of the covenants, agreements, provisos, conditions, rules, regulations or other obligations on the part of the Sublessee to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the Lessee has given the Sublessee notice thereof; or
- (c) if without the written consent of the Lessee the Premises shall be used by any other persons than the Sublessee or its permitted assigns or permitted sub-Sublessees or for any purpose other than that for which the Premises were Subleased, or occupied by any persons whose occupancy is prohibited by this Sublease; or
- (d) if the Premises shall be vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or
- (e) if any of the goods and chattels of the Sublessee shall at any time be seized in execution or attachment; or
- (f) if a receiver or receiver-manager is appointed of the business or property of the Sublessee, or if the Sublessee shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or
- (g) if any policy of insurance upon the Premises from time to time effected by the Lessee shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Premises by the Sublessee or any assignee, or licensee of the Sublessee or anyone permitted by the Sublessee to be upon the Premises and the Sublessee after receipt of notice in writing from the Lessee shall have failed to take such immediate steps in respect of such use or

occupation as shall enable the Lessee to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or

- (h) if the Lessee shall have become entitled to Terminate this Sublease or to re-enter the Premises under any provision hereof;

then and in every such case it shall be lawful for the Lessee thereafter to enter into and upon the Premises or any part thereof in the name of the whole and the same to have again, repossess, and enjoy as of its former estate, anything in this Sublease to the contrary notwithstanding. The Lessee may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Premises, and the Sublessee hereby reSubleases the Lessee from all actions, proceedings, claims, and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith.

16.3 Termination and Re-entry

If and whenever the Lessee becomes entitled to re-enter upon the Premises under any provision of this Sublease, the Lessee, in addition to all other rights and remedies, shall have the right to terminate this Sublease by giving to the Sublessee or by leaving upon the Premises notice in writing of such termination. Thereupon, this Sublease and the term shall terminate, and the Sublessee shall immediately deliver up possession of the Premises and License Area to the Lessee in accordance with clause 16.9.

16.4 Right of Termination - No Default

In the event that the Lessee requires the use of the Premises for whatever reason, the Lessee shall have the right to terminate this Sublease after giving the Sublessee sixty (60) days notice of the Lessee's intention to terminate.

16.5 Certain Consequences of Termination and Re-entry

If the Lessee re-enters the Premises and License Area or if this Sublease is terminated by reason of any event set out in clause 16.3 or 16.5, then without prejudice to the Lessee's other rights and remedies:

- (a) the provisions of this Sublease which relate to the consequences of termination, and the provisions of this Sublease as they apply with respect to acts, events, and omissions which occurred prior to the termination, shall all survive such termination;
- (b) in addition to the payment by the Sublessee of Rent and other payments for which the Sublessee is liable under this Sublease, Rent for the current month and the next ensuing three months shall immediately become due and be paid by the Sublessee or the person then controlling the Sublessee's affairs; and
- (c) the Sublessee or person then controlling the affairs of the Sublessee shall pay to the Lessee on demand such reasonable expenses as the Lessee has incurred, and a reasonable estimate of the Lessee of expenses the Lessee expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Sublessee, and storing and realizing upon assets seized, including without limitation brokerage fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Premises and License Area in good order, and the expenses of repairing the Premises and preparing them for re-letting.

16.6 Waiver of Distress and Bankruptcy

The Sublessee waives the benefit of any present or future statute taking away or limiting the Lessee's right of distress and covenants and agrees that notwithstanding any such statute none of the goods and chattels of the Sublessee on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears. The Sublessee will not sell, dispose of, or remove any other fixtures, goods, or chattels of the Sublessee from or out of the Premises during the Term without the consent of the Lessee, unless the Sublessee is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become excess for the Sublessee's purposes; and the Sublessee will be the owner or lessee of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance. The Sublessee agrees that it will not, without the Lessee's consent, repudiate or disclaim this Sublease in any bankruptcy, insolvency, reorganization, or other proceeding or court application, and if required by the Lessee, waives in favour of the Lessee the benefit of s. 65.2 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended, and any provision of similar import.

16.7 Re-letting and Sale of Personalty

Whenever the Lessee becomes entitled to re-enter upon the Premises under any provision of this Sublease, the Lessee, in addition to its other rights, shall have the right as agent of the Sublessee to enter the Premises and re-let them (for a term or terms shorter or longer than the balance of the Term, granting reasonable concessions in connection therewith), and to receive the Rent therefore, and as the agent of the Sublessee to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any rent derived from re-letting the Premises upon account of the Rent due and to become due under this Sublease, and the Sublessee shall be liable to the Lessee for the deficiency, if any.

16.8 Surrender on Termination

Forthwith upon the termination of this Sublease, whether by effluxion of time or otherwise, the Sublessee shall vacate and deliver up possession of the Premises in a neat and tidy state and in good and substantial repair in accordance with the Sublessee's obligation under this Sublease to repair the Premises, but subject to the Sublessee's rights and obligations in respect of removal in accordance with clause 11.4, and subject to reasonable wear and tear. At the same time the Sublessee shall surrender to the Lessee at the place then fixed for the payment of Rent all keys and other devices which provide access to the Premises, or any part thereof and shall inform the Lessee of all combinations to locks, safes, and vaults, if any, in the Premises.

17. MISCELLANEOUS

17.1 Notices

Any notice required or contemplated by any provision of this Sublease shall be given in writing, and if to the Lessee, either delivered to an executive officer of the Lessee or delivered or mailed (by prepaid registered mail) to the Lessee at the address set out in sub-clause 1.1(a), or if the Lessee has given the Sublessee notice of another address in Canada to which notices to the Lessee under this Sublease are to be given, then to the last such address of which the Sublessee has been given notice; and if to the Sublessee, either delivered to the Sublessee personally (or to a partner or officer of the Sublessee if the Sublessee is a firm or corporation)

or delivered or mailed (by prepaid registered mail) to the Sublessee at the Premises. Every such notice shall be deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered.

17.2 Extraneous Agreements

The Sublessee acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Sublease, the Premises save as expressly set out in this Sublease and in any agreement to Sublease in writing between the Lessee and the Sublessee pursuant to which this Sublease has been executed. In the event of any conflict between the terms of this Sublease and such agreement to Sublease, the terms of this Sublease shall prevail. This Sublease may not be modified except by an agreement in writing executed by the Lessee and the Sublessee, and no verbal agreements or conversations with any officer, agent, or employee of the City, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.

17.3 Time of Essence

Time shall be of the essence in this Sublease.

17.4 Enurement

This Sublease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Lessee and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Sublessee.

17.5 References to Sublessee

References to the Sublessee shall be read with such changes in gender as may be appropriate, depending upon whether the Sublessee is a male or female person or a firm or corporation. If the Sublessee is comprised of more than one person or entity, then each such person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Sublessee herein and any notice given or deemed to have been given at any time to any such person or entity shall be deemed to have been given at the same time to each other such person and entity.

17.6 Frustration

Notwithstanding the occurrence or existence of any event or circumstance or the non-occurrence of any event or circumstance, and so often and for so long as the same may occur or continue which, but for this clause, would frustrate or void this Sublease, and notwithstanding any statutory provision to the contrary, the obligations and liability of the Sublessee hereunder shall continue in full force and effect as if such event or circumstance had not occurred or existed.

17.7 Waiver

No condoning, excusing, or overlooking by the Lessee or Sublessee of any default, breach, or non-observance by the Sublessee or the Lessee at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the Lessee's or the Sublessee's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the Lessee or the Sublessee

herein in respect of any such continuing or subsequent default or breach, and no acceptance of Rent by the Lessee subsequent to a default by the Sublessee (whether or not the Lessee knows of the default) shall operate as a waiver by the Lessee, and no waiver shall be inferred from or implied by anything done or omitted by the Lessee or the Sublessee save only express waiver in writing.

