

**City of Kelowna
Regular Council Meeting
AGENDA**



Monday, March 9, 2015
1:30 pm
Council Chamber
City Hall, 1435 Water Street

	Pages
1. Call to Order	
<p>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.</p>	
2. Confirmation of Minutes	4 - 7
<p>Regular PM Meeting - March 2, 2015</p>	
3. Development Application Reports & Related Bylaws	
3.1 4360-4390 Gallaghers Dr. E, OCP14-0026 - GolfBC Holdings Inc.	8 - 15
<p>To consider an Official Community Plan Amendment to change the Future Land Use designation of the subject property to facilitate a three-lot subdivision that separates the recreational, amenity and commercial uses in the Vallage at Gallagher's Canyon.</p>	
3.2 4360-4390 Gallaghers Dr. E, BL11066 (OCP14-0026) - GolfBC Holdings Inc.	16 - 17
<p>Requires a majority of all Members of Council (5). To give Bylaw No. 11066 first reading in order to change the Future Land Use Designation of the subject property.</p>	
3.3 3528 Landie Road, Z14-0058 - Jesse East	18 - 24
<p>To consider a Rezoning application to rezone the subject property from the RU1 - Large Lot Housing zone to the RU2 - Medium Lot Housing zone to facilitate a two lot subdivision.</p>	
3.4 3528 Landie Road, BL11067 (Z14-0058) - Jesse East	25 - 25
<p>To give Bylaw No. 11067 first reading in order to rezone the subject property.</p>	

- 3.5 4962 Lakeshore Road, Z15-0001 - Shane Jones** 26 - 40

To rezone the subject property from RR2 - Rural Residential 2 zone to RR2c - Rural Residential 2 with Carriage house zone in order to convert an existing accessory building to a carriage house.

- 3.6 4962 Lakeshore Road, BL11068 (Z15-0001) - Shane Jones** 41 - 41

To give Bylaw No. 11068 first reading.

- 3.7 1205, 1215, 1223 & 1229 Richter Street, Z10-0104 - Eric & Margaret Nickel** 42 - 48

To consider the rescindment of the rezoning bylaw for the subject property and to close the file.

- 3.8 1205, 1215, 1223 & 1229 Richter Street, BL10544 (Z10-0104) - Eric & Margaret Nickel** 49 - 49

To rescind first, second and third readings given to Bylaw No. 10544 and to direct staff to close the file.

- 3.9 1599 KLO Road, Z11-0035 - Robert & Michelle Geismayr** 50 - 52

To consider the rescindment of the rezoning bylaw for the subject property and to close the file.

- 3.10 1599 KLO Road, BL10569 (Z11-0035) - Robert & Michelle Geismayr** 53 - 53

To rescind first, second and third readings given to Bylaw No. 10569 and to direct staff to close the file.

4. Bylaws for Adoption (Development Related)

- 4.1 BL11054 (TA14-0020) - Amendment to City of Kelowna Zoning Bylaw No. 8000** 54 - 55

To adopt Bylaw No. 11054 in order to amend City of Kelowna Zoning Bylaw No. 8000 by adding Analytical Testing of Medical Marihuana as a Principle Use.

- 4.2 BL11055 - Amendment No. 1 to Medical Marihuana Producer Business Licence and Regulation Bylaw No. 10920** 56 - 57

To adopt Bylaw No. 11055 in order to amend Medical Marihuana Producer Business Licence and Regulation Bylaw No. 10920.

5. Non-Development Reports & Related Bylaws

- 5.1 Our Rutland Funding Contributions** 58 - 74

To amend the Our Rutland Project including the funds, terms and conditions and revised construction schedule.

5.2 Budget Transfer - Kelowna Family Y Renovation Project 75 - 80

To inform Council of emergency repairs conducted as part of the Kelowna Family Y project that were beyond those anticipated and approved by Council in August 2014.

5.3 Bicycle Program - Pathways Abilities Society 81 - 86

To seek approval for the renewal of an additional five year term, to the agreement between the City of Kelowna (City) and Pathways Abilities Society (PAS) for the collection, safekeeping and ultimate disposal of lost and stolen bicycles within the City of Kelowna.

5.4 Transit Fare Changes 87 - 130

To obtain Council support for Transit Fare changes effective September 1, 2015 in order to phase in the goal of achieving a 30% cost recovery for transit service in the City of Kelowna.

5.5 Transit 2014/2015 Amended Annual Operating Agreement 131 - 133

To receive Council approval for the amendment to the transit 2014/15 Annual Operating Agreement.

5.6 1745 Chapman Place Land Lease 134 - 185

To seek Council endorsement of the 60 year land lease to the Ki-Low-Na Friendship Society endorsed by the British Columbia Management Housing Corporation for the construction of affordable housing units as part of the Central Green development.

6. Mayor and Councillor Items

7. Termination



City of Kelowna Regular Council Meeting Minutes

Date: Monday, March 2, 2015
 Location: Council Chamber
 City Hall, 1435 Water Street

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

Council Members Absent: Gail Given

Staff Present: City Manager, Ron Mattiussi; City Clerk, Stephen Fleming; Urban Planning Manager, Ryan Smith*; Subdivision, Agriculture & Environment Manager, Todd Cashin*; Sustainability Coordinator, Tracy Guidi*; and Council Recording Secretary, Arlene McClelland

(* denotes partial attendance)

1. Call to Order

Mayor Basran called the Meeting to order at 1:33 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 Donn/Seconded By Councillor Hodge

R136/15/03/02 THAT the Minutes of the Regular Meeting of February 23, 2015 be confirmed as circulated.

Carried

3. Development Application Reports & Related Bylaws

3.1 2127 Ethel Street, Z15-0004 - Shane Worman

Staff:

- Provided a PowerPoint Presentation summarizing the application and responded to questions from Council.

Moved By Councillor Hodge/Seconded By Councillor Sieben

R137/15/03/02 THAT Rezoning Application No. Z15-0004 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 1, Section 19, Township 26, ODYD, Plan 29557, located on 2127 Ethel Street, Kelowna, BC from the RU1 - Large Lot Housing zone to RM3 - Low Density Multiple Housing zone, be considered by Council;

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

AND THAT final adoption of the Zone Amending Bylaw be subsequent to the following:

1. Requirements of Development Engineering Branch being completed to their satisfaction.

Carried

3.2 2127 Ethel Street, BL11064 (Z15-0004) - Simple Pursuits Inc.

Moved By Councillor Hodge/Seconded By Councillor Gray

R138/15/03/02 THAT Bylaw No. 11064 be read a first time.

Carried

3.3 1980 Saucier Road, Z14-0034, Supplemental Report - Emil Anderson Construction Ltd.

Moved By Councillor Singh/Seconded By Councillor DeHart

R139/15/03/02 THAT Council receives, for information, the Supplemental Report from the Subdivision, Agriculture & Environment Services Department dated February 25, 2015 with respect to Rezoning Application No. Z14-0034 for the property located at 1980 Saucier Road;

AND THAT Zone Amending Bylaw No. 11065 be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the Zone Amending Bylaw No. 11065 be considered subsequent to the following requirements:

1. Requirements of Development Engineering Branch being completed to their satisfaction; and Issuance of a Farm Protection Development Permit.

Carried

3.4 1980 Saucier Road, BL11065 (Z14-0034) - Emil Anderson Construction Co. Ltd.

Moved By Councillor Hodge/Seconded By Councillor Donn

R140/15/03/02 THAT Bylaw No. 11065 be read a first time.

Carried

4. Bylaws for Adoption (Development Related)

4.1 275 Petch Road, BL10847 (Z12-0064) - Parminder & Kulwant Hans and Gurdev & Kamalpreet Gill

Moved By Councillor Hodge/Seconded By Councillor Donn

R141/15/03/02 THAT Bylaw No. 10847 be adopted.

Carried

4.2 1800 Crosby Road, BL10960 (OCP13-0003) - DRS Ventures Ltd.

Moved By Councillor Hodge/Seconded By Councillor Gray

R142/15/03/02 THAT Bylaw No. 10960 be adopted.

Carried

4.3 1800 Crosby Road, BL10961 (Z13-0004) - DRS Ventures Ltd.

Moved By Councillor Sieben/Seconded By Councillor DeHart

R143/15/03/02 THAT Bylaw No. 10961 be adopted.

Carried

4.4 385 Cadder Avenue, BL11053 (Z14-0056) - Andrew & Lesley Wilson

Moved By Councillor Stack/Seconded By Councillor Singh

R144/15/03/02 THAT Bylaw No. 11053 be adopted.

Carried

5. Non-Development Reports & Related Bylaws

5.1 Climate Action Revenue Incentive Program Reporting Requirements

Staff:

- Provided a PowerPoint Presentation summarizing the report and responded to questions from Council.

Moved By Councillor Hodge/Seconded By Councillor Singh

R145/15/03/02 THAT Council receives, for their information, the report from the Sustainability Coordinator, dated February 12, 2015, with respect to the Climate Action Revenue Incentive Program reporting requirements.

Carried

6. Bylaws for Adoption (Non-Development Related)

6.1 519, 529 & 539 Truswell Road (Portion of Road Adjacent to), BL11048 - Road Closure Bylaw

Mayor to invite anyone in the public gallery who deems themselves affected by the proposed road closure to come forward. No one came forward.

Moved By Councillor DeHart/Seconded By Councillor Stack

R146/15/03/02 THAT Bylaw No. 11048 be adopted.

Carried

6.2 BL11062 - Amendment No. 29 to Airport Fees Bylaw No. 7982

Moved By Councillor DeHart/Seconded By Councillor Stack

R147/15/03/02 THAT Bylaw No. 11062 be adopted.

Carried

7. Mayor and Councillor Items

Councillor Donn:

- Reminder of the UBC Okanagan Research Events this week.

Councillor Gray:

- Reminder of the Swinging with the Stars Fundraiser for The Hospice Society on Saturday March 7th.

Councillor Singh:

- Spoke to her attendance at the Airport's Travel Fair on Saturday, February 28th.

Councillor DeHart:

- Spoke to her attendance on behalf of Council at the BC Dragoons Mess Hall dinner and Hockey Tournament with visiting British Army Unit.

Councillor Stack:

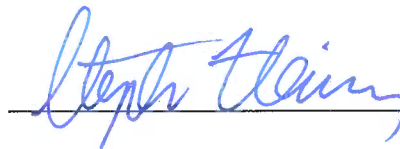
- Praised the Province for providing funding to keep Inn from the Cold open to the end of March. Great to see BC Housing and Province working together.

8. Termination

This meeting was declared terminated at 2:13 p.m.

Mayor

/acm



City Clerk

the REC - Private Recreation and S2RES - Single / Two Unit Residential designations. The subject property is the Village Centre for the Village at Gallagher’s Canyon and contains recreational, amenity and commercial uses. The property is zoned CD6 - Comprehensive Residential Golf Resort and the development is associated with the Gallagher’s Canyon Golf & Country Club. The OCP Amendments and associated subdivision are intended to separate the uses and provide the strata better control of the residential amenity uses and buildings. No additional development is proposed through these changes. Staff consider this a housekeeping amendment to address the interests of the strata and do not anticipate impacts, particularly outside of the Village at Gallagher’s Canyon.

The recreational area to be amended to the REC - Private Recreation designation consists of the tennis courts in the northwest portion of the property, which have been decommissioned and replaced with larger ones in another area of Gallagher’s Canyon. This portion of the property will be subdivided and added to the golf course to the immediate north and west (4320 Gallaghers Drive West). The Future Land Use designation of REC is consistent with that of the golf course.

The residential amenity area to be amended to the S2RES - Single / Two Unit Residential designation make up the majority of the property. This consists of three buildings that contain the residential strata’s amenities, including an indoor swimming pool, fitness centre, games rooms, and craft rooms, as well as a surface parking lot. The strata is seeking an improved means of managing these buildings and amenities by separating them from the other uses in the Village Centre. The S2RES designation allows for recreational amenities for the use of all residents within a bareland strata. Rather than retaining the COMM - Commercial designation, which would also permit amenity buildings, staff are of the opinion that if the site was ever to redevelop to something other than recreational amenities, single dwelling housing would be the most appropriate use and would be in keeping with the proposed S2RES designation.

The remainder of the property currently serves as the sales centre for The Village at Gallagher’s Canyon and the designation is to remain COMM - Commercial. Parking for this site will be shared with the surface parking lot on the residential amenity property.

4.0 Proposal

4.1 Site Context

The subject property is located in Gallagher’s Canyon in the City’s Southeast Kelowna Sector, at the north end of Gallaghers Canyon Boulevard along Gallaghers Drive. The property contains several amenity buildings and the sales centre for The Village at Gallagher’s Canyon, as well as tennis courts that have been decommissioned. The current designation in the Official Community Plan is COMM - Commercial and it is outside of the Permanent Growth Boundary.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	CD6lp - Comprehensive Residential Golf Resort (Liquor Primary)	Gallagher’s Canyon Golf & Country Club
East	CD6lp - Comprehensive Residential Golf Resort (Liquor Primary)	Parking lot Gallagher’s Canyon Golf & Country Club
South	CD6 - Comprehensive Residential Golf Resort	Single family residential
West	CD6lp - Comprehensive Residential Golf Resort (Liquor Primary)	Gallagher’s Canyon Golf & Country Club (clubhouse)

Report prepared by:

Laura Bentley, Planner

Approved for Inclusion:



Shelley Gambacort, Subdivision, Agriculture & Environment
Director

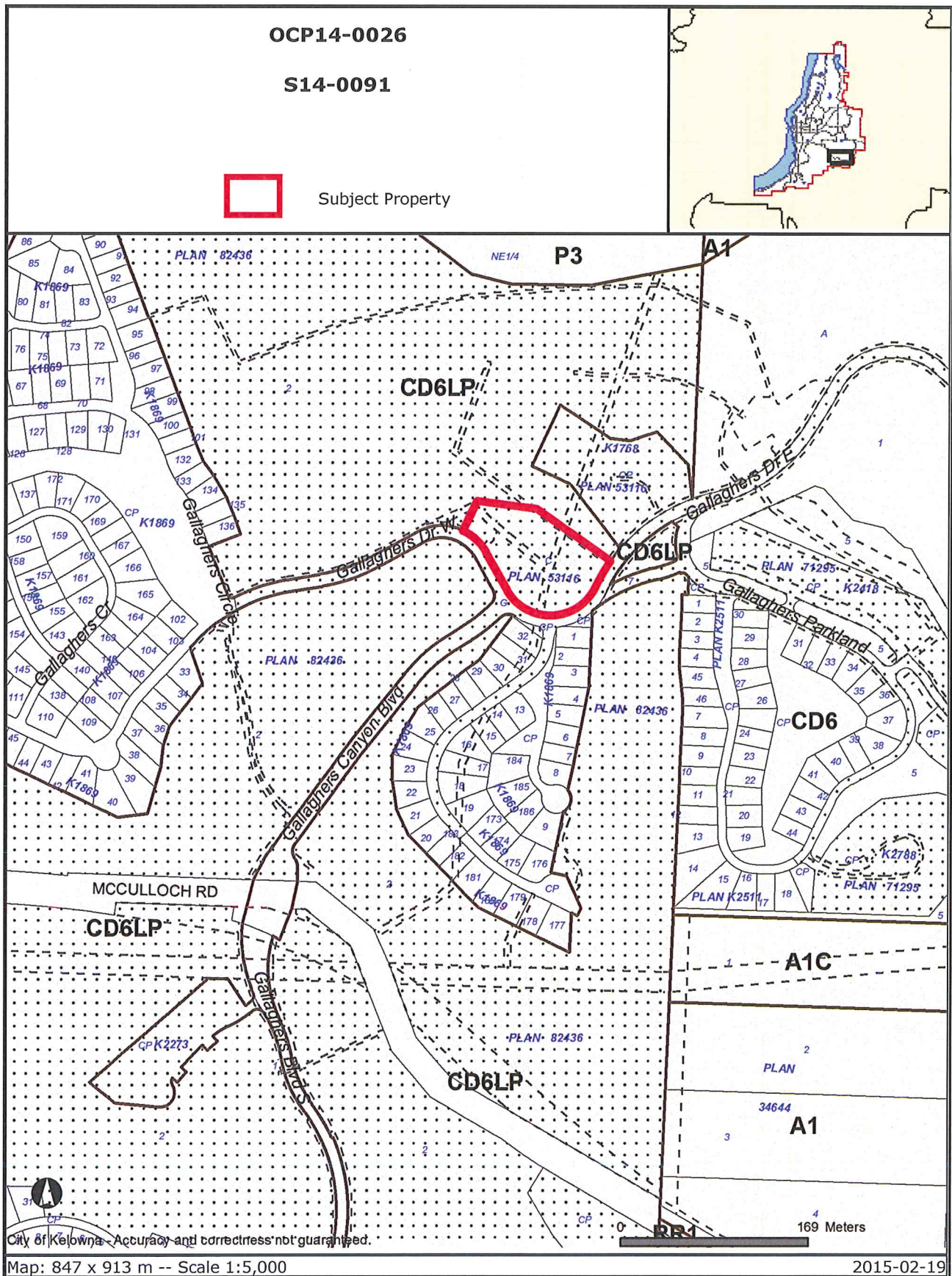
Attachments:

Subject Property Map

Map "A"

Preliminary Subdivision Layout

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.

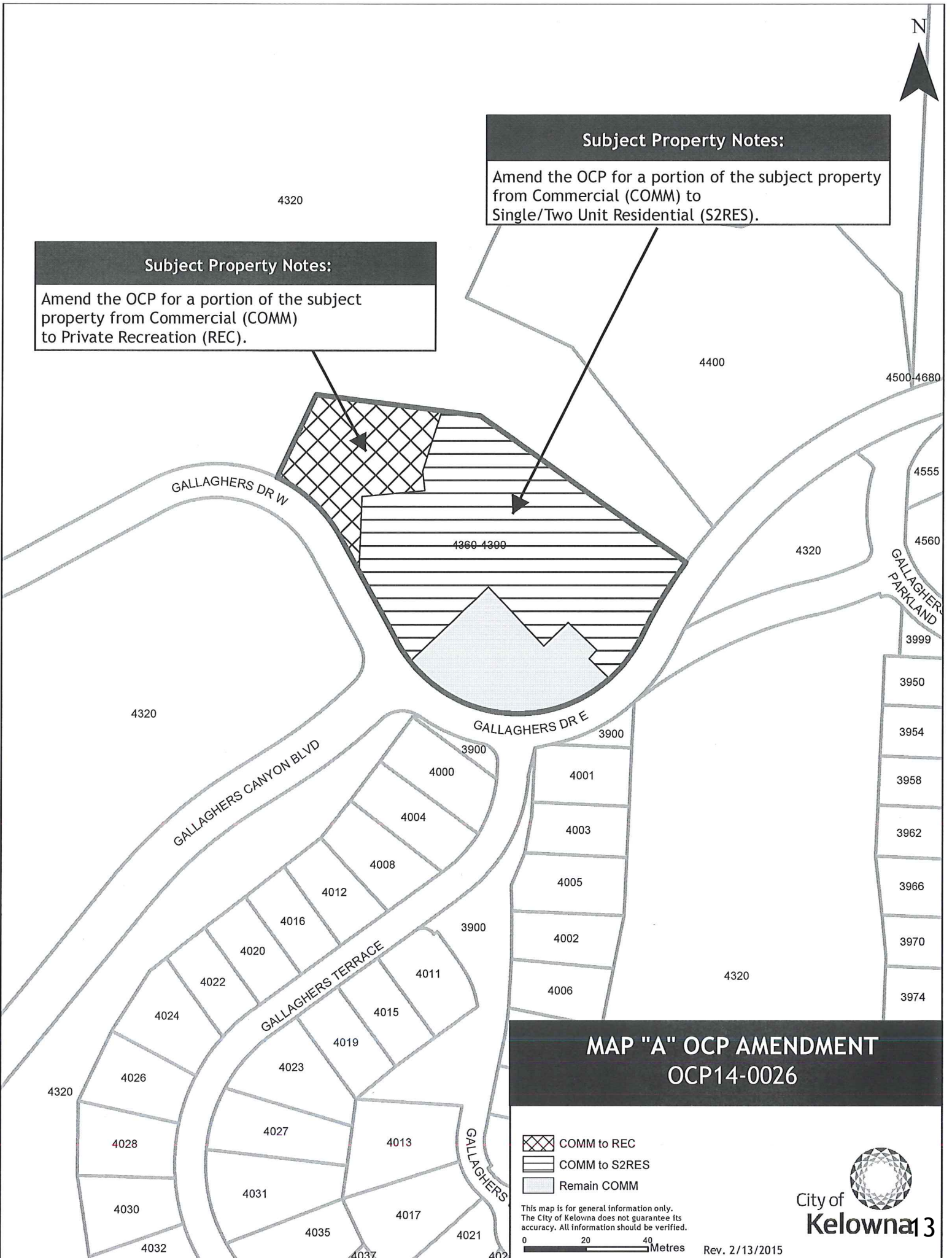


Subject Property Notes:




Amend the OCP for a portion of the subject property from Commercial (COMM) to Single/Two Unit Residential (S2RES).

Subject Property Notes:

Amend the OCP for a portion of the subject property from Commercial (COMM) to Private Recreation (REC).



**MAP "A" OCP AMENDMENT
OCP14-0026**

-  COMM to REC
-  COMM to S2RES
-  Remain COMM

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



Rev. 2/13/2015



CITY OF KELOWNA

MEMORANDUM

Date: January 22, 2015
File No.: OCP14-0026
To: Land Use Management Department (LB)
From: Development Engineer Manager (SM)
Subject: 4370 Gallaghers Drive Amend the Future Land Use

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

Development Engineering has no requirements of concerns with this application to amend the OCP Future Land Use designations to facilitate a three-lot subdivision to separate the recreational, amenity and commercial uses in the Village of Gallagher's Canyon.



Steve Muenz, P. Eng.
Development Engineering Manager

JF

CITY OF KELOWNA

BYLAW NO. 11066

Official Community Plan Amendment No. OCP14-0026 - GolfBC Holdings Inc., Inc. No. 639821 4360-4390 Gallaghers Drive E

A bylaw to amend the "*Kelowna 2030* - Official Community Plan Bylaw No. 10500".

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

1. THAT Map 4.1 - **GENERALIZED FUTURE LAND USE** of "*Kelowna 2030* - Official Community Plan Bylaw No. 10500" be amended by changing the Generalized Future Land Use designation of a portion of Lot C and an Undivided 1/6 Share in Lot G, Section 2, Township 26, ODYD, Plan KAP53116 (see plan as to limited access), located on Gallaghers Drive E, Kelowna, B.C., from the COMM - Commercial designation to the REC - Private Recreation and S2RES - Single/Two Unit Residentials designations 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

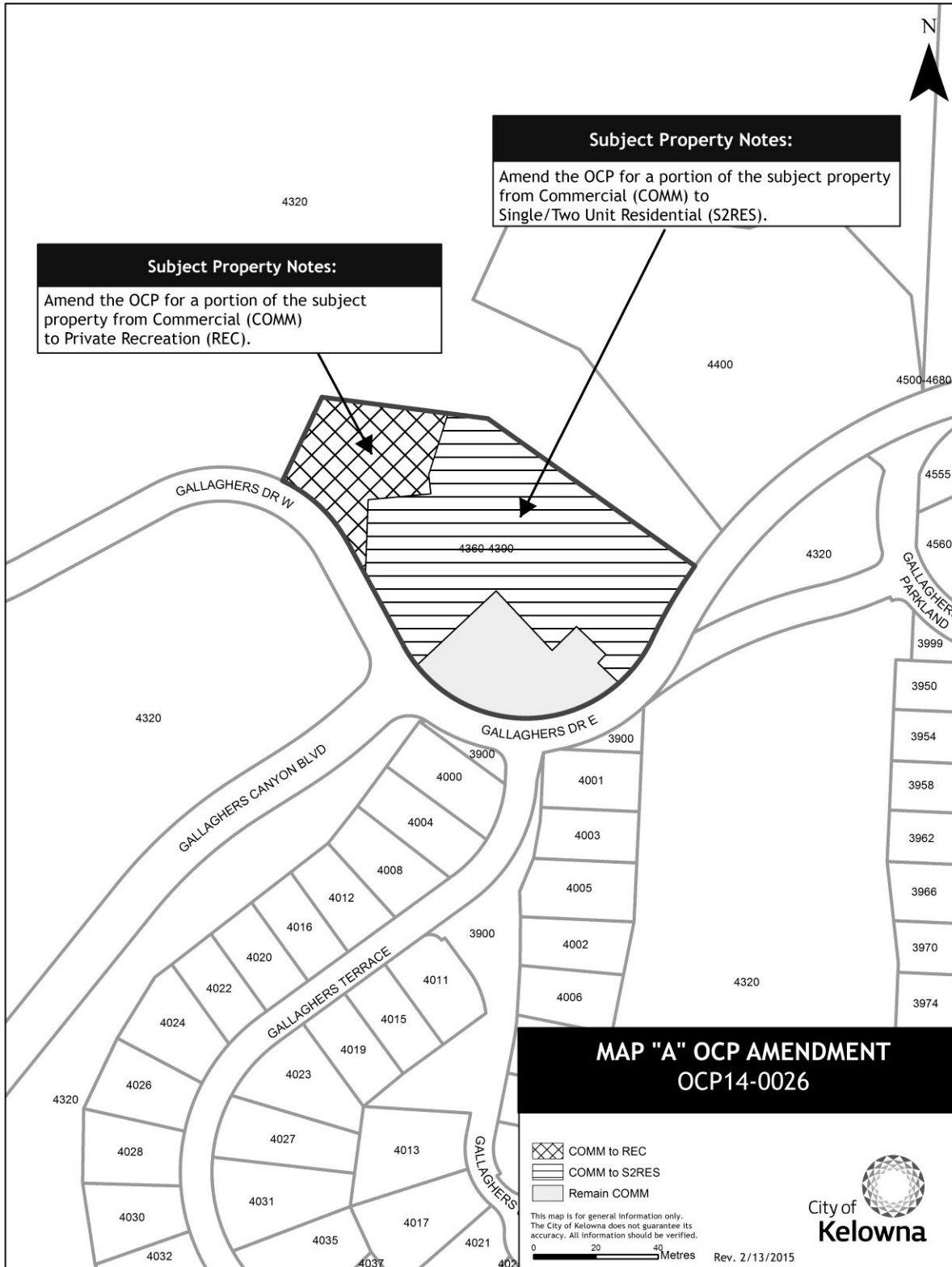
Considered at a Public Hearing on the

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: February 25, 2015
RIM No. 1250-30
To: City Manager
From: Urban Planning, Community Planning & Real Estate (LB)
Application: Z14-0058 **Owner:** Jesse East
Address: 3528 Landie Road **Applicant:** John Hodges
Subject: Rezoning Application
Existing OCP Designation: S2RES - Single / Two Unit Residential
Existing Zone: RU1 - Large Lot Housing
Proposed Zone: RU2 - Medium Lot Housing

1.0 Recommendation

THAT Rezoning Application No. Z14-0058 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot C, District Lot 134, ODYD, Plan 31819, located on 3528 Landie Road, Kelowna, BC from the RU1 - Large Lot Housing zone to the RU2 - Medium Lot Housing zone, be considered by Council;

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

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to Council's consideration of a Development Variance 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 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 RU2 - Medium Lot Housing zone to facilitate a two lot subdivision.

3.0 Urban Planning

Urban Planning supports the request to rezone the subject property to the RU2 - Medium Lot Housing zone to facilitate a two lot subdivision. The proposal is consistent with the Official

Community Plan (OCP) Future Land Use designation, and several other properties in the area are zoned RU2.

The applicant has submitted Subdivision and Development Variance Permit applications in conjunction with the rezoning. The proposed rezoning and subdivision meet the Subdivision Regulations for the RU2 zone: the north portion will have a lot area of 730 m² and width of 13.5 m, and the south portion will have a lot area of 1,190 m² with a width of 21.7 m. Both properties will have a lot depth of approximately 54 m.

The applicant intends to retain the existing dwelling on the southern portion, resulting in a side yard variance request from 1.8 m required to 1.2 m proposed along what will be the north side lot line. Although the proposed lot width for the north portion is 0.5 m wider than the minimum requirement (thus potentially reducing the requested variance to 0.1 m) the applicant would like the additional width on the north portion to better accommodate development of a single family dwelling. The existing accessory building will need to be demolished prior to subdivision. Should the rezoning be adopted, the Development Variance Permit application will be considered by Council.

In fulfillment of Council Policy No. 367 respecting public consultation, the applicant undertook neighbour consultation by individually contacting neighbouring properties within 50 m. No major concerns were identified during this consultation. To date, staff have responded to some questions from an area resident regarding the proposed development.

4.0 Proposal

4.1 Site Context

The subject property is located on the west side of Landie Road between Swordy Road and Bechard Road in the South Pandosy - KLO Sector. The property is designated S2RES - Single / Two Unit Residential in the OCP and is within the Permanent Growth Boundary. The surrounding area is characterized by low density residential development.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RU1 - Large Lot Housing	Single family residential
East	RU1 - Large Lot Housing	Single family residential
South	RU1 - Large Lot Housing	Single family residential
West	RU1 - Large Lot Housing	Single family residential
	RU6 - Two Dwelling Housing	Semi-detached residential

Subject Property Map: 3528 Landie Road



4.2 Zoning Analysis Table

Zoning Analysis Table			
CRITERIA	RU2 ZONE REQUIREMENTS	PROPOSAL (Lot 1)	PROPOSAL (Lot 2)
Existing Lot/Subdivision Regulations			
Lot Area	400 m ²	730 m ²	1,190 m ²
Lot Width	13.0 m	13.5 m	21.7 m
Lot Depth	30.0 m	54 m	54 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).

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.

5.2 Technical Comments

5.3 Building & Permitting Department

- Spatial separation calculations required for existing house. This may require a non-combustible cladding, reduction of windows and soffit protection. A building permit would be required.

5.4 Development Engineering Department

- See attached memorandum, dated December 15, 2014.

5.5 FortisBC - Electric

- There are primary distribution facilities within Landie Road. 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: December 1, 2014

Date Public Consultation Completed: February 20, 2015

Report prepared by:

Laura Bentley, Planner

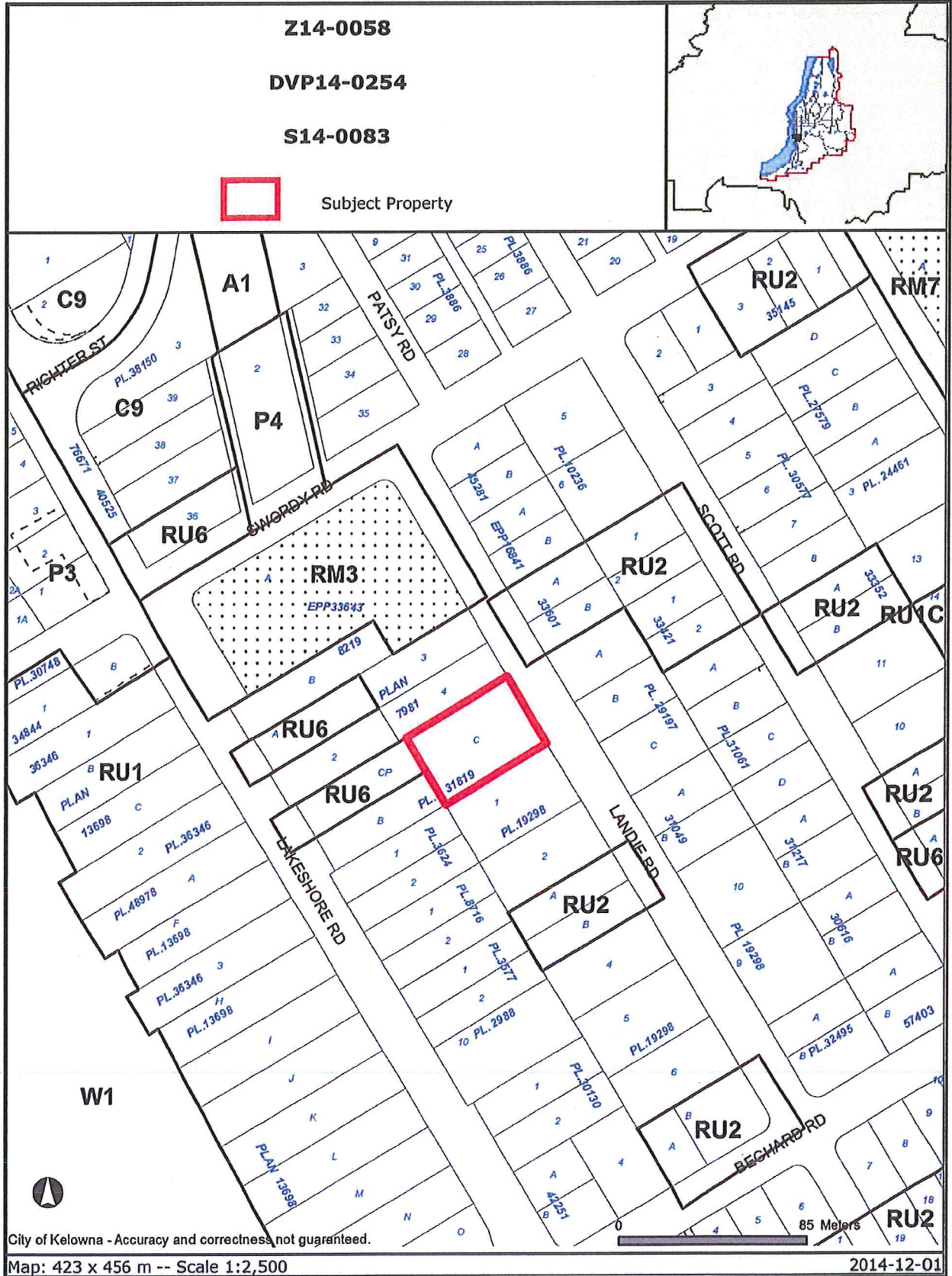
Reviewed by: Lindsey Ganczar, Urban Planning Supervisor

Approved for Inclusion: Ryan Smith, Urban Planning Manager

Attachments:

Subject Property Map
Proposed Subdivision Layout
Development Engineering Memorandum

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

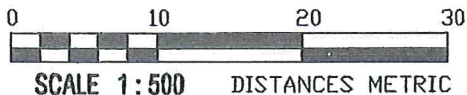
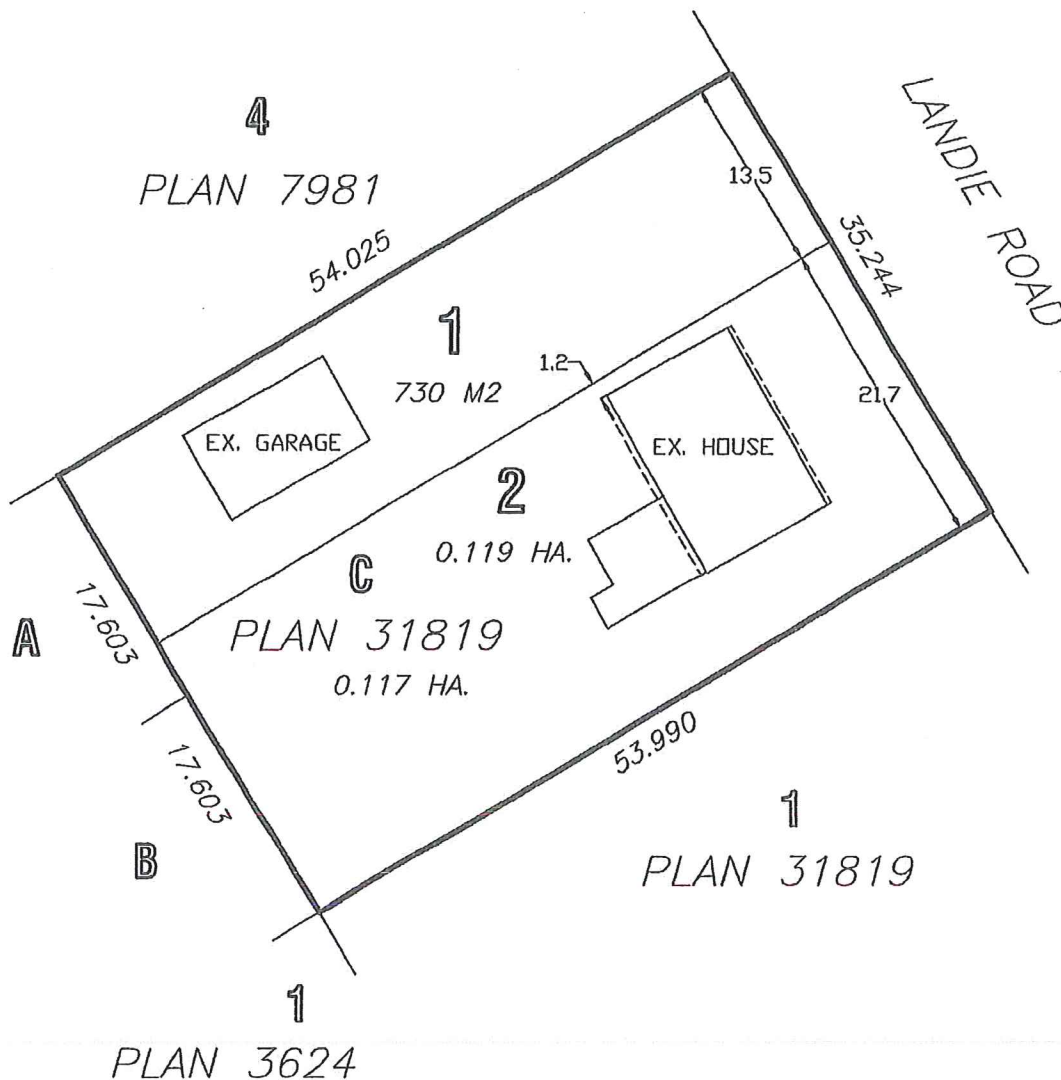


Certain layers such as lots, zoning and dp areas are updated bi-weekly. This map is for general information only.
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**SKETCH PLAN SHOWING PROPOSED SUBDIVISION OF
 LOT C, DISTRICT LOT 134, PLAN 31819
 OSOYOODS DIVISION, YALE DISTRICT,
 BRITISH COLUMBIA
 P.I.D.003-601-196**

CIVIC ADDRESS

3528 LANDIE ROAD
 KELOWNA, B.C.



Ponderoka Consulting
 4661 Stewart Road East
 Kelowna, B.C. V1W 4C1
 Ph. & Fx. 764-2656 File SS1451

Nov. 4 /14

CITY OF KELOWNA
MEMORANDUM

Date: December 15, 2014
File No.: Z14-0058

To: Urban Planning (LB)

From: Development Engineering Manager (SM)


Subject: 3528 Landie Road RU1 to RU2

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

1. General

Road frontage improvements are triggered by this rezoning application. The requirements include curb and gutter, 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 two lots. A subdivision application will require service upgrades that include the installation of additional services. 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. 11067
Z14-0058 - Jesse East
3528 Landie 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 C, District Lot 134, ODYD, Plan 31819, located on Landie Road, Kelowna, B.C., from the RU1 - Large Lot Housing zone to the RU2 - Medium 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

OCP. The OCP supports the densification of neighbourhoods through appropriate infill development and utilization of existing infrastructure.

