

City of Kelowna

Public Hearing

AGENDA



Tuesday, April 25, 2017
6:00 pm
Council Chamber
City Hall, 1435 Water Street

Pages

1. Call to Order

THE CHAIR WILL CALL THE HEARING TO ORDER:

1. (a) The purpose of this Hearing is to consider certain bylaws which, if adopted, shall amend *Kelowna 2030* - Official Community Plan Bylaw No. 10500 and Zoning Bylaw No. 8000.

(b) All persons who believe that their interest in property is affected by the proposed bylaws shall be afforded a reason-able opportunity to be heard or to present written submissions respecting matters contained in the bylaws that are the subject of this hearing. This Hearing is open to the public and all representations to Council form part of the public record. A live audio feed may be broadcast and recorded by Castanet.

(c) All information, correspondence, petitions or reports that have been received concerning the subject bylaws have been made available to the public. The correspondence and petitions received after April 12, 2017 (date of notification) are available for inspection during the course of this hearing and are located on the information table in the foyer of the Council Chamber.

(d) Council debate on the proposed bylaws is scheduled to take place during the Regular Council meeting after the conclusion of this Hearing. It should be noted, however, that for some items a final decision may not be able to be reached tonight.

(e) It must be emphasized that Council will not receive any representation from the applicant or members of the public after conclusion of this Public Hearing.

2. Notification of Meeting

The City Clerk will provide information as to how the Hearing was publicized.

3. Individual Bylaw Submissions

3.1 TA16-0007 (BL11376) - Medical Marihuana Amendments

4 - 10

Amend Zoning Bylaw No.8000 to clarify marihuana related regulations and definitions.

- 3.2 1225 Hwy 33 W, OCP16-0024 (BL11380) and Z16-0071 (BL11381) - Seventh Day Adventist Church** 11 - 17

To amend the Official Community Plan to change the Future Land Use Designation of the subject property to EDINST – Educational/Major Institutional and to rezone the property from RU1 – Large Lot Housing to P2 – Educational & Minor Institutional.

- 3.3 Arab Ct, Appaloosa Rd and Sexsmith Rd, OCP17-0008 (BL11382) - Various Owners** 18 - 31

To consider Official Community Plan amendments to change the Future Land Use of 31 properties that are without ready access to sewer and industrial standard roads.

4. Termination

5. Procedure on each Bylaw Submission

- (a) Brief description of the application by City Staff (Land Use Management);
- (b) The Chair will request that the City Clerk indicate all information, correspondence, petitions or reports received for the record.
- (c) The applicant is requested to make representation to Council regarding the project and is encouraged to limit their presentation to 15 minutes.
- (d) The Chair will call for representation from the public in attendance as follows:
 - (i) The microphone at the public podium has been provided for any person(s) wishing to make representation at the Hearing.
 - (ii) The Chair will recognize ONLY speakers at the podium.
 - (iii) Speakers are encouraged to limit their remarks to 5 minutes, however, if they have additional information they may address Council again after all other members of the public have been heard a first time.
- (e) Once the public has had an opportunity to comment, the applicant is given an opportunity to respond to any questions raised. The applicant is requested to keep the response to a total of 10 minutes maximum.
- (f) Questions by staff by members of Council must be asked before the Public Hearing is closed and not during debate of the bylaw at the Regular Meeting, unless for clarification.
- (g) Final calls for representation (ask three times). Unless Council directs that the Public Hearing on the bylaw in question be held open, the Chair shall state to the gallery that the Public Hearing on the Bylaw is closed.

Note: Any applicant or member of the public may use visual aids (e.g. photographs, sketches, slideshows, etc.) to assist in their presentation or questions. The computer and ELMO document camera at the public podium are available. Please ask staff for assistance prior to your item if required.