17.8 Governing Law and Severability

This Sublease shall be governed by and construed in accordance with the laws in force in the province of British Columbia. The venue of any proceedings taken in respect of or under this Sublease shall be Kelowna, British Columbia as long as such venue is permitted by law, and the Sublessee shall consent to any application by the Lessee to change the venue to Kelowna, British Columbia of any proceedings taken elsewhere. The Lessee and the Sublessee agree that all the provisions of this Sublease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should any provision or provisions of this Sublease be illegal or not enforceable, it or they shall be considered separate and severable from the Sublease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

17.9 Captions

The captions appearing in this Sublease have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Sublease or of any provision thereof.

17.10 Acceptance

The Sublessee accepts this Sublease, to be held by it as Sublessee, and subject to the conditions, restrictions, and covenants above set forth. The acceptance of possession of the Premises shall be conclusive evidence as against the Sublessee that at the Commencement Date of the Term the Lessee had duly completed all work required to be completed by the Lessee prior to the Commencement Date of the Term and the Premises were in good order and satisfactory condition for the commencement of the work and business of the Sublessee.

17.11 Deposit

If the Lessee is holding any deposit in connection with this Sublease, then unless the Lessee agreed in writing to different arrangements at the time the Lessee received the deposit, the deposit shall be held by the Lessee on a non-interest bearing basis to be applied to the Annual Base Rent for that month of the Term during which Annual Base Rent is first payable hereunder.

17.12 Expropriation

If at any time during the Term the interest of the Sublessee under this Sublease or the whole or any part of the Premises shall be taken by any lawful power or authority by the right of expropriation, the Lessee may at its option give notice to the Sublessee terminating this Sublease on the date when the Sublessee or Lessee is required to yield up possession thereof to the expropriating authority. Upon such termination, or upon termination by operation of law, as the case may be, the Sublessee shall immediately surrender the Premises and all its interest therein, Rent shall abate and be apportioned to the date of termination, the Sublessee shall forthwith pay to the Lessee the apportioned Rent and all other amounts which may be due to the Lessee up to the date of termination, and clause 16.9 shall apply. The Sublessee shall have no claim upon the Lessee for the value of its property or the unexpired Term of this Sublease,

the parties shall each be entitled to separately advance their claims for compensation for the loss of their respective interests in the Premises, and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Lessee specifically includes an award to the Sublessee, the Lessee shall account therefore to the Sublessee. In this clause the word "expropriation" shall include a sale by the Lessee to an authority with powers of expropriation, in lieu of or under threat of expropriation.


17.13 Statutory Functions

Nothing contained herein shall impair or affect in any way the exercise by the Lessee of its functions and authority under any enactment, constating document, law, bylaw, resolution or other source of authority.

IN WITNESS WHEREOF the parties have executed this Lease.

SIGNED, SEALED AND DELIVERED by the Lessee in the presence of:

The City of Kelowna, by its Authorized)	
Signatories:)	
	)	Witness
)	
_____)	
Mayor	)	Address
)	
_____)	
City Clerk	)	Occupation
)	

SOUTHERN INTERIOR DEVELOPMENT)	
INITIATIVE TRUST, by its)	
Authorized Signatories	)	Witness
)	
)	
)	
_____	)	1435 WATER ST.
	)	Address
LUANNE CHOUX CEO.	)	PROPERTY OFFICER
	)	Occupation

PLAN OF THE LEASED PREMISE



DEFINITIONS

In this Sublease the following expressions shall have the following meanings:

“Additional Rent” means all sums of money to be paid by the Sublessee, whether to the Lessee or otherwise under this Sublease, except for Annual Base Rent and Goods and Services Tax payable by the Sublessee.

“Annual Base Rent” means the annual Rent set out in sub-clause 1.1(g) and payable by the Sublessee as set forth in clause 4.2.

“Basic Terms” means those terms set out in clause 1.1.

“Commencement Date” means the date the term commences as set forth in or determined under sub-clause 1.1(e) and subject to clause 3.2.

“Goods and Services Tax” or “GST” means and includes any and all sales Taxes, value added Taxes, business transfer Taxes, or any other Taxes imposed on the Lessee or the Sublessee from time to time in respect of the Rent payable by the Sublessee to the Lessee under this Sublease or the Rental of the Premises or the provision of any goods, services, or utilities whatsoever by the Lessee to the Sublessee under this Sublease, whether characterized as a Goods and Services Tax, sales Tax, value added Tax, business transfer Tax, or otherwise.

“Insured Damage” means that part of any damage occurring to any portion of the Premises for which the Lessee is responsible, of which the entire cost of repair is actually recoverable by the Lessee under a policy of insurance in respect of fire and other perils from time to time effected by the Lessee, or, if and to the extent that the Lessee has not insured and is deemed to be a co-insurer or self-insurer under clause 12.1, would have been recoverable had the Lessee effected insurance in respect of perils, to amounts and on terms for which it is deemed to be insured.

“Land” means that parcel of land at 209 - 346 Lawrence Avenue in the City of Kelowna, British Columbia, more particularly described as Lot A, DL 139 KAP26819.

“Operating Costs” means electricity, water, gas, sewer, common area maintenance and repairs, janitorial costs and property taxes.

“Prime Rate” means the rate of interest declared from time to time by the main branch, Bank of Montreal, Kelowna, British Columbia, to the Lessee as the annual rate of interest.

“Rent” means and includes the Annual Base Rent, Additional Rent, and all other sums payable by the Sublessee to the Lessee under this Sublease except for Goods and Services Tax payable by the Sublessee.

“Sublease Year” means, in the case of the first Sublease Year, the period beginning on the Commencement Date and terminating 12 months from the last day of the calendar month in which the Commencement Date occurs (except that if the Commencement Date occurs on the first day of a calendar month, the first Sublease Year shall terminate on the day prior to the first anniversary of the Commencement Date) and, in the case of each subsequent Sublease Year, means each 12-month period after the first Sublease Year.

“Sublessee’s Share” means the proportion of Taxes attributed to the Premises.

“Subleasehold Improvements” means all fixtures, improvements, installations, alterations, and additions now and from time to time hereafter made, erected or installed, whether by the Sublessee, and the Lessee or anyone else, in the Premises, including all partitions however fixed (including movable partitions) and all wall-to-wall carpeting with the exception of such carpeting where laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage, but excluding trade fixtures and unattached free-standing furniture and equipment.

“Taxes” means all Taxes, rates, duties, levies, and assessments whatsoever, whether municipal, parliamentary, or otherwise, which are levied, imposed, or assessed against or in respect of the Premises, the Land, which are from time to time levied, imposed or assessed in the future in addition or in lieu thereof, including, without limitation, those levied, imposed, or assessed for education, schools and local improvements.

“Tax Cost” for any calendar year means an amount equal to the aggregate, without duplication, of all Taxes in respect of such calendar year.

“Term” means the Term of this Sublease set forth in sub-clause 1.1(e) and any renewal or extension thereof and any period of permitted overholding.

SCHEDULE C

Lessee/Sublessee Responsibility Checklist 209 – 346 Lawrence Avenue - SIDIT		Does not apply	Provided by the Sublessee, cost borne by the Sublessee	Provided by the Sublessee, Cost borne by the Lessee	Provided by the Lessee, Cost borne by the Lessee
Boiler operating permits		X			
Electrical field safety representative		X			
Electrical operating permit		X			
Electrical system preventative maintenance		X			
Electrical system repairs		X			
Electrical/lights - lamp & tube replacement					X
Elevator equipment repairs		X			
Elevator maintenance contract		X			
Elevator operating permits		X			
Emergency lighting testing & repairs		X			
Exterior doors, windows, facades, etc.		X			
Fire alarm system repairs		X			
Fire alarm system testing & inspection contracts		X			
Fire extinguisher monthly & annual inspections		X			
Fire safety plan and fire drills		X			
Fire sprinkler system repairs		X			
Fire sprinkler system testing and inspection contracts		X			
Furnishings (maintain & replace)			X		
Garbage removal		X			
HVAC preventative maintenance		X			
HVAC repairs		X			
Insurance - automotive		X			
Insurance - liability			X		
Insurance - property, building		X			
Insurance - Sublessee owned furnishings & fixtures			X		
Insurance - Sublessee owned operation equipment, computers, & furnishings			X		
Interior walls, flooring, doors, ceilings, etc.		X			
Internet				X	
Janitorial services & supplies		X			
Kitchen Exhaust Hood preventative maintenance		X			