4.0 Proposal

4.1 Background

DVP12-0139 was approved by Council on October 16, 2012. Building Permit BP38559 approved the construction of the building. DVP15-0008, which is currently under review, addresses the variance required to allow the carriage house to be located between the front property line and the single family dwelling. All other zoning requirements for the carriage house have been met.

4.2 Project Description

The applicant is proposing to rezone the property to RR2c in order to allow a dwelling unit on the main level of the two level garage. The single car garage door will be replaced with windows. Two parking stalls for the carriage house are provided on the east side of the building . The existing entry door is immediately accessible on the south side of the building.

The siting and overall exterior design of the building remains unchanged. Minor changes are proposed and include a new, expanded deck area on the west side of the building with access via existing balcony doors. The area below the deck will provide additional parking in the form of a carport. The lower level 3-car garage provides adequate parking for the existing single family dwelling.

For structures with walkout basements, building height is measured from the front yard and not from the lowest floor or walkout basement level. The height of the carriage house from the main level to the mid-point of the roof is 3.39m (1.41m below the 4.8m maximum height for a carriage house). Therefore, it does not require a height variance, even though the height of the building may appear larger when viewed from the lower level.

4.3 Site Context

The subject property is located on the west side of Lakeshore Road in the Southwest Mission area of Kelowna.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
Northeast	RR2 - Rural Residential 2	Single Family Dwelling
Southeast	A1 - Agriculture 1	Farm Use
Southwest	RR2 - Rural Residential 2	Single Family Dwelling
Northwest	W1 - Recreational Water Use	Okanagan Lake

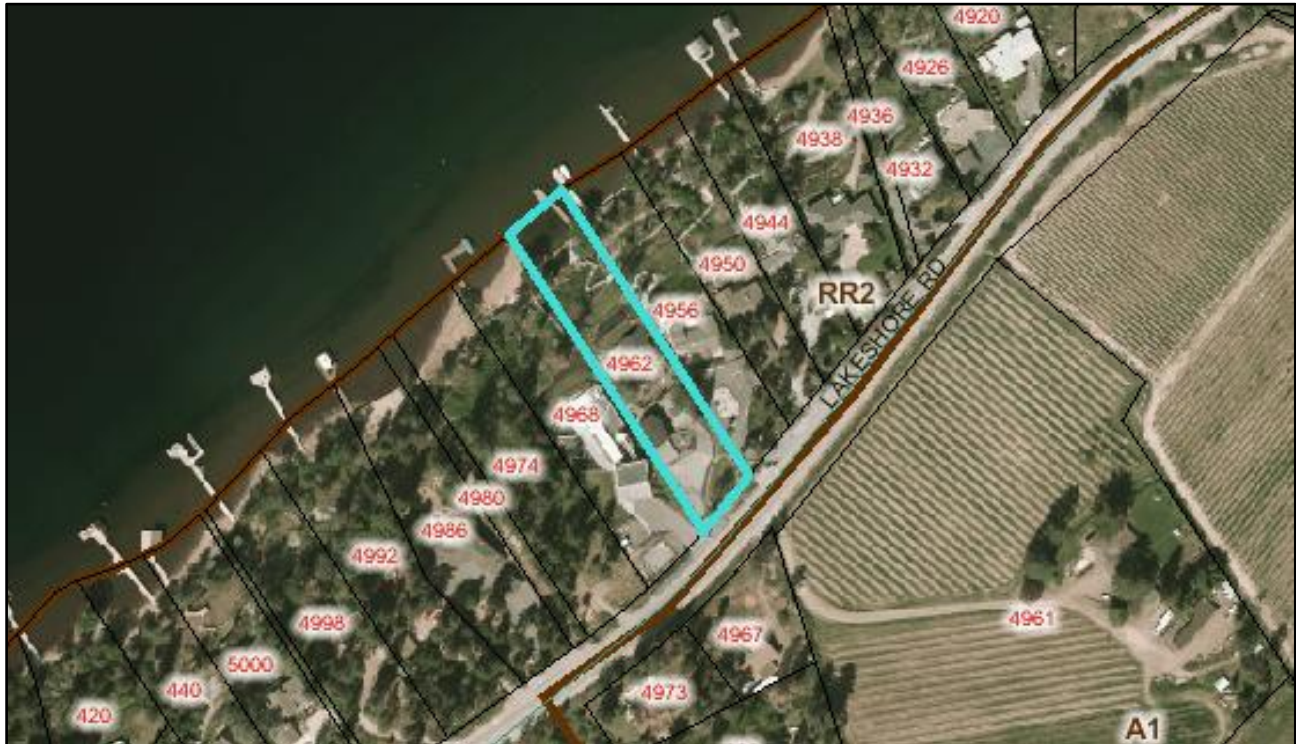
Subject Property Photos: 4962 Lakeshore Road
East Elevation (facing Lakeshore Rd)



North Elevation



Subject Property Map: 4962 Lakeshore Road



4.4 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	RR2c ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Lot Area	4,000m ²	3,062m ² *
Lot Width	36m	27m *
Lot Depth	30m	135.28m

Development Regulations		
Site Coverage	20%	11.1%
Site coverage: accessory buildings or structures and carriage house	14%	3.7%
Floor Area of carriage house	90m ²	84.8m ²
Maximum net floor area to total net floor area of principal building	75%	47.59%
Height (mid point of roof)	4.8m	4.13m
Setback from Principal Dwelling	3.0m	3.0m
Carriage House Regulations		
Height	4.8m	4.02m
Front Yard	6.0m	37.72m
Side Yard (southwest)	2.0m	2.03m
Side Yard (northeast)	2.0m	18.65m
Height (carriage house shall not be higher than existing primary dwelling unit)	5.13m ex. House roof peak	5.1m Carriage house roof peak
Other Regulations		
Minimum Parking Requirements	3 stalls	6 stalls
Private Open Space	30m ² min.	31m ²
*Existing non-conforming lot area and lot width.		

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 Infill² Encourage new development or redevelopment in existing residential areas to be sensitive to or reflect the character of the neighborhood with respect to building design, height and siting.

6.0 Technical Comments

6.1 Building & Permitting Department

- 1) Development Cost Charges (DCC's) are required to be paid prior to issuance of any Building Permit(s)
- 2) Full Plan check for Building Code related issues will be done at time of Building Permit applications.

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).

6.2 Development Engineering Department

See attached Memorandum dated February 10, 2015.

6.3 Fortis BC Inc - Electric

There are primary distribution facilities along Lakeshore Road. 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.

Otherwise, FortisBC Inc. (Electric) has no concerns with this circulation.

In order to initiate the design process, the customer must call 1-866-4FORTIS (1-866-436-7847). It should be noted that additional land rights issues may arise from the design process but can be dealt with at that time, prior to construction

7.0 Application Chronology

Date of Application Received: January 12, 2015

Date Public Consultation Completed: January 24, 2015

Report prepared by:

Lydia Korolchuk, Planner

Reviewed by:

Lindsey Ganczar, Urban Planning Supervisor

Reviewed by:

Ryan Smith, Urban Planning Manager

Attachments:

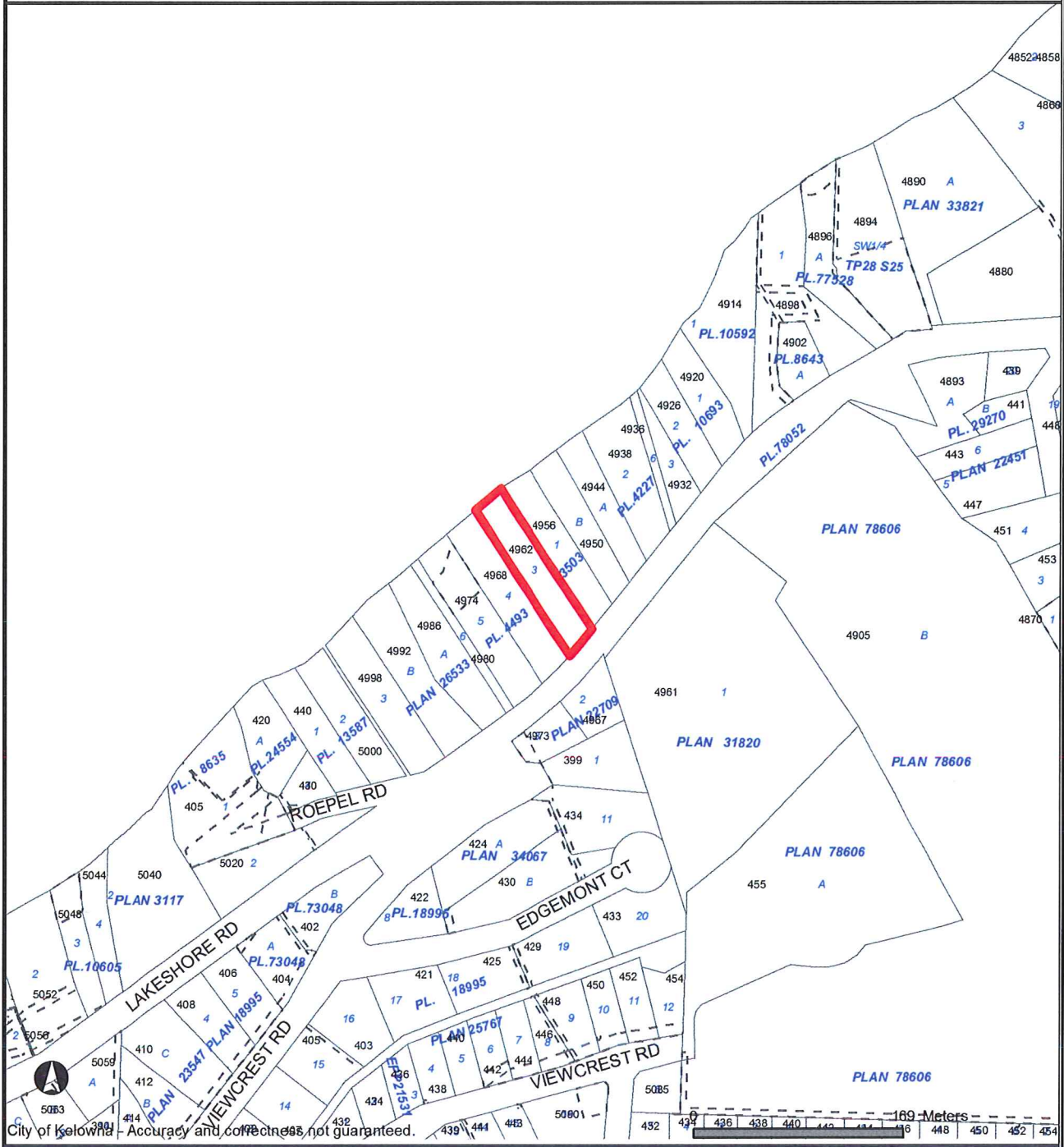
- Site Plan
- Floor Plans
- Elevations
- Landscape Plan
- Development Engineering Memorandum

ADDRESS

Z15-0001



Subject Property

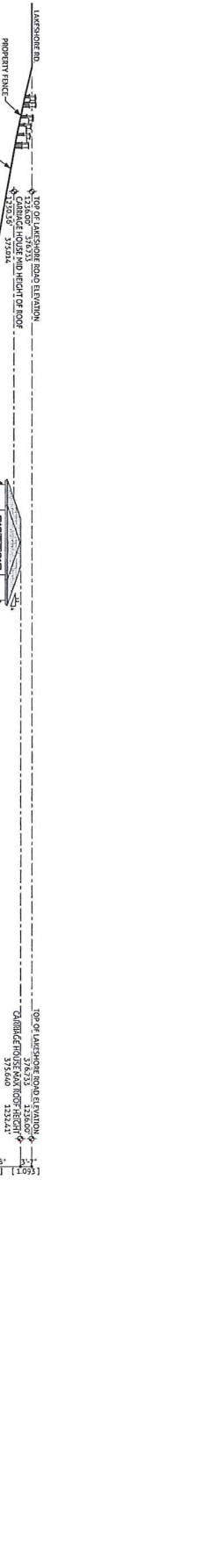


City of Kelowna - Accuracy and correctness not guaranteed.

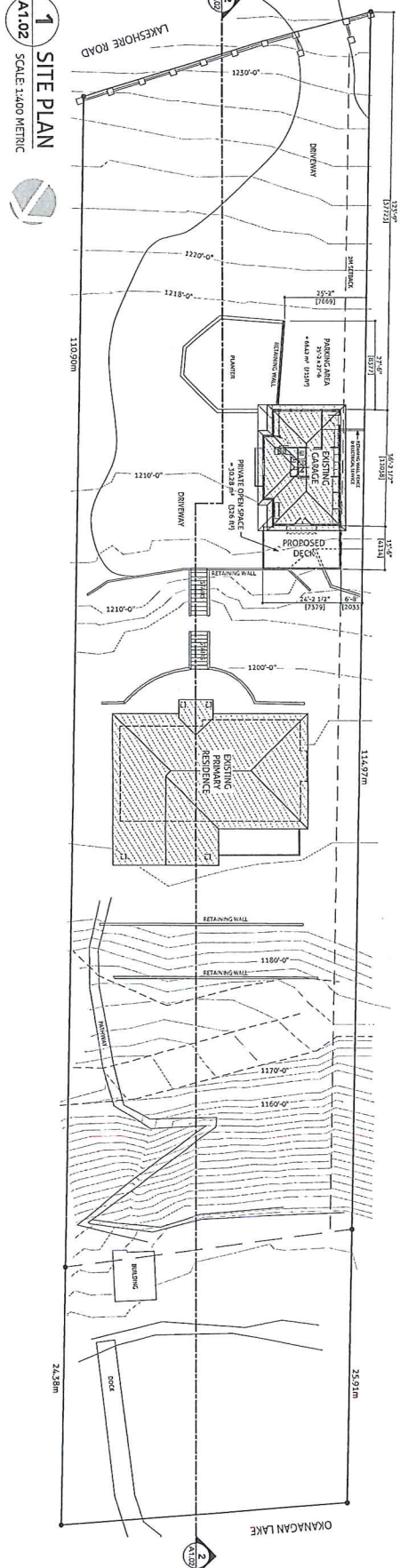
Map: 847 x 913 m -- Scale 1:5,000

2015-01-12

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.



2 SITE SECTION
 A1.02 / SCALE: 1:400 METRIC



1 SITE PLAN
 A1.02 / SCALE: 1:400 METRIC

WEST COAST DESIGN

42-218 glen park dr., kelowna, bc 250.215.1968

NOTES

#	DATE	DESCRIPTION
6	01/01/2024	ISSUED SITE SECTION
5	10/11/2023	ISSUE FOR PERMIT (METRIC)
4	10/11/2023	PERMIT REVIEW
3	10/11/2023	ISSUE FOR PERMIT (METRIC)
2	09/15/2023	DESIGN CHANGES
1	08/15/2023	DESIGN REVIEW
		ISSUED FOR PERMIT

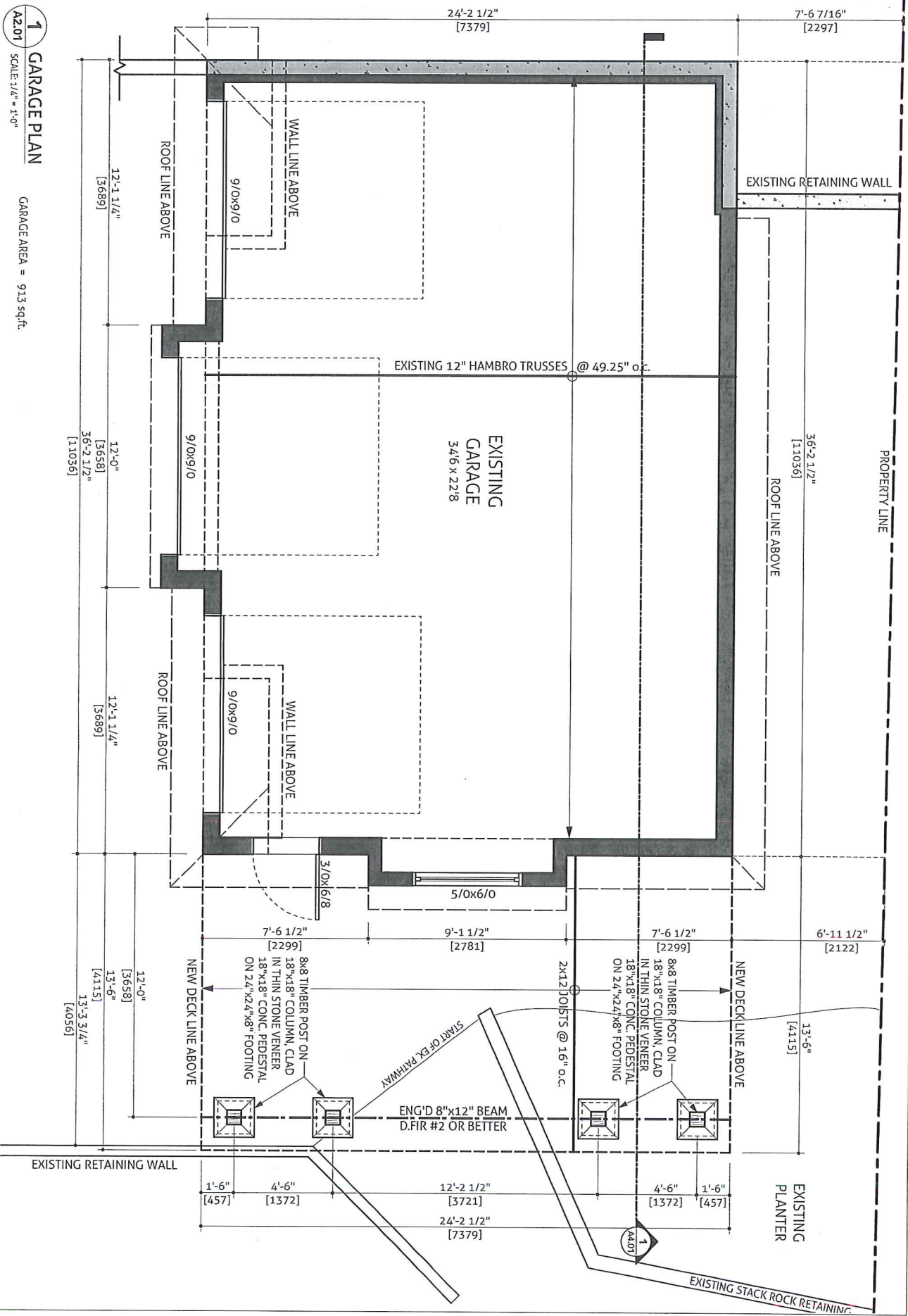
CLIENT
 JONES

PROJECT
 4962 LAKESHORE
 CARRIAGE SUITE

SHEET
 SITE PLAN &
 SITE SECTION

ISSUED / REVISIONS
 DRAWN BY
 CHECKED BY
 DATE
 SCALE: 3/16" = 1'-0"

GARAGE AREA = 913 sq.ft.



NO.	DATE	DESCRIPTION
1		DESIGN REVIEW
2		DESIGN CHANGES
3		ELECTRICAL PLAN APPROVED
4		PERMIT READY
5		FINAL FOR PERMIT MEETING

CLIENT: JONES

PROJECT: 4962 LAKESHORE CARRIAGE SUITE

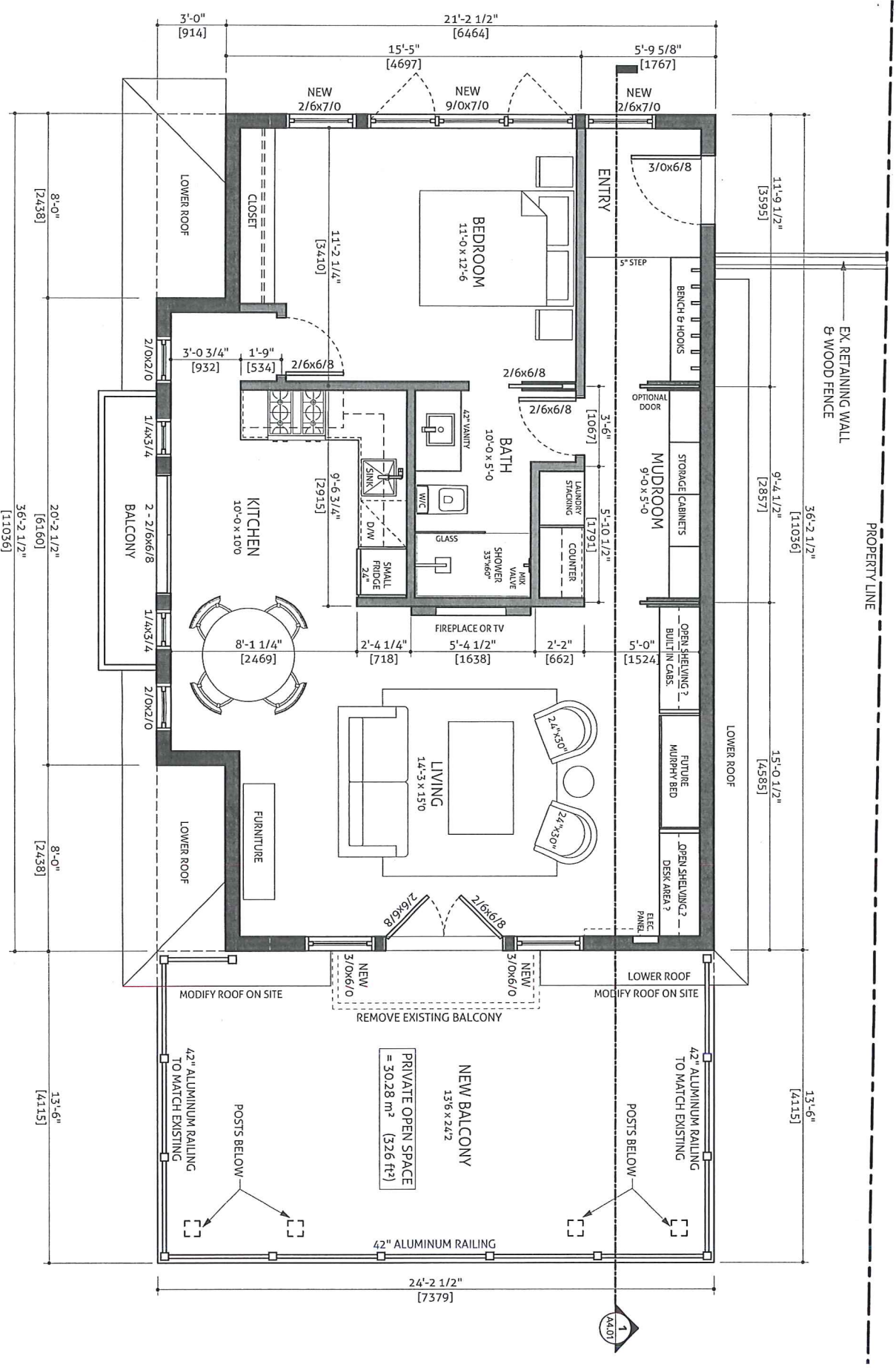
SHEET: GARAGE FLOOR PLAN

REVISIONS:

NOTES:

WEST COAST DESIGN
 42-218 glen park dr., kelowna, bc
 250.215.1968

FLOOR AREA = 828 sq.ft.

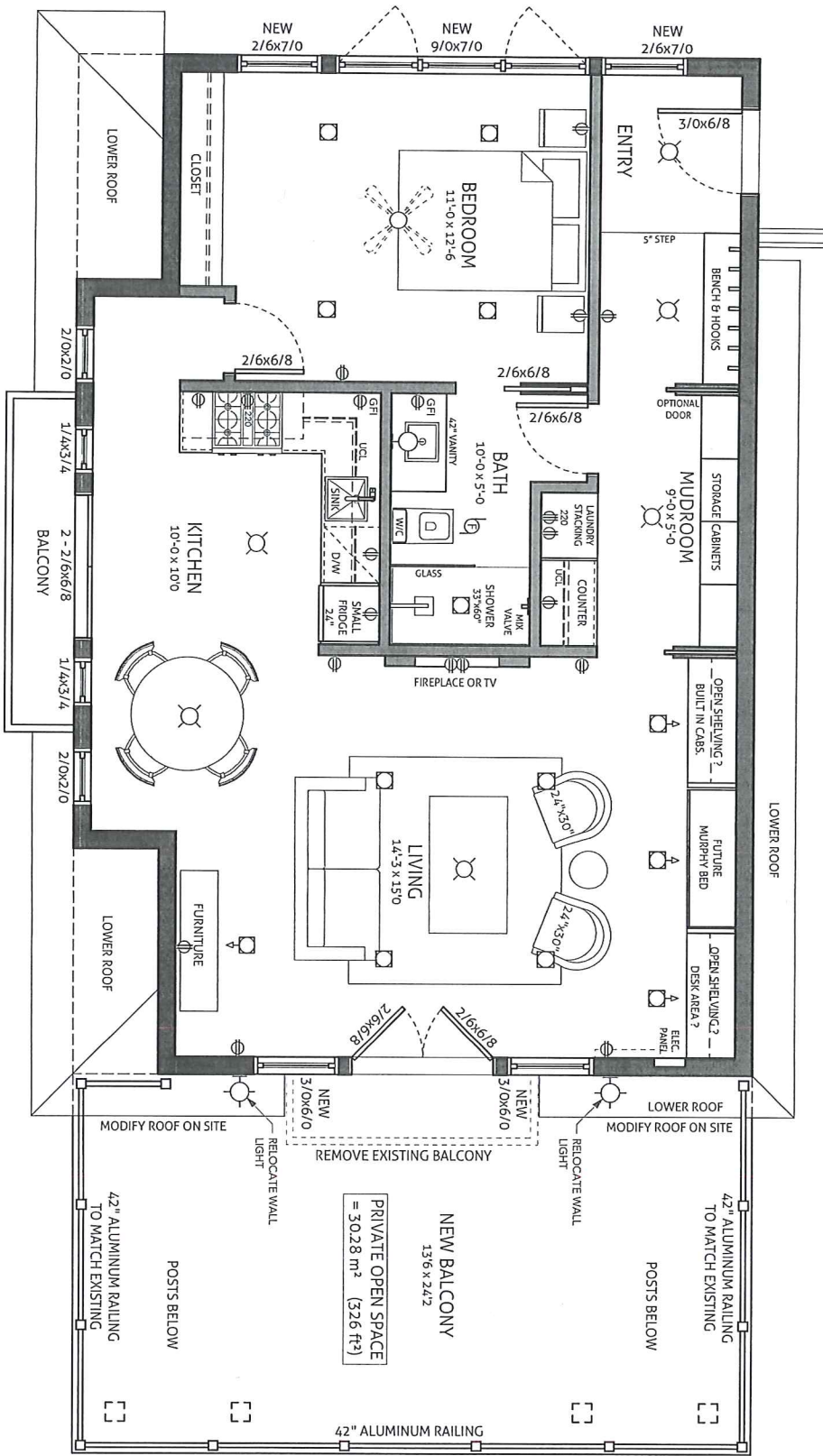


ISSUED/REVISIONS	
5. ADD SCALE FOR REVISION METHOD	
4. ADD FURNITURE	
3. ADD ELECTRICAL PLAN ADDED	
2. ADD DESIGN CHANGES	
1. ADD DESIGN NOTES	
# DATE DESCRIPTION	

CLIENT: JONES
 PROJECT: 4962 LAKESHORE CARRIAGE SUITE
 SHEET: UPPER FLOOR PLAN

DATE	
DESCRIPTION	

NOTES:
 1. PRIVATE OPEN SPACE = 30.28 m² (326 ft²)
 2. 42" ALUMINUM RAILING TO MATCH EXISTING
 3. POSTS BELOW



LIGHTING FIXTURES LEGEND

- SD SMOKE DETECTOR
- UCFL UNDER COUNTER LIGHTING
- EF EXHAUST FAN
- RECESSED POTLIGHT
- CEILING MOUNTED LIGHT
- WALL MOUNTED LIGHT
- CEILING FAN

POWER & SWITCHES LEGEND

- SWITCH
- THREE WAY SWITCH
- FOUR WAY SWITCH
- DIMMER SWITCH
- 110V DUPLEX RECEPTACLE
- 110V FLOOR MOUNTED PLUG
- 110V GROUND FAULT INT.
- 220V RECEPTACLE

COMMUNICATIONS LEGEND

- PHONE LINE
- FAX
- FAX LINE
- DATA
- CAT 6 - INTERNET
- CABLE
- CABLE TV COAXIAL
- SPEAKER - CEILING MOUNT

NOTE: ALL FINAL PLUGS & SWITCH LOCATIONS TO BE DETERMINED DURING ELEC. WALKTHROUGH WITH OWNER

ISSUED / REVISIONS	DATE	DESCRIPTION
5	1/20/24	ISSUE FOR PERMIT MARKING
4	1/16/24	PERMIT RELAY
3	1/16/24	ELECTRICAL PLAN ADDED
2	1/16/24	DESIGN CHANGES
1	1/16/24	DESIGN REVIEW
#	DATE	DESCRIPTION

CLIENT: JONES

PROJECT: 4962 LAKESHORE CARRIAGE SUITE

SHEET: UPPER FLOOR ELECTRICAL

DESIGN NO.	02
PROJECT NO.	02
DATE	1/16/24
SCALE	1/4" = 1'-0"
A2.03	

NOTES

ISSUED / REVISIONS

#	DATE	DESCRIPTION
5	05/15	ISSUE FOR PERMIT METRICS
4	05/15	PERMIT READY
3	05/15	ELECTRICAL PLAN ADDED
2	05/15	DESIGN CHANGES
1	05/15	DESIGN REVIEW
		DATE

CLIENT

JONES

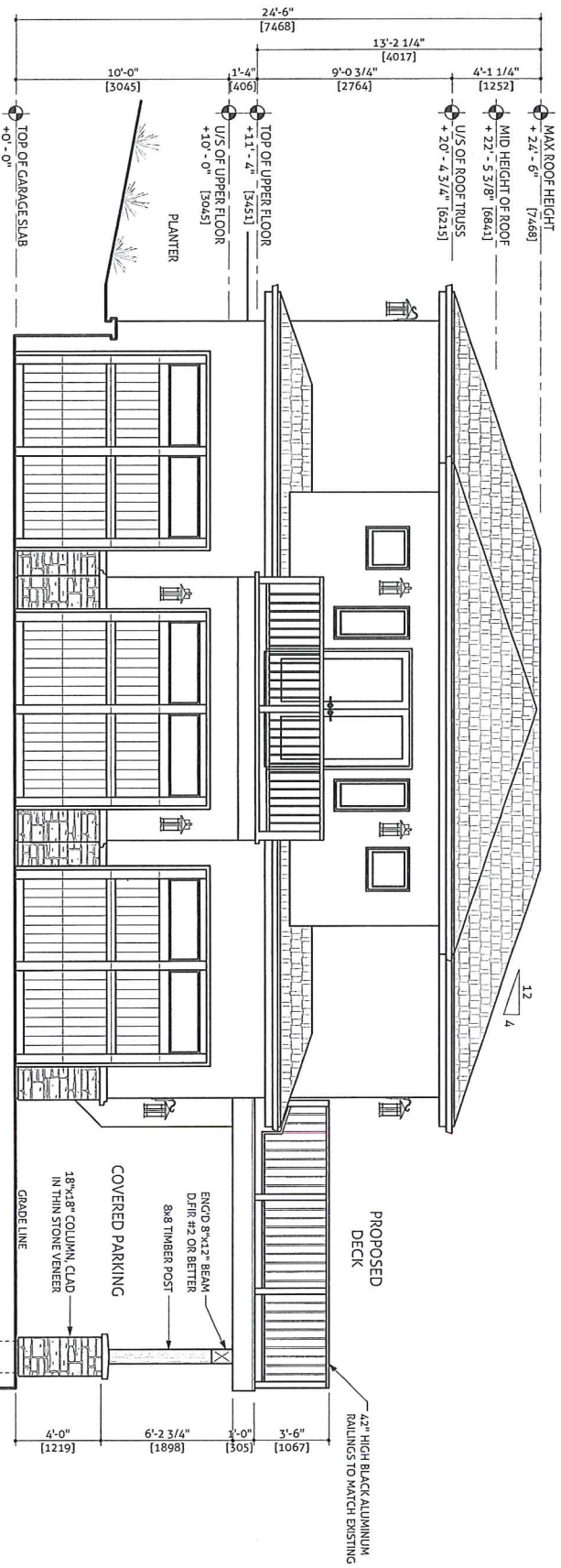
PROJECT

4962 LAKESHORE
CARRIAGE SUITE

SHEET

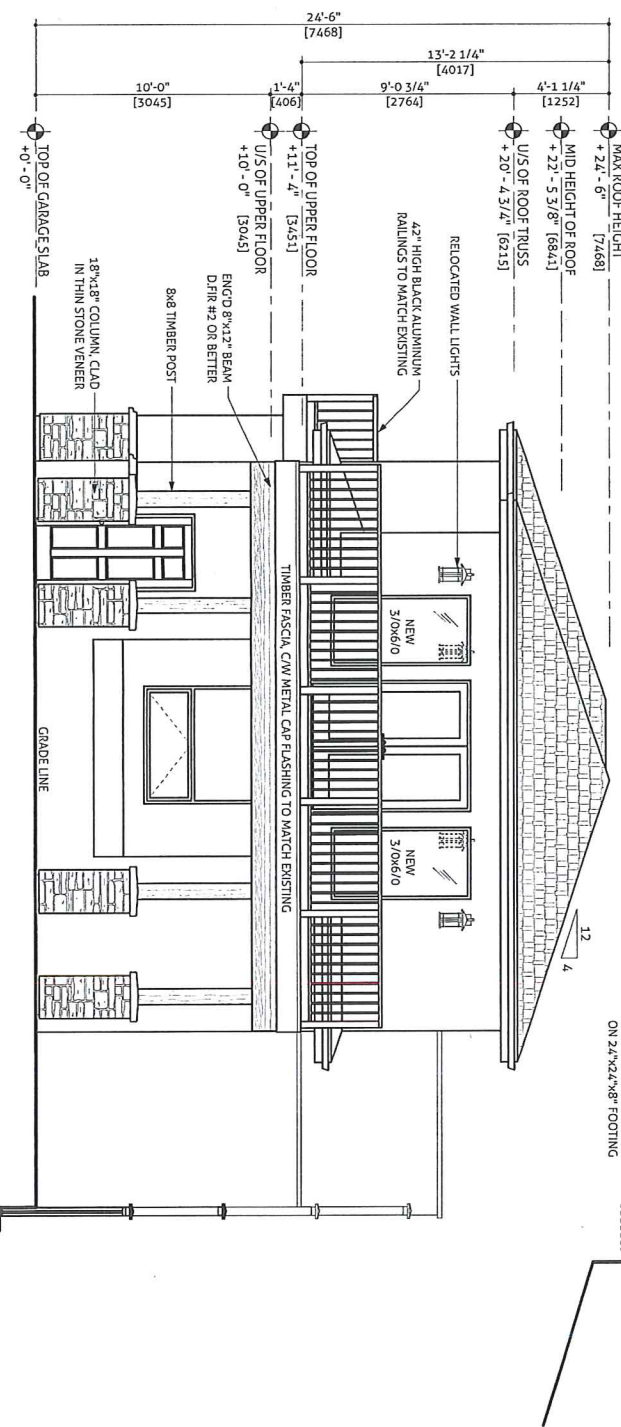
ELEVATIONS

REVISION	DATE	BY	DESCRIPTION
A.3.01	05/15		



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

2 NORTH ELEVATION
SCALE: 3/16" = 1'-0"



NOTES

ISSUED / REVISIONS

#	DATE	DESCRIPTION
1	05/25/20	DESIGN REVIEW
2	06/05/20	DESIGN CHANGES
3	06/15/20	PERMIT APPLICATION
4	06/25/20	PERMIT APPROVAL
5	07/01/20	SCALE FOR PERMIT DRAWING