Date: March 13, 2017

RIM No. 1250-04

To: City Manager

From: Community Planning Department (RS)

Application: TA16-0007

Owner: N/A

Applicant: City of Kelowna

Subject: Text Amendment – Zoning Bylaw

1.0 Recommendation

THAT Zoning Bylaw Text Amendment Application No. TA16-0007 to amend City of Kelowna Zoning Bylaw No. 8000 as outlined Schedule "A" and in the Report from the Community Planning Department dated March 13, 2017 be considered by Council;

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

2.0 Purpose

Amend Zoning Bylaw No.8000 to clarify marihuana related regulations and definitions.

3.0 Community Planning

The proposed Zoning Bylaw amendments are primarily meant to clarify that the storefront retail sale or dispensing of marihuana is not a permitted use in various city zoning categories that may be interpreted to allow such a use. At the present time, Health Canada regulations restrict the retail sale of medical marihuana to internet mail order from a licensed production facility, and other forms of retail sales for medical or recreational use is not lawful in Canada. It is the City's position that its sale is not permitted by any land use category. Furthermore, this would also extend to any storefront (retail) sale of marihuana. Nevertheless, various business ventures have been appearing in Canadian communities that are attempting to retail marihuana and marihuana products. Staff are proposing this set of Zoning Bylaw text amendments in order to add further clarity. It is expected that the federal government will introduce new legislation to regulate the production, use and sale of marijuana, and that the provincial government will also introduce some sort of complementary regulatory régime. When this may occur is unknown at time of writing.

In the background section of this report, staff have provided the recent recommendations of a Federal Government task force on the legalization of marihuana. If implemented, those recommendations will likely result in local governments having some measure of land use and business regulation control over the location of marihuana retail/dispensing. It is staff's goal to raise the level of understanding in the

community as early as possible regarding what type of land use process future business operators may need to pursue if higher levels of government choose to allow local land use control. Staff will be working with neighboring municipalities in the spring of 2017 in an effort to approach future regulation with some common principles.

Staff are also working on a report and workshop for Council to discuss the options for tracking and licensing the small scale production of medical marihuana in a residential context. This report will be brought forward to Council in the spring of 2017. The large scale commercial production of medical marihuana is already a regulated land use in Kelowna's Zoning Bylaw. It is a permitted in the City's I1, I2, I3 and I4 zones.

4.0 Proposal

4.1 Background

During 2016, a Federal Government task force received feedback from a number of different stakeholders, including City Council, on the topic of legalizing marijuana use. While some of the task force direction relates to all Canadians, the report did contain recommendations that will impact municipalities. Those recommendations included:

The Task Force heard mixed views on the type of retail outlets that should be permitted. Some advocated for a centralized, government monopoly akin to how most provinces and territories manage alcohol sales while others expressed a preference for a private-enterprise model with cannabis-specific storefronts (e.g., dispensaries) or with those for whom profit is not their principal motive (e.g., compassion clubs). Regardless of the model, participants were generally of the view that there should be some sort of storefront retail market, but they also noted concerns regarding the unchecked proliferation of unregulated dispensaries as they exist today.

Additionally, the Task Force heard strong support for prohibiting the co-location of cannabis sales with either alcohol or tobacco. Given the wide use and availability of liquor stores, concerns were raised about product promotion and exposing a larger population to cannabis products should sales be co-located, as well as the impact on cannabis consumers who are trying to avoid alcohol. Many also noted that this approach could help mitigate co-use, given what we heard about the risks of co-use on health and, with alcohol, the exponential effect on impairment. In all of the U.S. states that have legalized cannabis, there is a ban on the co-location of sales of cannabis and alcohol.

There was strong support for measures to control the density and location of retail stores. These measures prohibit storefronts from being located near schools, community centres and other public institutions. However, concerns were raised about the "downloading" of these regulatory responsibilities and costs to municipalities.

The Task Force recommends that retail sales of cannabis be regulated by provinces and territories in close collaboration with municipalities.