Kitchen Exhaust Hood repairs (liability Limit)					X
Kitchen Hood Fire suppression system preventative maintenance					X
Kitchen Hood Fire suppression repairs					X
Kitchen Hood Fire suppression testing					X
Landscape maintenance					X
Licences & permits					X
Parking lots - lighting, parking lines, sweeping, asphalt, signage, drainage etc.					X
Pest control					X
Plumbing system preventative maintenance					X
Plumbing system repairs (liability limit)					X
Recycling program					X
Roof inspection & maintenance (see appendix "D")					X
Roof repairs (liability limit)					X
Security system					X
Signage	X				
Snow removal					X
Taxes	X				
Telephone				X	
Sublessee improvements				X	
Sublessee improvements - Maintenance				X	
Tree removal					X
Utilities - electricity	X				
Utilities - natural gas	X				
Utilities - propane					X
Utilities - water, sewer	X				
Vandalism (exterior)					X
Vandalism (interior)					X
Window Cleaning (exterior)					X
Window Cleaning (interior)					X

Document Revision History:			
Revision			
1	Description	Revised by	Date

SCHEDULE D



CERTIFICATE OF INSURANCE

City staff to complete prior to circulation

City Dept.: _____
 Dept. Contact: _____
 Project/Contract/Event: _____

Insured

Name: _____
 Address: _____

Broker

Name: _____
 Address: _____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name _____ Title _____ Company (Insurer or Broker) _____

Signature of Authorized Signatory _____ Date _____

SUB-LEASE AGREEMENT

+/-140sf Office at 346 Lawrence Avenue



SOUTHERN INTERIOR DEVELOPMENT INITIATIVE TRUST

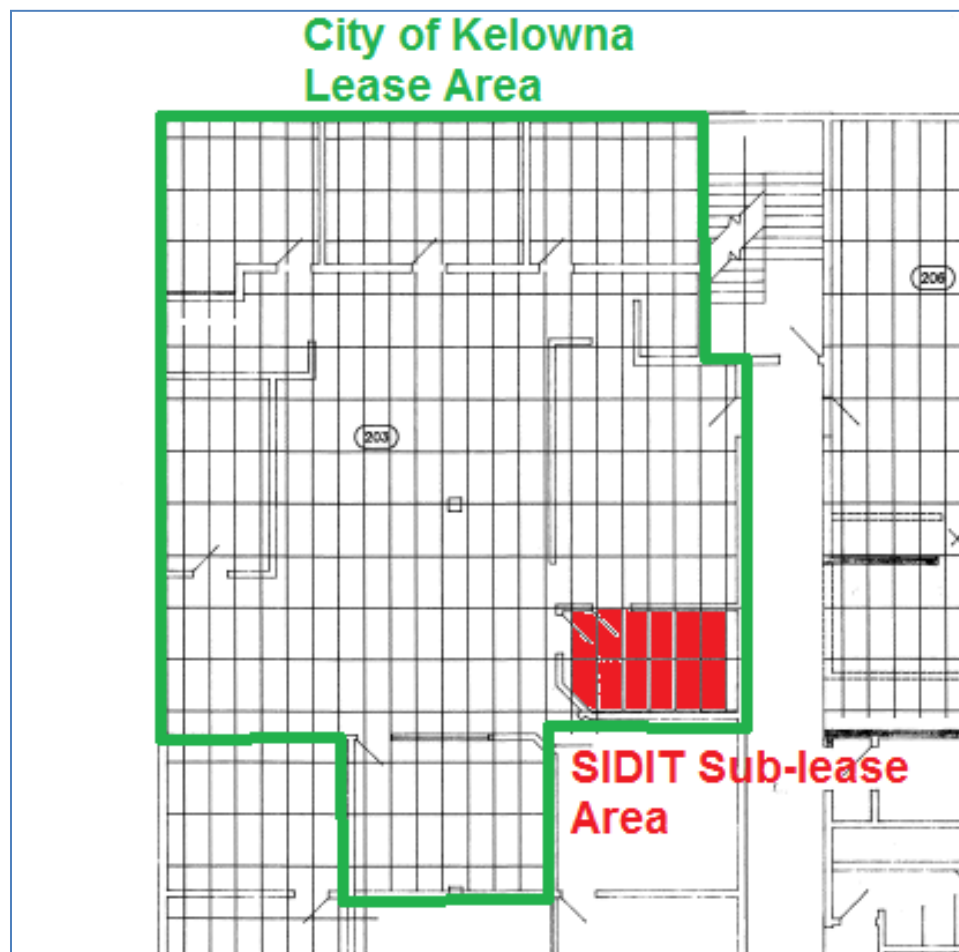
- ▶ Governed by provincial legislation
- ▶ Objective of growing & diversifying local economy
- ▶ Head office in Vernon
- ▶ 5 employees; 3 live in Kelowna
- ▶ Looking for temporary satellite office space in Kelowna
- ▶ Excellent partnership opportunity for City of Kelowna



LOCATION



OFFICE SPACE



LEASE DETAILS

- ▶ Area: +/- 140 square feet
 - ▶ Fully set-up office space (unfurnished)
- ▶ Lease rate: \$500/month
 - ▶ Rent includes operating cost recovery
- ▶ Total annual lease revenue: \$6,000
- ▶ Term of Lease: 1 year
- ▶ Renewal: 1 additional year (City's option)

Report to Council



Date: 12/10/2014
File: 1840-40
To: City Manager
From: P. McCormick, Planner Specialist, Urban Design
Subject: Partnership for the Provision of Public Art - Karis Supportive Housing Project

Recommendation:

THAT Council approves the City of Kelowna entering into a Public Art Financial Contribution Agreement with Davara Holdings Ltd. for a public art installation at 550 Rowcliffe Avenue/555 Buckland Avenue in the form attached to the Report of the Planner Specialist, Urban Design dated December 10, 2014;

AND THAT the Mayor and City Clerk be authorized to execute all documents necessary to complete the Agreement.

Purpose:

To approve a public art project and funding partnership with Davara Holdings Ltd.

Background:

Davara Holdings Ltd. has approached City staff with a request to partner on a public art installation. The objective of the partnership would be to install a publicly-accessible artwork in conjunction with the Karis supportive housing project at 550 Rowcliffe Avenue/555 Buckland Avenue

(http://www.kelowna.ca/CityPage/Docs/PDFs%5C%5CCouncil%5CMeetings%5CCouncil%20Meetings%202013%5C2013-10-22%5CRegular%20Tuesday%5CAgenda%20Package%20-%20Regular%20Tuesday%20Council%20Meeting_Oct22_2013.pdf; Council Agenda Item 6.6).

The purpose of the artwork would be to reflect upon the lives of the residents of the housing project and serve as a source of inspiration and hope for women whose lives are in transition and recovery from addiction-related circumstances.

The artwork would be located adjacent to what will be a major public space (Attachment A). Once Rowcliffe Park is constructed, the artwork would be in a highly-visible location and

easily accessed from the Park, and as such is considered by staff to be a positive addition to the public realm.

As per the terms of the Public Art Program, City resources could be made available to assist in provision of that art. These resources would include staff time, access to the evaluation roster, and funding for the project on a cost-sharing basis.

Full particulars of the proposed agreement with Davara Holdings Ltd. are included in Attachment B.

Site Location

The location is on a pedestrian path that will connect Rowcliffe Avenue to the future Rowcliffe Park. Public access would be secured through a Statutory Right of Way (SRW) from Rowcliffe Avenue to the future Park in the form of the SRW agreement attached as Attachment B - Part 2.

Funding and Ownership

The full project budget including the cost of the artwork is expected to be \$60,000.00 including honoraria to short-listed artists and registration of the SRW. Pending Council's approval, the funding would be shared on a 50/50 basis by the City and Davara Holdings Ltd. up to a total project cost of \$60,000.00.

The artwork would be owned by the City as part of the Public Art Collection and would be maintained as part of the City's regular maintenance program for public art.