CLIENT

JONES

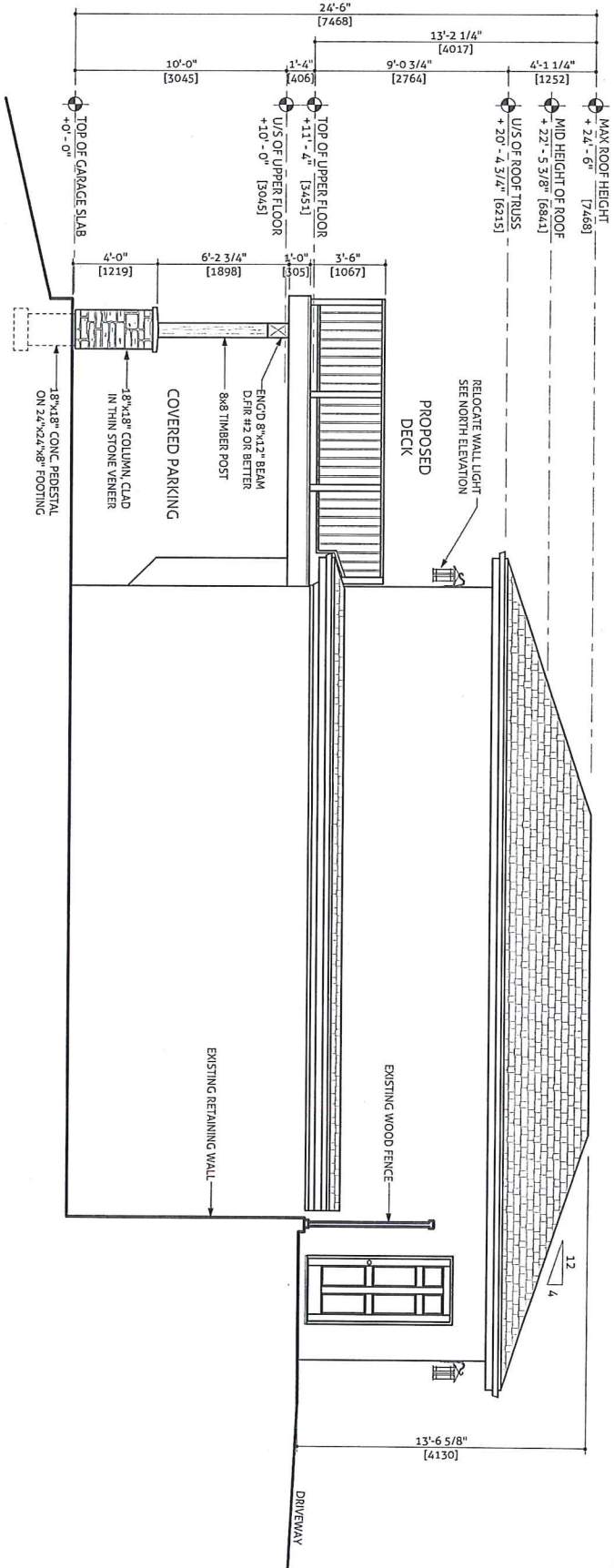
PROJECT

4962 LAKESHORE
CARRIAGE SUITE

SHEET

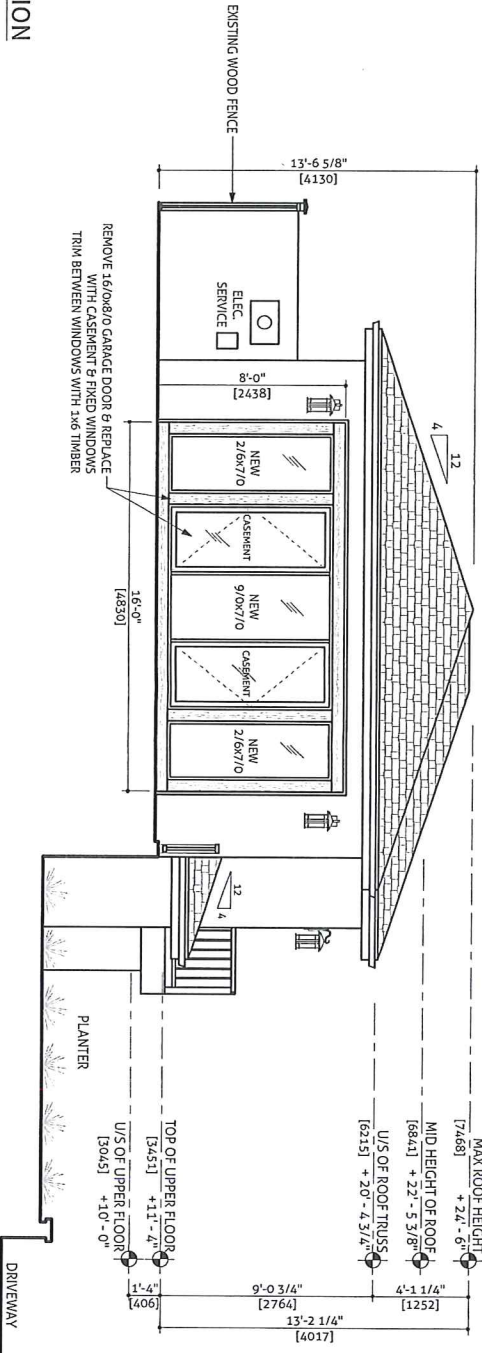
ELEVATIONS

DESIGN NO.	DATE
A3.02	05/25/20



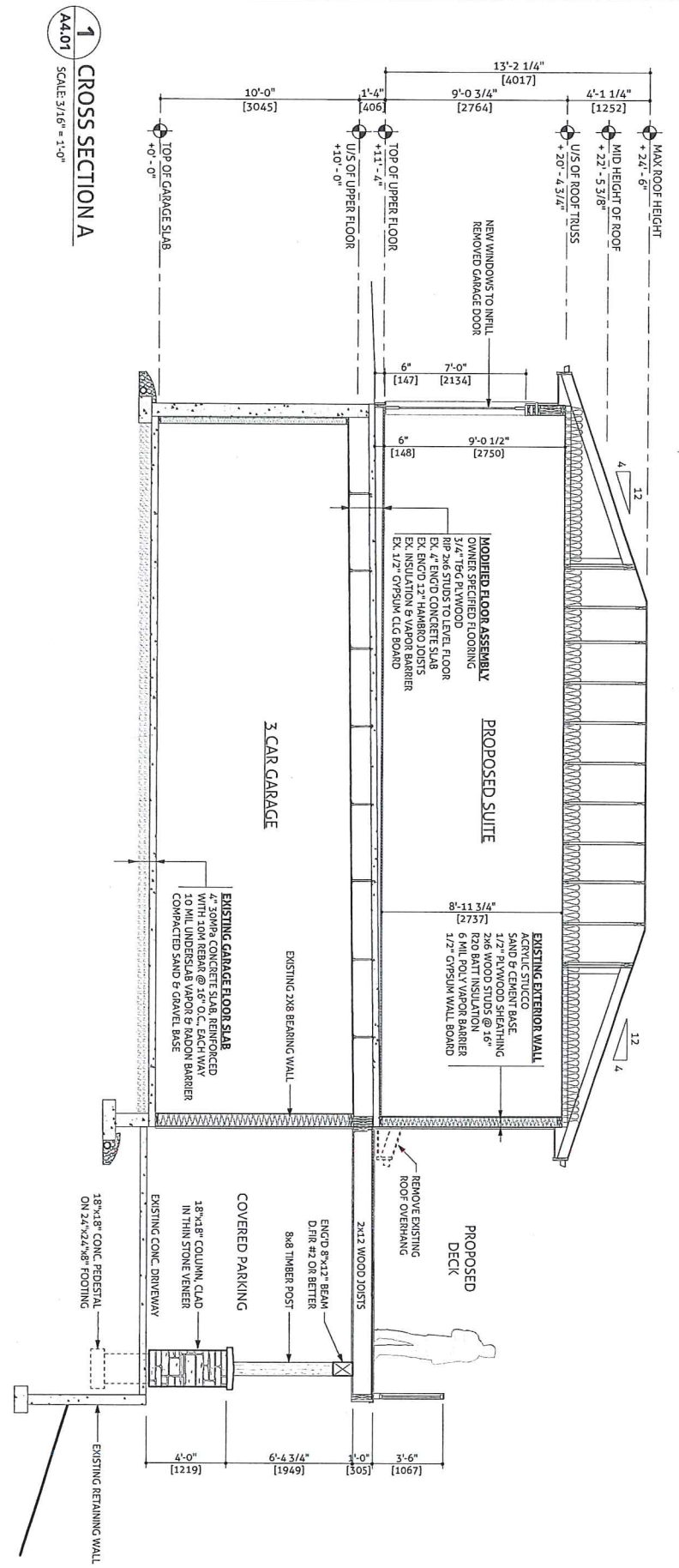
1 WEST ELEVATION

A3.02 SCALE 3/16" = 1'-0"



2 SOUTH ELEVATION

A3.02 SCALE 3/16" = 1'-0"



1 CROSS SECTION A
SCALE: 3/16" = 1'-0"

ISSUED / REVISIONS	NO.	DATE	DESCRIPTION

NO.	DATE	DESCRIPTION
5	1/25/18	ISSUE FOR PERMIT MARKING
4	1/25/18	PERMIT READY
3	1/25/18	ELECTRICAL PLAN ADDED
2	1/25/18	DESIGN CHANGES
1	1/25/18	DESIGN REVIEW

CLIENT: JONES

PROJECT: 4962 LAKESHORE CARRIAGE SUITE

SHEET: CROSS SECTION

WEST COAST DESIGN

42-218 glen park dr., kelowna, bc

250.215.1988

CITY OF KELOWNA
MEMORANDUM

Date: February 10, 2015
File No.: Z15-0001

To: Land Use Management Department (LK)

From: Development Engineering Manager

Subject: 4962 Lakeshore Road Plan 4493 Lot 3 RU2 to RU2c

Development Engineering Services have the following requirements associated with this rezoning Application.

1. Domestic Water and Fire Protection

The development is serviced by a private water system and subject to approval of Interior Health Authority and Building & Permitting.

2. Sanitary Sewer

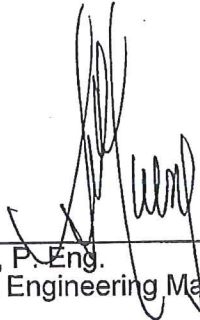
On-site sewage disposal system will be reviewed by the Interior Health Authority and Building & Permitting.

3. Site Related Issues

Provide on-site parking for the proposed dwelling.

4. 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

JF

CITY OF KELOWNA
BYLAW NO. 11068
Z15-0001 - Shane Jones
4962 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 Lot 3, Section 26, Township 28, SDYD, Plan 4493, Except Plan 13503, located on Lakeshore Road, Kelowna, B.C., from the RR2 - Rural Residential 2 zone to the RR2c - Rural Residential 2 with Carriage House 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: March 3, 2015
RIM No.: 1250-30
To: City Manager
From: Urban Planning - Community Planning & Real Estate Division (RS)
Application: Z10-0104 **Owner:** Eric & Margaret Nickel
Address: 1205, 1215, 1223, 1229 Richter St **Applicant:** Garry Tomporowski Arch.
Subject: Rezoning Application Rescind and Closure
Existing Zone: RU6 - Two Dwelling Housing
Proposed Zone: RM5 - Medium Density Multiple Housing

1.0 Recommendation

THAT Zone Amending Bylaw No. 10544 (Z10-0104) for the properties located at Lots 10 to 13, District Lot 138, ODYD, Plan 1039, located on Richter Street, Kelowna, BC be forwarded for rescindment consideration.

2.0 Purpose

To consider the rescindment of the rezoning bylaw for the subject property and to close the file.

3.0 Urban Planning

Zone Amending Bylaw No. 10544 to rezone the subject property from the RU6 to the RM5 zone received second and third readings on June 14, 2011. Final adoption of the bylaws was withheld pending the ability to secure financing for the project.

The application intended to develop a 26-unit apartment building. Two extensions have been granted for the development, most recently extending Third Reading to March 7, 2015. The applicant has chosen not to proceed with any further extension requests, and to abandon the project. Confirmation has been provided acknowledging the withdrawal of the application and requesting staff to close the associated files.

Staff are recommending that Council rescind 1st, 2nd and 3rd readings and direct staff to close the file.

Report prepared by:

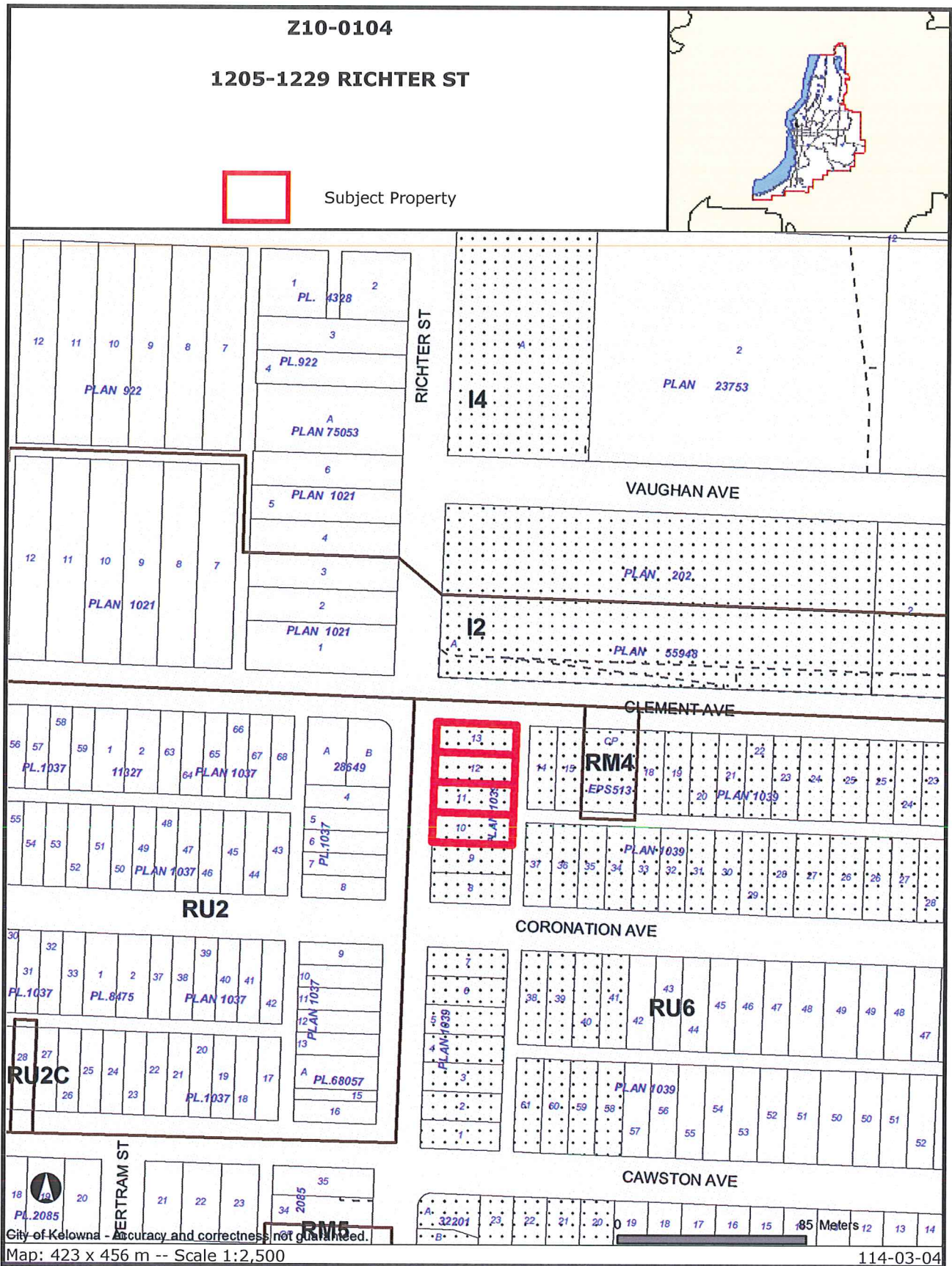
Ryan Smith, Manager - Urban Planning

Approved for Inclusion:



Doug Gilchrist, Divisional Director - Community Planning
& Real Estate

Site Plan
Report to Council March 10, 2014



City of Kelowna - Accuracy and correctness not guaranteed.

Map: 423 x 456 m -- Scale 1:2,500

114-03-04

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.

REPORT TO COUNCIL



Date: March 10, 2014
RIM No. 1250-30
To: City Manager
From: Urban Planning (AW)
Application: Z10-0104 **Owner:** Eric & Margaret Nickel
Address: 1205, 1215, 1223, 1229 Richter St **Applicant:** Garry Tomporowski Arch.
Subject: Rezoning Application, Extension Request
Existing Zone: RU6 - Two Dwelling Housing
Proposed Zone: RM5 - Medium Density Multiple Housing

1.0 Recommendation

THAT in accordance with Development Application Procedures Bylaw No. 10540, the deadline for the adoption of Amending Bylaw No. 10544 (Z10-0104), Lots 10-13 District Lot 138 ODYD Plan 1039, located on Richter Street, Kelowna, BC, be extended from March 7, 2014 to March 7, 2015.

2.0 Purpose

The applicant is proposing to extend the bylaw to rezone the subject properties from the RU6 - Two Dwelling Housing zone to the RM5 - Medium Density Multiple Housing zone in order to facilitate a 26-unit apartment building. A Development Permit for the form and character of the proposed development and a Development Variance Permit will be considered by Council at a later date.

3.0 Urban Planning

Section 2.12.1 of Procedure Bylaw No. 10540 states that:

In the event that an application made pursuant to this bylaw is one (1) year old or older and has been inactive for a period of six (6) months or greater:

- a) The application will be deemed to be abandoned and the applicant will be notified in writing that the file will be closed;
- b) Any bylaw that has not received final adoption will be of no force and effect;
- c) In the case of an amendment application, the City Clerk will place on the agenda of a meeting of Council a motion to rescind all readings of the bylaw associated with that Amendment application.

Section 2.12.2 of the Procedure Bylaw makes provision that upon written request by the applicant prior to the lapse of the application, Council may extend the deadline for a period of twelve (12) months by passing a resolution to that affect.

By-Law No. 10544 received second and third readings on June 1, 2011 after the Public Hearing held on the same date. The applicant wishes to have this application remain open for an additional twelve (12) months in order to address the outstanding conditions of final adoption. This project remains unchanged and is the same in all respects as originally applied for.

The applicant has been working to secure financing for the project but to date has been unable to do so. Staff have made the applicant aware that this is the final extension that will be supported and that the application should be closed if there is no forward progress during the next year. The applicant agreed that this was a reasonable approach and will spend the remainder of the year working through the financing details. For these reasons, the Urban Planning Department recommends Council consider this final request for an extension favourably.

Report prepared by:



Alec Warrender, Land Use Planner
/dc

Reviewed by:



Ryan Smith, Manager - Urban Planning

Approved for Inclusion

Doug Gilchrist, Divisional Director, Community
Planning & Real Estate

Attachments:

Site Plan

February 28, 2014

City of Kelowna
1435 Water Street
Kelowna, BC
V1Y 1J4

ATTENTION: Alec Warrender, Planner, RPP, MCIP, Strategic Planning

**REFERENCE: Rezoning Application No. Z10-0104, Extension Request
1205, 1215, 1223, 1229 Richter Street**

Further to our recent conversation regarding the status of the above referenced rezoning application, I am writing to provide an update on project activity and our future plans for the development.

The original rezoning application was made in the middle of the economic downturn. At that time, it was suggested by a number of colleagues that perhaps Kelowna was finally approaching the end of the down cycle, thus an application was considered timely in anticipation of a renewal in downtown development. We now recognize that this opinion was incorrect, and that unfortunately, development in the City would remain depressed for another two years, as evidenced by market statistics (including a noticeable decline in development applications). Several large projects, particularly in the downtown core and south Pandosy neighbourhood, remain shelved in hopes of future market renewal, others were brought to market and then subsequently shelved as a result of low interest, while others struggled to remain profitable during construction (some even failed and entered into creditor protection). Unlike the list of unsuccessful developers associated with this last list of projects, we chose to rely upon a combination of market intelligence, a solid business plan that has allowed us to keep our finances in the black, and investor patience to guide our decisions. I remain steadfast in the belief that our reliance on these three 'pillars' have allowed us, a small investor with limited capital, to weather these challenging economic times. We have been lucky to have avoided the need to sell to large developers, with sufficient capital and time to wait out the market, at predatory pricing. Had we been forced to take this route, I would suggest that these developers would have ultimately come to the same business decision to delay development until the return of increased interest in the local market.

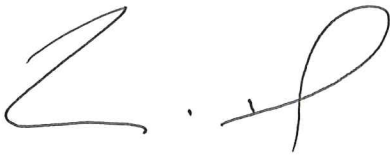
It is only very recently that the market has started to show evidence of a positive upswing. Declining inventories, related in part to the sale of the large number of idle condominiums and secondary homes held by speculative investors pre-2008, and commercial tenant demand for new and unique offerings to replace their aging lease space has resulted in increased interest for real estate projects in Kelowna. Our market intelligence indicates that investor interest is growing for both residential and commercial space: listings are down 17% compared to the same time in 2013 creating low supply in response to increased demand (a situation not seen in Kelowna since 2008). Recent changes made to signage on commercial billboards for previously shelved projects in Pandosy South suggest renewed marketing campaigns. Interest in the downtown core is also changing as evidenced with very recent transactions (in the last 30 days) of two small land assemblies and a recent rezoning hearing for a new commercial development at the corner of St Paul and Clement. I would suggest that renewed interest in the downtown area has also been sparked by recent forward movement in the City's (long standing) plan to construct the new police building, located 'kitty-corner' to our proposed development. The vision of a new police building at the Richter and Clement corner was conceived by the City of Kelowna prior to my first redevelopment application. In all, while previous years have demonstrated a depressed market, recent real estate trends indicate that investor confidence may finally be returning.

My original dream for development of this street corner, first started with the acquisition of 1205 Richter Street in 2006, remains. I met recently with my architect and marketing agent to re-visit the original design/concept and to re-think the strategy for this street corner considering offerings brought to the Okanagan in the last 24 months. Both parties remain as energized about the potential for this project and its offering for the local Kelowna area as the day it was conceptualized. As such, I have no plan to change the current design.

I would like to continue to pursue this project in 2014, particularly if the recent signs of market improvement continue into the Spring, and thus am seeking approval from the City of Kelowna to grant us an extension for project No. Z10-0104. A development permit application renewal form is attached.

We thank the City of Kelowna for the opportunity to provide our rationale for delaying completion of our existing development plan. We are hopeful that the City of Kelowna recognizes the challenges faced by smaller investors in these economic times. We are very hopeful that we will have the opportunity to continue to pursue development, particularly given our significant efforts to acquire, finance, assemble, and manage these properties.

If you have any questions or concerns about our request or future plans, please feel free to contact one of the undersigned as we would be glad to meet with the City of Kelowna to continue discussion on the matter.



Eric Nickel



Margaret (Peggy) Nickel

Attachment: City of Kelowna Development Permit Application Renewal Form

CITY OF KELOWNA
BYLAW NO. 10544
Z10-0104 - Eric and Margaret Nickel
1205, 1215, 1223 and 1229 Richter 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 Lots 10-13, District Lot 138, ODYD, Plan 1039 located on Richter Street, Kelowna, B.C., from the RU6 - Two Dwelling Housing zone to the RM5 - Medium Density Multiple 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 16th day of May, 2011.

Considered at a Public Hearing on the 14th day of June, 2011.

Read a second and third time by the Municipal Council this 14th day of June, 2011.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

REPORT TO COUNCIL



Date: February 11, 2015
RIM No. 1250-30
To: City Manager
From: Urban Planning, Community Planning & Real Estate (RS)
Application: Z11-0035 **Owner:** Robert & Michelle Geismayr
Address: 1599 KLO Rd **Applicant:** Robert & Michelle Geismayr
Subject: Rescind Bylaw No. 10569
Existing OCP Designation: S2RES - Single/Two Unit Residential
Existing Zone: RU1 - Large Lot Housing
Proposed Zone: RU6 - Two Dwelling Housing

1.0 Recommendation

THAT Zone Amending Bylaw No. 10569 (Z11-0035) for the property located at Lot 4, District Lot 131, ODYD, Plan 17156, except Plan KAP78069, located at 1599 KLO Road, Kelowna, BC be forwarded for rescindment consideration.

2.0 Purpose

To consider the rescindment of the rezoning bylaw for the subject property and to close the file.

3.0 Urban Planning

The above noted development application was originally considered at a Public Hearing by Council on August 9, 2011. In January 2014 the applicant was advised that Council had granted a final 1 year extension that it would not extend beyond February 3, 2015. To date, we have had no correspondence from the applicant and due to file inactivity Staff is recommending that Council rescind 1st, 2nd and 3rd readings and direct staff to close the file.

Report prepared by:

Ryan Smith - Urban Planning Manager

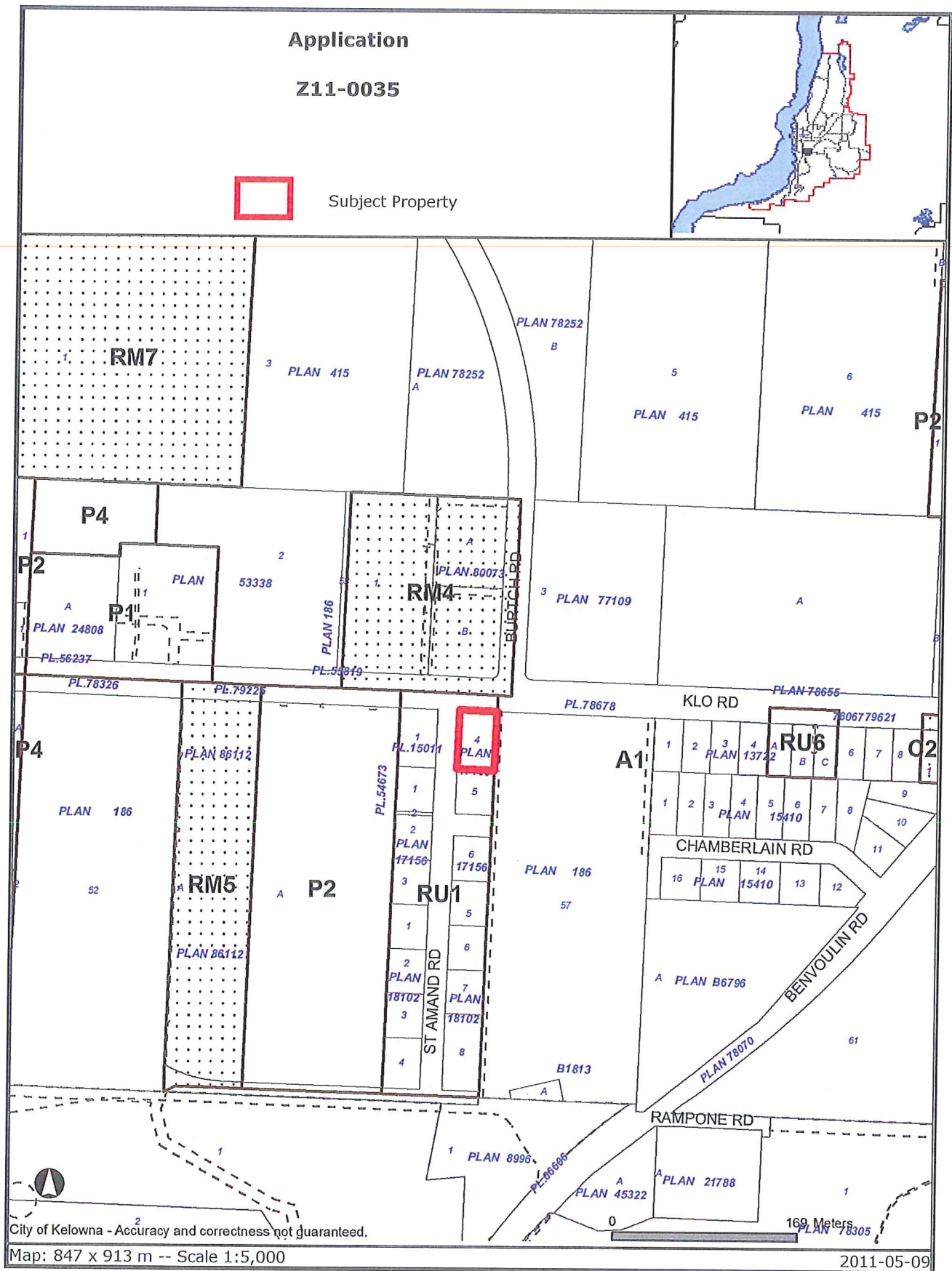
Approved for Inclusion:



Doug Gilchrist, Divisional Director,
Community Planning & Real Estate

Attachments:

Site Plan



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. 10569
Z11-0035 - Robert and Michelle Geismayr
1599 KLO 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 4, District Lot 131, ODYD, Plan 17156, Except Plan KAP78069 located on KLO Road, 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 11th day of July, 2011.

Considered at a Public Hearing on the 9th day of August, 2011.

Read a second and third time by the Municipal Council this 9th day of August, 2011.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA

BYLAW NO. 11054

TA14-0020 - Amendment to City of Kelowna Zoning Bylaw No. 8000 - Permitting Analytical Testing of Medical Marihuana as a Principal Use

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 Section 2 - Interpretation, 2.3 General Definitions be amended by:
 - a) Adding a new definition for **ANALYTICAL TESTING** in its appropriate location that reads:

“**ANALYTICAL TESTING** means the validated testing, research and development or quality control of a substance or product carried out in a laboratory operation and must be licensed under Health Canada or Controlled Drugs and Substances regulation of any substance or product being tested.”
 - b) Deleting the definition of **MEDICAL MARIHUANA PRODUCTION FACILITY** that reads:

“**MEDICAL MARIHUANA PRODUCTION FACILITY** means a facility for the producing, processing, selling, providing, shipping, delivering, and destroying of marihuana and must be licensed under the Health Canada Marihuana for Medical Purposes Regulations (SOR/2013-119).”And replace it with:

“**MEDICAL MARIHUANA PRODUCTION FACILITY** means a facility for the producing, processing, selling, providing, shipping, delivering, and destroying of medical marihuana and can include analytical testing in permitted industrial zones and must be licensed under the Health Canada Marihuana for Medical Purposes Regulations (SOR/2013-119).”
2. AND THAT Section 15 - Industrial Zones, 15.1 - I1-Business Industrial, 15.1.2 Principal Uses be amended to add Analytical Testing in its appropriate location and renumber subsequent subsections.
3. AND THAT Section 15 - Industrial Zones, 15.2 - I2-Business Industrial, 15.2.2 Principal Uses be amended to add Analytical Testing in its appropriate location and renumber subsequent subsections.
4. AND THAT Section 15 - Industrial Zones, 15.3 - I3-Business Industrial, 15.3.2 Principal Uses be amended to add Analytical Testing in its appropriate location and renumber subsequent subsections.
5. AND THAT Section 15 - Industrial Zones, 15.4 - I4-Business Industrial, 15.4.2 Principal Uses be amended to add Analytical Testing in its appropriate location and renumber subsequent subsections.

6. 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 26th day of January, 2015.

Considered at a Public Hearing on the 17th day of February, 2015.

Read a second and third time by the Municipal Council this 17th day of February, 2015.

Approved under the Transportation Act this 26th day of February, 2015.

Audrie Henry
(Approving Officer-Ministry of Transportation)

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

CITY OF KELOWNA

BYLAW NO. 11055

Amendment No. 1 to Medical Marihuana Producer Business Licence and Regulation Bylaw No. 10920

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts that the City of Kelowna Medical Marihuana Producer Business Licence and Regulation Bylaw No. 10920 be amended as follows:

1. AND THAT Section 2. DEFINITIONS be amended as follows:
 - a) Adding in its appropriate location a new definition for **Business** as follows:

“Business means reference to both Medical Marihuana Production Regulation Business and Medical Marihuana Analytical Testing.”;
 - b) Adding to the definition **“Medical Marihuana Production Regulation Business”** the word **“protection”** after the words **“carrying on a commercial or industrial”**; and
 - c) Adding a new definition for **“Medical Marihuana Analytical Testing or (MMAT)”** in its appropriate location that reads as follows:

“Medical Marihuana Analytical Testing means the validated testing, research and development or quality control of a substance or product carried out in a laboratory operation and must be licensed under Health Canada or Controlled Drugs and Substances regulation of any substance or product being tested.”
2. AND THAT 4. LICENCE REQUIRED, 4.2 be deleted in its entirety that reads:

“In the case of different **MMPR businesses in one building which are operated or owned by the same person and which are accessible to each other through internal doorways without leaving the structure, such **MMPR businesses** shall be considered one **premise** for the purposes of this bylaw.”**

And replaced with the following:

“In the case of different **businesses in one building, each **business** shall be considered as a separate business.”**
3. AND THAT all references to **“MMPR business”** be deleted and replaced with **“business”**;
4. This bylaw may be cited for all purposes as **“Bylaw No. 11055, being Amendment No. 1 to Medical Marihuana Producer Business Licence and Regulation Bylaw No. 10920.”**
5. 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, second and third time by the Municipal Council this 2nd day of February, 2015.

Adopted by the Municipal Council of the City of Kelowna this

Mayor

City Clerk

Report to Council



Date: March 9, 2015
File: 1200-90
To: City Manager
From: Michelle Kam, Sustainability Coordinator
Subject: Our Rutland Funding Contributions

Recommendation:

THAT Council receives, for information, the report from the Sustainability Coordinator dated March 9, 2015, with respect to *Our Rutland* Funding Contributions;

AND THAT Council approves the contribution from Uptown Rutland Business Association (URBA) of \$36,000 to allow for enhanced lighting for the *Our Rutland* Project;

AND FURTHER THAT Council amends the 2015 Financial Plan Capital Budget approved for the *Our Rutland* Project, from \$133,000 to \$169,000, funded from Policy and Planning's budget, to reflect the report from the Sustainability Coordinator, dated March 9, 2015.

Purpose:

To amend the *Our Rutland* Project including the funds, terms and conditions and revised construction schedule.

Background:

The *Our Rutland* project began in 2014 through a community engagement process in partnership with key stakeholders including Uptown Rutland Business Association (URBA), The Rutland Unified Stakeholders Team (TRUST) and the Rutland Residents Association (RRA).

After two extensive community engagement phases, it was determined that the \$100,000 investment for the *Our Rutland* project would be used towards creating an enhanced public space at Roxby Plaza, located in the heart of the Rutland Town Centre. The enhancements include electrical upgrades so that the new Rutland Community Market (operated by Rutland Parks Society) can be re-located to Roxby Parking lot.

The *Our Rutland* project will include numerous features including:

- Removal of large centre planter / landscape area

- Installation of plaza treatments
- 7 steel urban trees with lighting
- 4 furnishings (tables and seating)
- Banner pole
- Electrical upgrades
- Bike rack, bollard, trash receptacles

In February, 2015 URBA requested to be advised of how they could financially contribute to the *Our Rutland* project. As part of the project detailed design, outdoor lighting was being explored for the project to serve as the primary illumination and draw visual interest to this upgraded urban park. However, in order to provide URBA with a potential enhancement to the project, upgraded LED lights were considered. These preferred lights were significantly above the approved City budget, however the cost estimate was discussed with URBA. On February 18th, 2015 the Uptown Rutland Business Association Board approved up to \$36,000 towards the LED light option for the Our Rutland Project. The upgraded light option will significantly enhance this urban place, provide a unique space in the Rutland Town Centre and encourage year-round activity.