The Task Force further recommends that the retail environment include:

- *No co-location of alcohol or tobacco and cannabis sales, wherever possible. When co-location cannot be avoided, appropriate safeguards must be put in place*

- *Limits on the density and location of storefronts, including appropriate distance from schools, community centres, public parks, etc.*
- *Dedicated storefronts with well-trained, knowledgeable staff*
- *Access via a direct-to-consumer mail-order system*

4.2 Description of Proposed Bylaw Changes

Several businesses have sprung up in Kelowna's commercial areas which appear to be operating or planning to operate in the future as marihuana dispensary type businesses. Staff are concerned that those taking the risk to invest in such a way prior to formal law/policy from the Federal/Provincial governments and regulation from local government may run into future conflict with land use regulations. At the present time, marihuana dispensaries wishing to use "storefront" type model are not legal in Canada.

Staff are recommending that Council endorse changes to the definitions of Health Services - Major, Retail Store – Convenience, Retail Store – General, Retail Store – Health Products and Retail Store - Service Commercial to clearly prohibit the retail sale or dispensing of marihuana. This is not new regulation. Since the retail/storefront sale of marihuana is not currently legal in Canada, staff are simply updating to bylaw in order to provide additional clarity for our Community.

Staff are also proposing to update the definition of "Medical Marihuana Production Facility" in order to ensure that the definition remains up to date with the current Health Canada regulations.

4.3 Proposed Future Policy/Regulatory Direction

Staff are currently working with neighbouring municipalities in an effort to move forward with a coordinated approach to future land use regulation for the retail sale/dispensing of marihuana. The exact model of this approach will depend on the regulatory framework introduced by both Federal and Provincial governments.

The recommended regulatory model will very likely include:

- Special zoning designation (similar to Liquor Primary zoning designation)
- Prohibited areas (potentially Bernard Avenue, Ellis Street Pandosy Street retail commercial corridors)
- Minimum distances from public parks and schools

5.0 Technical Comments

5.1 RCMP

While the Federal Government is considering the legalization of marihuana, it remains against the law to consume or sell except in accordance with Federal regulations.

Report prepared by:

Ryan Smith, Community Planning Manager

Approved for Inclusion:



Doug Gilchrist, Divisional Director, Community Planning & Real Estate

Attachments:

Schedule "A"

TA16-0007 – SCHEDULE “A”

Zoning Bylaw No. 8000			
No.	Section	Existing Text	Proposed Text
1	2.3 - General Definitions	MEDICAL MARIHUANA PRODUCTION FACILITY means a facility for the producing, processing, setting, 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/210 -119).	MEDICAL MARIHUANA PRODUCTION FACILITY means a facility for the producing, processing, setting, providing, shipping, delivering and destroying of medical marihuana and can include analytical testing in permitted industrial zones and must be licensed by Health Canada. This use does not include the retail sale or dispensing of marihuana.
2	2.3 - General Definitions	RETAIL STORE - CONVENIENCE means development used for the retail sale of those goods required by area residents (including tourists temporarily resident in a neighbourhood) and employees on a day to day basis, from business premises which do not exceed 235 m ² in gross floor area . Typical uses include but are not necessarily limited to: small food stores, drug stores, florists, or variety stores selling confectionery, tobacco, groceries, beverages, pharmaceutical items, personal care items, hardware, printed matter, seasonal or tourism related rentals or the rental of videos. In the W2 Zone, this includes items normally required by people using marina facilities, but does not include the rental of	RETAIL STORE - CONVENIENCE means development used for the retail sale of those goods required by area residents (including tourists temporarily resident in a neighbourhood) and employees on a day to day basis, from business premises which do not exceed 235 m ² in gross floor area . Typical uses include but are not necessarily limited to: small food stores, drug stores, florists, or variety stores selling confectionery, tobacco, groceries, beverages, pharmaceutical items, personal care items, hardware, printed matter, seasonal or tourism related rentals or the rental of videos. This use does not include the retail sale or dispensing of marihuana. In the W2 Zone, this includes items normally required by people using marina facilities, but does not include the rental of