Process

- The artwork would be chosen by an open, two-stage competition;
- The City would oversee the artist selection process;
- Competition documents would be drafted by City staff and reviewed and approved by Davara Holdings Ltd. prior to being issued;
- An evaluation panel of five individuals would convene to evaluate submissions;
Three members of the panel would be from the City's Public Art Roster; two members would be representatives of Davara Holdings Ltd.;
- Short-listed proposals would be reviewed by qualified staff to advise the Evaluation Panel on constructability and any long-term maintenance issues as well as compliance with the City of Kelowna Crime Prevention Through Environmental Design Guidelines;
- The City would oversee detail design of the proposed artwork;
- Pending approval of detail design, Davara Holdings Ltd. would enter into and administer a contract with the successful artist for fabrication and installation of the artwork.

Timeline

The artwork would need to be ready for installation upon completion of the building and associated landscaping/site improvements. This is expected to occur in June 2015.

Existing Policy:

The proposed partnership would be consistent with the terms of the City of Kelowna Public Art Program.

Financial/Budgetary Considerations:

The City's share of the project, up to \$30,000.00, would be funded from the annual Public Art allocation.

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:

Alternate Recommendation:

Internal Circulation:

Director of Real Estate

Urban Planning Manager

Purchasing Manager

Submitted by:

P. McCormick, Planner Specialist

Approved for inclusion:



Attachments:

12/15/2014 Attachment A: Aerial Photo

12/15/2014 Attachment B: Site Map

12/15/2014 Attachment C: Draft Contract Between the City and Davara Holdings Ltd.

cc:

Director of Real Estate

Urban Planning Manager

Purchasing Manager

Attachment A: Aerial Photo



City of Kelowna - Accuracy and correctness not guaranteed.

Future Rowcliffe Park site

Karis Housing Project site

TERMS OF INSTRUMENT - PART 1
PUBLIC ART FINANCIAL CONTRIBUTION AGREEMENT

This agreement made the _____ day of _____, 2014

Between:

City of Kelowna

a municipal corporation having its offices at 1435 Water Street,
in Kelowna, BC V1Y 1J4

(the "City")

And:

Davara Holdings Ltd.

An incorporated society having its offices at, #1-911 Borden Ave.
Kelowna BC V1Y 6A5

Whereas:

A. The City has established a Public Art Program, the terms of which provide for partnerships with other agencies and organizations for the installation of public art;

B. City Council has approved a partnership between the City of Kelowna and Davara Holdings Ltd., according to the terms set out herein, including a financial contribution from the Public Art Program for the commissioning of a work of public art for the Karis Supportive Housing Project at 550 Rowcliffe/555 Buckland Avenue, Kelowna, BC; and

Now, therefore, the City and Davara Holdings Ltd., for the consideration and under the conditions hereinafter set forth, agree as follows:

1.0 PROCESS

- a) The location of the artwork will be as per Schedule "A";
- b) An artist (the "Artist") for design, fabrication, and delivery of the artwork will be chosen by an open, two-stage competition;
- c) The terms of the artist evaluation process, including the evaluation criteria, the value of any honoraria to short-listed artists, as well as pertinent information regarding the scope of the project, e.g., the value of the contract to the successful Artist (Artist

Contract), will be drafted by the City and reviewed and approved in writing by Davara Holdings Ltd. prior to being issued;

- d) The artwork is expected, but not required to be a freestanding 3-dimensional piece;
- e) The evaluation/selection process will be administered by the City;
- f) An Evaluation Panel will be assembled by City staff to review submissions and to select the Artist according to the criteria set out in the competition documents;
- g) Three members of the Panel will be from the City's Public Art Roster; two members will be representatives of Davara Holdings Ltd.;
- h) Short-listed proposals will be reviewed by pertinent City staff for the purpose of advising the Evaluation Panel on constructability and any long-term maintenance issues as well as adherence to the City of Kelowna Crime Prevention Through Environmental Design Guidelines;
- i) Davara Holdings Ltd. will have the option of terminating the process described herein, upon selection of the Artist by the Evaluation Panel. In the event that Davara Holdings Ltd. exercises this option, this agreement will be terminated and will have no further effect. In the event that Davara Holdings Ltd. does not exercise this option, Davara Holdings Ltd. will abide by the Evaluation Panel's selection;
- j) Upon selection of the Artist, the City will contract the Artist to develop the concept and produce detail design drawings and specifications;
- k) Upon submission of the detail design drawings and specifications, the City will reconvene the Evaluation Panel to review the detail design package; the City will also solicit final comments from pertinent City staff with regard to constructability and any long-term maintenance issues as well as adherence to the City of Kelowna Crime Prevention Through Environmental Design Guidelines;
- l) Pending final comments from the Evaluation Panel and pertinent staff, the Artist could be requested to revise the detail design drawings and specifications;
- m) Upon approval of the detail design documents, Davara Holdings Ltd. will enter into a contract with the Artist (Artist Contract);
- n) The Artist Contract will be based on the City's template for public art contracts;
- o) Acquisition of any required permits will be the responsibility of Davara Holdings Ltd.;
- p) In the event that an artist is not selected, and/or if any of the terms herein are breached, this agreement will be terminated and will have no further effect.

2.0 THE CITY'S FINANCIAL CONTRIBUTION

Upon signing of the Artist Contract, \$15,000.00 will be transferred by the City to Davara Holdings Ltd.;

Upon installation of the artwork, the balance of the City's share of the funding will be transferred to Davara Holdings Ltd. The City's total contribution will not exceed one-half of the total cost, including taxes, of the fabrication, delivery, and installation (if within the Artist's scope of work) of the artwork up to a maximum of \$60,000.00. In addition to Artist fees, the project costs may include costs associated with securing a Statutory Right of Way, e.g., survey and legal fees (see 3.4 below).

The budget to be cost-shared by the City will not include any costs incurred as a result of delays in the building and/or site construction that in turn, result in costs to the Artist as a result of such delays.

To receive final payment, Davara Holdings Ltd. will submit an invoice to the City, complete with substantiating documentation.

3.0 OBLIGATIONS OF DAVARA HOLDINGS LTD.

In addition to the obligations set out above, Davara Holdings Ltd. will:

3.1 administer the Artist Contract and ensure that the Artist fulfils the obligations pursuant to the Artist Contract and to otherwise abide by the terms of this Agreement;

3.2 provide the City with written updates complete with pertinent images, i.e., drawings or photographic images, at the completion of fabrication and prior to delivery of the artwork to the Subject Site;

3.3 give the City written notice of any proposed changes to the terms set out in the Artist Contract. Such notice will be in writing and no changes to the Artist Contract will be made until a written response is received from the City, such response to be provided no later than conclusion of five full business days after receipt of notice;

3.4 provide a Statutory Right-of-Way (SRW) to the artwork. The SRW will extend from the south property line at Rowcliffe Avenue to the east property line adjacent to the future Rowcliffe Park as set out in Attachment B. The SRW must be registered prior to installation of the artwork (see Part 2 below);

Upon substantial completion of Rowcliffe Park, Davara Holdings Ltd., at its option will be able to recind that portion of the SRW that extends from the south property line at Rowcliffe Avenue to the artwork site.

Davara Holdings Ltd. will ensure that safe public access is maintained within the hours of 9:00 am and 9:00 pm daily;

3.5 not remove the artwork subsequent to installation, without the written permission of the City;

3.6 maintain adequate insurance and abide by the terms set out in 7.0 below;

3.7 provide the City with a maintenance schedule for the artwork;

3.8 ensure that the contribution from the City of Kelowna's Public Art Program is acknowledged in media and promotional materials and events.

4.0 OBLIGATIONS OF THE CITY

The City of Kelowna will:

4.1 provide funding in the amounts and at the milestones specified herein;

4.1 maintain and conserve the artwork according to the schedule of maintenance to be provided by the Artist;

4.2 provide a plaque at its expense; the plaque location and design and wording will be reviewed with Davara Holdings Ltd. prior to fabrication of the plaque;

4.3 include the artwork in its public art brochure and on its website at such time as those media are updated.