Terms and Conditions:

LED Lighting:

URBA will provide the City with \$36,000 by March 12, 2015 to be used towards the purchase and installation of the LED lights for the *Our Rutland* project at Roxby Plaza;

The City will purchase and contract the installation for the LED lights;

The City will re-imburse URBA any funds that are not used towards the LED light purchase and installation once the project is complete.

Banners:

Three banners will be designed, produced and installed at Roxby Plaza.

1. "Rutland" banner
2. "Rutland Community Market" banner
3. "Roxby Plaza" banner

URBA will provide the City with \$750 towards the initial design, production and printing of the "Rutland" banner for the Our Rutland project at Roxby Plaza;

The City will commit to the cost for the design, production and printing of the "Roxby Plaza" and the "Rutland Community Market" banner;

On behalf of the *Our Rutland* project, the City will contract and coordinate and purchase all three banners for the *Our Rutland* Project;

The City will approve all designs prior to production;

Any costs for maintenance, changing of the individual banners and replacement (worn, tattered or otherwise needing replacement), will be the responsibility of the following:

1. URBA - "Rutland" banner
2. Rutland Parks Society - "Rutland Community Market" banner

3. City of Kelowna - "Roxby Plaza" banner

Any changes to the banner program needs to be approved by the City of Kelowna's Parks Department.

Due to the change in scope for the lighting option at Roxby Plaza, the construction schedule has been revised to accommodate the finalizing details of the funding contribution with URBA as well as the delivery and installation of the upgraded lighting. The construction completion date for Roxby Plaza is anticipated for mid-May. The Rutland Parks Society will be operating the Rutland Community Market indoors at the Rutland Centennial Hall this spring until the Roxby Plaza construction is complete.

Our Rutland was designed to help generate positive momentum through community-determined, Rutland-focused actions. This project aims to spark additional community projects and investment in the Rutland Town Centre. *Our Rutland* is believed to meet the spirit of what the community input told us about what they desired for their community.

The URBA contributions are a testament of the commitment to upgrade this Roxby Plaza to a standard that supports community vibrancy, celebrates public places and encourages year-round activities and celebrations through design elements for a variety of users. The construction timeline being adjusted reflects these scope changes and ensures that the project can be delivered based on the amended design.

Internal Circulation:

Doug Gilchrist, Div. Director of Community Planning & Real Estate
Andrew Gibbs, Parks & Building Project Manager
Amy Nyhof, Landscape Technician II
Ian Wilson, Parks Services Manager
Terry Barton, Parks & Building Planning Manager
Kari O'Rourke, Community Engagement Consultant

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:

Michelle Kam, Sustainability Coordinator

Approved for inclusion:



(D. Noble-Brandt, Dept. Manager, Policy & Planning)

Attachments:

URBA Letter of Commitment

Our Rutland Funding Contributions Presentation

cc:

Doug Gilchrist, Div. Director of Community Planning & Real Estate

Andrew Gibbs, Parks & Building Project Manager

Amy Nyhof, Landscape Technician II

Ian Wilson, Parks Services Manager

Terry Barton, Parks & Building Planning Manager

Kari O'Rourke, Community Engagement Consultant

Jodi Foster, Community Communications Supervisor

Graham Hood, Strategic Land Development Manager

Kelly Hanson, Engineering Technical Support Coordinator

Lorna Gunn, Grants & Partnerships Manager

Genelle Davidson, Financial Services Director

Mariko Siggers, Event Development Supervisor

Uptown Rutland Business Association

Rutland Parks Society

Our Rutland Community Panel



February 19, 2015

City of Kelowna

Attention: Michelle Kam, Sustainability Coordinator

Dear Sir or Madam:

Re: Roxby Plaza – Our Rutland Project

On behalf of the Uptown Rutland Business Association, we are most pleased to advise that the URBA board has approved to provide \$36,000 to the City Of Kelowna by March 12, 2015, for its improvements to Roxby Plaza, specifically for LED light acquisition and installation. Additionally we will provide \$750 for an URBA banner for the Plaza.

It is expected that any funds not used towards the light acquisition and installation or banner design and production will be re-imbursed to URBA once the project is complete.

Please contact the writer should you require any further information.

Yours truly,

A handwritten signature in blue ink that reads "Laurel D'Andrea". The signature is written in a cursive style.

Laurel D'Andrea
pp:Shawn Swail
President

OUR RUTLAND PROJECT



OUR RUTLAND PROJECT OVERVIEW

- ▶ \$100,000 for *Our Rutland* project
- ▶ Community-determined Rutland-focused actions
- ▶ Partnership with stakeholders and the community
- ▶ Extensive community consultation

OUR RUTLAND



\$100K Worth of Ideas!

In building on Rutland assets, the City of Kelowna and community partners invite you to share your \$100K Worth of Ideas to be invested in the Rutland Town Centre.

Find out how you can make your ideas real.



Online

getinvolved.kelowna.ca



Email

mkam@kelowna.ca



Phone

250-469-8982



Open House

TBA

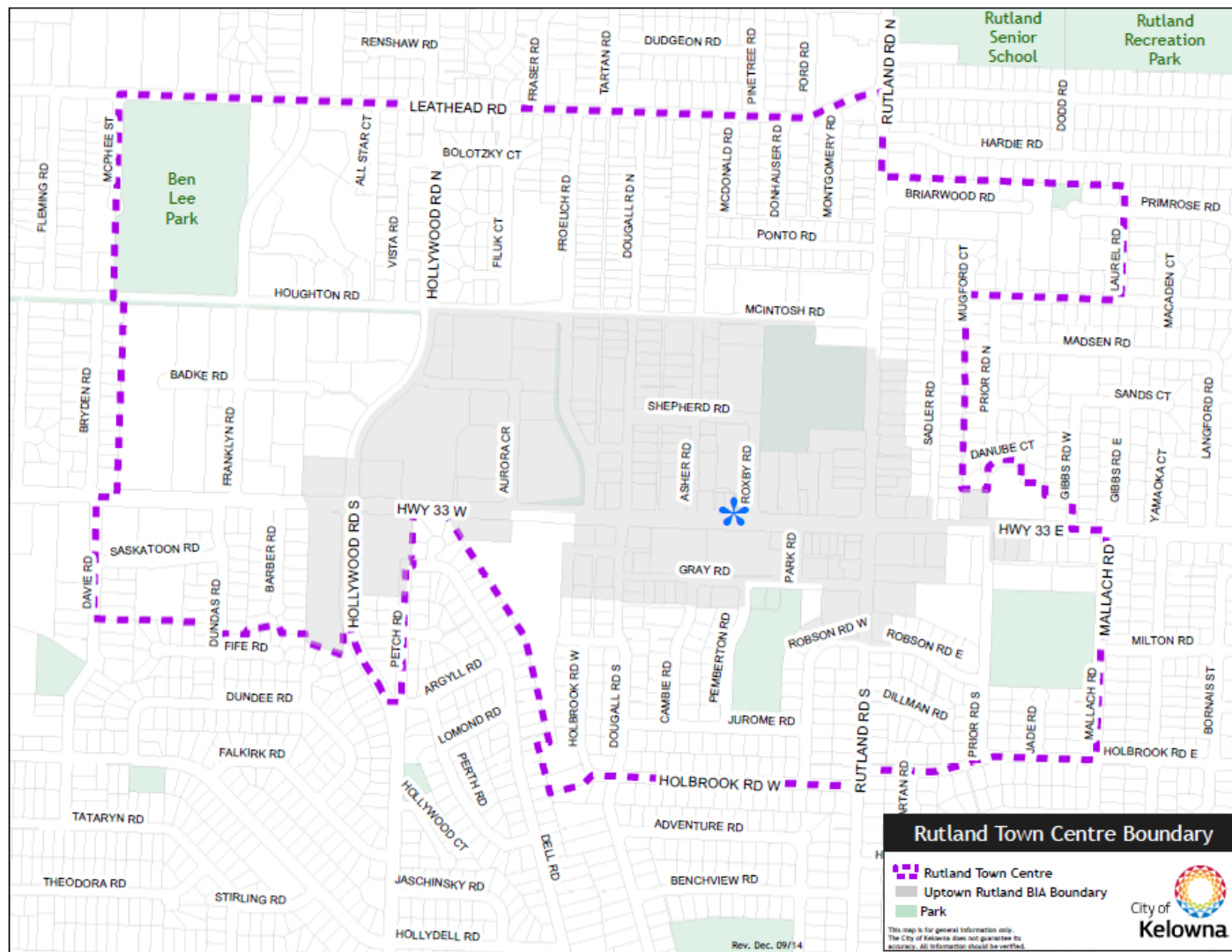
City of Kelowna

TRUST
The Rutland Unified
Stakeholders Team

OUR RUTLAND PROJECT SELECTION

- ▶ Project that was selected for the *Our Rutland* Project;
 - ▶ Enhancements to Roxby Plaza with capital funding
 - ▶ Movement of Rutland Community Market to Roxby Parking lot (operated by Rutland Parks Society)





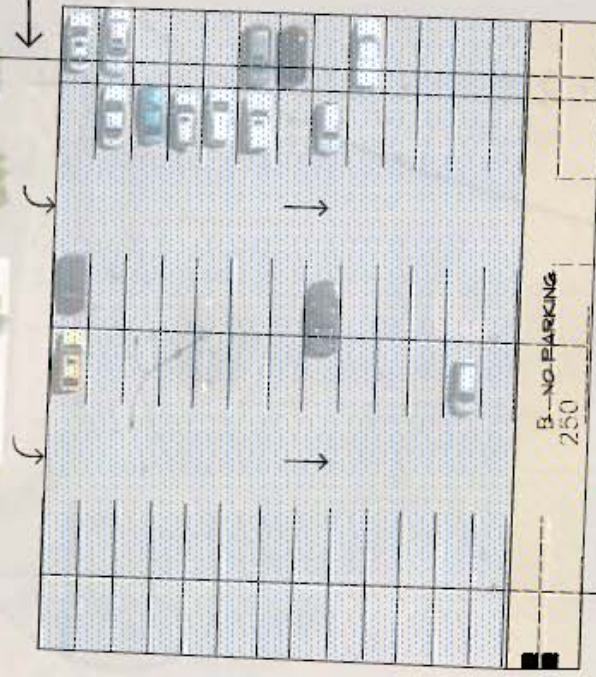
ROXBY PLAZA



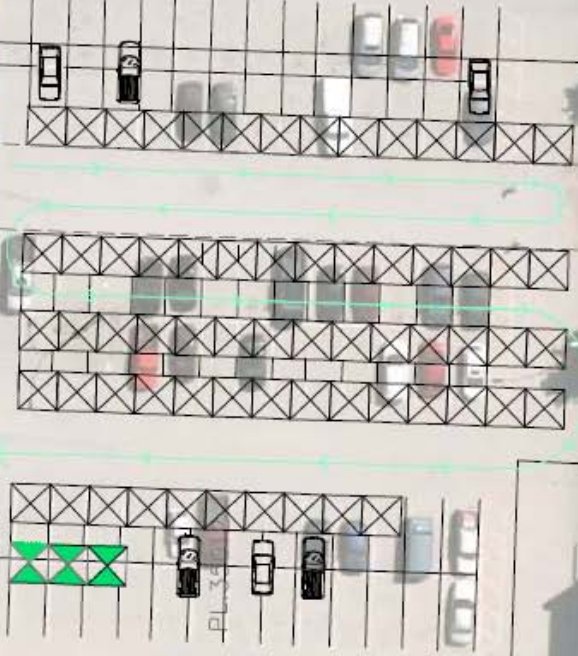
ROXBYS RD

PARKING ENTRANCE

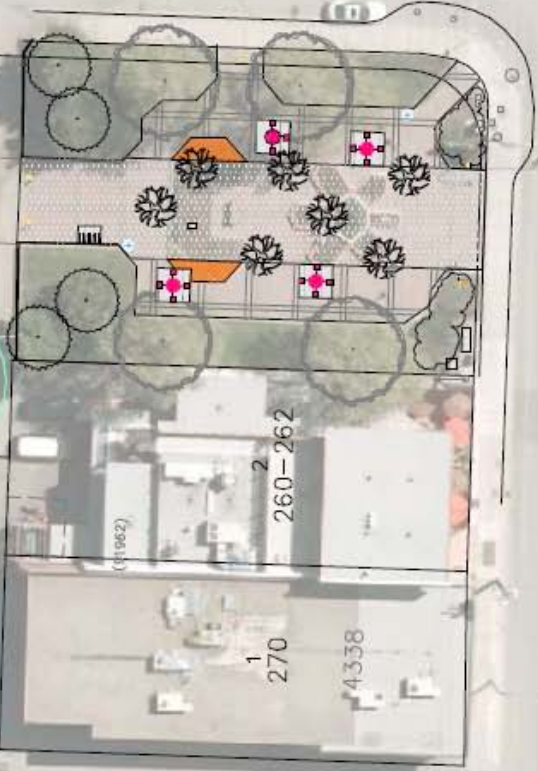
PL. 75003



B. NO. PARKING
250



PL. 33



270

260-262

4338

(11982)

ASHER ROAD

ASHER RD

185-191

16739

(41812)

145-163

(45130)

EP. 14987

284-290

16739

CITY	
PROJECT	
DATE	
ISSUE	
DRAWN	
AN	
PROJECT	Our
SHEET	Fa
CITY OF	Kel

PL.35012

ROXBY ROAD

(#1982) EXISTING SERVICE BOX
TO BE BURIED

RELAY SALVAGED
PAVERS

REPLACE 3' MANHOLE
COVER WITH FLUSH LID

LIFT AND STOCKPILE
PAVERS

2.6 X 2.6 CONCRETE SLAB

BANNER POLE
(REFURBISHED LIGHT POLE)
328321.264E
5529041.211N

EXISTING ELECTRICAL
SERVICE BOX
(FORTIS)

EXISTING SIGN

TREE SCULPTURE
LOCATIONS:

328326.118E
5529065.131N

328330.360E
5529061.111N

328321.624E
5529056.614N

328329.131E
5529054.618N

328326.352E
5529051.504N

328321.326E
5529041.138N

328329.431E
5529045.161N

4338

HIGHWAY 33

CITY OF KELOWNA NOTES:

-  ELECTRICAL WIRING IN GROUND
-  STAMPED CONCRETE CURB/RAIL
-  RECLAIMED PAVERS
-  VEHICLE TRAIT 54' TOTAL W/O
-  EXPANSION JOINT/VEHICLE TRAIT W/O
-  POLYFA PUTTY
-  BOLLARD PUBLIC USE ONLY
-  SIDE POLE PUBLIC USE ONLY
-  SIDE POLE PUBLIC USE ONLY - SMALL SIGNAGE
-  TRASH RECEPTACLE FRAMES HERE
-  ELECTRICAL RECEPTACLE
-  VERTICAL SIGNAGE POLE WITH SIGNAGE
-  CUSTOMER SEATING AREA & LANDSCAPE FORM PLANS
-  TREE SCULPTURE
-  CHRISTMAS TREE
-  ADDITIONAL LANDSCAPE

DATE	ISSUED FOR REVIEW	DATE
	JAN 19, 2015	

ISSUE DESCRIPTION	DATE

CITY OF KELOWNA
225 BURN & CONSTRUCTION DEPARTMENTS
200-253 Harvey Ave.
Kelowna, BC V1Y 6C7
www.kelowna.ca

SHEET TITLE:
Site Plan

PROJECT NAME:
Roxby Plaza

PROJECT NO.:	DATE:
1070	Nov 27, 2014

DRAWN:	CHECKED:	SCALE:
AN	AG	NTS

DRAWING NO.:	REVISION NO.:
L1	69

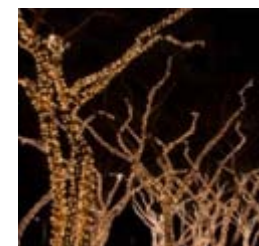
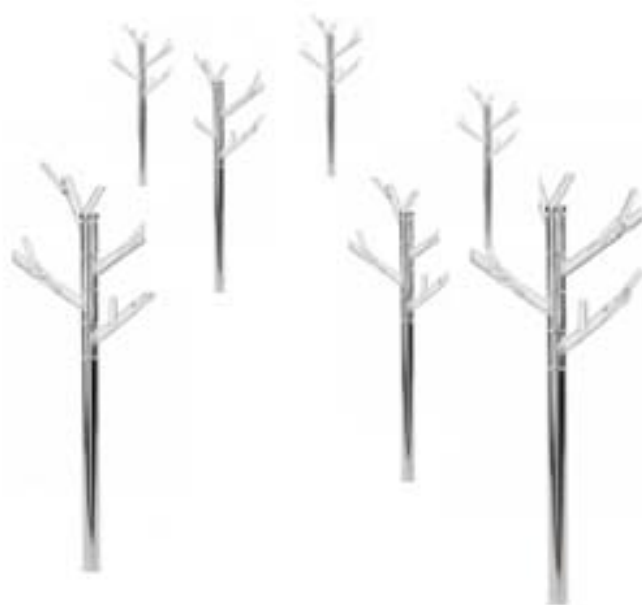


XX

ROXBY FURNISHINGS



ROXBY FEATURES



UPTOWN RUTLAND BUSINESS ASSOCIATION FINANCIAL CONTRIBUTION



LED Tape Lighting

- ▶ \$36,000 financial contribution to upgraded LED lights for Roxby Plaza
- ▶ \$750 financial contribution for “Rutland” banner

COMMUNITY EVENTS IDEAS FOR ROXBYP PLAZA

- ▶ Rutland Community Market
- ▶ Food trucks
- ▶ Picnic days
- ▶ Cultural potlucks
- ▶ Music in the park
- ▶ Community activities



NEXT STEPS...

- ▶ Procurement of lights and electrical components
- ▶ Construction of amenities at Roxby Plaza
- ▶ Anticipated completion date - Mid May



Report to Council



Date: February 25, 2015
File: 1810-30
To: City Manager
From: Kevin Van Vliet, Utility Services Manager
Subject: Budget Transfer - Kelowna Family Y Renovation Project

Recommendation:

THAT Council receives, for information, the Report from the Utility Services Manager dated February 25, 2015 regarding the Kelowna Family Y Structural Upgrade and Renovation Project;

AND THAT Council approves additional budget of \$180,000 required for the Kelowna Family Y emergency repairs;

AND THAT Council authorizes staff to transfer funds for this \$180,000 shortfall from other completed 2014 capital projects where funding is available.

Purpose:

To inform Council of emergency repairs conducted as part of the Kelowna Family Y project that were beyond those anticipated and approved by Council in August 2014.

Background:

As part of the 2013 Capital Budget, Council approved structural upgrades to the Family Y facility for \$850,000. The project is to repair the failing structural concrete slab above the boiler room (which is also the floor of the women's change room). The project budget included \$250,000 in Federal Community Infrastructure Improvement Fund grant funding.

On July 5, 2013 Council added \$637,000 to the Capital budget, with funding from the Kelowna Family Y, to add the men's and family change room renovations to the project scope and directed staff to manage the overall project on behalf of the City and YMCA of Okanagan. As part of the project the Family Y carried an additional budget of \$78,000 to provide external temporary washroom facilities. It was later determined that the temporary washroom facilities would not provide best value to the project and the Family Y agreed to contribute this \$78,000 towards project costs, increasing their contribution to \$715,000. The overall

project commitment from the Family Y did not change. The total budget for this project was \$1,565,000.

Project construction began in December 2013 and was to be constructed in three phases:

- Phase 1 Structural remediation of the women's change room floor and change room reconstruction.
- Phase 2 Renovation to the men's change room, including making it slightly smaller to allow for expansion of the Family change room,
- Phase 3 Completion of the Family change room.

Substantial building problems were discovered in late January 2014, resulting in extensive electrical and mechanical repairs being required on an emergency basis in the building. Phase 1 was completed in late May of 2014.

Significant additional funds were required to address the known urgent repair work during Phase 1 and 2. In late August 2014, Council approved an additional \$300,000 in funding to cover repair work to date (roughly \$235,000) as well as some contingency funds for Phase 3 (roughly \$65,000). A copy of the Council report is attached as Appendix A.

The phase 3 contingency amount (\$65,000) was established, in part, on the belief that the most humid / caustic areas to be renovated were behind us and that much of the phase 3 work area was more recently renovated and therefore in better condition.

The scope of facility deterioration in Phase 3 was far worse than anticipated, or could have been anticipated, based on phase 2 and 1. Some highlights:

- Steel stud walls that were not to be touched in this renovation (other than small holes for minor plumbing works) were corroded to the point of no longer being structurally sound. These walls were rebuilt with concrete block where possible,
- extensive plumbing problems and unexpected work in the floor and ceiling,
- inappropriate and adhoc ventilation modifications done in the past that needed to be rectified in order for the air handling system to properly function,
- extensive electrical rework above the old guard room, as well as the installation of a replacement electrical panel to pass Safety Authority inspection. The electrical panel was outside of the work zone,
- a new handrail for both sides of the on deck stair to the second floor as the existing handrail did not survive temporary removal due to corrosion.

The project was substantially complete (turned over to the Family Y for use) in early December. Final completion (Stair handrail, tile work) is occurring in March 2015. Total budget, including current \$180,000 transfer, is \$2,045,000. Staff are confident that this funding will complete the project.

Internal Circulation:

Divisional Director Infrastructure
Community Communications Supervisor
Building Services Manager
Financial Services Director

Financial/Budgetary Considerations:

Staff are completing the year end process and are looking at all of the completed capital projects where funding is available. There will be adequate funding from 2014 completed projects for the transfer.

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:

K. Van Vliet, Utility Services Manager

Approved for inclusion:

A square box containing a handwritten signature in blue ink, which appears to be "JC".

Joe Creron, Divisional Director Civic Operations

Report to Council



Date: 8/6/2014
File: 1810-30
To: City Manager
From: Kevin Van Vliet, Utility Services Manager
Subject: Emergency Repairs - Kelowna Family Y

Recommendation:

THAT Council receives, for information, the Report from the Utility Services Manager dated August 6, 2014 regarding the Kelowna Family Y Structural Upgrade project;

AND THAT Council approves additional budget of \$300,000 required for the Kelowna family Y emergency repairs;

AND THAT Council authorizes staff to fund this \$300,000 shortfall from the Building Repair Reserve and then appropriate to the Building Repair Reserve any savings from the 2014 Building Capital Projects, #3129 Mission Fire Hall and #3131 Rutland Seniors Centre, up to the amount of \$300,000.

AND FURTHER THAT the 2014 Financial Plan be amended to reflect these changes.

Purpose:

To inform Council of emergency repairs conducted and underway at the Kelowna Family Y and to obtain the additional funding required for these repairs.

Background:

As part of the 2013 Capital Budget, Council approved structural upgrades to the Family Y facility for \$850,000. The project is to repair the failing structural concrete slab above the boiler room (which is also the floor of the women's change room). The project budget includes \$250,000 in Federal Community Infrastructure Improvement Fund grant funding.

On July 5, 2013 Council added \$715,000 to the Capital budget, with funding from the Kelowna Family Y, to add the men's and family change room renovations to the project scope and directed staff to manage the overall project on behalf of the City and YMCA of Okanagan.

Project construction began over the Christmas break in 2013 and is expected to be complete this November. On January 27, 2014 the contractor and City received a report from the BC Safety Authority identifying extensive and serious safety concerns with the facility's electrical system in the construction work area. Failure to act on these concerns could have resulted in the facility being ordered closed.

Electrical wiring systems (wire and conduit) running in the walls and floor slab were corroded to the point that occupant safety could have been compromised, necessitating immediate correction. Mechanical plumbing in many places was also corroded well beyond expectations and replacement in many areas was enacted to ensure long term operation and public safety. Electrical repair and replacement was originally identified in the capital planning process as a 2015 project; however, the extent of the corrosion was significantly more than anticipated and needed to be addressed immediately.

Mechanical repairs have extended to replacing the plumbing above the facility whirlpool, which was to remain open during the entire renovation. In mid March a sewer pipe above the whirlpool failed due to corroded connections and the whirlpool was closed until repairs could be enacted. These repairs required removal of the cedar ceiling above the pool. Given the extent of the corrosion (effectively all of the plumbing above the whirlpool) and the risk of failure of other pipes above the pool, it was decided to replace all of the plumbing above the whirlpool and reconstruct the cedar ceiling.

The renovation and rehabilitation project is being constructed in three phases: women's, men's, and then the family change room. The bulk of the electrical and mechanical repairs located in phase 1 and those urgent repairs identified by the BC Safety Authority were completed at the end of June.

Phase 1 of the project (structural repair and reconstruction of the women's changeroom) was completed at the end of May. Phase 2 work, renovation of the men's washroom, is underway. Corrosion of mechanical and electrical systems continues to be an issue and is requiring more funding than originally anticipated. Further unanticipated electrical and mechanical repairs are expected to continue in phases 2 and 3 and the proposed budget adjustment includes funding for further repairs through project completion.

Internal Circulation:

Civic Operations
Communications
Financial Services
Capital Assets/Infrastructure

Financial/Budgetary Considerations:

With the construction season underway some building projects are expected to be completed under budget. It is proposed that the required funds to complete the Kelowna Family Y project be partially funded by transfers from some capital projects with the remaining funded from the Building Repair Reserve, the amounts determined near the end of this calendar year.

In order to ensure adequate funding is available without compromising the ability of other projects to meet their needs, Council direction for full funding from the Building Repair

Reserve is requested at this time as the Building Repair Reserve is used for both planned and emergency type requirements at City facilities. The anticipated total additional funding requirement for the Kelowna Family Y project is approximately \$300,000.

Considerations not applicable to this report:

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Communications Comments:

Personnel Implications:

External Agency/Public Comments:

Alternate Recommendation:

Submitted by:

K. Van Vliet, Utility Services Manager

Approved for inclusion:

A square box containing a handwritten signature in blue ink, which appears to be 'J. Creron'.

Joe Creron, Divisional Director, Civic Operations

Attachments:

None.

cc:

Building Services Manager

Divisional Director, Infrastructure

Director, Financial Services

Divisional Director, Communications & Information Services

Director, Design and Construction Services

Report to Council



Date: Feb 28, 2015
File: 0210-10
To: City Manager
From: Jackie Dueck, Systems and Reporting Manager
Subject: Bicycle Program - Pathways Abilities Society

Recommendation:

THAT Council continues to support the Bicycle program with the Pathways Abilities Society, by entering into a new agreement for the period 2015-2019 to provide for the collection, safekeeping and ultimate disposal of lost and stolen bicycles within the City of Kelowna;

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

Purpose:

To seek approval for the renewal of an additional five year term, to the agreement between the City of Kelowna (City) and Pathways Abilities Society (PAS) for the collection, safekeeping and ultimate disposal of lost and stolen bicycles within the City of Kelowna.

Background:

Since 1995 the City has contracted with Pathways Abilities Society, a non-profit society, for the collection, safekeeping and ultimate disposal of lost and stolen bicycles.

Contract highlights include:

- PAS picks up bikes as directed by the RCMP
- All bikes picked up are to be logged into a computer database
- Secure storage is provided for 90 days
- Efforts to contact owners are to be made
- Bikes will be sold, used for parts or disposed of at the landfill
- PAS will maintain insurance coverage as per the agreement

The City's funding of this operation will change from the prior five year term, which was:

- 2010 \$10,000
- 2011 \$11,000

- 2012 \$12,000
- 2013 \$12,000
- 2014 \$12,000

The City’s funding of this operation for the coming term (2015-2019) has been adjusted slightly to account for estimated increases in operating costs over the term of the contract:

- 2015 \$12,000
- 2016 \$12,250
- 2017 \$12,500
- 2018 \$12,750
- 2019 \$13,000

The service provided by PAS has relieved the RCMP or other City staff of costs and efforts that would be associated with retrieving bicycles, finding the owners and storing bikes. As well, this agreement has also provided meaningful activities for adults with developmental disabilities in the areas of customer sales, bike repair and maintenance, computer skills, public interaction and money handling.

The proposed funding change will cover the costs that increase on a yearly basis like wage, vehicle and storage costs.

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:

J. Dueck, Systems and Reporting Manager

Approved for inclusion:

G. Davidson, Director Financial Services

cc: Manager, Risk Management
Financial Planning Manager

THIS AGREEMENT made this _____ day of _____, 2015.

BETWEEN:

CITY OF KELOWNA
1435 Water Street
Kelowna, British Columbia, V1Y 1J4

(hereinafter called "the City")

OF THE FIRST PART

AND:

PATHWAYS ABILITIES SOCIETY
123 FRANKLYN RD
Kelowna, British Columbia, V1X 6A9

(hereinafter called "the Society")

OF THE SECOND PART

WHEREAS any lost or stolen bicycles found in the City of Kelowna and turned over to the Kelowna Detachment of the R.C.M.P., are the property of the City, unless claimed by the rightful owner or, after a ninety (90) day waiting period, retrieved by the registered finder;

AND WHEREAS any bicycles donated privately to the Society are the sole property of the Society until such time as they are sold or disposed of;

AND WHEREAS the City has agreed to contract with the Society to handle lost or stolen bicycles for the purpose of returning them to their rightful owners or registered finders, or to sell or otherwise dispose of the same;

NOW THEREFORE in consideration of the fee of One Dollar (\$1.00) of lawful money of Canada to be paid by the City to the Society, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. SOCIETY TO PICK UP BICYCLES. The Society will pick up bicycles as directed by the Kelowna Detachment of the R.C.M.P., complete with appropriate documentation, when notified to do so by the Kelowna Detachment of the R.C.M.P.
2. BICYCLES TO BE STORED SECURELY. Once picked up by the Society, all bicycles are to be kept on the premises of the Society in a secure compound for a period of ninety (90) days.
3. EFFORT TO LOCATE RIGHTFUL OWNER. During the ninety (90) day holding period, the Society will make every reasonable effort to locate the rightful owner of the bicycle.
4. OWNER FOUND. If a match is made between owner and bicycle, the owner shall be contacted and may retrieve the bicycle by paying a service charge of Twenty-five Dollars (\$25.00) to the Society.
5. EXPIRATION OF NINETY (90) DAY HOLDING PERIOD. Upon the expiration of the ninety (90) day holding period, if the rightful owner has not claimed the bicycle, the Society may sell or dispose of the bicycle in the manner that it sees fit.

6. PROCEEDS FROM SALE OF BICYCLES. That all proceeds from the return of bicycles to proven owners or to registered finders, and all proceeds from the sale of unclaimed bicycles will be the sole property of the Society, except as otherwise provided elsewhere in this agreement, at a rate to be set by the Society.
7. DISPOSAL OF NON-SALEABLE BICYCLES. If a bicycle is in a poor and unsafe condition, after the ninety (90) day holding period, it may be dismantled for parts and unusable portions may be disposed of.
8. SALE OR DISPOSAL OF A BICYCLE. Upon the sale or disposal of a bicycle, documentation showing the final disposal of a bicycle shall be forwarded to the Kelowna Detachment of the R.C.M.P. for their records.
9. CITY TO MEDIATE. In the event that the purchaser of a bicycle, who has purchased it in good faith from the Society, is challenged by the original owner who had not reported the loss or theft of the bicycle to the Kelowna Detachment of the R.C.M.P., nor filed a claim with the Society, the decision of rightful ownership shall rest with the City.
10. REFUND OF PURCHASE PRICE. In the event that the original owner had previously reported the loss or theft of the bicycle with the Kelowna Detachment of the R.C.M.P, or filed a claim with the Society, and challenges the purchaser who has bought the bicycle in good faith from the Society, the bicycle will be forfeited to the proven owner upon payment of a twenty-five dollar (\$25.00) service charge, the costs of repairing or upgrading the bicycle and a storage fee. The Society will reimburse the original purchase price to the purchaser.
11. ACCURATE RECORDS. The Society shall maintain accurate and full records on each bicycle handled by them.
12. REVENUE FROM SALE OF BICYCLES. All revenue received from the sale of bicycles as part of this agreement will belong to the Society.
13. CITY SUBSIDY. The City shall pay the Society the following:

2015	\$12,000 Plus PAS retains the proceeds of the bicycle sales
2016	\$12,250 Plus PAS retains the proceeds of the bicycle sales
2017	\$12,500 Plus PAS retains the proceeds of the bicycle sales
2018	\$12,750 Plus PAS retains the proceeds of the bicycle sales
2019	\$13,000 Plus PAS retains the proceeds of the bicycle sales
14. GENERAL INSURANCE PROVISIONS. Without in any way limiting the obligation or liabilities of the Contractor, the Contractor shall, at his/her expense, maintain and keep in force during the term of this agreement, the insurance coverage listed in this article. The deductible or reimbursements amounts of any of the policies shall be the responsibility of the Contractor and shall not apply to the City.

The City retains the exclusive right to amend the amounts of insurance and deductible stated in this section, from time to time, to reflect changes in requirements.

The Contractor shall at the time the agreement is signed, and prior to commencement of this contract, submit to the City, a certificate in exactly the same format and wording as per attached Schedule A, for all liability insurance policies required under this article or certified copies of these insurance policies (if required), and shall also provide to the City from time to time, as may be required, satisfactory proof that such policies are still in full force and effect.

Each insurance policy required under this Article shall contain an endorsement to provide all additional insureds with prior notice of material changes and cancellations. Such endorsement shall be in the following form:

"It is understood and agreed that the City will be provided with at least thirty (30) days written notice in advance of any material alteration or amendment restricting coverage, transfer, assignment or cancellation. Notice shall be given or sent by registered mail to all named additional insureds."

Whenever the word "City" is to appear in the insurance policies, the legal name shall be inserted.

LIABILITY INSURANCE. The Contractor shall be responsible for a policy of public liability and property damage insurance in an amount of no less than TWO MILLION DOLLARS (\$2,000,000) against liabilities and damages in respect to injuries to persons (including injuries resulting in death) and in respect of damage arising out of the performance of this agreement.

The deductible in this policy shall not exceed \$5,000 per occurrence.

The City shall be a named additional insured on the policy. The policy shall preclude subrogation claims by the insurer against anyone insured thereunder. In addition, such insurance policy shall include the following "Cross Liability" clause:

"The insurance afforded by this policy shall apply in the same manner, as though separate policies were issued, to any action brought against any of the named insured by or on behalf of any other named insured."

AUTOMOTIVE INSURANCE. The Contractor shall licence and insure for business purposes to a minimum of TWO MILLION DOLLARS (\$2,000,000) public liability and property damage, all automotive equipment used by the Contractor in the conduct of the business provided for in this agreement. The Contractor shall provide the City with a Certificate of Insurance, ICBC form APV 47, for all owned and leased vehicles as evidence of third party motor vehicle insurance coverage.

15. INDEMNIFICATION. The Society agrees to reimburse the City for all expense, damages, loss or fines incurred or suffered by the City by reason of any breach, violation or non-performance by the Society of any covenant or provision of this Agreement or by reason of damage to the premises, persons or property caused by the Society, its employees or agents or persons visiting or doing business with the Society. The Society further covenants and agrees to save and hold harmless the City, its officers, agents, servants and employees, from and against any and all suits or claims alleging damage or injury (including death) to any person or property that may occur or that may be alleged to have occurred, in the course of the term of this Agreement, whether such claim shall be made by an employee of the Society, or by a third person and whether or not it shall be claimed that the alleged damage or injury (including death) was caused through a willful or negligent act or omission of the Society, its officers, servants, agents or employees; and at its own expense, the Society shall defend any and all such actions and pay all legal charges, costs, and other costs arising therefrom.
16. TERM OF AGREEMENT. This agreement shall be for five years from and including the 1st day of January, 2015 to the 31st day of December, 2019.


IN WITNESS WHEREOF the parties have executed the agreement as of the day and year first written above:

CITY OF KELOWNA by its authorized signatories:

Authorized Signatory
COLIN BASRAN, MAYOR

Authorized Signatory
Stephen Fleming, City Clerk

PATHWAYS ABILITIES SOCIETY
by its authorized signatories:



Authorized Signatory



Authorized Signatory

Report to Council



Date: March 9, 2015
File: 1405-01
To: City Manager
From: Director, Financial Services
Subject: Transit Fare Changes

Recommendation:

THAT Council supports a fare change, as detailed in Appendix 3 attached to the Report of the Director, Financial Services dated March 9, 2015, for Conventional and Custom Transit effective September 1, 2015 and a UPASS increase effective September 1, 2016;

AND THAT the 2015 Financial Plan be amended to include the projected increase in revenue for September to December 2015.

Purpose:

To obtain Council support for Transit Fare changes effective September 1, 2015 in order to phase in the goal of achieving a 30% cost recovery for transit service in the City of Kelowna.