		personal watercraft or rental of automobiles.	personal watercraft or rental of automobiles.
3	2.3 - General Definitions	RETAIL STORE, GENERAL means premises where goods, merchandise and other material are offered for sale at retail to the general public and includes limited on-site storage or limited seasonal outdoor sales to support that store's operations. Typical uses include but are not limited to grocery, hardware, pharmaceutical, clothing, appliance and sporting goods stores. This use excludes warehouse sales and sale of gasoline, heavy agricultural and industrial equipment, second-hand goods, and retail stores requiring outdoor storage .	RETAIL STORE, GENERAL means premises where goods, merchandise and other material are offered for sale at retail to the general public and includes limited on-site storage or limited seasonal outdoor sales to support that store's operations. Typical uses include but are not limited to grocery, hardware, pharmaceutical, clothing, appliance and sporting goods stores. This use excludes warehouse sales and sale of gasoline, heavy agricultural and industrial equipment, second-hand goods, and retail stores requiring outdoor storage . This use does not include the retail sale or dispensing of marihuana.
4	2.3 - General Definitions	Retail Stores, Health Products means a retail outlet where products related to the health industry are sold, rented, custom fitted or repaired. Such uses include but are not limited to pharmacies, health food stores, naturopathic stores, uniform stores. Limited convenience retail is permitted as a secondary use.	Retail Stores, Health Products means a retail outlet where products related to the health industry are sold, rented, custom fitted or repaired. Such uses include but are not limited to pharmacies, health food stores, naturopathic stores, uniform stores. Limited convenience retail is permitted as a secondary use. This use does not include the retail sale or dispensing of marihuana.
5	2.3 - General Definitions	RETAIL STORE, SERVICE COMMERCIAL means premises where goods, merchandise or other materials are offered for sale at retail to the general public and require extensive on-site storage to support the store's operations, either for product storage, or for processing, manufacturing or repairing goods sold on site. Typical uses include but are not limited to sales of automotive parts, and bakeries and	RETAIL STORE, SERVICE COMMERCIAL means premises where goods, merchandise or other materials are offered for sale at retail to the general public and require extensive on-site storage to support the store's operations, either for product storage, or for processing, manufacturing or repairing goods sold on site. Typical uses include but are not limited to sales of automotive parts, and bakeries and butchers that process on site. This use does not

		butchers that process on site.	include the retail sale or dispensing of marihuana.
6	2.3 - General Definitions	<p>HEALTH SERVICES, MAJOR means a development used for the provision of physical or mental health services on an out-patient basis. Services may be of a preventative, diagnostic, treatment, therapeutic, rehabilitative or counseling nature.</p> <p>Typical uses include, but are not limited to, medical and dental offices, chiropractors, massage therapists and acupuncture clinics, health clinics, and counseling services.</p>	<p>HEALTH SERVICES, MAJOR means a development used for the provision of physical or mental health services on an out-patient basis. Services may be of a preventative, diagnostic, treatment, therapeutic, rehabilitative or counseling nature. Typical uses include, but are not limited to, medical and dental offices, chiropractors, massage therapists and acupuncture clinics, health clinics, and counseling services. This use does not include the retail sale or dispensing of marihuana.</p>

REPORT TO COUNCIL



Date: April 10, 2017

RIM No. 1250-20 & 1250-30

To: City Manager

From: Community Planning Department (TB)

Application: OCP16-0024 & Z16-0071

Owner: Seventh-Day Adventist Church
(British Columbia Conference)

Address: 1225 Hwy 33 W

Applicant: Paul Schuster, Novation Design
Studio

Subject: Official Community Plan Amendment, Rezoning

Existing OCP Designation: MRL – Multiple Unit Residential (Low Density)

Proposed OCP Designation: EDINST – Educational / Major Institutional

Existing Zone: RU1 – Large Lot Housing

Proposed Zone: P2 – Educational & Minor Institutional

1.0 Recommendation

THAT Official Community Plan Map Amendment Application No. OCP16-0024 to amend Map 4.1 in the Kelowna 2030 – Official Community Plan Bylaw No. 10500 by changing the Future Land Use designation of Lot 1, Section 22, Township 26, ODYD, Plan EPP64302, located at 1225 Hwy 33 W, Kelowna, BC from the S2RES - Single / Two Unit Residential designation to the EDINST – Educational / Major Institutional designation, be considered by Council;