5.0 OWNERSHIP AND COPYRIGHT

Upon installation of the artwork, ownership of the artwork will be transferred from the Artist to the City of Kelowna.

The copyright in the Work will be owned by the Artist until the artwork is installed. Upon transfer of ownership to the City, the copyright will be jointly held by the Artist and the City. Notwithstanding such joint copyright, each party may exercise its respective copyright without requiring the other's consent except that any future sales of goods containing images of the artwork shall be established pursuant to a written agreement between the Artist and the City, outlining the terms and conditions of production, sales, cost-sharing, and any royalties.

The terms of the copyright will allow Karis Housing Society to use images of the artwork for its purposes, including those purposes involving remuneration to Karis Housing Society, pending written agreement from the City and the Artist. Other terms and conditions, including a share of any remuneration could be specified in the written agreements from the City and/or the Artist.

The terms of the copyright will also allow Davara Holdings Ltd. to use images of the artwork for its purposes, pending written agreement from the City and the Artist.

6.0 TIMELINE

It is expected that the artwork will be ready for installation upon completion of the building and associated site improvements. However, Davara Holdings Ltd. is at liberty to revise the project schedule as set out in the Artist Contract and/or to terminate the Artist Contract (see 8.0 below).

7.0 INSURANCE

7.1 Applicant To Provide

Davara Holdings Ltd. (Applicant) shall procure and maintain, at its own expense and cost, the insurance policies listed in section 7.0 of this Schedule, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the agreement, services and/or occupancy the City advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of this agreement, services and/or occupancy until the date that the City certifies in writing completion of the agreement, services and/or occupancy or such further period as may be specified by the City.

7.2 Insurance

As a minimum, Davara Holdings Ltd. shall, without limiting its obligations or liabilities under any other contract with the City, procure and maintain, at its own expense and cost, the following insurance policies:

7.3 Comprehensive General Liability Insurance

(i) providing for an inclusive limit of not less than \$2,000,000.00 for each occurrence or accident;

(ii) providing for all sums which the applicant shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to this agreement, services and/or occupancy or any operations carried on in connection with this agreement;

(iii) including coverage for Products/Completed Operations, Blanket contractual, contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability;

(iv) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgment made against any other Insured.

7.4 The City Named As Additional Insured

The policies required by section 7.3 above shall provide that the City is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the City.

7.5 Sub-Contractors

Davara Holdings Ltd. shall require each of its sub-contractors to provide comparable insurance to that set forth under section 7.0 of this Schedule.

7.6 Certificates of Insurance

Davara Holdings Ltd. agrees to submit Certificates of Insurance (Appendix "A -1") for itself and all of its sub-contractors to the Infrastructure Planning Division of the City prior to the commencement of this agreement, services and/or occupancy. Such Certificates shall provide that 30 days written notice shall be given to Infrastructure Planning Division of the City, prior to any material changes or cancellations of any such policy or policies.

7.7 Other Insurance

After reviewing the Certificates of Insurance, the City may require other insurance or alterations to any applicable insurance policies in force during the period of this contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the City and result in increased insurance premium, such increased premium shall be at the Davara Holdings Ltd.'s expense.

7.8 Additional Insurance

Davara Holdings Ltd. may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the City. The applicant shall ensure that all of its sub-contractors are informed of and comply with the City's requirements set out in this Schedule "A-1".

7.9 Insurance Companies

All insurance, which Davara Holdings Ltd. is required to obtain with respect to this agreement, shall be with insurance companies registered in and licensed to underwrite such insurance in the Province of British Columbia.

7.10 Failure to Provide

If Davara Holdings, Ltd. fails to do all or anything which is required of it with regard to insurance, the City may do all that is necessary to effect and maintain such insurance, and any monies expended by the City shall be repayable by and recovered from Davara Holdings Ltd. Davara Holdings Ltd. expressly authorizes the City to deduct from any monies owing Davara Holdings Ltd., any monies owing by Davara Holdings Ltd. to the City.

7.11 Non-payment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of Davara Holdings Ltd. or any sub-contractor shall not be held to waive or release Davara Holdings, Ltd. or sub-contractor from any of the provisions of the Insurance Requirements or this agreement, with respect to the liability of Davara Holdings Ltd. otherwise. Any insurance deductible maintained by Davara Holdings Ltd. or any sub-contractor under any of the insurance policies is solely for their account and any such amount incurred by the City will be recovered from Davara Holdings Ltd. as stated in section 9 of the Schedule.

7.12 Indemnification and Hold Harmless Clause

Davara Holdings Ltd. must indemnify and hold harmless the City of Kelowna, its elected officials, officers, agents and employees, from and against all liabilities, losses, damages, personal injury, death, property loss or damage, actions, causes of action, costs (including legal fees and costs) or expenses in connection with loss of, or damage or injury (including death) to, any person or property that occurs in the course of the performance of the contract, whether suffered, incurred or made by Davara Holdings Ltd. or an employee of Davara Holdings Ltd. or other party for whom Davara Holdings Ltd. is responsible and caused through a willful or negligent act or omission or other actionable wrong of Davara Holdings Ltd., its officers, agents, employees, or sub-contractors, or any of their officers, agents or employees, and at its expense Davara Holdings Ltd. must defend any and all actions and pay all damages and legal costs and other costs arising therefrom to the extent of its sole or partial fault as determined by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body, apportionment or reimbursement of any such costs not attributed solely or partially to the fault of Davara Holdings Ltd. as determined by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body shall be made only following the binding determination by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body.

Davara Holdings Ltd. shall be liable for all losses, costs, damages, and expenses whatsoever incurred or suffered by the Indemnitees including but not limited to, damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Agreement, services and/or occupancy excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnitees.

8.0 TERMINATION OF ARTIST CONTRACT

Davara Holdings Ltd. will notify the City in writing of any intention by Davara Holdings Ltd. or the Artist to terminate the Artist Contract, citing the reason for the termination. Davara Holdings Ltd. will reimburse the City for one-half of any outstanding amount that exceeds the initial disbursement of \$15,000.00, to a total contribution amount of \$30,000.00. If the amount is less than \$15,000.00, Davara Holdings Ltd. will return the City's portion of any amounts that have not been spent or are otherwise owing to the Artist.

9.0 ENTIRE AGREEMENT

This Agreement embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

10.0 MODIFICATION

No alteration, change or modification of the terms of this Agreement will be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the City.

11.0 GOVERNING LAW

This agreement, regardless of where executed or performed, will be governed by and construed in accordance with the laws of the Province of British Columbia.

12.0 HEIRS AND ASSIGNEES

This agreement will be binding upon and will inure to the benefit of the City and Davara Holdings Ltd. and Davara Holdings Ltd.'s respective heirs, personal representatives, successors, and permitted assigns.

13.0 NOTICES

All notices, requests, demands and other communications which are required or permitted to be given under this agreement will be in writing and will be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

- (a) if to the City of Kelowna:

Patrick McCormick
Public Art Coordinator
City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

- (b) if to Davara Holdings Ltd.:

Dustin Sargent
#1-911 Borden Ave.
Kelowna B.C. V1Y 6A5

IN WITNESS WHEREOF the parties hereto have executed this agreement on the day and year first above written.