Background:

Transit Structure

The Kelowna Regional Transit system is the largest Tier 1 system (those with service area populations over 50,000) within the Municipal Systems program in BC. Service hours are the basis of cost allocation and currently the Kelowna Regional Transit system annually provides:

- 154,000 service hours of Conventional bus service,
- 30,000 service hours of Community bus service (smaller buses that serve the outlying areas), and
- 36,000 service hours of Custom bus service (HandyDART buses).

The Kelowna Regional Transit system is comprised of three main groups:

1. Municipal

The Municipal component includes the City of Kelowna and five other local government partners:

- District of Peachland
- District of West Kelowna
- Westbank First Nation
- District of Lake Country
- Regional District of Central Okanagan

As detailed in the Master Operating Agreement, some of the partners' main responsibilities include:

- Participating in the development of, and where in agreement, approving plans and amendments to the Kelowna Regional Transit System within their jurisdiction
- Infrastructure and strategic planning
- Establishing necessary traffic control bylaws and transit priority measures on their streets. This includes:
 - Supply and maintenance of bus stop/shelter amenities
 - Signage
- Fare rates and management
- Paying Authority for transit costs
- Supporting the sustainability of the Kelowna Regional Transit System

On behalf of the local government partners, the City of Kelowna is specifically responsible for administration of:

- Revenue and Cost Analysis
- Revenue Reporting
- Inventory distribution to outlets (i.e. Bus passes, tickets, etc)
- Revenue/Cost sharing structure

2. Authority

The Authority is BC Transit. As detailed in the Master Operating Agreement, some of their main responsibilities include:

- Managing the Operator's overall delivery of transit services
- Developing policies and procedures for the delivery of the transit services
- Service planning, preparing and implementing the transit services
- Paying the Transit Operator for costs incurred
- Determining need and providing vehicles and equipment to Operator
- Providing reporting to the Municipality on actual and budgeted costs as well as performance summaries on a monthly and annual basis

3. Operator

The Operator is FirstCanada ULC (an independent contractor to the Authority). As detailed in the Master Operating Agreement, some of their responsibilities include:

- Managing and operating the transit service
- Providing financial reporting to Authority
 - Audited financial statements
 - Detailed cost reports

Transit Costs and Allocation

Costs are controlled and reported by BC Transit. These include:

- Operating costs
- Payments on capital as operating lease fees
- Administration for both groups; BC Transit and Municipal
 - the City of Kelowna retains 100% of the Municipal portion as we are the administrator on behalf of all the partners

Total costs are shared between BC Transit and the Municipalities. The municipal share of total costs is allocated to each Local Government partner based on the hours of scheduled service within their jurisdiction. The rates which BC Transit and the municipalities share the costs are part of the British Columbia Transit Act - British Columbia Transit Regulation.

The cost split for Conventional and Community transit is:

- BC Transit - 46.69%
- Municipalities - 53.31%

The cost split for Custom transit is:

- BC Transit - 66.69%
- Municipalities - 33.31%

Due to the nature of the service and increased social responsibility, BC Transit shares more of the cost for Custom transit.

Revenue Sources and Sharing

Revenue Sources:

There are five main revenue sources generated from transit:

1. Bus passes and tickets
 - These can be purchased by customers at City Hall or at one of the 29 outlets located throughout the region.
2. UPASS
 - In September 2007, a Universal Bus Pass (UPASS) was implemented at UBCO based on approval through a student referendum. The UPASS is structured as a student fee, which all full-time students pay and is currently set at \$60 per semester. The University of BC Okanagan subsidizes the UPASS by 10% or \$6, so the net cost to a student is \$54 per semester. Issuance and administration of the UPASS program is done by the UBCO Students Society for which they receive \$3 per pass. After this deduction, the net proceeds to Kelowna Regional Transit is \$57 per student, per semester.

3. Bus Fares (cash)
4. Advertising revenue - Third party contracts
 - On bus advertising (wraps) - Shared with local government partners
 - Shelters and benches
 - Each local government partner can have their own contract for the shelters and benches within their jurisdiction and thus receives 100% of the resulting revenue.
 - The City of Kelowna uses this revenue for shelter and bench infrastructure needs
5. BC Bus Pass Program
 - The BC Bus Pass Program is offered by the Province. This is a reduced cost (\$45/year), annual bus pass for low income seniors and individuals receiving disability assistance from the Province of BC.
 - Available to BC residents who receive:
 - Federal Guaranteed Income Supplement with the OAS or spousal allowance (60 years or older)
 - Disability allowance under BC benefits (18 - 64 years of age)
 - BC Transit pays the City of Kelowna on a monthly basis for revenue received by the province. This is then shared among the local government partners.

Revenue Sharing:

Transit revenue only offsets the Municipal partner share of costs. All revenue is received by the City of Kelowna and then distributed to the local government partners based on an agreed upon split.

The current agreement has 75% of the Conventional and Community transit revenue allocated based on ridership and 25% allocated based on the cost allocation per partner (hours of scheduled service within their jurisdiction).

- Ridership is derived from passenger count data that is gathered by BC Transit on each route. The percentage of total rides within each municipal jurisdiction drives a ridership percentage for each partner. Having ridership as the main factor of revenue sharing is an important motivator for all partners to increase ridership and route efficiency within their jurisdiction.
- The purpose of having a portion of the revenue split based on cost allocation (hours of scheduled service within each jurisdiction) was to support local government partners that are not as densely populated and have limited ability to increase ridership.

The current Revenue and Cost split percentages are illustrated in [Appendix 1](#) of this report.

Cost Recovery:

Cost Recovery Goal:

Monitoring cost recovery is an integral part of managing the Kelowna Regional Transit system. The recovery level average of all Tier 1 Systems has been approximately 30%. This has been seen as a minimum recovery to provide the balance between what the transit user pays and

what amount of subsidy all taxpayers provide to support the transit service. In July 2011, Council supported a minimum recovery goal of 30% for Conventional Transit and 10% for Custom Transit.

Annual Comparison

Appendix 2 illustrates the annual comparison of actual transit revenues and costs for the past five years as well as projected transit revenues and costs for 2015 with and without a fare increase.

Since the last fare increase in January 2012 revenue dollars have leveled out but there have been significant changes made that have increased costs within the Kelowna Regional Transit System such as:

- Increased operating costs related to significant capital investments in:
 - New stops and exchanges for Bus Rapid Transit (97 Okanagan route)
 - The Queensway transit exchange
 - The Okanagan College Transit exchange
 - The Rutland Centre transit exchange
- New transit service including:
 - Gordon Drive and direct service to the Mission Recreation Centre
 - Lake Country Community bus route
 - Increased frequency for Bus Rapid Transit (97 Okanagan route)
- Improved service on many routes to increase service reliability
- Operational cost increases for the transit service:
 - Hourly costs to operate
 - Fuel
 - Vehicle and property maintenance
 - Information technology

BC Transit projects service hours to increase 11,000 hrs and related costs to increase approximately 13% in 2015/16. Strategies to increase route efficiency have not been sufficient to compensate for the projected increase in costs. To mitigate the size of future fare increases routes are periodically reviewed to find efficiency opportunities such as:

- The use of smaller Community Buses on the feeder routes
- Reviewing ridership and cost of routes
- Implementing strategies for increasing ridership
- Prepayment of bus leases through gas tax funding

Conventional and Community bus routes within the City of Kelowna are averaging a 28% cost recovery rate. The rest of the partners' average a 21% cost recovery rate. For the overall transit service the budgeted cost recovery for 2014/15 is 27%. With anticipated 2015 cost impacts projected by BC Transit and 1% ridership growth taken into consideration, the recovery level will drop to 24%. The recommended fare change will bring the recovery level up to 27%. This remains below the recovery target of 30%. Another review will be required in 2016, likely resulting in another proposed increase for 2017.

The budgeted cost recovery for Custom transit is 8.8% for 2014/15. The recommended increase will bring the recovery level up to 9.4%. This remains below the recovery target of 10%. Another review will be required in 2016, likely resulting in another proposed increase for 2017.

Fare Rate Change:

The last change to transit fares was implemented January 1, 2012. At that time the conventional cash fares were increased by \$0.25 and monthly passes had a \$4 to \$7 increase. The Custom fare was increased by \$0.25 and the monthly pass by \$7.00. This was an overall increase of 12%.

In the fall of 2014, fare rate change options were discussed with all municipal transit partners' Chief Financial Officers and Chief Administrative Officers. A 29% overall fare increase would realize the target cost recovery of 30%. It was the partners' consensus that an overall fare increase of 16% would be more appropriate to help mitigate the loss of customer base due to the impact of increased costs to our customers and that another review be undertaken in 2016.

The recommended fare changes are illustrated in [Appendix 3](#) of this report. They are designed to increase recovery as well as standardize some of the fare product in order to reduce the number of fare products and to follow industry fare-setting practices more closely. The current recommendation is to:

1. Increase Cash Fares to a standardized rate of \$2.50 for all riders. This means:
 - a. an increase in Adult/College cash fares of \$0.25
 - b. an increase in Senior and Student cash fares of \$0.50
 - c. Children under 5 still ride for free
2. Increase Ticket booklet prices by approximately 12% or \$2.25. Seniors and students still receive a discounted rate.
3. Increase Day Passes to a standardized rate of \$6.50 for all riders. This means:
 - a. an increase in Adult Day Passes of \$0.50
 - b. an increase in Senior and Student Day Passes of \$1.00
4. Increase Monthly passes by an average of 15% which includes standardizing the Senior and Student pass to \$45 for both groups.
5. Increase UPASS by 17% or \$10.00. The proposed new rate for the UPASS would be \$70 per semester with \$67 of that coming to the regional transit service.

Any increase to the UPASS Fee can only occur on September 1st in any year. A UPASS rate increase must be approved both by a referendum of UBCO students and by the UBCO Board of Governors. Notice of a proposed rate increase must be given before August 15th in the calendar year prior to the year that the proposed increase in the UPASS Fee is to come into effect. In other words, UBCO and the students union (SUUBCO) must receive a minimum of twelve months and 2 weeks written notice of any proposed increase to the U-Pass Fee, allowing them time to conduct a student referendum. Accordingly, a notice given to UBCO and SUUBCO August 15, 2015 would

not result in an increase in the UPASS rate until September 1, 2016, subject to a successful student referendum result.

Research of other UPASS programs in BC, outside the Lower Mainland Translink area, reveals that the semester UPASS rate is typically very close to the cost of a single month adult pass. The current UPASS rate is structured to match the Kelowna Regional Transit Adult single month pass rate. A request will be made to link future UPASS rates to the Adult single month pass rate and amend the UPASS agreement so that student referendums would not have to be held in the future when system wide fare increases are implemented.

6. Increase Custom Transit (HandyDART service) fare products by approximately 12%.

Tier 1 System Comparisons:

The current transit fares for the Tier 1 systems, Okanagan Valley municipalities and Victoria as well as a comparison across various other Canadian municipalities are included as Appendix 4 to the report. The Kelowna Regional Transit conventional service fares are currently less than the average for these Tier 1 systems. The higher the service hours, generally the higher the fare prices due to a greater level of service. The larger Tier 1 systems have raised their rates over the last couple of years. The Kelowna Regional system rates have remained unchanged since January, 2012.

Appendix 5 has the 2013/14 Conventional Transit Performance Summary for the Tier 1 systems. These performance summaries from BC Transit on Tier 1 Systems show recoveries to average just under 30%. Once recovery levels fall below the 30% minimum recovery goal, a fare increase or expenditure reduction should be considered.

Alignment with Parking Management Strategy

The transit fare structure and the City's Parking Management Strategy are closely linked. The Parking Management Strategy principles recognize that parking should be used to support a balanced transportation system. It acknowledges that inexpensive and plentiful parking will not encourage people to use transit, walk or cycle. Strategies to manage the supply of various types of parking and pricing in some of the most vibrant areas of the city can serve to discourage single-occupant vehicles and encourage other ways to commute such as transit.

The Official Community Plan also indicates the City must work towards a pricing structure where the cost of parking for an hour at a municipal facility (city owned parkade, off street surface lots and on-street parking) exceeds the price of a single transit trip. Council further supported this relationship by passing a resolution in 2001 to establish a minimum monthly parking rate set at 10% greater than an adult monthly transit pass.

To maintain alignment with the Parking Management Strategy, any change in transit fares will trigger a review of base parking rates. Staff will bring forward parking rate adjustment recommendations later this year if required.

Internal Circulation:

Deputy City Manager
Director, Regional Services
Regional Programs Manager
Regional Planning Manager
Director of Real Estate

Legal/Statutory Authority:

The local municipalities are responsible for the setting of transit fares.

Existing Policy:

Official Community Plan, Chapter 7 (Infrastructure), Objective 7.11

Financial/Budgetary Considerations:

The proposed conventional transit fare increase will generate approximately \$738,557 in additional annual revenues and will result in a recovery increase to 27%. A further fare review in 2016 as well as a route review to reduce or re-allocate service hours may be required to reach the objective of a 30% recovery level.

External Agency/Public Comments:

The external agencies consulted for this report were BC Transit, District of Peachland, District of West Kelowna, Westbank First Nation, District of Lake Country, and Regional District of Central Okanagan.

Considerations not applicable to this report:

Legal/Statutory Procedural Requirements:

Personnel Implications:

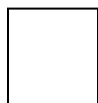
Community & Media Relations Comments:

Alternate Recommendation:

Submitted by:

G. Davidson, Director, Financial Services

Approved for inclusion:



Rob Mayne, *Div. Director, Corporate and Protective Services*

APPENDIX 1

Revenue and Cost Split Percentages

<u>Revenue and Cost Splits Effective September 2014</u>						
	City of Kelowna	RDCO	District of Lake Country	District of West Kelowna	Westbank First Nation	Peachland
<u>Conventional and Community Transit</u>						
Revenue Share	81.35%	0.03%	3.76%	10.20%	3.50%	1.16%
<u>Conventional Transit</u>						
Cost Share	83.55%	0.09%	4.89%	8.68%	2.79%	
<u>Community Transit</u>						
Cost Share	37.63%		6.71%	36.47%	13.66%	5.53%
<u>Custom Transit (Same Rate)</u>						
Revenue Share	73.70%		6.48%	16.07%	3.75%	
Cost Share	73.70%		6.48%	16.07%	3.75%	

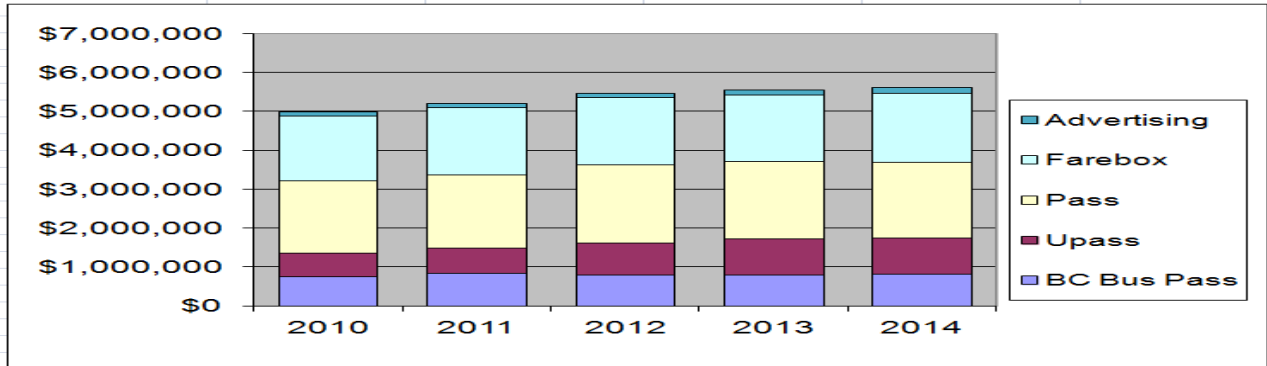
APPENDIX 2

Annual Comparison of Transit Revenues and Costs

KELOWNA REGIONAL TRANSIT SYSTEM

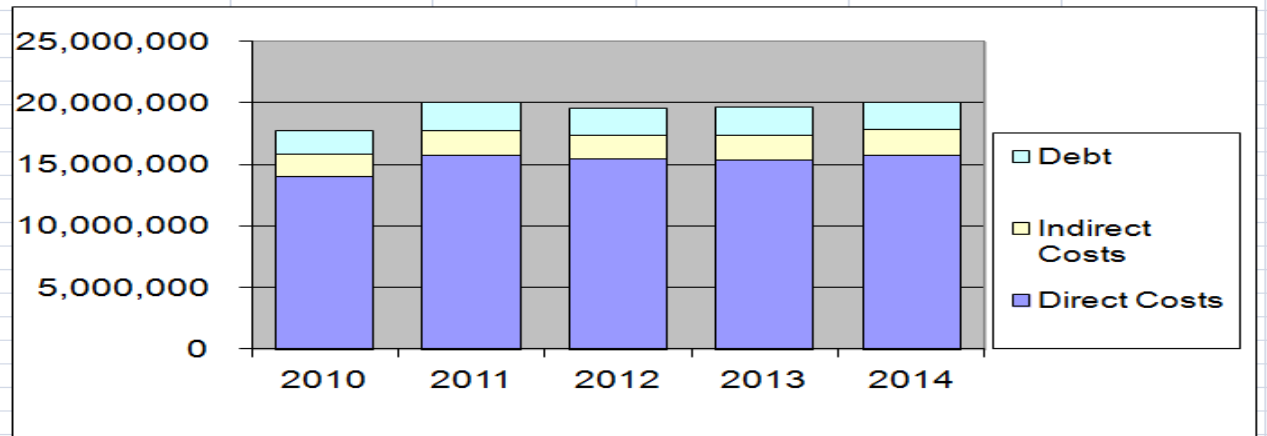
Annual Comparison of Transit Revenue and Costs

Conventional & Community Transit - Revenue



	2010	2011	2012	2013	2014
BC Bus Pass	747,027	819,938	782,838	793,831	799,908
Upass	589,850	663,734	813,796	927,841	936,731
Pass	1,860,079	1,876,993	2,009,193	1,984,321	1,951,844
Farebox	1,681,385	1,724,878	1,730,694	1,694,906	1,768,441
Advertising	99,000	102,000	123,735	143,648	142,429
Total	\$4,977,341	\$5,187,543	\$5,460,256	\$5,544,547	\$5,599,353
Percentage Change		4.2%	5.3%	1.5%	1.0%

Expenditures



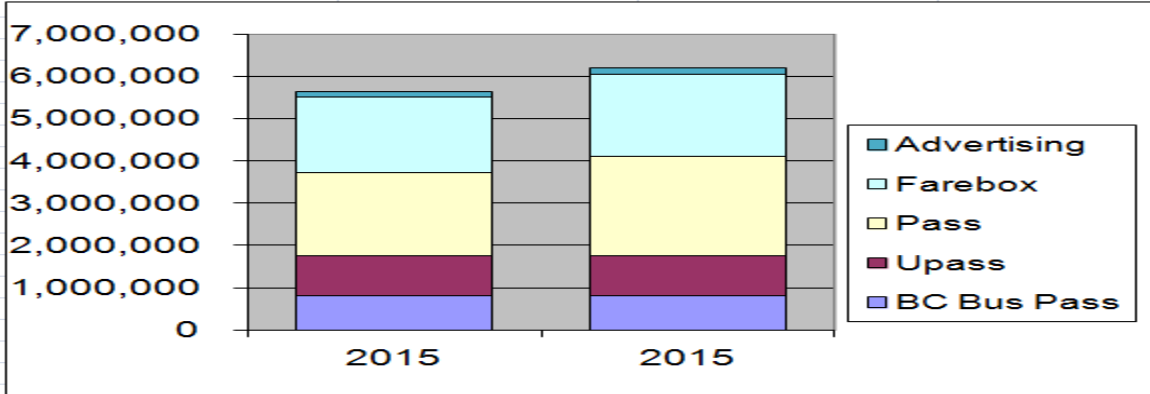
	2010	2011	2012	2013	2014
Total Costs	17,743,926	20,052,241	19,588,793	19,678,873	20,024,368
Percentage Change		13.0%	-2.3%	0.5%	1.8%
Service Hours	176,318	179,519	176,007	175,875	176,489
Cost per Hour	\$ 100.64	\$ 111.70	\$ 111.30	\$ 111.89	\$ 113.46
Recovery %	28.1%	25.9%	27.9%	28.2%	27.0%

Projected Recoveries With and Without Fare Increases

KELOWNA REGIONAL TRANSIT SYSTEM

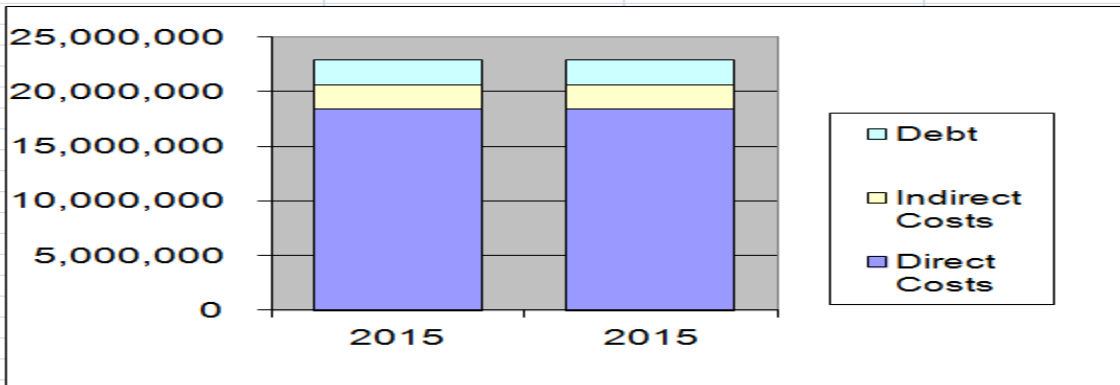
Conventional Transit

Revenues



	Projected Revenue <i>without</i> a Fare Increase 2015	Projected Revenue <i>with</i> a Fare Increase 2015
BC Bus Pass	807,907	807,907
Upass	946,098	946,098
Pass	1,961,901	2,340,008
Farebox	1,786,125	1,955,660
Advertising	142,429	142,429
Total	5,644,462	6,192,103
Percentage Change	1.0%	10.4%

Expenditures



	2015	2015
Direct Costs	18,461,788	18,461,788
Indirect Costs	2,147,643	2,147,643
Debt	2,351,307	2,351,307
Total Costs	22,960,738	22,960,738
Service Hours	187,810	187,810
Cost per Hour	\$ 122.26	\$ 122.26
Recovery %	Projected Recovery <i>without</i> a Fare Increase 24%	Projected Recovery <i>with</i> a Fare Increase 27%

APPENDIX 3

Recommended Fare Rate Changes

	<i>Proposed Fares</i>	<i>Current Fares</i>
Cash Fares		
Adult / College Students	\$2.50	\$2.25
Seniors & Students (to gr 12)	\$2.50	\$2.00
Child (under 5)	Free	Free
Tickets - Sheet of 10		
Adult / College Students	\$22.50	\$20.25
Seniors & Students (to gr 12)	\$20.25	\$18.00
Day Pass		
Adult	\$6.50	\$6.00
Seniors & Students	\$6.50	\$5.50
Monthly Pass		
Adult	\$70.00	\$60.00
Senior	\$45.00	\$42.00
College*	\$55.00	\$48.00
Student	\$45.00	\$38.00
Semester Pass*	\$176.00	\$154.00
Family Max. for Student Passes	\$112.50	\$95.00
Upass (September 2016)	\$70.00	\$60.00

*Fully registered College Students

Kelowna HandyDART System

	<i>Proposed Fares</i>	<i>Current Fares</i>
Cash Fares	\$2.50	\$2.25
Monthly Pass	\$75.00	\$67.00

APPENDIX 4

Current Transit Fares for the Tier 1 systems in the Okanagan Valley Municipalities and Victoria

BC Municipal Systems Program, Conventional Transit 2014 Fare Structures										
<u>Teir 1 Systems & Okanagan Valley</u>										
	CASH FARE			MONTHLY PASSES						
	Adult	Senior	Student	Adult	Senior	Student	College	Semester	Upass	Last Chg
Central Fraser Valley	2.25	1.75	1.75	52.00	38.00	35.00	38.00	150.00	40.00	Jan. 13
Kamloops	2.25	1.75	1.75	53.00	34.00	34.00	43.00		51.04	Apr. 11
Kelowna Regional *	2.25	2.00	2.00	60.00	42.00	38.00	48.00	154.00	57.00	Jan. 12
Nanaimo Regional	2.50	2.25	2.25	67.50	41.00	41.00	55.00	176.00		Mar. 12
Prince George	2.50	2.00	2.00	57.50	48.00	48.00		125.00	54.00	Jan. 14
Whistler	2.50	2.50	2.50	65.00	52.00	52.00				Dec. 13
Average	2.38	2.04	2.04	59.17	42.50	41.33	46.00	151.25	50.51	
KRS Variance from Avg.	(0.13)	(0.04)	(0.04)	0.83	(0.50)	(3.33)	2.00	2.75	6.49	
Victoria	2.50	2.50	2.50	85.00	45.00	45.00	77.00		85.00	Apr. 13
Penticton	2.00	1.75	1.75	45.00	32.00	27.00	38.00	120.00		Jun. 09
Vernon	2.00	1.75	1.75	50.00	35.00	35.00		100.00		Aug. 08

Current Transit Fares for the Conventional Transit systems in Various Canadian Municipalities

Conventional Transit Systems 2014 Fare Structures								
Municipal Systems Program, Conventional Transit								
Various Canadian Municipalities								
	CASH FARE			MONTHLY PASSES				
	Adult	Senior	Youth	Adult	Senior	Youth	College	Semester
Barrie	3.00	2.60	3.00	82.40	54.00	35.50	63.85	247.00
Burlington	3.25	3.25	1.90	95.00	58.50	69.00	95.00	
Guelph	3.00	3.00	3.00	75.00	62.00	64.00		
Kingston	2.75	2.50	2.50	72.00	53.50	53.50		
Lethbridge	3.00	3.00	3.00	77.00	28.00	62.00		289.00
Oakville	3.50	3.50	3.50	105.00	50.00	70.00		
Red Deer	2.45	2.15	2.15	66.00	58.00	58.00		
Regina	2.75	2.75	2.25	75.00	20.00	55.00	65.00	
Sherbrooke	3.25	3.25	3.25	69.50	53.50	53.50		
St. Catharines	3.00	3.00	3.00	92.00	57.00	62.00		290.00
St. John's	2.75	2.50	2.50	70.00	50.00	60.00		245.00
Sudbury	2.90	2.15	2.15	80.00	48.00	48.00	74.00	
Thunder Bay	2.65	2.65	2.65	74.00	53.00	53.00	74.00	
Windsor	2.75	2.75	2.75	87.00	44.00	60.00	60.00	
Average	2.93	2.79	2.69	79.99	49.25	57.39	71.98	267.75
KRS Variance from Avg.	(\$0.68)	(\$0.79)	(\$0.69)	(\$19.99)	(\$7.25)	(\$19.39)	(\$23.98)	(\$113.75)
Kelowna Regional *	2.25	2.00	2.00	60.00	42.00	38.00	48.00	154.00

APPENDIX 5

2013/14 Conventional Transit Performance Summary for the Tier 1 systems

Municipal Systems Program, Conventional Transit					
2013/14 Information and Performance Summary					
<u>Tier 1 Systems - Year End Actuals</u>					
	Service Hours	Revenue Passengers	Total Revenue	Total Cost	Cost Recovery
Central Fraser Valley	108,617	2,399,916	2,930,046	11,026,736	26.6%
Kamloops	106,192	3,421,960	3,744,440	12,756,840	29.4%
Kelowna Regional	175,098	4,767,346	5,463,284	19,882,360	27.5%
Nanaimo Regional	113,892	2,731,126	4,222,727	11,919,053	35.4%
Prince George	65,138	2,032,972	2,131,711	6,875,563	31.0%
Whistler	59,619	2,368,692	2,606,884	9,620,554	27.1%
Average	104,759	2,953,669	3,516,515	12,013,518	29.5%
	Cost per Service Hour	Revenue per Passenger	Population Served	Buses in Service	
Central Fraser Valley	\$ 101.52	\$ 1.22	149,748	47	
Kamloops	\$ 120.13	\$ 1.09	74,691	46	
Kelowna Regional	\$ 113.55	\$ 1.15	135,898	76	
Nanaimo Regional	\$ 104.65	\$ 1.55	98,794	46	
Prince George	\$ 105.55	\$ 1.05	57,745	28	
Whistler	\$ 161.37	\$ 1.10	9,503	25	
Average	\$ 117.80	\$ 1.19	87,730	45	

TRANSIT OVERVIEW & FARES RATES

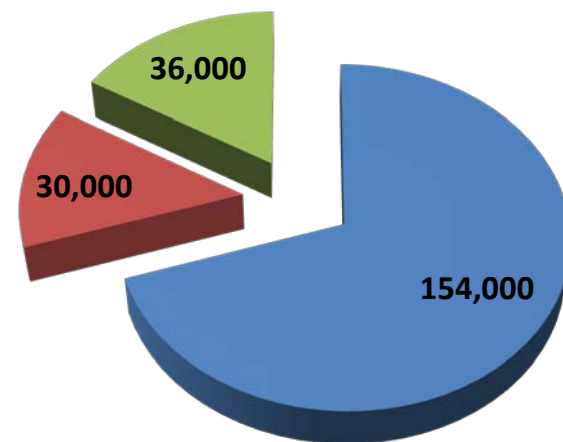


KELOWNA REGIONAL TRANSIT SYSTEM OVERVIEW

Largest Tier 1 system (*service area populations over 50,000*)

Annually provides:

- 154,000 service hours of Conventional bus service
- 30,000 service hours of Community bus service
- 36,000 service hours of Custom bus service



■ Conventional ■ Community
■ Custom

KELOWNA REGIONAL TRANSIT SYSTEM OVERVIEW

Three Main Groups:

1. **Municipal** - Six local government partners
2. **Authority** - BC Transit
3. **Contract Operator** - FirstCanada ULC



KELOWNA REGIONAL TRANSIT SYSTEM OVERVIEW

Municipal

Six Local Government Partners Include:

1. City of Kelowna
2. Regional District of Central Okanagan
3. District of Peachland
4. District of West Kelowna
5. Westbank First Nation
6. District of Lake Country



KELOWNA REGIONAL TRANSIT SYSTEM OVERVIEW

Local Government Partner Responsibilities:

- Public Passenger Transportation System Development
- Infrastructure & Strategic Planning
- Traffic Control Bylaws
- Fare Rates & Management
- Payments to Authority
- Sustainability
- Administration



KELOWNA REGIONAL TRANSIT SYSTEM OVERVIEW

BC Transit Authority Responsibilities:

- Manage Accountability of Operator
- Develop Policies and Procedures
- Service Plan, Prepare and Implement
- Provide Vehicles and Equipment
- Financial Reporting



KELOWNA REGIONAL TRANSIT SYSTEM OVERVIEW

Contract Operator Responsibilities:

- Manage and Operate Transit Service
- Provide Financial Reports to Authority

TRANSIT COSTS AND ALLOCATION

Costs are controlled & reported by BC Transit

- Municipal portion of total administration costs are retained by the City of Kelowna

Local government share of costs are allocated based on hours of scheduled service

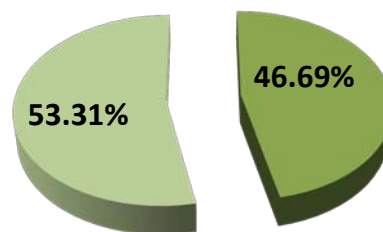


TRANSIT COSTS AND ALLOCATION

Costs are shared between BC Transit and the Municipalities
 Cost Splits are legislated through BC Transit Act

➤ Conventional and Community Cost Split

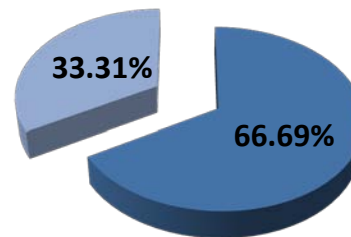
- BC Transit 46.69%
- Municipalities 53.31%



- BC Transit
- Municipalities

➤ Custom Cost Split

- BC Transit - 66.69%
- Municipalities - 33.31%



- BC Transit
- Municipalities

REVENUE SOURCES & SHARING

Five main revenue sources generated from transit:

1. Bus Passes and Tickets
2. UPASS
3. Bus Fare (cash)
4. Advertising Revenue
5. BC Bus Pass Program



REVENUE SOURCES & SHARING

Revenue Allocation to Partners Based on:

75% Ridership

- Motivator to increase ridership and route efficiency

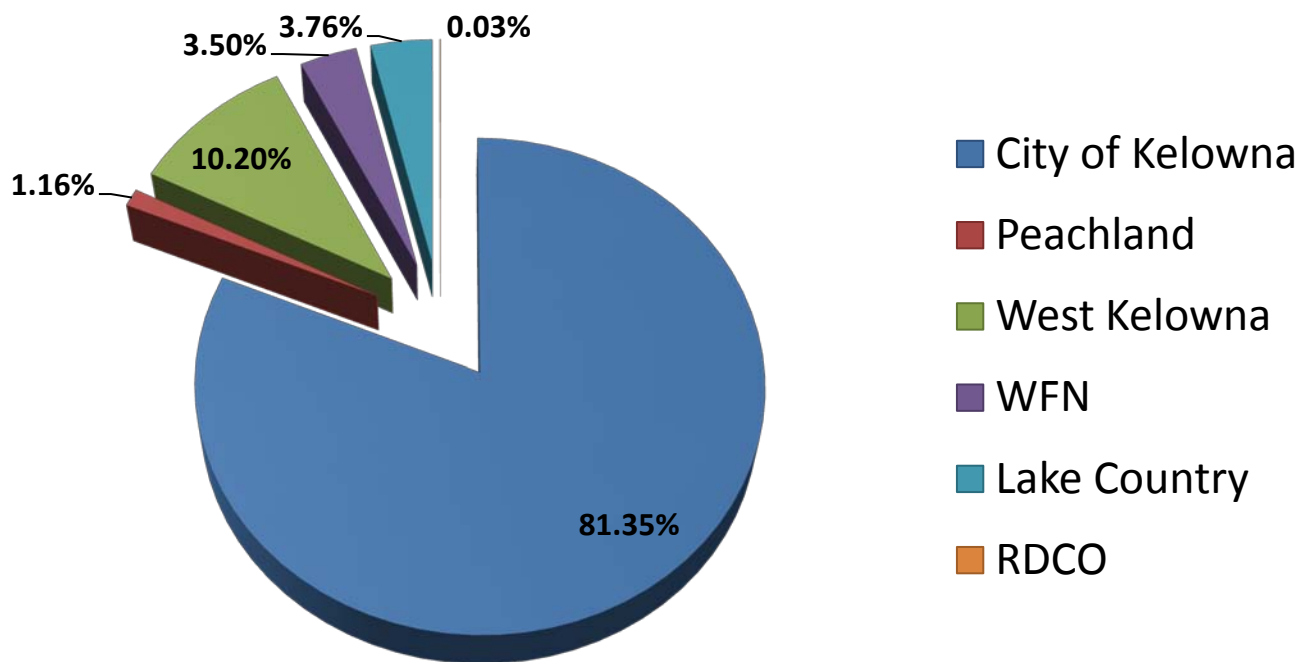
25% Cost Allocation

- Support for lower density populations



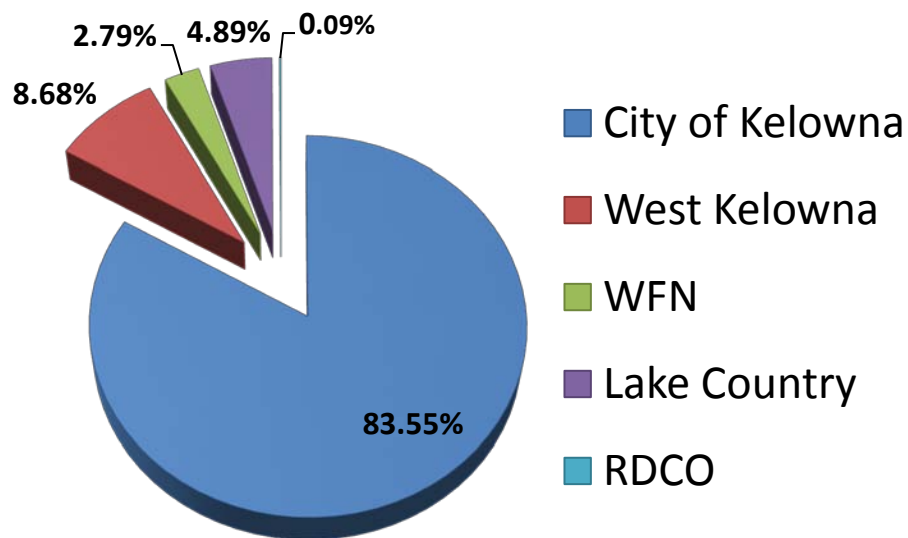
REVENUE SPLIT PERCENTAGES

Conventional and Community Transit

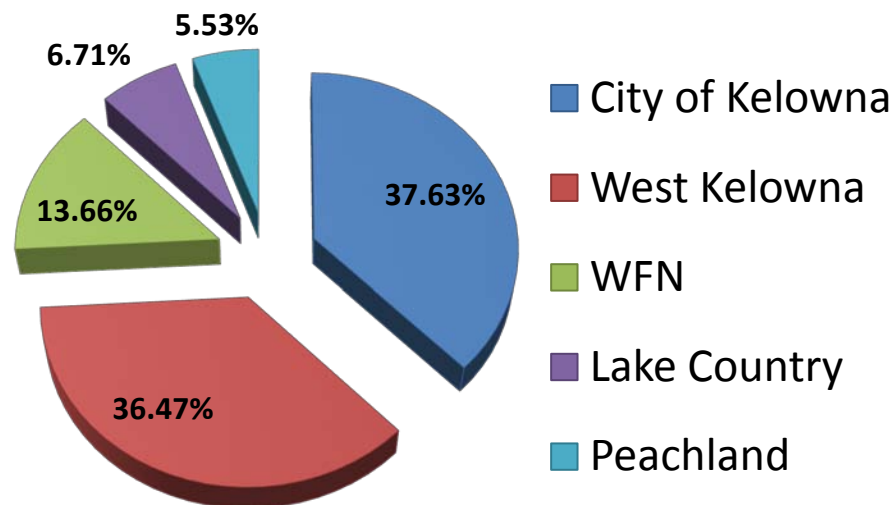


COST SPLIT PERCENTAGES

Conventional Transit

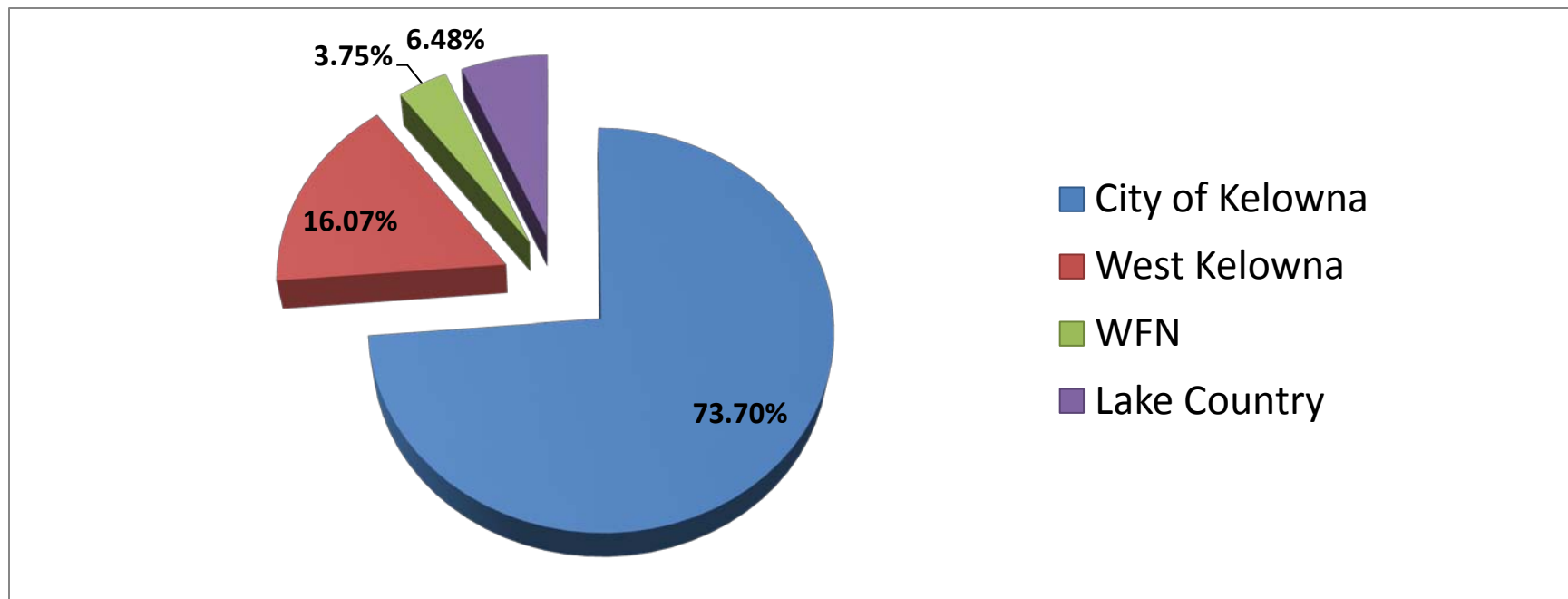


Community Transit



REVENUE & COST SPLIT PERCENTAGES

Custom Transit



COST RECOVERY

Cost Recovery Goal

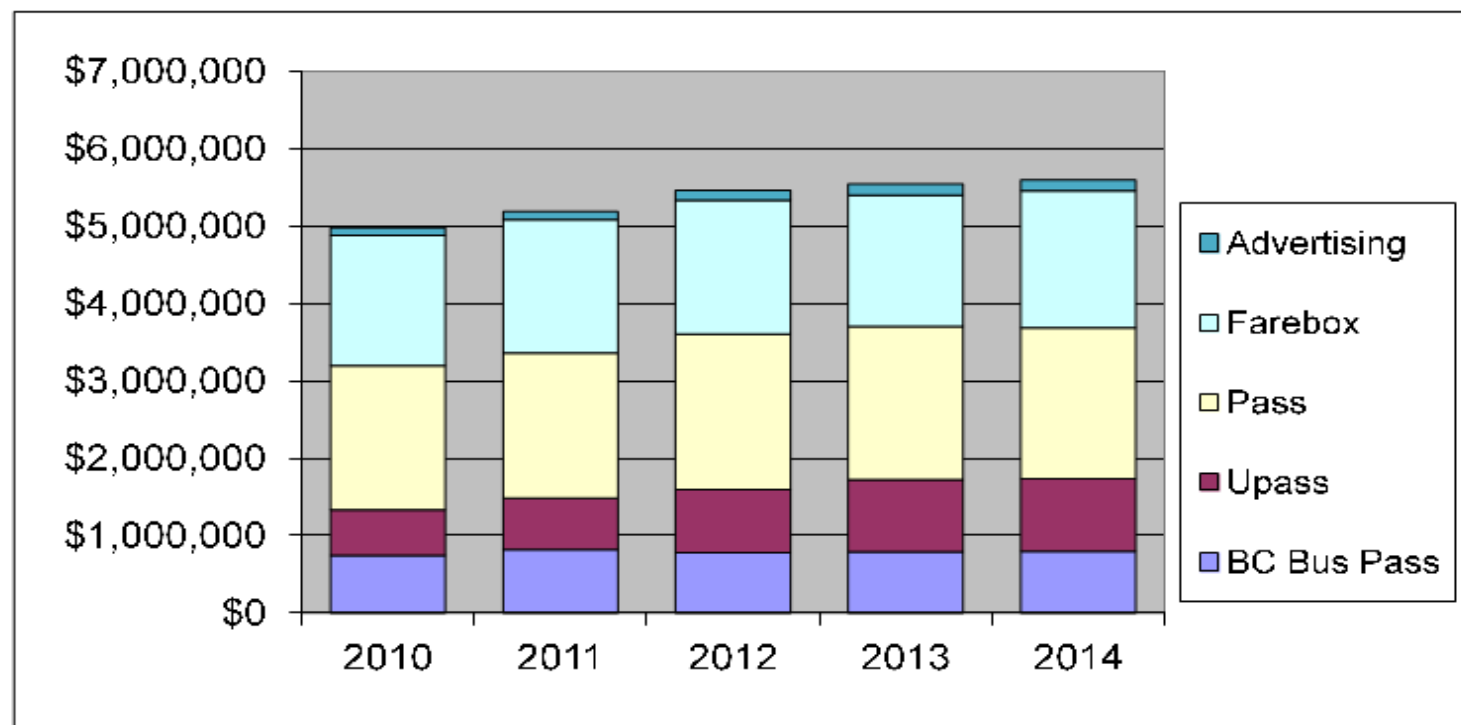
Council directed to partially self-fund transit

- 30% for Conventional and Community Transit
- 10% for Custom Transit



Annual Comparison of Transit Revenue and Costs

Conventional & Community Transit - Revenue

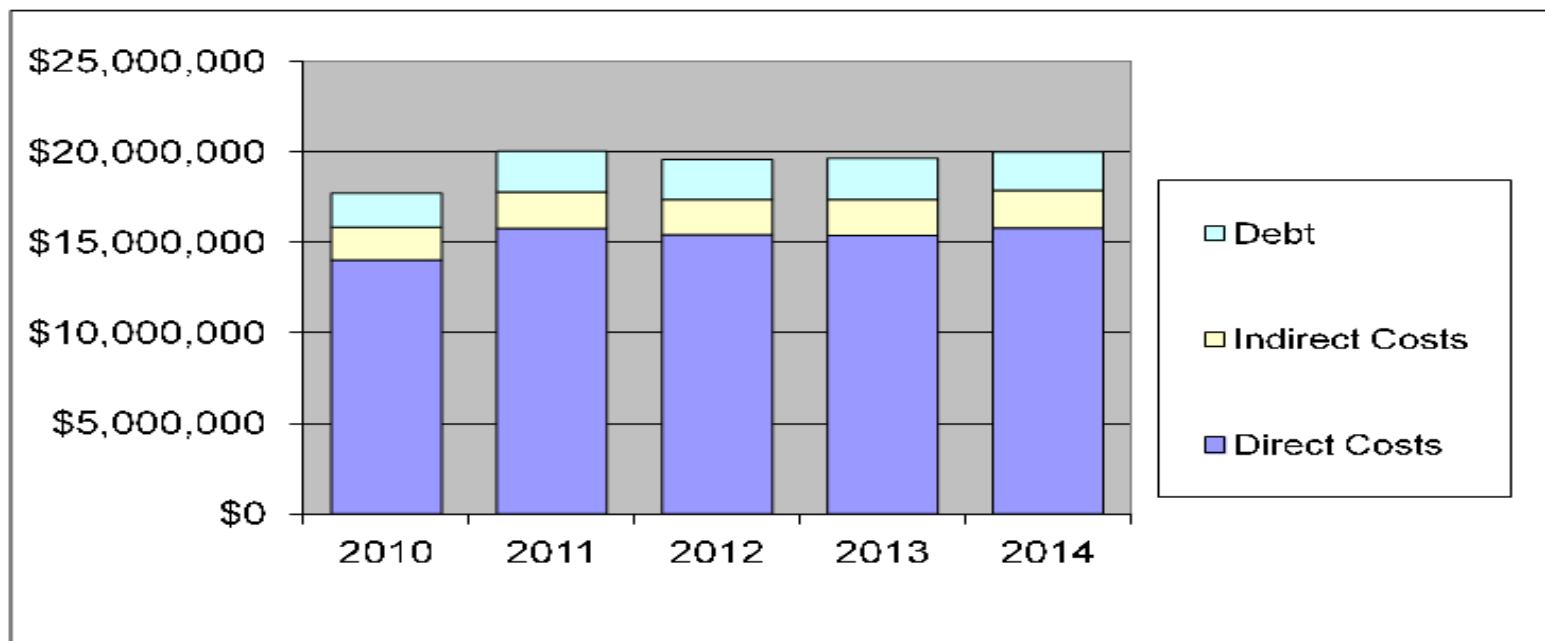


	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Total	\$4,977,341	\$5,187,543	\$5,460,256	\$5,544,547	\$5,599,353

Percentage Change		4.2%	5.3%	1.5%	1.0%
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Annual Comparison of Transit Revenue and Costs

Conventional and Community Transit - Costs



	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Total Costs	\$17,743,926	\$20,052,241	\$19,588,793	\$19,678,873	\$20,024,368
Percentage Change		13.0%	-2.3%	0.5%	1.8%
Cost per Hour	\$100.64	\$111.70	\$111.30	\$111.89	\$113.46
Recovery %	28.1%	25.9%	27.9%	28.2%	27.0%

COST RECOVERY

Costs Have Increased

Increased Operating Costs due to Capital Investments:

- New stops and exchanges for Bus Rapid Transit
- Queensway Transit Exchange
- Okanagan College Transit Exchange
- Rutland Centre Transit Exchange

New Transit Service:

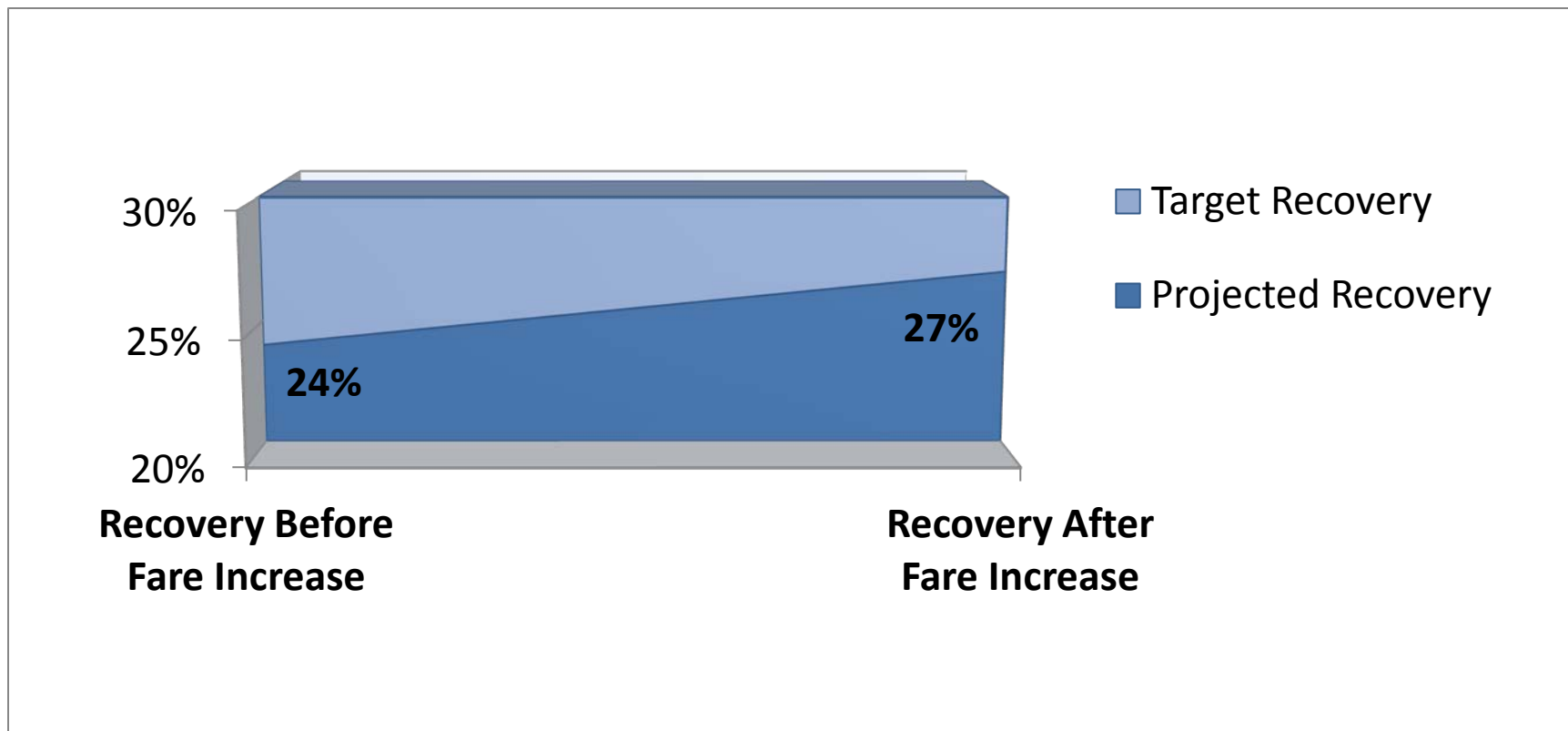
- Gordon Drive & Direct Service to Mission Recreation Centre
- Lake Country Community Bus Route
- Increased Frequency for Bus Rapid Transit

Improved Service to Increase Route Reliability

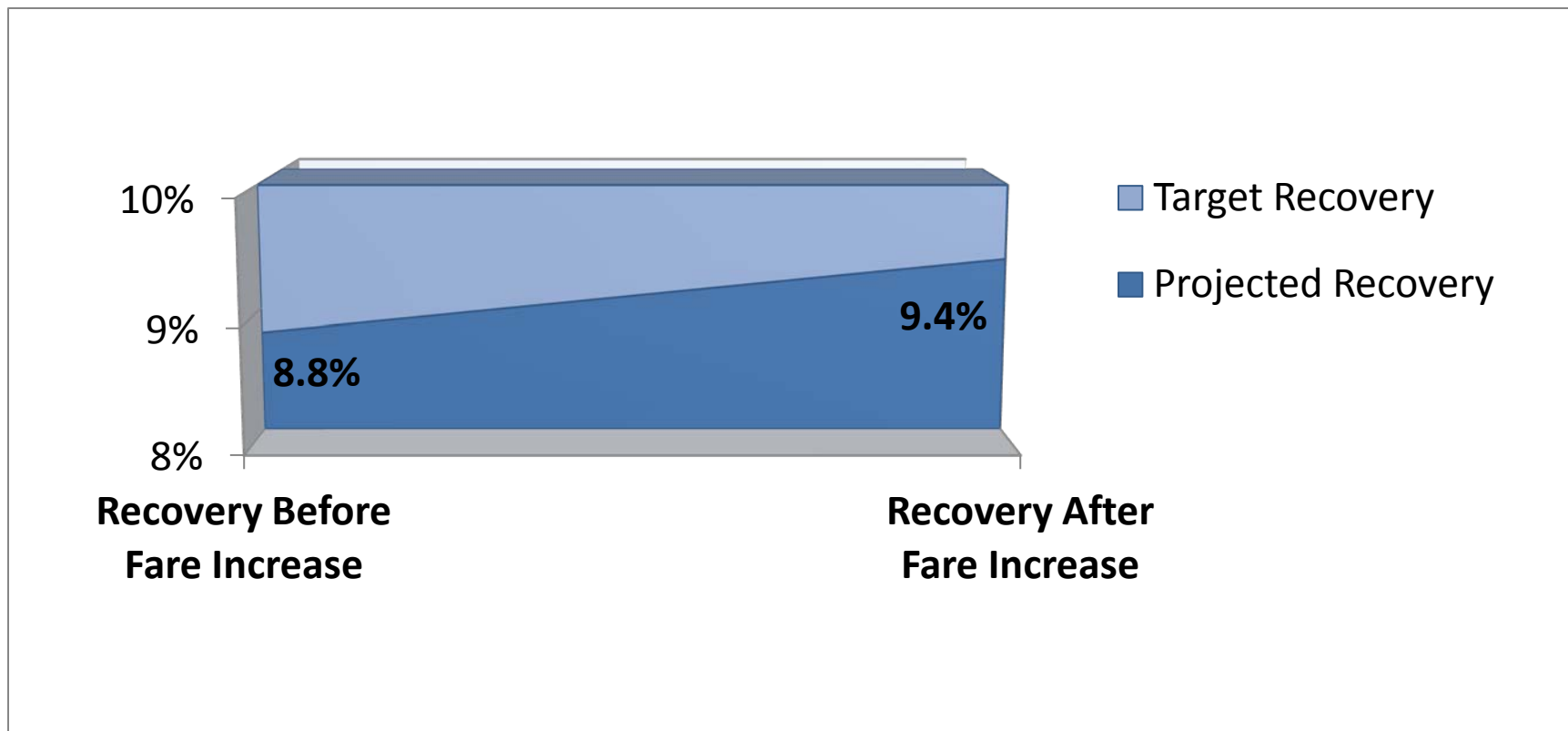
General Operational Cost Increases



PROJECTED RECOVERY BEFORE & AFTER FARE INCREASE *CONVENTIONAL & COMMUNITY*



PROJECTED RECOVERY BEFORE & AFTER FARE INCREASE *CUSTOM*



FARE RATE CHANGE

The last fare increase was January 1, 2012

- Was increase of approximately 12%

Fare rate changes discussed with Local Gov't Partners

- A 29% rate increase needed for 30% recovery
- Agreed to recommend 16% increase to reduce impact to customers

Recommended fare changes designed to:

- Increase recovery
- Standardize some of the fare products



FARE RATE CHANGE

Increase Cash Fares to a standardized rate of \$2.50

Increase Ticket booklet by 12% or \$2.25

Increase Day passes to a standardized rate of \$6.50

Monthly Passes

- Average increase of 15%
- Standardize Senior and Student passes to \$45

UPASS

- Increase by 17% or \$10
- Link future UPASS rate changes to Adult pass rate changes

Increase Custom Transit Fares by 12%

FARE RATE CHANGE

CONVENTIONAL & COMMUNITY

	<i>Proposed Fares</i>	<i>Current Fares</i>
Cash Fares		
Adult / College Students	\$2.50	\$2.25
Seniors & Students (to gr 12)	\$2.50	\$2.00
Child (under 5)	Free	Free
Tickets - Sheet of 10		
Adult / College Students	\$22.50	\$20.25
Seniors & Students (to gr 12)	\$20.25	\$18.00
Day Pass		
Adult	\$6.50	\$6.00
Seniors & Students	\$6.50	\$5.50
Monthly Pass		
Adult	\$70.00	\$60.00
Senior	\$45.00	\$42.00
College*	\$55.00	\$48.00
Student	\$45.00	\$38.00
Semester Pass*	\$176.00	\$154.00
Family Max. for Student Passes	\$112.50	\$95.00
UPASS (September 2016)	\$70.00	\$60.00

*Fully registered College Students

FARE RATE CHANGE

CUSTOM

Kelowna HandyDART System

	<i>Proposed Fares</i>	<i>Current Fares</i>
<i>Cash Fares</i>	\$2.50	\$2.25
<i>Monthly Pass</i>	\$75.00	\$67.00

FARE RATE CHANGE

Tier 1 System Comparison

BC Municipal Systems Program, Conventional and Community Transit
2014 Fare Structures

Tier 1 Systems & Okanagan Valley

	CASH FARE			MONTHLY PASSES						Last Chg
	Adult	Senior	Student	Adult	Senior	Student	College	Semester	Upass	
Central Fraser Valley	2.25	1.75	1.75	52.00	38.00	35.00	38.00	150.00	40.00	Jan. 13
Kamloops	2.25	1.75	1.75	53.00	34.00	34.00	43.00		51.04	Apr. 11
Kelowna Regional *	2.25	2.00	2.00	60.00	42.00	38.00	48.00	154.00	57.00	Jan. 12
Nanaimo Regional	2.50	2.25	2.25	67.50	41.00	41.00	55.00	176.00		Mar. 12
Prince George	2.50	2.00	2.00	57.50	48.00	48.00		125.00	54.00	Jan. 14
Whistler	2.50	2.50	2.50	65.00	52.00	52.00				Dec. 13
Average	2.38	2.04	2.04	59.17	42.50	41.33	46.00	151.25	50.51	
KRS \$ Variance from Avg.	(\$0.13)	(\$0.04)	(\$0.04)	\$0.83	(\$0.50)	(\$3.33)	\$2.00	\$2.75	\$6.49	
Victoria	2.50	2.50	2.50	85.00	45.00	45.00	77.00		85.00	Apr. 13
Penticton	2.00	1.75	1.75	45.00	32.00	27.00	38.00	120.00		Jun. 09
Vernon	2.00	1.75	1.75	50.00	35.00	35.00		100.00		Aug. 08

FARE RATE CHANGE

Canadian Municipality Comparison

Conventional Transit Systems 2014 Fare Structures

Municipal Systems Program, Conventional Transit

Various Canadian Municipalities

	CASH FARE			MONTHLY PASSE S				
	Adult	Senior	Youth	Adult	Senior	Youth	College	Semester
Barrie	3.00	2.60	3.00	82.40	54.00	35.50	63.85	247.00
Burlington	3.25	3.25	1.90	95.00	58.50	69.00	95.00	
Guelph	3.00	3.00	3.00	75.00	62.00	64.00		
Kingston	2.75	2.50	2.50	72.00	53.50	53.50		
Lethbridge	3.00	3.00	3.00	77.00	28.00	62.00		289.00
Oakville	3.50	3.50	3.50	105.00	50.00	70.00		
Red Deer	2.45	2.15	2.15	66.00	58.00	58.00		
Regina	2.75	2.75	2.25	75.00	20.00	55.00	65.00	
Sherbrooke	3.25	3.25	3.25	69.50	53.50	53.50		
St. Catherines	3.00	3.00	3.00	92.00	57.00	62.00		290.00
St. John's	2.75	2.50	2.50	70.00	50.00	60.00		245.00
Sudbury	2.90	2.15	2.15	80.00	48.00	48.00	74.00	
Thunder Bay	2.65	2.65	2.65	74.00	53.00	53.00	74.00	
Windsor	2.75	2.75	2.75	87.00	44.00	60.00	60.00	
Average	2.93	2.79	2.69	79.99	49.25	57.39	71.98	267.75

KRS Variance from Avg. (\$0.68) (\$0.79) (\$0.69) (\$19.99) (\$7.25) (\$19.39) (\$23.98) (\$113.75)

Kelowna Regional * 2.25 2.00 2.00 60.00 42.00 38.00 48.00 154.00

FARE RATE CHANGE

Tier 1 System Comparison

Municipal Systems Program, Conventional and Community Transit 2013/14 Information and Performance Summary

Tier 1 Systems - Year End Actuals

	Service Hours	Revenue Passengers	Total Revenue	Total Cost	Cost Recovery
Central Fraser Valley	108,617	2,399,916	2,930,046	11,026,736	26.6%
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	Cost per Service Hour	Revenue per Passenger	Population Served	Buses in Service
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Prince George	\$ 105.55	\$ 1.05	57,745	28
Whistler	\$ 161.37	\$ 1.10	9,503	25
Average	\$ 117.80	\$ 1.19	87,730	45

FARE RATE CHANGE

Next Steps:

City of Kelowna Council approval

- Fare increase effective September 1, 2015
- UPASS increase effective September 1, 2016

Local Gov't Partners bring same recommendations to their Councils

Fare and route review for 2016





Questions

Report to Council



Date: March 9, 2015
Rim No. 1405-01
To: City Manager
From: Director, Financial Services
Subject: Transit 2014/2015 Amended Annual Operating Agreement

Recommendation:

THAT Council approve Amendment #1 to the 2014/2015 Annual Operating Agreement for conventional and community transit.

Purpose:

To receive Council approval for the amendment to the transit 2014/15 Annual Operating Agreement.

Background:

The Annual Operating Agreement (AOA) is submitted annually by BC Transit to the City of Kelowna in March, and is effective for the period of April 1st to March 31st of the following year. The AOA is a summary of budgeted revenues and costs within the Kelowna Regional Transit System for BC Transit's fiscal year (March 31st yearend). Each Local Government Partner within the Kelowna Regional Transit System submits the AOA to their Councils for approval. However, significant changes to transit service throughout the year within the Kelowna Regional Transit System may require an amendment to the original AOA.

This is a request for the approval of an amendment to the 2014/15 Conventional Transit Annual Operating Agreement. The amendment covers the conventional and community transit changes that occurred last September, including items related to the City of Kelowna and also our regional partners:

- New stops and exchanges for Bus Rapid Transit (97 Okanagan route)
 - Richter/Hwy 97 and at Gordon/Hwy 97
- Increased frequency for Bus Rapid Transit (97 Okanagan route)
- Gordon Drive and direct service to the Mission Recreation Centre
- Lake Country Community bus route
- Reviewed and adjusted the run times on a number of routes to address some of the most significant schedule reliability issues
- Operational cost increases for the increase in transit service
 - Hourly costs to operate

- Fuel
- Vehicle and property maintenance changes to service levels in West Kelowna

The amendment includes a \$416,940 increase in costs for Conventional transit. \$379,697 is related to Operating costs and \$37,243 is related to increased lease fees. This represents a 2.25% increase from the original 2014/15 AOA budget presented in March 2014. \$200,235 is the City of Kelowna's portion of the Local Government share of the increase.

The amendment also includes a \$483,968 increase in costs for Community transit which is all related to Operating costs. This represents a 25.40% increase from the original 2014/15 AOA budget presented in March 2014. \$97,087 is the City of Kelowna's portion of the Local Government share of the increase.

The amendment was received at the City of Kelowna in January 2015 and the 2014 impacts were covered by the existing budget. 2015 impacts were built into the 2015 Provisional Budget Operating Requests that council approved in January 2015.

Internal Circulation:

Director, Regional Services
Regional Programs Manager
Revenue Manager

Legal/Statutory Authority:

Annual Operating Agreement is required to authorize funding for payment of transit contractor.

Financial/Budgetary Considerations:

Existing budget provides for these Annual Operating requirements.

Considerations not applicable to this report:

Legal/Statutory Procedural Requirements:

Existing Policy:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:

Alternate Recommendation:

Submitted by:

G. Davidson, Director, Financial Services

Approved for inclusion:  Rob Mayne, *Div. Director, Corporate and Protective Services*

Appendix 1

CONVENTIONAL TRANSIT	2014/2015			Local Gov't Portion 53.31%	City of Kelowna Portion 83.55%	Allocated to 2014 Budget	Allocated to 2015 Budget
	Original AOA	Amended AOA	Total Difference				
Expenditures							
Total Operating Costs	\$16,374,561	\$16,754,258	\$379,697	\$202,416	\$169,119	\$96,639	\$72,480
Total Lease Fees - Local Share	\$2,124,235	\$2,161,477	\$37,243	\$37,243	\$31,117	\$17,781	\$23,337
TOTAL COSTS	\$18,498,796	\$18,915,735	\$416,940	\$239,659	\$200,235	\$114,420	\$95,817
Percentage Increase from Original AOA			2%				

COMMUNITY TRANSIT	2014/2015			Local Gov't Portion 53.31%	City of Kelowna Portion 37.63%	Allocated to 2014 Budget	Allocated to 2015 Budget
	Original AOA	Amended AOA	Total Difference				
Expenditures							
Total Operating Costs	\$1,852,293	\$2,336,261	\$483,968	\$258,003	\$97,087	\$55,478	\$41,609
Total Lease Fees - Local Share	\$53,398	\$53,398	\$0	\$0	\$0	\$0	\$0
TOTAL COSTS	\$1,905,691	\$2,389,659	\$483,968	\$258,003	\$97,087	\$55,478	\$41,609
Percentage Increase from Original AOA			25%				

Report to Council



Date: March 9, 2015
File: 1125-31
To: City Manager
From: Graham Hood, Strategic Land Development Manager
Subject: 1745 Chapman Place Land Lease

Recommendation:

THAT Council enter into the land lease for 1745 Chapman Place, Lot 2 Plan KAP92715 with the Ki-Low-Na Friendship Society and the British Columbia Management Housing Corporation in the form attached as Schedule 'A' to the Report of the Strategic Land Development Manager dated March 9, 2015;

AND THAT the Mayor and City Clerk be authorized to execute.

Purpose:

To seek Council endorsement of the 60 year land lease to the Ki-Low-Na Friendship Society endorsed by the British Columbia Management Housing Corporation for the construction of affordable housing units as part of the Central Green development.

Background:

Sub Area H of the Central Green development (1745 Chapman Place) has been identified throughout the project history as the location of an affordable housing project supported by BC Housing. In the fall of 2013, BC Housing underwent a request for proposal (RFP) process which resulted in the selection of the Ki-Low-Na Friendship Society being chosen to develop the site. BC Housing is making a capital contribution to the project in the amount of \$1 million.

The site developer has completed the development permit process and anticipates beginning construction of the project in the coming months. In order to commence construction, the land lease must be registered on title to the property as a final condition of the development permit issuance.

Staff and legal counsel have negotiated a land lease between the parties, which is consistent with other leases the City has negotiated between development societies and BC Housing.

The lands are to be leased to the Society with provisions for BC Housing to take ownership or transfer to another party under the same terms and conditions of the lease upon default.

Both the developer and BC Housing have executed the land lease which contains the following important provisions:

- Term - 60 years
- Compensation - \$10.00
- Termination upon failure to construct
- Restriction on strata ownership (Ki-Low-Na or BC Housing)
- Right to lease assumption by BC Housing upon default

This development will be built to a LEED certified standard as is consistent with the remainder of buildings on the Central Green site. When coupled with the development occurring at 550 Rowcliffe Avenue (Karis Support Society), this development will allow the objectives for affordable housing at Central Green to be met.

Internal Circulation:

Considerations not applicable to this report:

Financial/Budgetary Considerations:

Legal/Statutory Authority:

Existing Policy:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:

Submitted by: G. Hood Strategic Land Development Manager

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

Attachments:

1. Schedule A - Land Lease
2. Powerpoint

cc: Ryan Smith, Manager, Land Use Management

Doug Gilchrist, Divisional Director, Community Planning & Real Estate

**LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia**

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Allison Godey
Singleton Urquhart LLP
1200 - 925 West Georgia Street
Vancouver BC V6C 3L2
Phone No: 604.673.7425
File No: 25000.151
BCH File No: 92857pr6992

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

**028-791-649 LOT 2 DISTRICT LOT 139 OSOYOOS DIVISION YALE DISTRICT PLAN
KAP92715 EXCEPT PLAN EPP40150**

STC? YES

3. NATURE OF INTEREST

CHARGE NO. ADDITIONAL INFORMATION

Lease

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms D.F. No.

(b) Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

CITY OF KELOWNA

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

KI-LOW-NA FRIENDSHIP SOCIETY

442 LEON AVENUE
KELOWNA

V1Y 6J3

BRITISH COLUMBIA
CANADA

Incorporation No
S-0010638

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date		
Y	M	D

Transferor(s) Signature(s)

CITY OF KELOWNA, by its
authorized signatory(ies):

Print Name: _____

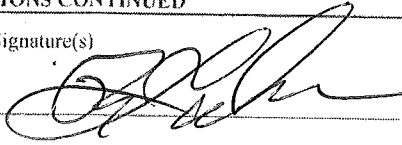
Print Name: _____

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Officer Signature(s)



RONALD P. LABOSSIÈRE
Barrister & Solicitor
1726 Sonora Drive
Kelowna, BC V1Y 8K7

Execution Date

Y	M	D
15	02	12

Transferor / Borrower / Party Signature(s)

KI-LOW-NA FRIENDSHIP SOCIETY,
by its authorized signatory(ies):



Print Name: EDNA MADELINE TERBASKET

Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Y	M	D

Transferor / Borrower / Party Signature(s)

BRITISH COLUMBIA HOUSING
MANAGEMENT COMMISSION, by its
authorized signatory(ies):

Print Name:

Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

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WHEREAS:

- A. The Lessee wishes to provide housing for persons with special housing requirements and/or limited income and agrees to lease the Lands for this purpose.
- B. The Commission, a representative of the Province, has agreed to provide a capital contribution for the capital costs of the Building.
- C. The Lessor is the owner of the Lands and has agreed to lease to the Lessee the Lands for the Term upon the terms, conditions and provisos herein so that the Lessee may renovate or construct the Building and otherwise use, occupy and enjoy the Lands.

WITNESS that in consideration of the rents reserved and the covenants and agreements set forth below, the parties agree as follows:

THE LESSOR HEREBY DEMISES AND LEASES UNTO THE LESSEE AND THE LESSEE DOES HEREBY TAKE AND RENT THE LANDS, TO HAVE AND TO HOLD THE LANDS UNTO THE LESSEE FOR AND DURING THE TERM AS HEREIN PROVIDED.

AND IN CONSIDERATION OF THE SUM OF TEN DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION PAID AND PROVIDED BY THE COMMISSION TO BOTH THE LESSOR AND THE LESSEE, BOTH THE LESSOR AND THE LESSEE COVENANT AND AGREE WITH THE COMMISSION THAT THE COMMISSION WILL HOLD AND ENJOY THE RIGHTS, BENEFITS, PRIVILEGES, AUTHORITY AND DISCRETIONS GRANTED TO THE COMMISSION IN THIS LEASE.