Executed in the Presence of:

_____)	_____
Name	)	Name, Title,
<u>1435 Water St., Kelowna, BC V1Y 1J4</u>	)	City of Kelowna
Address)	
_____)	_____
Name	)	Dustin Sargent, Davara Holdings Ltd.
<u>#1-911 Borden Ave., Kelowna BC V1Y 6A5</u>)	
Address)	



1435 Water Street
Kelowna, BC V1Y 1J4
250 469-8500
kelowna.ca

APPENDIX A-1
CERTIFICATE OF INSURANCE

City staff to complete prior to circulation
City Dept.: _____
Dept. Contact: _____
Project/Contract/Event: _____

Insured

Name: _____
Address: _____

Broker

Name: _____
Address: _____

Location and nature of operation and/or contract reference to which this Certificate applies:

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
Section 1 Comprehensive General Liability including: <ul style="list-style-type: none"> • Products/Completed Operations; • Blanket Contractual; • Contractor's Protective; • Personal Injury; • Contingent Employer's Liability; • Broad Form Property Damage; • Non-Owned Automobile; • Cross Liability Clause. 				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
Section 2 Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

Print Name _____

Title _____

Company (Insurer or Broker) _____

Signature of Authorized Signatory _____

Date _____

TERMS OF INSTRUMENT - PART 2
STATUTORY RIGHT OF WAY - Public Access

THIS COVENANT dated for reference the __ day of _____, 20__

Davara Holdings Ltd., an incorporated society having its offices
at, #1-911 Borden Ave. Kelowna B.C. V1Y 6A5

(the "Grantor")

AND:

CITY OF KELOWNA, a municipality under the laws of British Columbia, having
offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "City")

RECITALS:

- A. The Grantor owns the land located in the City of Kelowna, British Columbia legally described as:
_____ (the "Land")
- B. The City wishes to register a statutory right of over the proposed sidewalk to be constructed by Davara Holdings Ltd the location of which is shown on the plan attached hereto as Schedule "A";
- C. The Grantor has agreed to grant to the City a statutory right of way for the the passage of the public and use of the area as a public walkway and trail (the "Works");
- D. Section 218 of the *Land Title Act*, R.S.B.C., c. 250 enables the Grantor to grant in favour of the City an easement without a dominant tenement known as a statutory right of way;
- E. This statutory right of way is necessary for the operation and maintenance of the City's undertaking.

THIS AGREEMENT is evidence that, pursuant to s. 218 of the *Land Title Act*, and in consideration of ONE DOLLAR (\$1.00) paid by the City to the Grantor, and other good and valuable consideration (the receipt and sufficiency of which the Grantor hereby acknowledges), the Grantor grants to and covenants with the City as follows:

- 1. **Grant of Statutory Right of Way** - The Grantor hereby grants, conveys and confirms to the City in perpetuity the full, free and uninterrupted right, liberty, easement and statutory right of way ("Statutory Right of Way") for the City, its officers, employees, contractors and agents, in common with the Grantor, at all times hereafter from time to time at their will and pleasure to enter, go, be on, pass and repass, across that portion of the Land outlined in heavy black on the explanatory plan of statutory right of way, deposited in the Land Title Office ("Land Title Office") under number EPP_____ (the "Right of Way Area") a reduced paper print copy of which plan is attached hereto as Schedule "A" (the "Plan") to:

- (a) repair, , maintain, inspect, clean and operate the Works as a public route of access and public trail open to the public from time to time in the City's discretion and to permit the public to use the Works on the Right of Way Area as though it was a dedicated highway without specific invitation or authorization;
- (b) remove from the Right of Way Area such structures, improvements, fixtures, fences and driveways, trees, shrubs, plants, vehicles, storage facilities and other obstructions whatsoever as, in the City's opinion, acting reasonably, is necessary in order to repair, alter, operate, maintain, clean, inspect or replace the Works and provided that the City receives the Grantor's prior approval to do so;
- (c) permit the public (without the need for any express invitation) to have use of the Right of Way Area by foot, bicycle, and other means of conveyance but not by motor vehicles, such use being limited to between the hours of 9:00am and 9:00pm, daily, or any other time mutually agreed to in writing by the parties to this Agreement;
- (d) landscape the Right of Way Area as a public way, including tree trimming and reforestation to the City's park standards;
- (e) As per section 3.4 of the Public Art Financial Agreement between the Grantor and the City of Kelowna, upon substantial completion of Rowcliffe Park the Grantor, at its option and expense can remove the portion of the SRW that extends from the south property line at Rowcliffe Avenue to the artwork;

2. Grantor's Obligations - The Grantor must:

- (a) not do or permit to be done anything in the Right of Way Area which in the opinion of the City, acting reasonably, may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of, the Right of Way Area, the Works or the rights granted under this Statutory Right of Way;
- (b) trim or, if the City requires, permit the City to trim or cut down any tree or other growth on the Right of Way Area or the Land which in the opinion of the City constitutes or may constitute a danger, impairment or obstruction to the Works or to those using the Right of Way Area in connection with the Works;
- (c) permit the City to peaceably hold and enjoy the rights hereby granted;
- (d) permit the City to:
 - (i) maintain and clean the surface of the Right of Way Area and remove grass and other growth from the surface of the Right of Way Area to the extent required for the construction and maintenance of the Works; and
 - (ii) to do all other things in the Right of Way Area which in the reasonable opinion of the City are reasonably necessary for the safe use and preservation of the Right of Way Area for the purposes of the Works and the Statutory Right of Way;
- (e) not deposit or place garbage, debris or other material on the Right of Way Area;

- (f) not place, install, erect, construct or maintain any building, structure, foundation, mobile or manufactured home or other improvement (including any, walls or fences) on the Right of Way Area;
- (g) not carry on blasting on or adjacent to the Right of Way Area without the City's prior written consent;
- (h) not permit any building, construction, structure or other improvement to overhang the Right of Way Area, without the City's written approval;
- (i) not carry on blasting on or adjacent to the Right of Way Area without the City's approval;
- (j) not diminish or increase the soil cover over any Works installed in the Right of Way Area without the City's approval;
- (k) at its own expense, do or cause to be done all acts necessary to grant priority to this Statutory Right of Way over all charges and encumbrances which are registered, or pending registration, against title to the Land, in the Land Title Office, save and except those as have been approved in writing by the City or have been granted in favour of the City; and
- (l) at its own expense, do or execute or cause to be done or executed all such further and other lawful acts, deeds, things, conveyances and assurances whatsoever for better assuring to the City the rights, liberties and statutory right of way hereby granted.

3. **City's Obligations** - The City must:

- (a) do all things hereby authorized to be done by it over, through, under and upon the Right of Way Area in a good and workmanlike manner so as to cause no unnecessary damage or disturbance to the Grantor, the Lands or Right of Way Area or to any improvements thereon; and
- (b) not bury, without the prior written consent of the Grantor, construction debris or rubbish in excavations or backfill.

4. **No Obligation to Maintain** - No right herein granted to or reserved by the City requires the City to clean, repair or maintain the Works or the Right of Way Area, except as expressly provided herein.

5. **City's Rights** - The City:

- (a) is entitled to peaceably hold and enjoy the rights, liberties and Statutory Right of Way hereby granted without hindrance, molestation or interruption by the Grantor or any person, firm or corporation claiming by, through, under or in trust for the Grantor;
- (b) on default by the Grantor of any of its obligations under this Agreement, may, but is not obliged to, rectify the default, provided that, except in the case of an emergency, the City must first give 20 days prior notice to the Grantor specifying

the default and requiring it to be remedied. The Grantor shall reimburse the City for its reasonable, out of pocket expenses incurred in remedying such a default; and

- (c) despite section 5(b), if the City abandons, releases or discharges the Statutory Right of Way, the City is not responsible or obligated in any way to remove or pay for the cost of removal of any Works from the Right of Way Area.
6. **No Waiver** - No waiver of default by either party is effective unless expressed in writing by the party waiving default, and no condoning, overlooking or excusing by either party of a previous default of the other is to be taken to operate as a waiver of any subsequent default or continuing default, or to in any way defeat or affect the rights and remedies of the non-defaulting party.
7. **Discretion** - Wherever in this Agreement the approval of the City is required, some act or thing is to be done to the City's satisfaction, the City is entitled to form an opinion, or the City is given a sole discretion:
- (a) the relevant provision is not deemed to have been fulfilled or waived unless the approval, opinion or expression of satisfaction is in writing signed by the City's Director, Civic Operations ("Engineer");
 - (b) the approval, opinion or satisfaction is in the discretion of the Engineer acting reasonably in accordance with municipal engineering practice;
 - (c) any discretion of the Engineer is not subject to public law duties and the principles of procedural fairness and the rules of natural justice have no application; and
 - (d) the sole discretion of the City is deemed to be the sole, absolute and unfettered discretion of the City and the principles of procedural fairness and the rules of natural justice have no application.
8. **No Effect on Powers** - This Agreement does not:
- (a) affect or limit the discretion, rights, duties or powers of the City under the common law or any statute, bylaw, or other enactment;
 - (b) affect or limit the common law or any statute, bylaw or other enactment applying to the Land; or
 - (c) relieve the Grantor from complying with the common law or any statute, bylaw or other enactment.
9. **Grantor Indemnity** - The Grantor covenants to and does hereby indemnify and save harmless the City, its elected officials, officers, and employees at all times from all losses, damages, actions, suits, claims, demands, costs, expenses, fees and liabilities of any nature whatsoever by whomsoever brought, made or suffered for which the City is or may become liable, incur or suffer by reason of any injury to person (including death) or loss or damage to property or economic loss arising directly or indirectly from any act, omission, negligence or default of the Grantor in connection with or in

consequence of this Agreement, save and except to the extent caused by any act, omission, negligence or default of the City.

10. **Notice** - Any notice to be given pursuant to this Agreement must be in writing and may be delivered personally or sent by prepaid mail. The addresses of the parties for the purpose of notice are the addresses hereinbefore set out. If notice is delivered personally, it may be left at the relevant address in the same manner as ordinary mail is left by Canada Post and is to be deemed given when delivered. If notice is mailed, it is to be deemed given 5 days after mailing by deposit at a Canada Post mailing point or office. In the case of any strike or other event causing disruption of ordinary Canada Post operations, a party giving notice must do so by personal delivery as provided in this section. Any party may at any time give notice in writing to the other of any change of address and from and after the receipt of notice the address therein specified is to be deemed to be the address of such party for the giving of notice.
11. **Severance** - If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the validity of the remainder of this Agreement.
12. **Entire Agreement** - No amendment of this Agreement, is valid or binding unless in writing and executed by the parties.
13. **Headings** - The headings in this Statutory Right of Way are inserted for reference and convenience only and must not be used to construe or interpret the provisions hereof.
14. **Schedules** - Schedule "A", being a reduced copy of the Plan delineating the Right of Way Area, forms part of this Agreement.
15. **Interpretation** - In this Agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
 - (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
 - (e) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - (f) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;

- (g) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (h) time is of the essence;
- (i) all provisions are to be interpreted as always speaking;
- (j) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- (k) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- (l) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

16. **Interest In Land and Enurement** - The Statutory Right of Way runs with the Land and each and every part into which the Land may be subdivided or consolidated by any means (including by deposit of strata plan or leasehold plan of any kind), but no part of the fee of the Land passes to or is vested in the City under or by this Agreement and the Grantor may fully use the Right of Way Area and Land subject only to the common law and the rights, obligations and restrictions expressly set out in this Agreement. This Statutory Right of Way enures to the benefit of and is binding on the parties notwithstanding any rule of law or equity to the contrary.

Execution - As evidence of their agreement to be bound by the above terms, the Grantor has executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

Further, the City of Kelowna Approving Officer acknowledges that this is the instrument creating the condition or covenant entered into under Section 218 of the *Land Title Act* by the registered owner(s) referred to in this instrument and shown on the print of the plan initialled by me and annexed to this instrument.

Signature of Approving Officer - City of Kelowna

PRIORITY AGREEMENT

_____ (the "Chargeholder") being the holder of Charge No. _____
(the "Charge")

The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of, joins in and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charge in the same manner and to the same effect as if it had been dated and registered prior to the Charge.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on Form D to which this Agreement is attached and which forms part of this Agreement.



PARTNERSHIP FOR THE PROVISION OF PUBLIC ART





Future Rowcliffe Park site

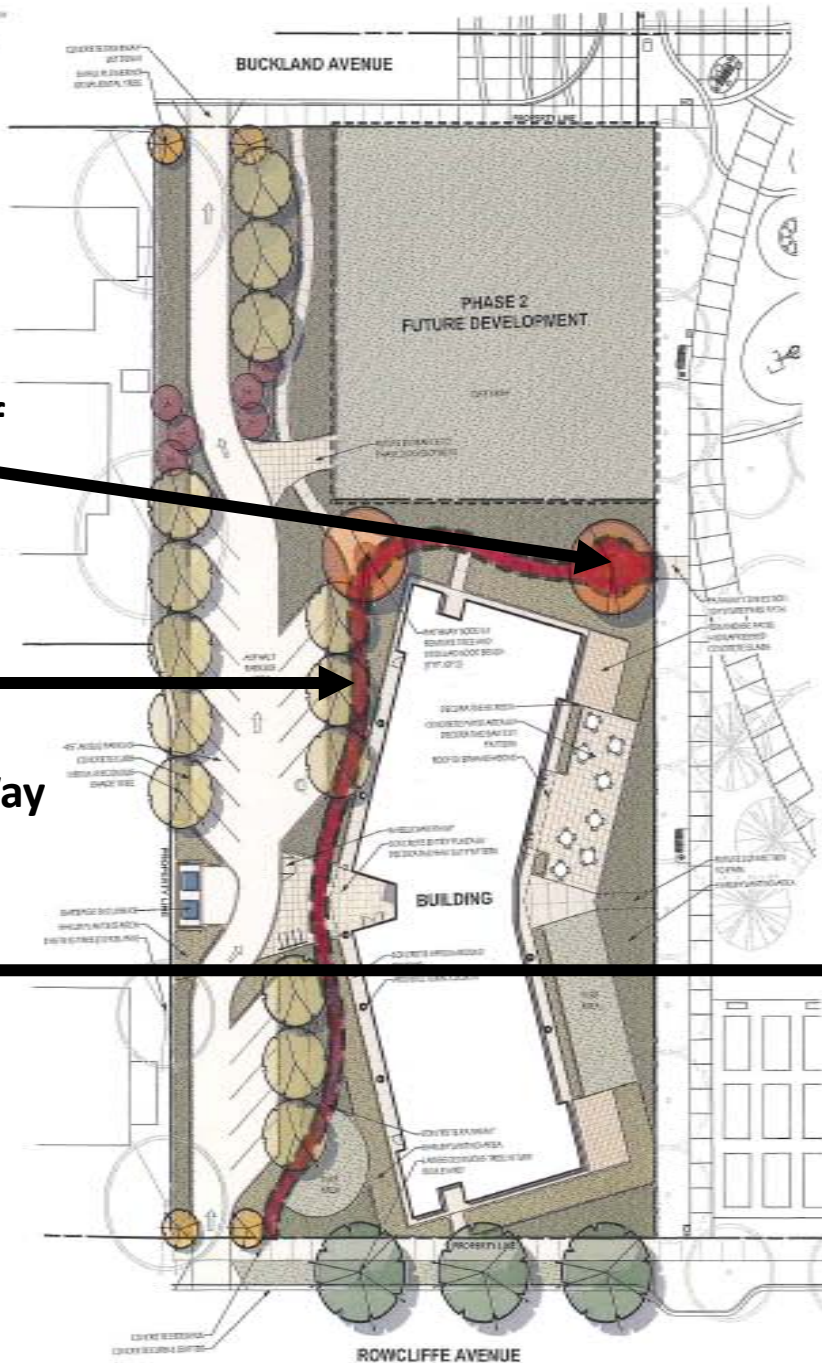
Harvey Avenue

Future Rowcliffe Park

Karis Housing Project site

Richter St.

Rowcliffe Ave.



Future Rowcliffe Park

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Report to Council



Date: December 10, 2014
File: 0625-01
To: City Manager
From: Chief Election Officer (Deputy City Clerk)
Subject: 2014 Election Results Report

Recommendation:

THAT Council receives, for information, the Report from the Deputy City Clerk dated December 10, 2014 with respect to the 2014 Election Results.

Purpose:

To provide Council with the final results report of the 2014 General Local Election including a summary of the overall objectives, voting opportunities and results.

Background:

The official results of the 2014 election were declared by the Chief Election Officer, as required under the *Local Government Act*, on Wednesday, November 19, 2014. An overview of the election is included in this report, with the official results and the ballot account summary attached.