ARTICLE 1
DEFINITIONS AND INTERPRETATION

- 1.1 Capitalized terms used in this Lease have the meanings specified in this section 1.1, unless otherwise provided in this Lease:
 - (a) "Additional Rent" means all sums, costs, expenses and other amounts, if any, payable by the Lessee to the Lessor pursuant to this Lease, including, without limitation, Realty Taxes, payments in lieu of Realty Taxes, Utilities and all sums payable by way of indemnity under this Lease, but excluding Basic Rent;
 - (b) "Air Space Parcel Charges" means, where the Lands are an air space parcel, all easements, statutory rights of way and other charges which are Permitted Encumbrances that are registered against the Lands in priority to this Lease in the course of creating such air space parcel;
 - (c) "Alterations" means all alterations, changes, replacements, substitutes, additions and improvements to the Building;
 - (d) "Approved Lender" means any Mortgagee approved by Canada Mortgage and Housing Corporation for the purpose of making loans under the *National Housing Act* (Canada);

- (e) “Architect” means the architect qualified as such pursuant to the laws of the province of British Columbia who is supervising the design, construction, repair, renovation and/or reconstruction of the Building;
- (f) “Basic Rent” means ten dollars (\$10.00);
- (g) “Building” means the building(s) and all other structures to be constructed on the Lands, together with all Alterations or repairs thereto and all improvements from time to time constructed upon or affixed or appurtenant to the Lands;
- (h) “City” means the municipality and corporation of the City of Kelowna;
- (i) “Commencement of Construction” means the later of the date when the first building permit for the Building is issued to the Lessee by the City and the date when the Lessee’s contractor commences any work on the Lands related to construction of the Building;
- (j) “Commission” means British Columbia Housing Management Commission or its successors in function;
- (k) “Corporation” means Canada Mortgage and Housing Corporation or its successors in function, or the Commission;
- (l) “Eligible Occupant” means a person who, during the time that such person is a tenant in the Building, meets the criteria prescribed in an Operating Agreement or prescribed in a separate document provided by the Commission and delivered to the Lessee from time to time;
- (m) “General Instrument” means the Form C - *Land Title (Transfer Forms) Regulation* pursuant to the *Land Title Act* (British Columbia), and all schedules and addenda to the Form C;
- (n) “Insured Loan” means a loan in respect of which an insurance policy has been issued under the *National Housing Act* (Canada) and is in force;
- (o) “Interest Adjustment Date” means the date from which the principal amount of the Insured Loan together with interest thereon becomes payable by regular instalments;
- (p) “Lands” means all of the Lessor’s interest in the land described in the General Instrument, including every incidental right, benefit or privilege attaching to that land or running with it;
- (q) “Lease” means this Lease;
- (r) “Lease Commencement Date” means the date this Lease is registered at the Kamloops Land Title Office;
- (s) “Lessee” means Ki-Low-Na Friendship Society;

- (t) “Lessor” means the City of Kelowna;
- (u) “Losses” means liabilities, actions, statutory or other proceedings, judgments, investigations, claims, losses, damages, orders, fines, penalties, expenses, professional and other fees and disbursements, and costs;
- (v) “Mortgage” means a registered mortgage or registered mortgages granted by the Lessee in accordance with section 16.1 upon or in respect of the interest of the Lessee in the Lands and the Building or any part thereof and includes any deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (w) “Mortgagee” means a mortgagee or mortgagees under a Mortgage and includes any trustee for bondholders or debenture holders under a deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (x) “Operator” means a non-profit organization with which the Commission has entered into an Operating Agreement;
- (y) “Operating Agreement” means an agreement or agreements entered into or to be entered into between the Commission and an Operator that relates to the management of the Building;
- (z) “Permitted Encumbrances” means the charges and encumbrances, if any, registered on title on the Lease Commencement Date and any other charges specifically approved in writing by both the Commission and the Lessor;
- (aa) “Personnel” of a party means the elected officials and directors, as applicable, officers, employees, servants and agents of that party;
- (bb) “Province” means Her Majesty the Queen in Right of the Province of British Columbia;
- (cc) “PRHC” means the Provincial Rental Housing Corporation;
- (dd) “Prime Rate” means the floating annual percentage rate of interest established from time to time by the main branch of the Bank of Montreal located in Vancouver, British Columbia, or its successor, as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as its “prime rate”;
- (ee) “Realty Taxes” means all assessments for taxes, rates, duties (including school taxes, local improvement rates and other charges levied pursuant to the *Hospital District Finance Act* (British Columbia), the *Municipal Finance Authority Act* (British Columbia) or otherwise) and all other charges for services used in or supplied to the Lands and the Building (including penalties and interest) that now are or will or may be levied, rated, charged or assessed against the Lands, the Building, and all other structures, machinery, equipment, facilities and other property of any nature whatsoever located thereon or therein, charged by any municipal, parliamentary, legislative, regional, school or other authority;

- (ff) "Review Date" means the date on which the constitution and bylaws of the Lessee are approved in writing by the Commission;
- (gg) "Term" means sixty (60) years commencing on the Lease Commencement Date;
- (hh) "Trustee" means a trust company duly authorized to carry on business in the province of British Columbia and appointed by the Corporation, or the Lessor if the Corporation has no interest in the Lands and the Building, for the purposes of Article 9 of this Lease; and
- (ii) "Utilities" means all charges, rates and levies on account of utilities, including for heat, electricity, gas, telephone, television, internet and other costs and expenses of a similar nature, and, if not included in Realty Taxes, for water and garbage collection.

1.2 Any reference in this Lease to legislation will be deemed to include all regulations thereto, all amendments and re-enactments thereof and all successor legislation.

ARTICLE 2 PAYMENT OF RENT

2.1 Basic Rent

The Lessee covenants and agrees with the Lessor to pay to the Lessor as rent the Basic Rent for the Term on the Lease Commencement Date.

2.2 Net Lease

All Basic Rent and Additional Rent required to be paid by the Lessee hereunder will be paid at such location as the Lessor may stipulate from time to time without any deduction, abatement or set-off whatsoever, it being the intention of this Lease that:

- (a) all expenses, costs, payments and outgoings incurred in respect of the Lands, the Building and any other improvements on the Lands or for any other matter or thing affecting the Lands, will, unless otherwise expressly stipulated herein to the contrary, be borne by the Lessee; and
- (b) the Basic Rent and Additional Rent payable under this Lease will be absolutely net to the Lessor and free of all abatements, set-off or deduction of any costs, payments and outgoing of every nature arising from or related to the Lands, the Building, or any other improvements on the Lands, and the Lessee will pay or cause to be paid all such costs, payments and outgoings.

2.3 Interest on Amounts in Arrears

When the Basic Rent, Additional Rent or any other amount payable hereunder by the Lessee to the Lessor is in arrears, such amount will bear interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly not in advance, from

the date due until paid. Notwithstanding the foregoing, this section will not apply to defaults under sections 3.1 and 3.2.

ARTICLE 3.
PAYMENT OF TAXES

3.1 Payment of Realty Taxes if Lands Not Exempt

Save as otherwise provided in section 3.2, the Lessee will, during the Term, no later than the day immediately preceding the date or dates on which the Realty Taxes become due and payable, pay and discharge or cause to be paid and discharged the Realty Taxes and, if requested by the Lessor, will deliver to the Lessor for inspection receipts for payments of the Realty Taxes within fourteen (14) days of such payment. Not later than thirty (30) days following receipt of any tax assessment or notice the Lessor will deliver a copy of such assessment or notice to the Lessee.

3.2 Payment in Lieu of Realty Taxes if Lands Exempt

The Lessee covenants and agrees with the Lessor that if during the Term all or any part of the Lands, Building, structures, machinery, equipment and facilities thereon and therein and any other property of any nature whatsoever thereon and therein are exempt from Realty Taxes in whole or in part, then the Lessee will, in each and every year during the Term that such exemption occurs, pay to the Lessor as Additional Rent, at the same time as Realty Taxes would be payable if such exemption were not available, an amount equal to the amount that would be payable as Realty Taxes if such exemption were not available.

3.3 Right to Appeal Assessment

The Lessee will have the right from time to time to appeal, in its own or the Lessor's name, any assessment of the Lands or Building or any Realty Taxes referred to in sections 3.1 and 3.2, provided that such appeal will be at the sole expense of the Lessee.

3.4 Business Tax and License Fees

The Lessee covenants with the Lessor to pay or cause to be paid during the Term when due every tax and permit and license fee (including penalties and interest) in respect of any and every business carried on, in or upon the Lands or Building or in respect of the use or occupancy of the Lands or Building by the Lessee (and any and every sublessee, permittee and licensee), other than such taxes as corporate income, profits or excess profit taxes assessed upon the income of the Lessee (or such sublessee, permittee and licensee), whether such taxes or permit and license fees are charged by any municipal, parliamentary, legislative, regional or other authority.

3.5 Other Taxes

The Lessee will pay when due all goods and services taxes, value-added taxes, sales taxes and consumption based taxes, rates, levies and assessments, including penalties and interest, that are from time to time payable by the Lessee as a result of, or that would not

be payable but for, its rights and obligations contained in this Lease, including but without derogating from the generality of the foregoing, such taxes, rates, levies and assessments payable as a result of any payment obligations herein of the Lessee to the Lessor.

3.6 Pro-rating Obligations

In the first and last years of the Term, the Lessee's obligations under sections 3.1 and 3.2 will be pro-rated according to the portion of the year included in the Term, such pro-rating to be on a per diem basis.

3.7 Application of Sections 3.1 and 3.2

Sections 3.1 and 3.2 will not apply during such time as the Building is used or is intended to be used to house Eligible Occupants, it being the intent of the parties that the Lands and Building will be exempt from Realty Taxes or payments in lieu of Realty Taxes if the Building is intended to be used to house Eligible Occupants.

ARTICLE 4
CONSTRUCTION OF BUILDING

4.1 Lessee to Construct Building

The Lessee will construct the Building, together with other facilities ancillary thereto and connected therewith, on the Lands in substantial accordance with the drawings, specifications (including materials to be used), elevations, location on the Lands and exterior decoration and design and all other documents and information upon which the issuance of the building permits by the City are based and that have been approved by the Lessor and the Commission. No changes will be made to such drawings, specifications, elevations, location, exterior decoration and design, other documents or information, or to the requirements of such building permits without the approval of the Lessor and the Commission, provided that the Commission may approve minor changes allowed by the building permit(s) for the Building without the approval of the Lessor.

4.2 Substantial Completion of Building

For the purposes of this Article 4, the Building will be deemed to have been substantially completed when the Architect has certified to, or otherwise satisfied, the Lessor and the Commission that, with respect to the Building:

- (a) all work of a structural nature has been properly completed;
- (b) all building equipment and services, including elevators (if any), heating systems and air-conditioning systems (if any), and utilities have been completed, are operating properly and are available for use by tenants of the Lessee, and all lobbies, stairwells and other areas intended for the common use of tenants of the Lessee are completed except for work of a superficial nature, which is both minor in character and of a type that, owing to the likelihood of damage, may reasonably

- be deferred until the Building is partially or substantially occupied by tenants of the Lessee;
- (c) all building bylaws and regulations of the City have been complied with by the Lessee;
 - (d) all rentable space is completed for occupancy except for work of a superficial nature that is dependent upon unascertained requirements of individual tenants of the Lessee, and work that is reasonably and customarily performed by tenants of the Lessee;
 - (e) all areas are clean and all surplus building material and rubbish have been removed;
 - (f) the Building is in a condition in which it can be occupied by tenants of the Lessee, and any work that is still unfinished can be completed promptly and is work the incompleteness of which will not be objectionable to a tenant of the Lessee acting reasonably;
 - (g) the Building has been constructed in all respects in a good and workmanlike manner and in accordance with the drawings and specifications, location on the Lands and the exterior decoration and design approved in writing by the Lessor, and in compliance with all building permits issued by the City; and
 - (h) a certificate of completion has been issued in respect of the Building pursuant to the *Builders Lien Act* (British Columbia).

4.3 Termination of Lease on Failure to Construct

Subject to sections 4.6 and 18.2 and Article 23, the Lessee agrees with the Lessor that if Commencement of Construction has not taken place within one hundred and eighty (180) days of the Lease Commencement Date, or if construction of the Building is not substantially completed in accordance with the requirements of section 4.1 within one hundred and eighty (180) days after the second anniversary of the Lease Commencement Date, the Lessor will have the option at any time thereafter to terminate this Lease, and in such event this Lease will terminate and be of no further force or effect and without any reimbursement or compensation to the Lessee, unless the Lessor consents in writing to extend the deadline for Commencement of Construction, such consent not to be unreasonably withheld.

4.4 Landscaping

Within one hundred and eighty (180) days of substantial completion of the Building, the Lessee will landscape the Lands and thereafter maintain the landscaping in accordance with landscaping plans that have been approved by the Commission.

4.5 Alterations After Substantial Completion

After substantial completion of the Building, the Lessee will not make or permit to be made any Alterations affecting the structure of the Building or the exterior appearance of the Building without the written approval of the Lessor and the Commission, which approval the Lessor and the Commission will not unreasonably withhold. No Alterations involving an estimated cost of more than Two Hundred and Fifty Thousand Dollars (\$250,000.00) (in 2014 dollars) will be undertaken until the Lessee has submitted or caused to be submitted to the Lessor and the Commission such drawings, specifications (including the materials to be used), elevations (where applicable), locations (where applicable), exterior decoration and design and such other documentation and information as the Lessor and the Commission may request in connection with the proposed Alterations, and until all of the same have been approved in writing by the Lessor and the Commission, which approval the Lessor and the Commission will not unreasonably withhold. The Lessee covenants and agrees with the Lessor and the Commission that, subject to section 4.6, all Alterations undertaken by or for the Lessee once begun will be prosecuted with due diligence to completion.

4.6 Unavoidable Delays

If, by reason of strike, lock-out or other labour dispute, material or labour shortage not within the control of the Lessee, fire, explosion, flood, wind, water, earthquake, act of God or other similar circumstances beyond the reasonable control of the Lessee and not avoidable by the exercise of reasonable effort or foresight by the Lessee, the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in achieving Commencement of Construction or substantial completion of the Building in accordance with section 4.2 or the repair of the Building or any part or parts of the Building which under the terms of this Lease the Lessee is required to do by a specified date or within a specified time, the date or period of time within which such work was to have been completed will be extended by the Lessor by a reasonable period of time at least equal to that of such prevention or delay, and the Lessee will not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Lease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Lessor, the Lessee and the Commission.

ARTICLE 5 BUILDERS LIENS

5.1 Builders Liens

In connection with all labour performed on or materials supplied to the Lands, including but not limited to the construction of the Building, the Lessee will comply with, and will cause any contractor hired by it to comply with, the provisions of the *Builders Lien Act* (British Columbia), and with all other statutes applicable in connection therewith and in force from time to time, including any provision or statute requiring or permitting the retention of portions of any sums payable by way of holdbacks.

5.2 Discharge of Builders Liens

If and whenever any builders lien, or other lien or claim arises or is filed against the Lessor's interest in the Lands in connection with work, labour, services or materials supplied to or for the Lessee or for the cost of which the Lessee may in any way be liable, the Lessee will, within fifteen (15) days after receipt of notice of such lien or claim, procure the discharge thereof, and the discharge of any certificate of pending litigation registered in respect of any such lien or claim, by payment or giving security or in such other manner as may be required or permitted by law; provided, however, that in the event of a bona fide dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee will not be bound by the foregoing, but will be entitled to defend against the same in any proceedings brought in respect thereof after first paying into a court of competent jurisdiction the amount claimed or sufficient security therefor, and such costs as the court may direct. The Lessor may pay and discharge any lien claim if, in its reasonable judgement, the Lands or the Lessor's interest in the Lands becomes liable to forfeiture or sale, or is otherwise in jeopardy. The Lessee will reimburse to the Lessor any amount paid by the Lessor in discharging a lien claim and the Lessor's reasonable expenses in connection therewith.

5.3 Notice by Lessor

Pursuant to section 3(2) of the *Builders Lien Act*, the Lessor may file in the Land Title Office notice of its fee simple interest in the Lands and for all purposes of this Lease the construction of the Building by the Lessee will be deemed not to be done at the request of the Lessor.

ARTICLE 6 RESTRICTIONS ON OPERATIONS AND USE

6.1 Use

Unless otherwise agreed to in writing by the Lessor and the Commission, the Lessee covenants and agrees with the Lessor and the Commission that neither the Lands nor Building nor any part of the Lands or Building will be used for any purpose except that of housing Eligible Occupants, subject always to the laws, bylaws, regulations and permits governing the use of the Lands and Building from time to time. Neither the Lands nor Building nor any part of the Lands or Building will be used for business, trade or manufacture without the written approval of the Lessor and the Commission, which approval the Lessor and the Commission may arbitrarily withhold. If, however, the Lessor in its unfettered discretion and the Lessee determine that it is not practical or commercially reasonable to continue to carry on the use described in section 6.1, the Lessee may commence to use and occupy the Lands and Building for another use, including a commercial use that is approved by the Lessor, and if it elects to do so:

- (a) the Basic Rent will be adjusted, from time to time, to reflect the fair rental value of the Lands, without reference to the Building, given the use to which the Lands and Building are put, from time to time. If the parties cannot agree on the Basic

Rent or the dates when the Basic Rent is to be adjusted, the Basic Rent and/or adjustment dates will be settled by arbitration pursuant to Article 19; and

- (b) the Lands and Building will not be exempt from Realty Taxes.

6.2 No Nuisance

The Lessee will not carry on, or suffer or permit to be carried on, upon the Lands anything which would constitute a nuisance to the Lessor or to any neighbouring properties or their owners or occupants provided, however, that the occupation of the Lands and Building by Eligible Occupants in accordance with the terms of this Lease shall not constitute a nuisance.

6.3 Subdivision by Strata Titling

The Lessee may subdivide the Lands or the Building pursuant to the *Strata Property Act* (British Columbia), and upon such stratification, the Lessee may transfer title to some of the resulting strata properties to the Commission, but shall not transfer title of the resulting strata properties to any other organization or individual without the consent of the Lessor.

6.4 Constitution

The Lessee agrees that without the prior written consent of the Commission, it will not amend or permit its constitution to be amended or varied in any way from the constitution filed in the British Columbia Corporate Registry as of the Review Date. If the Review Date is not established by the Commission, the Lease Commencement Date will be deemed to be the Review Date.

6.5 Restriction on Contracting

The Lessee covenants that:

- (a) it will not pay directly or indirectly to any of its directors or their relatives by blood or marriage (including common-law marriage) any money obtained from the operation of the Lands or the Building, or from the operation of other premises leased from the Lessor, or otherwise received from the Lessor, the Commission or the Province, without the express written consent of the Lessor, the Commission and/or the Province, as the case may be;
- (b) it will not, by contract or otherwise, pay to any of its former directors or their relatives by blood or marriage (including common-law marriage), pursuant to any contract or arrangement made when the former director was a director of the Lessee, money obtained from the operation of the Lands or the Building, or from the operation of other premises leased from the Lessor, or otherwise received from the Lessor, the Commission or the Province, without the express written consent of the Lessor, the Commission and/or the Province, as the case may be;

- (c) subject to sub-paragraphs (a) and (b), the Lessee may enter into bona fide arm's length contracts with occupants of the Building for the provision of services in furtherance of the good management of the Lands and the Building; and
- (d) notwithstanding the foregoing, the Lessee may reimburse its directors or occupants of the Building for out-of-pocket expenses incurred for the proper management of the Lands or the Building but only upon the proof of such expenditure by the production of bona fide receipts.

The Lessor may not terminate this Lease on account of a breach of this section 6.5 but such directors will forthwith and forever be disqualified from such directorship.

6.6 Permitted Encumbrances

The Lessor and the Lessee covenant and agree that, during the Term, the Lessee, at its expense, will perform and observe all of the obligations of the Lessor and may enjoy all of the rights of the City as Lessor (but not those rights of the City in its regulatory capacity) set out in the Permitted Encumbrances. None of the Permitted Encumbrances will merge or be deemed to have merged with the Lessor's title to the Lands, and accordingly all Permitted Encumbrances will be deemed to be in full force and effect. The Lessor will execute such documents as might reasonably be requested by the Lessee to enable it to comply with its obligations and to enjoy its rights in respect of the Permitted Encumbrances. The Lessee further covenants and agrees with the Lessor that if the City exercises any of its rights in its regulatory capacity under the Permitted Encumbrances, such exercise will not be a breach of the Lessor's covenant for quiet enjoyment.

6.7 Obligations of the Commission

The Commission will:

- (a) cause the Operator to use the Lands and the Building in a manner that is consistent with the Lessee's obligations contained in section 6.1;
- (b) cause the Operator to operate the Building on a non-profit basis and to operate and manage the Lands and Building in the manner approved by the Commission; and
- (c) provide the Lessor with current copies of the Operating Agreement upon the request of the Lessor.

ARTICLE 7 REPAIRS AND MAINTENANCE

7.1 Lessor Not Obligated to Repair

The Lessor will not be obliged to furnish any services or facilities or to make repairs or Alterations in or to the Lands or the Building, and the Lessee hereby assumes the full and

sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Lands and the Building and all expenses related thereto.

7.2 Repairs by the Lessee

Reasonable wear and tear excepted, so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Building:

- (a) the Lessee at the Lessee's cost and expense will put and keep in good order and condition, or cause to be put and kept in good order and condition, the Lands and Building (and any equipment located thereon and therein), both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, stairways, elevators (if any) and similar devices, heating and air conditioning equipment, sidewalks, yards and other like areas, water and sewer mains and connections, water, steam, gas and electric pipes and conduits, and all other fixtures and appurtenances to the Lands and the Building and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs and, subject to section 4.5, Alterations, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Building and any and all fixtures and equipment therein fully usable for the purposes for which the Building was constructed. Such repairs and Alterations will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Building, and will in each case be performed only in accordance with all applicable terms and conditions of the Permitted Encumbrances;
- (b) the Lessee will not commit or suffer waste to the Lands or the Building or any part thereof;
- (c) at the expiration or earlier termination of this Lease, the Lessee will, except as otherwise expressly provided herein, surrender and deliver up the Lands with the Building, and the fixtures, appurtenances and equipment thereon and therein, or any replacements or substitution therefor, in good order and condition; and
- (d) if the Lessee does not fulfil its obligations set out in this Article 7, the Lessor or the Commission, through their agents, servants, contractors and subcontractors, may, but will not be obliged to, enter (without hindrance by the Lessee) upon the Lands and the Building as required for the purpose of making any repairs necessary to put the Lands and the Building in good order and condition, provided that the Lessor or the Commission will make such repairs only after giving the Lessee not less than fourteen (14) days written notice of its intention to do so, except in the case of an emergency when no notice will be required. Any costs and expenses (including overhead costs) incurred by the Lessor or the Commission in making such repairs to the Lands and Building will be reimbursed to the Lessor or the Commission, as the case may be, by the Lessee on demand, together with interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly, from the date incurred until the date paid.

7.3 Removal of Ice and Snow from Sidewalks

The Lessee covenants and agrees with the Lessor that if the Lessee at any time fails to keep the public sidewalk adjacent to the Lands reasonably clean from rubbish, ice and snow during the times and to the extent lawfully required of an owner, the Lessor, through its agents, servants, contractors and subcontractors, may remove such rubbish, ice and snow and the Lessor will not be required to give the Lessee any notice of its intention to do so. Any costs and expenses incurred by the Lessor in removing such ice and snow will be reimbursed to the Lessor by the Lessee on demand, together with interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly, from the date incurred until paid.

ARTICLE 8 ADDITIONAL RENT

8.1 All Defaults in Payment as Additional Rent

If the Lessee defaults in the payment of any sums required to be paid by it pursuant to the terms of this Lease, or fails to fulfil any of its obligations under this Lease, the Lessor may (but will be under no obligation to) pay such sums or fulfil such obligations on behalf of the Lessee, and any losses, costs, charges and expenses suffered by the Lessor as a result, including sums payable by way of indemnity, whether or not expressed in this Lease to be rent, may at the option of the Lessor be treated as and deemed to be Additional Rent, in which event the Lessor will have all remedies for the collection of such sums, costs, expenses or other amounts when in arrears as are available to the Lessor for the collection of rent in arrears.

ARTICLE 9 INSURANCE

9.1 Insurance During Construction of Building

Prior to the Commencement of Construction of the Building, and throughout the entire period of construction until substantial completion of the Building pursuant to section 4.2, the Lessee will effect or will cause its contractor or contractors to effect and maintain in full force the following insurance coverage:

- (a) wrap-up liability insurance with limits of not less than Five Million Dollars (\$5,000,000), or such other amount as the Lessor and the Commission may require from time to time, per occurrence, issued in the joint names of the Lessee, the Lessor, the Commission, the Lessee's contractors, any subcontractors and their respective Personnel, protecting them against claims for bodily injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands from any cause, including the risks occasioned by the construction of the Building; and
- (b) all-risk course of construction insurance issued in the joint names of the Lessee, the Lessor and the Commission, protecting them from all loss or damage of or to the Building and all fixtures, equipment, improvements and building materials on

the Lands from time to time, both during and after construction (but which may be by different policies effected from time to time covering the risk during different phases of construction of the Building, provided that at no time will the Building be uninsured) against fire, earthquake, flood and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the province of British Columbia by prudent owners, and such other perils as the Lessor or the Commission may reasonably require to be insured against, to the full replacement value thereof at all times.

9.2 Commercial General Liability Insurance

The Lessee will effect and keep in force commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000), or such other amount as the Lessor and the Commission may require from time to time, per occurrence, against public liability claims for bodily injury, death and property damage (including loss of use) arising from the Lessee's use and occupancy of the Building and from any occurrence or accident on the Lands or Building. Such insurance will be written on an occurrence basis and will provide for blanket contractual liability, including liability assumed by the Lessee under this Lease. The policy will also contain a cross liability or severability of interests clause and will name the Lessor, the Commission and their respective Personnel as additional insureds with respect to third party claims arising out of the Lessee's operations pursuant to this Lease.

9.3 All Risk Property, Pressure Vessel and Rental Income Insurance

Immediately following substantial completion of the Building and at all times thereafter during the Term, the Lessee will effect and maintain property insurance in the joint names of the Lessor, the Commission and the Mortgagee (if any) as their interests may appear, to the full replacement value of the Building and fixtures on the Lands, protecting them against "All Perils" of loss or damage including flood, sewer backup and earthquake, and will include:

- (a) rental income insurance in an amount equal to the maximum annual rental income of the Building pursuant to the Operating Agreement; and
- (b) boilers and pressure vessels, protecting against usual and unusual perils, including damage caused by rupture of steam pipes.

The policies described in this section 9.3 will contain a clause directing insurers to make losses payable to the Lessee, the Lessor, the Commission and the Mortgagee as their interests may appear.

9.4 Insurance – Additional Provisions

The following provisions will apply to all policies of insurance which are referred to in this Article 9:

- (a) the policies will be primary and non-contributing with respect to any policy or self-insured fund otherwise held or established on behalf of the Lessor or the Commission;
- (b) the stated amount of value insured under property policies will be of sufficient amount that none of the Lessee, the Commission nor the Lessor will become co-insurers with respect to any loss claimed against the insurance;
- (c) each policy will be written on a form acceptable to the Lessor and the Commission and with insurers licensed to do business in the province of British Columbia and acceptable to the Lessor and the Commission;
- (d) any deductible amounts applying to a claim against a policy will be of an amount approved by the Lessor and the Commission;
- (e) each policy will contain a clause requiring that the insurers provide to the Lessor and the Commission a minimum of sixty (60) days prior written notice of any cancellation (except for cancellation resulting from non-payment of premiums, in which case applicable statutory provisions will apply); and
- (f) all premiums and deductibles required under said policies will be paid by the Lessee to the insurers and proof of such payment will be submitted to the Lessor and the Commission.

In addition to the notification obligations of the insurers required by section 9.4(e), the Lessee will provide to the Lessor and the Commission a minimum of sixty (60) days prior written notice of any cancellation, lapse or material change resulting in reduction of coverage, either in whole or in part, in respect of any of the policies of insurance which are referred to in this Article 9.

9.5 Evidence of Insurance

Prior to the Lease Commencement Date the Lessee will provide the Lessor and the Commission with evidence of all insurance required to be taken out pursuant to this Lease, in the form of one or more detailed certificates of insurance, in such form(s) and contents as the Lessor and the Commission requests. Each certificate of insurance must identify the Lease number, policy holder and subject matter, and must not contain any disclaimer. Thereafter, and throughout the Term, forthwith upon request by the Lessor or the Commission, similar evidence of renewals, extensions or replacement of such insurance will be provided in the form of such certificate(s) of insurance. In addition, if requested by the Lessor or the Commission at any time, the Lessee will forthwith deliver to the Lessor or the Commission, as applicable, a certified copy of each insurance policy requested.

9.6 Payment of Loss Under Insurance Policies

The insurance monies payable under the policies of insurance referred to in this Article 9, will, notwithstanding the terms of the policy or policies, be paid to the Trustee on behalf of the Lessee, the Lessor, the Commission and the Mortgagee. The Lessee, the Lessor

and the Commission agree that the Trustee will, subject to section 10.5, pay for all restoration, reconstruction or replacement of the loss or damage in respect of which such insurance monies were paid to the Trustee out of such insurance monies in accordance with certificates of the Architect or such other person as the Lessee, the Lessor and the Commission may agree upon and who is in charge of such restoration, reconstruction or replacement, after receiving such other certificates, evidence or opinions as the Trustee will require for the purpose of being satisfied that such restoration, reconstruction or replacement is being properly carried out. If the Lessee fails to restore, reconstruct or replace the loss or damage in respect of which the insurance monies were paid to the Trustee within a reasonable time, the Lessor and the Commission will be entitled to effect such restoration, reconstruction or replacement and the Trustee will pay such insurance monies to the Lessor or the Commission in the same manner that the Trustee would have done had the Lessee effected such restoration, reconstruction or replacement.

9.7 Workers Compensation Coverage

At all times during the Term, the Lessee will, and will cause its Personnel and all others engaged in or upon any work on the Building or the Lands to, comply with the *Workers Compensation Act* (British Columbia) (the "WCA") and the requirements and regulations of WorkSafeBC in respect of the Building and the Lands. Without limiting the generality of the foregoing, the Lessee will:

- (a) require as a condition of any agreement made with respect to construction, repair, renovation or demolition of the Building, whether with contractors, materialmen or otherwise, that there is full workers compensation insurance coverage in place in respect of all workmen, employees, servants and others engaged in or upon any work, and that all workmen, contractors or other workers require the same of their workmen and subcontractors. The Lessee will immediately notify the Lessor and the Commission of any dispute involving third parties that arises in connection with obtaining and maintaining the workers compensation insurance coverage required hereby if such dispute results or may result in the required insurance coverage not being in place, and the Lessee will take all reasonable steps to ensure resolution of such dispute forthwith. The Lessee will further ensure that no amount payable pursuant to the WCA is left unpaid so as to create a lien on the Lands or the Building. If the workers compensation insurance coverage required by this section 9.7 is not in place, the Lessor and the Commission will be entitled to have recourse to all remedies specified in this Lease or at law or equity; and
- (b) be deemed to be, and is hereby designated and appointed by the Lessor as, the "Prime Contractor" as that term is defined in section 118 of the WCA for the purposes of the WCA and related regulations, including the Occupational Health and Safety Regulation (the "OHS Regulation"), and the requirements and regulations of WorkSafeBC, and will in that capacity strictly comply with all requirements applicable to that designation, including without limitation those set forth in Division 3 of Part 3 of the WCA and in sections 20.2 and 20.3 of the OHS Regulation, as they may be amended from time to time. Notwithstanding the foregoing, with the prior written consent of the Lessor, a contractor hired by the

Lessee to perform work on the Lands on its behalf may be designated as the Prime Contractor instead of the Lessee.

9.8 Release of Lessor and Commission from Liability for Insured Loss or Damage

The Lessee hereby releases the Lessor and the Commission and their respective Personnel, whether or not the Lessor, the Commission and their respective Personnel have been negligent, from any and all liability for loss or damage caused by any of the perils against which the Lessee will have insured or is obligated to insure pursuant to the terms of this Lease or any applicable law, or self insures if it elects to do so under section 9.9, the intent being that the Lessee's policies of insurance will contain a waiver of subrogation in favour of the Lessor and the Commission or, if the Lessee elects to self insure under section 9.9, the Lessee will release the Lessor and the Commission from any and all liability for loss or damage caused by the perils referred to in sections 9.1(b) and 9.2 to the same extent as if the Lessee had taken out insurance.

9.9 Insurance Exemption for Corporation and PRHC

Notwithstanding anything contained in this Lease, if for any reason and at any time the Corporation or PRHC is the Lessee, the Corporation or PRHC, as the case may be, will not be under any obligation to take out and keep in force any of the insurance required to be taken out and kept in force under sections 9.1(b) and 9.3 of this Lease.

ARTICLE 10
DAMAGE OR DESTRUCTION

10.1 Rent Not to Abate

Subject to the provisions of sections 10.5 and 10.6, the partial destruction or damage or complete destruction by fire or other casualty of the Building will not result in the termination of this Lease or entitle the Lessee to surrender possession of the Lands or the Building or to demand any abatement or reduction of the Basic Rent or Additional Rent or other charges payable under this Lease, any law or statute now or in the future to the contrary notwithstanding.

10.2 Lessee's Obligation When Building Partially Damaged or Destroyed

Subject to the provisions of sections 10.5 and 10.6 and any Air Space Parcel Charges applicable, the Lessee covenants and agrees with the Lessor and the Commission that in the event of partial damage to or partial destruction of the Building, the Lessee will either:

- (a) replace any part of the Building damaged or destroyed with a new structure in accordance with any agreement which may be made by the Lessee with the Lessor and the Commission; or
- (b) in the absence of any such agreement, repair or replace such damage or destruction to a standard comparable to the standard of the structure being repaired or replaced.

10.3 Lessee's Obligations When Building Completely or Substantially Destroyed

Subject to the provisions of sections 10.5 and 10.6 and any Air Space Parcel Charges applicable, the Lessee covenants and agrees with the Lessor and the Commission that in the event of complete or substantially complete destruction of the Building, the Lessee will either:

- (a) reconstruct or replace the Building with a new structure or structures in accordance with any agreement which may be made by the Lessee with the Lessor and the Commission; or
- (b) in the absence of any such agreement, replace the Building with a new structure or structures comparable to the structure or structures being replaced.

10.4 Replacement, Repair or Reconstruction

Any replacement, repair or reconstruction of the Building or any part thereof pursuant to the provisions of section 10.2 or 10.3 will be made or done in compliance with section 4.5 and Article 7.

10.5 Special Provisions Where Approved Lender or Corporation is Mortgagee

- (a) If the Building is damaged or destroyed to the extent of at least twenty-five percent (25%) of the full replacement cost of the Building, and at the time of such damage or destruction the Mortgagee is an Approved Lender, and such Mortgagee notifies the parties that the insurance monies made available by reason of the casualty causing such damage or destruction will not be applied in repairing, reconstructing or replacing the Building, and the right to so elect is reserved to the Mortgagee under the terms of the Mortgage, then the Lessee may decline to repair, reconstruct or replace the Building and instead elect to terminate this Lease, provided that the Lessee makes such election within sixty (60) days after the date on which the Building was so damaged or destroyed and notifies the Lessor and the Commission of its election forthwith after making it. If the Lessee does not elect to so terminate this Lease, then the Lessee will repair, reconstruct or replace the Building or any part thereof damaged or destroyed in accordance with section 10.2 or section 10.3, as the case may be, and section 10.4;
- (b) If the Mortgagee is the Corporation and it attorns to the Lessor as tenant and undertakes to be bound by and perform the covenants and agreements of the Lease, and subsequently during the Term the Building is damaged or destroyed to the extent of at least twenty-five percent (25%) of the full replacement cost of the Building, the Corporation as tenant may at its option either repair, reconstruct or replace the Building so damaged or destroyed or decline to repair, reconstruct or replace the Building and instead elect to terminate this Lease, provided that the Corporation as tenant makes such election within sixty (60) days after the date on which the Building was so damaged or destroyed and notifies the Lessor and the Commission of its election forthwith after making it. If the Corporation as tenant does not so elect to terminate this Lease, then the Corporation as tenant will repair, reconstruct or replace the Building or any part thereof damaged or

destroyed in accordance with section 10.2 or section 10.3, as the case may be, and section 10.4;

- (c) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Lessee pursuant to section 10.5(a) or section 10.5(b), the Lessee will demolish and completely remove the Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 9, be distributed as follows:
- (i) firstly, to reimburse the Lessee for all costs and expenses necessarily incurred by the Lessee in the demolition and removal of the Building and all foundations and debris from the Lands and the restoration of the Lands as aforesaid;
 - (ii) secondly, to pay and satisfy the Mortgage, if any;
 - (iii) thirdly, to pay the balance of the insurance monies, if any, as follows:
 - A. to the Lessor, the amount calculated as follows:

$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days in expired portion of the Term} \div \text{total days in Term}); \text{ and}$$
 - B. to the Lessee, the amount calculated as follows:

$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days remaining in the Term} \div \text{total days in Term}),$$

provided however that any amount so payable to the Lessee will be paid directly to the Commission;
- (d) If this Lease is terminated pursuant to this section 10.5, then upon the Lessee substantially completing the work required by section 10.5(c), the Lessor will forthwith refund to the Commission a portion of the Basic Rent payable pursuant to this Lease, calculated as follows:
- $$\text{amount payable} = (\text{Basic Rent}) \times (\text{days remaining in the Term as of the date of such substantial completion of work} \div \text{total days in the Term}),$$
- provided however that the Commission hereby assigns such refund to all Mortgagees, if any, and such refund will be paid by the Lessor to such Mortgagees in the same priority as registration of their Mortgages, if any;
- (e) Notwithstanding anything contained herein, in the event the Lessee terminates this Lease in accordance with this section 10.5, this section will nevertheless survive such termination and remain in full force and effect and be binding upon

the parties and their respective successors and assigns so long as any obligations of the parties under this section 10.5 or any part thereof remains unperformed; and

- (f) The provisions of this section 10.5 are subject always to the provisions of section 10.6.