Planning for the 2014 Election included three key objectives, accessibility to voting opportunities, communication of voting information to inform the public, and integrity of the voting process. Using these objectives, our goal was to ensure all residents were provided with an opportunity to vote, through multiple locations, opportunities and Voter Assist Terminal.

Under the current legislation, there are two (2) required voting opportunities, advance and general voting days, while another (4) voting opportunities, additional advance voting, additional general voting, special voting and mail ballot voting, are optional. Through the Election Bylaw, Council directed staff to provide all available voting opportunities to residents of the City of Kelowna in 2014.

With Council direction, the 2014 Election offered electors the following voting opportunities, including the return of the Voter Assist Terminal during all days of voting at City Hall for voters with disabilities and other special needs that were able to mark their ballot privately and independently:

- **Advance/Additional Voting**

Building on the interest in advanced voting from previous years, the City provided four (4) days of advance voting, with an increase from seven (7) to eight (8) advance voting locations.

Parkinson Recreation Centre once again proved extremely popular, and with 3 days of advance voting (up from 2 days in 2011), 4899 votes were cast. In addition to City Hall, UBC-O and Okanagan College, a total of 7226 votes were cast in the advanced polls.

- **General/Additional Voting**

On November 15, 2014, thirteen (13) voting opportunities were available, an increase from 10 in 2011. The most popular voting locations once again were Rutland Senior Secondary (2434), Okanagan Mission Community Hall (2252), and Watson Road Elementary (2209).

The addition of the Capital News Centre (2186) in the Mission, and the return of Orchard Park Mall (1442), both proved popular voting locations that resonated with our continuing focus on “going where the people are.”

- **Special Voting**

Election staff visited nine (9) care facilities at a pre-arranged date and time during the week of November 03-07, and KGH on general voting day, November 15. All special voting locations provided the opportunity for residents, staff and, new in our 2014 Election Bylaw, visiting relatives, to vote.

- **Mail Ballot Voting**

Through the *Local Government Act*, voters with a physical disability, illness or injury, or those who are going to be out of town on all voting days, may choose the option to vote by mail. Of the 352 applications received, there were 96 mailed out of town, with the remainder picked-up or mailed locally. There were 206 mail ballots returned by 8pm on November 15 representing a 58% return rate.

To provide electors with information on the election, staff once again relied on city generated news releases, public service announcements, the kelowna.ca/election website, social media, Instagram and Facebook. New for 2014 was the election-specific mobile app that generated 2713 views. These cost-effective means of providing information to the public were enhanced by statutory newspaper advertisements, as well as select online and print advertising including the voter information card mailed directly to 57,199 households.

Web traffic to kelowna.ca jumped from 10,100 pageviews on a typical Saturday to more than 42,400 on November 15. The largest increase over the 2011 election numbers came from mobile and tablet users.

After voting commenced, residents were asked to complete a brief online survey rating their election experience. Nearly 600 complied. The City of Kelowna election website was the No. 1 choice for people seeking election information, followed by online and print news. More than 85% said they were knowledgeable about when and where to vote, while 75% said they were made aware of advance voting options. They also said that options for different voting times (78%) and locations (80%) were “quite” or “very” important.

The election gives the City a great opportunity to connect with people in the democratic process; voters and election workers alike. Respondents were asked for suggestions to improve their voting experience. Results varied from “free parking at UBC” to “not requiring people to read the voter declaration out loud.” Respondents also recognized “fantastic organization” at the polls, as well as “polite and helpful” staff, and provided practical suggestions regarding voting locations and set-up.

All feedback received throughout the election period, from candidates, members of the public, voters and election staff on their training and experience, along with the survey results will be further analyzed and inform all aspects of planning for the next General Local Election in 2018.

Internal Circulation:

Communication Advisor, Communication & Information Services
Deputy Chief Election Officer (Legislative Coordinator)

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:

Alternate Recommendation:

Submitted by:

K. Needham, Deputy City Clerk

Approved for inclusion:



Stephen Fleming, City Clerk

DECLARATION OF OFFICIAL ELECTION RESULTS GENERAL LOCAL ELECTION - 2014

I, Karen Needham, Chief Election Officer, do hereby declare elected the following candidates, who received the following number of valid votes for the office as follows:

FOR ONE (1) MAYOR FOR A FOUR (4) YEAR TERM

Candidate:		Number of Votes Received:
BASRAN, Colin	(Elected)	16,888
CONDY, Sam		80
HARDY, Chuck		548
MURPHY, James		78
ROW, Kelly		450
SHEPHERD, Sharon		10,512
SMEDLEY, Glendon		84
THOMPSON, Mark		1,143

FOR EIGHT (8) COUNCILLORS FOR A FOUR (4) YEAR TERM

Candidate:		Number of Votes Received:
AALTONEN, Billie		2,211
CHUNG, Ken		1,500
CONDY, Cal		1,002
DEHART, Maxine	(Elected)	15,683
DONN, Ryan	(Elected)	9,622
FINNEY, Ken		1,283
GIVEN, Gail	(Elected)	15,691
GORMAN, Michael		4,473
GRAN, Carol		3,866
GRAY, Tracy	(Elected)	11,588
HODGE, Charlie	(Elected)	9,519
ITANI, Beryl		8,187
JAMES, Graeme		4,900
JAMES, Rawle		1,748
JESSACHER, Krista		785
KENDALL, Leslie		2,101
KENNEDY, Bobby		3,151
MCLOUGHLIN, Mike		4,374
MILES, Gwendolyn		1,298
MONK, Alan		6,247
MOSSMAN, David		5,311
OLSON, Dale		2,533
OREILLY, Connor P.S.		1,511
RAJABALLY, Mo		3,058
SIEBEN, Brad	(Elected)	12,666
SINGH, Mohini	(Elected)	15,561
SOMER, Derek		762
STACK, Luke	(Elected)	16,651
THURNHEER, Laura		7816
UPSHAW, Sean		3,945
VAN RYSWYK, Dayleen		2,310

FOR FOUR (4) SCHOOL TRUSTEES FOR A FOUR (4) YEAR TERM

Candidate		Number of Votes Received
AALTONEN, Scott		2,887
AUBIN, Nicholas		6,400
BRINKERHOFF, Joyce		7,195
CACCHIONI, Rolli	(Elected)	10,635
DROHOMERESKI, S		2,450
GORMAN, Chris	(Elected)	10,986
MOSSMAN, Lee	(Elected)	7,426
PAGLIOCCHINI, Peter		5,667
PENDHARKAR, Murli		6,667
TIEDE, Lee-Ann	(Elected)	8,035

Summary of Ballot Accounts

	<u>Mayor</u>	<u>Councillor</u>	<u>School Trustee</u>
Total number of ballots given out:	30,444	30,444	30,408
Spoiled ballots:	327	327	325
Ballots not accounted for (Mail-in)	119	119	119
Ballots accepted with valid marks:	<u>29,998</u>	<u>29,998</u>	<u>29,964</u>
Unused Ballots	20,441	20,441	19,623
Total Number of Ballots Accounted For:	<u>50,885</u>	<u>50,885</u>	<u>50,031</u>

Summary of Cards Cast

Capital News Centre	2186
Central School	1300
City Hall	1024
Dr. Knox Middle School	1304
East Kelowna Community Hall	1475
Evangel Church	2109
Hollywood Road Education	1399
Okanagan Mission Community	2252
Orchard Park Shopping Centre	1442
Parkinson Recreation Centre	2038
Rutland Senior Secondary	2434
Springvalley Middle School	1062
Watson Elementary School	2209
Parkinson Rec Centre Nov 5, 12, 14	4899
City Hall Nov 12, 13, 14	1421
UBC Okanagan Campus Nov 12	290
Okanagan College Nov 13	616
Special Voting	337
Mail Ballots	<u>201</u>
Total	29998

Estimated Voter Turnout

Number of Electors Casting a Ballot	29,998
Estimated Number of Electors	99,000
Estimated % Turnout	30.30%

I hereby certify the foregoing to be a true statement of the said election and of the votes cast and of the ballot paper account and of the results of the 2014 Local Government Election.

Given under my hand this 19th day of November 2014.

Karen Needham, Chief Election Officer