10.6 Destruction or Damage During Last Five Years of Term

- (a) In the event of the complete or substantial destruction of the Building during the last five (5) years of the Term, the Lessee may, at its option, either reconstruct or replace the Building so destroyed or damaged in accordance with section 10.3 or decline to do so, and instead elect to terminate this Lease, provided that the Lessee makes such election within sixty (60) days after the date on which the Building was so destroyed and notifies the Lessor of its election forthwith after making it;
- (b) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Lessee pursuant to section 10.6(a), the Lessee will demolish and completely remove the Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 9, be distributed as follows:
- (i) firstly, to reimburse the Lessee for all costs and expenses necessarily incurred by the Lessee in the demolition and removal of the Building and all foundations and debris from the Lands and the restoration of the Lands as aforesaid;
- (ii) secondly, to pay and satisfy the Mortgage, if any;
- (iii) thirdly, to pay the balance of the insurance monies, if any, as follows:
- A. to the Lessor the amount calculated as follows:
- $$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days in expired portion of the Term} \div \text{total days in Term}); \text{ and}$$
- B. to the Lessee the amount calculated as follows:
- $$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days remaining in the Term} \div \text{total days in Term}),$$
- provided however that any amount payable to the Lessee will be paid directly to the Commission;
- (c) If this Lease is terminated pursuant to this section 10.6, then upon the Lessee, substantially completing the work required by section 10.6(b), the Lessor will

forthwith refund to the Commission a portion of the Basic Rent payable pursuant to this Lease, calculated as follows:

$$\text{amount payable} = (\text{Basic Rent}) \times (\text{days remaining in the Term as of the date of substantial completion of such work} \div \text{total days in the Term}),$$

provided however that the Commission hereby assigns such refund to all Mortgagees, if any, and such refund will be paid by the Lessor to such Mortgagees in the same priority as registration of their Mortgages, if any; and

- (d) Notwithstanding anything contained herein, in the event the Lessee terminates this Lease in accordance with this section 10.6, this section 10.6 will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this section 10.6 or any part thereof remains unperformed.

ARTICLE 11 INSPECTION AND EXHIBITION BY LESSOR

11.1 Inspection by Lessor and Commission

The Lessor and the Lessee agree that it will be lawful for representatives of the Lessor and the Commission to enter the Lands and the Building at all reasonable times during the Term and to examine the condition thereof. If the Lessor or the Commission determines that any of the repairs described in section 7.2 are required, notice of such required repairs will be given by the Commission or the Lessor to the Lessee, and the Lessee will within thirty (30) days after every such notice, or such longer period as provided in section 18.1(d), repair and make good accordingly.

11.2 Exhibition by Lessor

During the final year of the Term, the Lessor will be entitled to display upon the Lands the usual signs advertising the Lands and Building as being available for purchase or lease, provided such signs are displayed in such a manner as not to unreasonably interfere with the Lessee's use and enjoyment of the Lands and the Building.

ARTICLE 12 OBSERVANCE OF GOVERNMENTAL REGULATIONS

12.1 Compliance

The Lessee covenants to competently and faithfully observe and comply with all laws, bylaws and lawful orders which apply to the Lands and the Building or the Lessee's occupation of or activities on the Lands or in the Building, and to not use or occupy or permit to be used or occupied the Lands or the Building or any part thereof for any illegal or unlawful purpose or in any manner which would result in the cancellation or threatened cancellation of any insurance, or in the refusal of any insurer to issue any insurance as requested. If any law, bylaw or lawful order is directed at or places a duty or

obligation upon the Lessor, then the same will be performed and observed by the Lessee, at its cost, in the place and stead of the Lessor.

ARTICLE 13
RIGHTS OF LESSOR AND LESSEE

13.1 As Landlord and Tenant

All rights and benefits and all obligations of the Lessor and the Lessee under this Lease will be rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as landlord and tenant respectively under this Lease.

13.2 Air Space Parcel Considerations

If the Building is going to be constructed in an air space parcel, the following provisions will apply:

- (a) the Lessee covenants with the Lessor to perform any obligation of the Lessor pursuant to any Air Space Parcel Charges;
- (b) each of the Lessee, the Lessor and the Commission acknowledges and agrees that it will not modify or replace the Air Space Parcel Charges without the prior written consent of the other parties; however, if any of the Air Space Parcel Charges contemplate future modification or replacement, if requested by the Lessor, the Lessee covenants with the Lessor that the Lessee will consent to such modification or replacement and perform the Lessor's obligations contained therein;
- (c) if the Lessor is obligated to pay the holders of the Air Space Parcel Charges for the value of any work or service benefiting the Lands and Building, the Lessee covenants with the Lessor to reimburse the Lessor for such amounts as Additional Rent, on demand; and
- (d) the Lessee covenants with the Lessor and the Commission, which will, at their option, be deemed to have an interest in all actions and arbitrations concerning the rights and obligations arising from the Air Space Parcel Charges, to promptly provide the Lessor and the Commission with written notice of all such actions and arbitrations and, if necessary, the Lessee covenants to consent to the Lessor and/or the Commission becoming a party to such actions or arbitrations. If the Lessee or the Commission may only be a party in the name of the Lessor, the Lessor covenants to permit such standing by the Lessee and the Commission in the Lessor's name.

ARTICLE 14
EXCLUSION OF LIABILITY AND INDEMNITY

14.1 Limitation of Liability and Release

Neither the Lessor nor the Commission nor their respective Personnel or contractors will be liable for, and the Lessee hereby releases the Lessor, the Commission and their respective Personnel and contractors from all Losses, including without limitation, Losses as a result of:

- (a) any bodily injury or death, however caused, suffered or sustained in or about the Lands or the Building; or
- (b) any property damage or other loss or damage of any nature whatsoever, however caused, to the Lands or the Building, or to any property belonging to the Lessee or to any other person in or about the Lands or the Building,

whether such Losses arise from an exercise of the Lessor's or the Commission's respective rights or privileges herein or otherwise, unless directly resulting from the respective negligence of the Lessor, the Commission or their respective Personnel or contractors, as the case may be.

14.2 Exclusion of Liability

Notwithstanding section 14.1, neither the Lessor nor the Commission nor their respective Personnel or contractors will be liable for:

- (a) consequential, business, economic or indirect loss or damage of any nature whatsoever, however caused, which may be suffered or sustained by the Lessee or any other person who may be in or about the Lands or the Building; or
- (b) any loss against which the Lessee is obligated to insure or has insured.

14.3 Indemnification

The Lessee hereby agrees to indemnify and save harmless the Lessor, the Commission and their respective Personnel and contractors from and against all Losses which the Lessor, the Commission or their respective Personnel or contractors may suffer or incur arising out of, or in any way connected with, or that would not or could not be made or incurred but for this Lease; provided, however, that such indemnity will not apply to the extent, if any, to which such Losses directly result from the respective negligence of the Lessor, the Commission or their respective Personnel or contractors, as the case may be. Without derogating from the generality of the foregoing, the Lessee agrees to indemnify and save harmless the Lessor, the Commission and their respective Personnel and contractors in respect of all Losses:

- (a) as a result of bodily injury or death, property damage or other damage arising from the conduct of any work by or any act or omission of or relating to or arising from the occupation or possession of the Lands and the Building by the Lessee or

any assignee, subtenant, Personnel, contractor, invitee or licensee of the Lessee;
or

- (b) suffered or incurred by the Lessor, the Commission or their respective Personnel and contractors that arise, whether directly or indirectly, from any breach by the Lessee, its Personnel, contractors or any other person for whom the Lessee is responsible in law, of any of its covenants and obligations under this Lease.

14.4 Indemnification Survives Termination of Lease

The obligations of the Lessee to indemnify the Lessor, the Commission and their respective Personnel and contractors will apply and continue notwithstanding the termination or expiration of this Lease.

14.5 Indemnity Exemption for PRHC

None of the provisions of the Lease which require the Lessee to indemnify the Lessor or the Commission will apply if PRHC is the Lessee under this Lease. However, upon the request of the Lessor, the Commission agrees to apply to the Minister of Finance to allow the Commission or PRHC to grant such indemnities, and the Commission will use its best efforts to obtain the necessary consent so as to grant such indemnities to the Lessor.

ARTICLE 15
SUBLETTING AND ASSIGNING

15.1 Subletting and Assigning by Lessee

The Lessee will not sublease, assign, transfer, sell or encumber the Lease or enter into any agreement for the purpose of sub-leasing, assignment, transferring, selling or encumbering the Lease, the Building or the Lands, except as expressly permitted in this Lease, or with the prior written consent of the Lessor and the Commission, which consent the Lessor and the Commission may arbitrarily withhold; provided, however, that if the Lessee is PRHC, the Corporation or a Mortgagee which is an Approved Lender, the Lessor and the Commission will not unreasonably withhold their consent. The Lessee may sublet or grant licences or other rights to occupy or use any part of the Building to:

- (a) Eligible Occupants; or
- (b) staff and other personnel authorized by the Lessor and the Commission who are required to operate and maintain the Building and the Lands for the purposes of this Lease and who are bona fide employees of the Lessee.

15.2 Copies of Subleases

If requested by the Lessor or the Commission, a copy of any or all such subleases will be forwarded to the Lessor or the Commission, as the case may be, within thirty (30) days after the conclusion of each transaction, together with particulars of registration (if any) in the Land Title Office.

15.3 Where Mortgagee is Approved Lender, Commission or Corporation

If a Mortgagee which is an Approved Lender, the Commission or the Corporation takes an assignment of the rents payable to the Lessee by holders of occupation rights granted by the Lessee pursuant to section 15.1, the Lessee is permitted to enter into such assignment of rents, without the consent of the Lessor or the Commission, as collateral or additional security for an Insured Loan, if such Mortgagee has registered that assignment in the Land Title Office as a charge against the interest of the Lessee in the Lands and the Building or any part thereof. The Lessor agrees that such an assignment of rents will have priority over any similar assignment of those particular rents granted to the Lessor by this Lease.

ARTICLE 16 MORTGAGE

16.1 Mortgaging by Lessee

The Lessee may mortgage its leasehold interest in the Lands and the Building only with the prior written consent of the Lessor, which consent may not be unreasonably withheld, and the Commission, which consent may be arbitrarily withheld. Notwithstanding any such Mortgage, the Lessee will be and remain liable for the payment of all Basic Rent and Additional Rent, and the performance of all of its obligations set out in this Lease.

16.2 Tripartite Agreement

At the request of the Mortgagee, the Lessor will execute and deliver to the Mortgagee an agreement among the Lessee, the Lessor and the Mortgagee, or between the Lessor and the Mortgagee, which will be binding and enforceable against the Lessee (if a party thereto), the Lessor and the Mortgagee and their successors and assigns, whereby the Lessor will agree with the Mortgagee to afford to the Mortgagee the rights and remedies afforded to Mortgagees under this Lease.

ARTICLE 17 BANKRUPTCY OF LESSEE

17.1 Bankruptcy of Lessee

Subject to the provisions of section 18.2(c), if the Term is at any time seized or taken in execution by any creditor of the Lessee, or if the Lessee makes a general assignment for the benefit of creditors, or institutes proceedings to subject itself to the *Winding-up and Restructuring Act* (Canada) or to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files an application or petition or answer or consent seeking reorganization or readjustment of the Lessee under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or any law of Canada or any province thereof relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver, or if the Lessee or its directors pass any resolution authorizing the dissolution or winding-up of the Lessee, or if a receiver, interim receiver, trustee or liquidator of all or any part of the property of the Lessee is

appointed or applied for by the Lessee, or if a judgment, decree or order is entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Winding-up and Restructuring Act* or *Bankruptcy and Insolvency Act* or determining the proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or winding-up or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency has been properly instituted, then, subject to Section 23.1, this Lease will, at the option of the Lessor, immediately become terminated.

ARTICLE 18
DEFAULT BY LESSEE

18.1 Re-entry on Certain Defaults by Lessee

The Lessee, the Lessor and the Commission agree that, subject to the provisions of sections 18.2 and 23.1, if and whenever:

- (a) Basic Rent or any part thereof is not paid on the day appointed for payment thereof; or
- (b) the Lessee defaults in payment of Additional Rent or any other sums required to be paid to the Lessor or the Commission by any provision of this Lease, and such default continues for thirty (30) days following any specific due date on which the Lessee is to make such payment or, in the absence of such specific due date, for thirty (30) days following notice by the Lessor or the Commission requiring the Lessee to pay the same; or
- (c) the Building is abandoned or remains vacant for more than thirty (30) days; or
- (d) the Lessee defaults in performing or observing any of its other covenants or obligations under this Lease, or any contingency occurs which by the terms of this Lease constitutes a breach hereof or confers upon the Lessor the right to re-enter or forfeit or terminate this Lease, and the Lessor has given to the Lessee notice of such default or the happening of such contingency, and if at the expiration of forty-five (45) days after the giving of such notice the default or contingency continues to exist, or in the case of a default or contingency which cannot with due diligence be cured within the period of forty-five (45) days aforesaid, if the Lessee does not commence the rectification of such default or contingency within the said forty-five (45) day notice period and thereafter promptly and diligently and continuously proceed with such rectification; or
- (e) this Lease expires or is forfeited or terminated pursuant to any other provision contained herein, including, without restricting the generality of the foregoing, the termination of this Lease pursuant to the provisions of sections 4.3 or 10.5,

then and in every such case, it will be lawful for the Lessor at any time thereafter without notice or demand, with or without process of law and by forced entry if necessary, to enter into and upon the Lands and the Building, or part thereof in the name of the whole,

and, if this Lease has not already expired or been forfeited or terminated, to terminate this Lease by leaving upon the Lands notice in writing of such termination. If the Lessor terminates this Lease pursuant to this section 18.1, or otherwise as a result of default of the Lessee, or if the Lessee has forfeited this Lease, the Lessee will be liable to the Lessor for the rents and all other amounts to be paid and the covenants to be performed by the Lessee up to the date of such termination or forfeiture.

18.2 Notice to and Remedies of Mortgagee

The following provisions will apply with respect to any Mortgagee:

- (a) no re-entry, termination or forfeiture of this Lease by the Lessor will be valid against the Mortgagee who has filed with the Lessor a notice of Mortgage and specified an address for notice in accordance with Article 25, unless the Lessor has first given to the Mortgagee written notice of the default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease, specifying the nature of that default or contingency, and stating the Lessor's intention to take such proceedings and requiring the Mortgagee:
 - (i) to cure the default or contingency specified in the notice within a period of sixty (60) days from the date of receipt of that notice by the Mortgagee; or
 - (ii) if the default or contingency is other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease, and if the default or contingency cannot reasonably be cured within such sixty (60) day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency,

and the Lessor hereby grants the Mortgagee access to the Lands and the Building for that purpose. If the default or contingency is cured within the period specified, or in the circumstances referred to in 18.2(a)(ii), if cured within a reasonable period, the Mortgagee will be entitled to continue as tenant for the balance of the Term remaining at the date of the notice of default or contingency providing that the Mortgagee attorns as tenant to the Lessor and undertakes to be bound by and to perform and observe all of the Lessee's obligations, covenants and agreements under this Lease until such Mortgagee as tenant assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to be bound by and to perform and observe all of the Lessee's obligations, covenants and agreements under this Lease. If the Mortgagee consists of more than one mortgagee, each having a separate charge upon the Lessee's interest in this Lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Lessor hereby agrees to permit curing of the default or contingency specified as aforesaid by that Mortgagee that is willing to cure the default or contingency and attorn as tenant as aforesaid and whose charge ranks in

priority over the charge or charges held by the other Mortgagee or Mortgagees willing to cure and attorn as aforesaid, except that in the event that any Mortgagee has commenced a foreclosure action, the provisions of section 18.2(b) will apply;

- (b) in the event the Mortgagee commences foreclosure proceedings against the Lessee, whether or not the Lessee is in default of the performance of its covenants and agreements with the Lessor under this Lease at the time such foreclosure proceedings are commenced, the Lessor will not re-enter, terminate or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease if the Mortgagee:
- (i) has given to the Lessor notice of the foreclosure proceedings;
 - (ii) is actively prosecuting the foreclosure proceedings;
 - (iii) except for the bankruptcy or insolvency of the Lessee, which will be governed by section 18.2(c), cures the default or contingency within a period of sixty (60) days from the date of receipt of notice from the Lessor specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or contingency cannot reasonably be cured within such sixty (60) day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency; and
 - (iv) performs and observes all of the Lessee's covenants and agreements under this Lease, except for any obligation to cure the bankruptcy or insolvency of the Lessee and except for the obligations of the Lessee which the Mortgagee is exempt from pursuant to the terms of this Lease, and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee;

provided, however, that if the Mortgagee is an Approved Lender, the Corporation or the Commission, the curing of the default or contingency may be delayed until the earlier of the date of the assignment of this Lease to a third party or an Approved Lender, the Corporation or the Commission acquiring the Lessee's interest in this Lease. In the event that the Mortgagee acquires the Lessee's interest in the Lands and Building pursuant to the foreclosure proceedings, the Mortgagee will thereupon become subrogated to the rights of the Lessee under this Lease, provided it attorns to the Lessor as tenant and undertakes to be bound by and perform the covenants and agreements of this Lease until such Mortgagee as Lessee assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to be bound by and to perform the covenants and

agreements of this Lease. If the Mortgagee consists of more than one mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default or contingency granted by this section 18.2(b) to a foreclosing Mortgagee will be deemed granted to them in the order of priority of the charges held by the foreclosing mortgagees;

- (c) if this Lease is subject to termination or forfeiture pursuant to Article 17 by reason of the bankruptcy or insolvency of the Lessee and the Mortgagee has filed with the Lessor a notice of Mortgage in favour of the Mortgagee and specified an address for notice in accordance with Article 25, the Lessor will give to the Mortgagee notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to terminate or forfeit this Lease and stating the Lessor's intention to take such proceedings and requiring the Mortgagee to cure the Lessee default under this Lease (except for the bankruptcy or insolvency of the Lessee), and the Lessee's default will be deemed to have been sufficiently cured if the Mortgagee will:
- (i) take possession and control of the Lands and Building, or cause a receiver to be appointed under the terms of the Mortgagee's charge or by a court of competent jurisdiction, which receiver will take possession and control of the Lands and Building, and the Lessor hereby grants the Mortgagee or such receiver access to the Lands and Building for that purpose;
 - (ii) cure every default under this Lease (except for the bankruptcy or insolvency of the Lessee) within a period of sixty (60) days from the date of receipt by the Mortgagee of the notice from the Lessor of the bankruptcy or insolvency of the Lessee, or if such default or defaults are other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or defaults cannot reasonably be cured within such sixty (60) day period, immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure such default or defaults; provided, however, that if the Mortgagee is an Approved Lender, the Commission or the Corporation, the curing of the default or contingency may be delayed until the earlier of the date of the assignment of this Lease to a third party or an Approved Lender, the Commission or the Corporation acquiring the Lessee's interest in this Lease; and
 - (iii) subject to the right of an Approved Lender, the Commission or the Corporation to delay the curing of the default or contingency as set out in section 18.2(c)(ii), attorn as tenant to the Lessor and undertake to observe, be bound by and perform the obligations, covenants and agreements of the Lessee under this Lease until such Mortgagee, as tenant, assigns its leasehold estate as permitted under this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to observe, be bound by and

perform the obligations, covenants and agreements of the Lessee under this Lease.

If the Mortgagee consists of more than one mortgagee, the right to take possession and control, to cure any default and to assume the Lease as aforesaid will be deemed granted to them in the order of the priority of their respective charges;

- (d) any re-entry, termination or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Lessee will be valid and effectual against the Lessee even though made subject to the rights of any Mortgagee to cure any default of the Lessee and to continue as tenant under this Lease; and
- (e) no entry upon the Lands or into the Building by the Mortgagee for the purpose of curing any default of the Lessee will release or impair the continuing obligations of the Lessee.

18.3 Change of Use

If the Lessee, by foreclosure or otherwise, acquires or intends to assign or sublet an interest in the Lands, the Lessee, assignee or subtenant will not be obliged to observe or perform the Lessee's obligations under section 6.1 but will otherwise comply with all the Lessee's other obligations under this Lease. If the Lessee, assignee or subtenant elects not to use and occupy the Lands for the use set out in section 6.1 and commences to use and occupy the Lands for another use, the Basic Rent will be adjusted, from time to time, to reflect the fair rental value of the Lands, without reference to the Improvements thereon, given the use to which the Lands is put, from time to time. If the parties cannot agree on the Basic Rent or the dates when the Basic Rent is to be adjusted, the Basic Rent and/or adjustment dates will be settled by arbitration pursuant to ARTICLE 19.

18.4 Remedies of Lessor and the Commission are Cumulative

The remedies of the Lessor and the Commission specified in this Lease are cumulative and are in addition to any remedies that the Lessor and the Commission may have at law or equity. No remedy will be deemed to be exclusive, and the Lessor and the Commission may from time to time have recourse to one or more or all of the available remedies specified herein, or at law or equity. In addition to any other remedies provided in this Lease, the Lessor and the Commission will be entitled to restrain by injunction any violation or attempted or threatened violation by the Lessee of any of the covenants or agreements contained herein.

18.5 Waiver by Lessor and Commission

The failure of the Lessor or the Commission to insist upon the strict performance of any covenant or agreement contained in this Lease will not waive such covenant or agreement, and the waiver by the Lessor or the Commission of any breach of any covenant or agreement of the Lessee under this Lease will not constitute a waiver of such covenant or agreement in respect of any other breach. The receipt and acceptance by the Lessor of rent or other monies due hereunder with knowledge of any breach of any

covenant or agreement by the Lessee will not constitute a waiver of such breach. No waiver by the Lessor or the Commission will be effective unless made in writing.

ARTICLE 19
ARBITRATION

19.1 Arbitration

If a disagreement arises pursuant to sections 4.3, 4.6, or 6.1, the same will be settled by arbitration. The arbitration will be conducted by a single arbitrator chosen by the Commission which arbitrator will be at arm's length from the Commission. The costs and expenses of the reference and award will be dealt with as follows:

- (a) each party will bear its own expense of preparing and presenting its case to the arbitrator, irrespective of whether any such expense was incurred or contracted for prior to the election for arbitration, including the expenses of appraisals, witnesses and legal representation; and
- (b) the fees of the arbitrator will be shared by the parties equally.

The *Commercial Arbitration Act* (British Columbia) will apply with respect to the arbitration. If an Approved Lender or the Corporation holds a Mortgage of the Lessee's leasehold interest in the Lands and Building, any notice of a dispute given under this section by one of the parties to the others will be given at the same time to such Mortgagee, if it has specified an address for notice, and such Mortgagee so notified will be given a reasonable opportunity by the parties to participate in the arbitration proceedings if it considers such proceedings may affect the Mortgage security.

ARTICLE 20
SURRENDER OF LEASE

20.1 Surrender of Lease

At the termination or expiration of the Term, whether by forfeiture, default or lapse of time, the Lessee will surrender the Lands and Building to the Lessor in the condition in which they were required to be kept by the Lessee pursuant to the provisions of this Lease, including, without restricting the generality of the foregoing, the provisions of sections 10.5(c) and 10.6(b), except as herein otherwise expressly provided.

ARTICLE 21
QUIET ENJOYMENT, OWNERSHIP OF TENANTS' FIXTURES AND OWNERSHIP OF
BUILDING

21.1 Covenant for Quiet Enjoyment

Subject always to the Lessor's and the Commission's rights herein, and subject always to the Permitted Encumbrances as extended or modified from time to time, if the Lessee pays the rent hereby reserved and all other amounts payable hereunder, and observes and performs all of the obligations, covenants and agreements of the Lessee herein contained,

the Lessee may peaceably enjoy and possess the Lands for the Term, without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming through, from or under the Lessor, provided however that the enforcement by the Lessor, in its capacity as a municipality, of laws, bylaws and orders that touch and concern the Lands and Building will not be a breach of the Lessor's covenant set forth in this section 21.1.

21.2 Ownership of Tenant's Fixtures

The Lessee may confer upon tenants or occupants of the Building the right of property in, or the right to remove, fixtures or improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Building or the Lands. The Lessee will make good, or will cause such tenants to make good, any damage to the Building caused by any removal of the tenants' fixtures.

21.3 Ownership of Building

The Building will become the absolute property of the Lessor, free and clear of all liens, charges, encumbrances, equities or claims of any kind or nature whatsoever, save and except for the Permitted Encumbrances, upon the expiration or earlier termination of the Term or any permitted period of overholding, except as provided in Article 10, but will be deemed, as between the Lessor and the Lessee during the Term, to be the separate property of the Lessee and not of the Lessor but subject to and governed by all the provisions of this Lease, provided always that the Lessor's absolute right of property in the Building, which will arise at the expiration or earlier termination of the Term or any permitted period of overholding, will take priority over any other interest in the Building that may now or hereafter be created by the Lessee without the prior written consent of the Lessor, and provided that all dealings by the Lessee with the Building which in any way affect title thereto will be made expressly subject to this right of the Lessor and the Lessee will not assign, encumber or otherwise deal with the Building separately from any permitted dealing with the leasehold interest under this Lease, to the intent that no person will hold or enjoy any interest in this Lease acquired from the Lessee who does not at the same time hold a like interest in the Building.

ARTICLE 22 OVERHOLDING

22.1 Overholding

The Lessee covenants and agrees with the Lessor that if the Lessee will hold over and the Lessor will accept rent after the expiration of the Term, the new tenancy thereby created will be a tenancy from month to month and not a tenancy from year to year and will be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month, provided however that the monthly Basic Rent payable by the Lessee will be the then market rental value of the Lands and the Building as determined from time to time in the bona fide opinion of the Lessor's Director of Housing and Properties or his or her successor in function, and such monthly Basic Rent

will be paid in advance. The Lessee will also pay monthly as Additional Rent one-twelfth of the then current sum described in section 3.1 or 3.2 hereof, as the case may be.

ARTICLE 23
ADDITIONAL RIGHTS OF THE COMMISSION

23.1 Notice to Commission

Unless otherwise agreed in writing by the Commission and unless failure of the Lessor to act in the circumstances would result in an emergency situation, the Lessor may not exercise any of its rights which arise as a result of a default by the Lessee under this Lease until ninety (90) days (the "Notice Period") after receipt by the Commission of written notice describing the Lessee's default.

If at the expiration of the Notice Period:

- (a) the Commission has not cured such default; or
- (b) the Commission has not given the Lessor a notice in writing (the "Attornment Notice") advising the Lessor that the Commission or its nominee will attorn as tenant under this Lease; or
- (c) the Commission has not entered into a new Operating Agreement with a new Operator;

then the Lessor will be at liberty to proceed to exercise any of the powers given to it under this Lease.

Upon receipt of the Attornment Notice the Lessor will enter into the necessary agreement with the Commission or its nominee allowing them to attorn as tenant under the Lease.

23.2 Rights of Commission Not Limited

The Lessee and the Lessor agree that the rights given to the Commission pursuant to Article 23 are not to be construed in any manner whatsoever so as to limit or otherwise prejudice the rights of the Commission as against the Lessee under any Operating Agreement or any other agreement between the Commission and the Lessee or the Commission and the Lessor.

23.3 Commission May Perform Obligations of Lessee

Where the Commission chooses to perform an obligation of the Lessee under this Lease in order to avoid forfeiture, the Lessor will accept that performance as if the same had been performed by the Lessee.

ARTICLE 24
ENVIRONMENTAL MATTERS

24.1 Definitions

For the purposes of this Article 24:

- (a) “Contaminants” mean any pollutants, contaminants, deleterious substances, underground or aboveground tanks, asbestos materials, urea formaldehyde, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance which is now or hereafter prohibited, controlled or subject to Environmental Laws; and
- (b) “Environmental Laws” means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any governmental authority having jurisdiction over the Lands or Building, now or hereafter in force and relating in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, and includes the principles of common law and equity.

24.2 Lessee’s Covenants and Indemnity

The Lessee covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the Lands or Building for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with Contaminants, without the prior written consent of the Lessor, which consent may be arbitrarily or unreasonably withheld;
- (b) to strictly comply, and cause all persons for whom it is at law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Lands and Building;
- (c) to promptly provide to the Lessor a copy of any environmental site investigation, assessment, audit or report relating to the Lands or Building and conducted by or for the Lessee at any time before, during or after the Term, or any renewal or extension thereof. The Lessee hereby waives the requirement for the Lessor to provide a site profile for the Lands pursuant to the *Environmental Management Act* (British Columbia), any regulations enacted pursuant thereto, or any similar or successor legislation;
- (d) to promptly provide to the Lessor on request such written authorizations as the Lessor may require from time to time to make inquiries of any governmental authorities regarding the Lessee’s compliance with Environmental Laws;
- (e) to promptly notify the Lessor in writing of the existence or release of any Contaminant on, in or under the Lands or Building or of any other occurrence or condition at the Lands or any adjacent property that could contaminate the Lands or the Building or result in the non-compliance of the Lands or Building with

Environmental Laws, or subject the Lessor or Lessee to any fines, penalties, orders, investigations or proceedings under Environmental Laws;

- (f) on the expiry or earlier termination of this Lease, or at any time if requested by the Lessor or required pursuant to Environmental Laws, to remove from the Lands and Building all Contaminants, and to remediate any contamination of the Lands or any adjacent or other affected property resulting from Contaminants, in either case brought onto, used at, created upon or released from the Lands by the Lessee or any person for whom the Lessee is at law responsible. The Lessee will perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants will remain the property of the Lessee, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding their degree of affixation to the Lands or Building; and
- (g) without limiting the generality of Article 14, to indemnify the Lessor, the Commission, PRHC and their respective Personnel and contractors from any and all Losses (including the cost of remediation of the Lands and Building and any other affected property) arising from or in connection with:
 - (i) any breach of or non-compliance with the provisions of this Article 24 by the Lessee; or
 - (ii) the release or alleged release of any Contaminants at or from the Lands related to or as a result of the use and occupation of the Lands and Building by, or any act or omission of, the Lessee or any person for whom the Lessee is responsible at law.

The obligations of the Lessee under this Article 24 will survive the expiry or earlier termination of this Lease, and the obligations of the Lessee under this Article 24 are in addition to, and will not limit, the other obligations of the Lessee under this Lease.

ARTICLE 25 NOTICES

25.1 Notices

All notices, demands and request which may or are required to be given pursuant to this Lease will be in writing and will be sufficiently given if served personally upon the party for which it is intended, or mailed prepaid and double registered:

- (a) in the case of the Lessor, addressed to:

City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4
Attention: Manager of Community Development & Real Estate

- (b) in the case of the Lessee, addressed to:

Ki-Low-Na Friendship Society
442 Leon Avenue
Kelowna, BC V1Y 6J3
Attention: Director

- (c) in the case of the Commission or PRHC, addressed to:

British Columbia Housing Management Commission
Suite 1701 - 4555 Kingsway
Burnaby BC V5H 4V8
Attention: Manager Real Estate Services

or at such other addresses as each of the parties may from time to time advise by notice in writing. Mortgagees will supply their respective mailing addresses to the Lessor and the Lessee. The date of receipt of any such notice, demand or request will be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed as aforesaid on the fifth business day next following the date of such mailing; provided, however, that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down of postal service or other labour dispute which affects the delivery of such notice, then such notice will be deemed to be received when actually delivered.

ARTICLE 26 MISCELLANEOUS

26.1 Statements by Lessor

The Lessor and the Lessee agree that at any time and from time to time, upon not less than thirty (30) days prior request by the other party, each will execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this Lease is unmodified and in full force and effect, or if there have been modifications, the nature of such modifications and that the same are in full force and effect as modified;
- (b) the dates to which the rent and any other amounts payable under this Lease have been paid; and
- (c) that to the best of the information and belief of the maker of the statements, the Lessor and the Lessee are not in default under any provision of this Lease, or, if in default, the particulars thereof.

26.2 Time of Essence

Time will be of the essence of this Lease, save as otherwise specified herein.

26.3 Formality of Modifications

This Lease may not be modified or amended except by an instrument in writing executed by the Lessor and the Commission or their successors or assigns, and by the Lessee or its successors or permitted assigns.

26.4 Captions and Headings

The captions and headings throughout this Lease are for convenience and reference only and the words and phrases contained therein will in no way be held or deemed to define, limit, describe explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Lease nor in any way affect this Lease.

26.5 Enurement

It is further agreed and declared by the Lessor and the Lessee that this Lease will extend to, be binding upon and enure to the benefit of the Lessor, the Commission, PRHC and the Lessee, the successors and assigns of the Lessor, the Commission and PRHC, and the successors and permitted assigns of the Lessee.

26.6 Covenants or Conditions

All of the provisions of this Lease will be deemed and construed to be conditions as well as covenants, as though the words specifically expressing or importing covenants or conditions were used in each separate provision hereof.

26.7 References

The words "herein", "hereby", "hereunder" and words of similar import refer to this Lease as a whole and not to any particular Article, section or subsection in this Lease.

26.8 Execution

By signing the General Instrument, the parties have agreed to be bound by their respective obligations contained in this Lease.

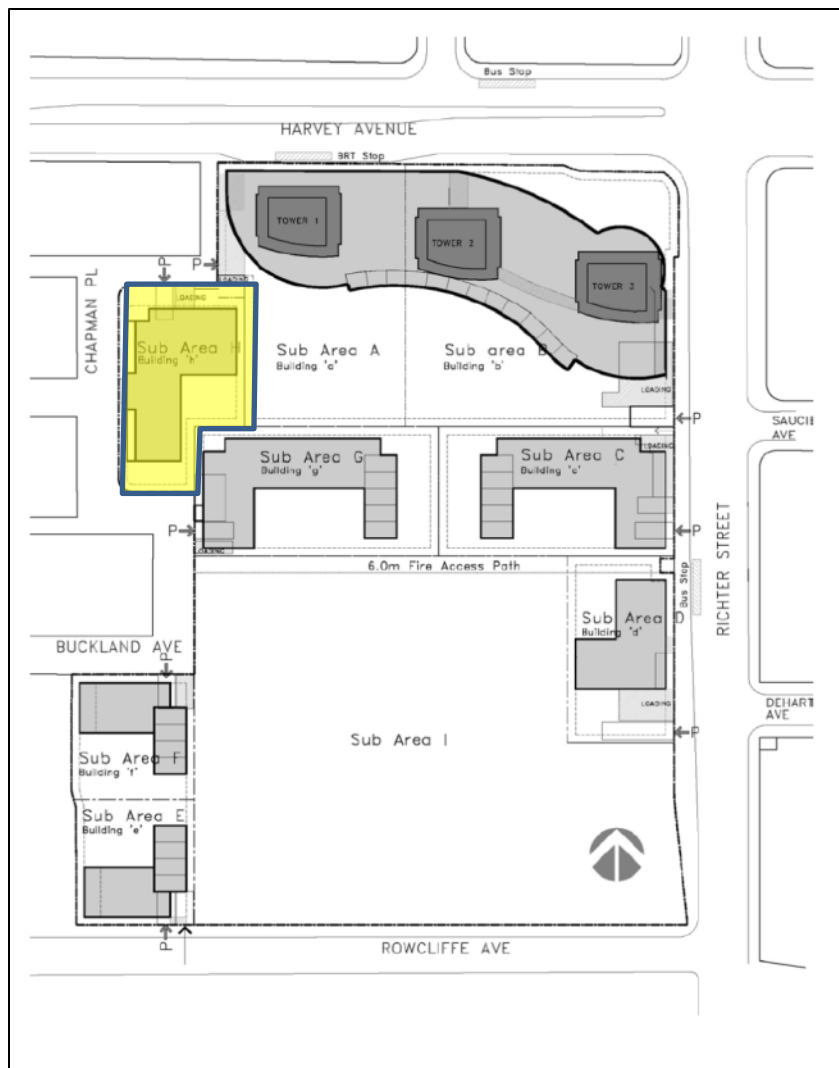
END OF DOCUMENT

CENTRAL GREEN

1745 Chapman Place



SITE OVERVIEW



SUB AREA H - 1745 CHAPMAN PLACE

- ▶ BC Housing
- ▶ Ki-Low-Na
- ▶ Development permit approval
- ▶ Lease approval
- ▶ Construction schedule - 2015/2016

LEASE

- ▶ Term - 60 years
- ▶ Compensation - \$10.00
- ▶ Termination upon failure to construct
- ▶ Restriction on strata ownership (Ki-Low-Na or BC Housing)
- ▶ Right to lease assumption by BC Housing upon default