AND THAT Council considers the Public Notification public process to be appropriate consultation for the *Purpose* of Section 879 of the *Local Government Act*, as outlined in the Report from the Community Planning Department dated April 10, 2017;

AND THAT Rezoning Application No. Z16-0071 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 1, Section 22, Township 26, ODYD, Plan EPP64302, located at 1225 Hwy 33 W, Kelowna, BC from the RU1 – Large Lot Housing zone to the P2 – Educational & Minor Institutional zone be considered by Council;

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

AND FURTHER THAT final adoption of the Official Community Plan Map Amending Bylaw and Rezoning Bylaw be considered subsequent to the outstanding conditions of approval as set out in Schedule "A" attached to the Report from the Community Planning Department dated March 23, 2017.

2.0 Purpose

To amend the Official Community Plan to change the Future Land Use Designation of the subject property to EDINST – Educational/Major Institutional and to rezone the property from RU1 – Large Lot Housing to P2 – Educational & Minor Institutional.

3.0 Community Planning

Community Planning recommends support for the proposed Official Community Plan (OCP) Amendment and rezoning as it reflects the actual use of the property which is supportive housing for the Seventh-Day Adventist Church located next door at 130 Gerstmar Road. The application will harmonize the uses onto one consolidated site and is supported by the OCP Policy for Social Sustainability and Housing Availability.

4.0 Proposal

4.1 Background

The Seventh-Day Adventist Church purchased the subject property several years ago with the intent to use the property for additional parking or support buildings for the Church located next door at 130 Gerstmar Road.

4.2 Project Description

The OCP Amendment and Rezoning application would change the subject property from Residential to Institutional. This is reflective of the current use of the property which is for supportive housing for the Seventh-Day Adventist Church at 130 Gerstmar Road. A component of this application is to consolidate the subject property with the church property next door to allow for continued use as supportive housing as well as to allow for future additional parking or other support buildings as needed. This will harmonize the existing uses, and the properties will be consolidated as a function of this application. Access to the property will be restricted to Gerstmar Road, and a 3.5m road dedication on the north of the property will allow for potential future upgrades or widening of Hwy 33 W.

At this time, there are no immediate plans to develop or construct on the subject property other than to repair and renovate the existing dwelling. The OCP Policy on Social Sustainability and Housing Availability supports the provision of different types of housing including providing core housing for those in need and special needs housing.

4.3 Site Context

The subject property is located on the south side of Hwy 33 W between Taylor Road and Gerstmar Road. It is located in a neighbourhood that has a mix of uses including single family, multi-family, and commercial.

Specifically, adjacent land uses are as follows:

Orientation	Zoning	Land Use
North	RU1 – Large Lot Housing	Residential

East	P2 – Educational & Minor Institutional	Religious Assembly
South	P2 – Educational & Minor Institutional	Religious Assembly
West	RM3 – Low Density Multiple Housing	Multi-family Residential

Subject Property Map: 1225 Hwy 33 E



4.4 Zoning Analysis Table

Zoning Analysis Table		
CRITERIA	P2 ZONE REQUIREMENTS	PROPOSAL
Existing Lot/Subdivision Regulations		
Lot Area	660 m ²	2707.7 m ²
Lot Width	18.0 m	37.9 m
Lot Depth	30.0 m	71.5 m

5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Social Sustainability

Housing Availability¹. Support the provision of housing for all members of the community, including those in core housing need or requiring special needs housing (transitional, age in place, emergency, or shelter).

6.0 Technical Comments

6.1 Development Engineering Department

Please see attached Schedule "A" dated March 23, 2017.

6.2 Ministry of Transportation

Preliminary Approval is granted for the rezoning for one year pursuant to Section 52(3)(a) of the Transportation Act, subject to the following conditions:

- No direct access to Highway 33.

7.0 Application Chronology

Date of Application Received: September 30, 2016

Date Public Consultation Completed: February 6, 2017

Report Prepared by: Trisa Brandt, Planner

Reviewed by: Terry Barton, Urban Planning Manager

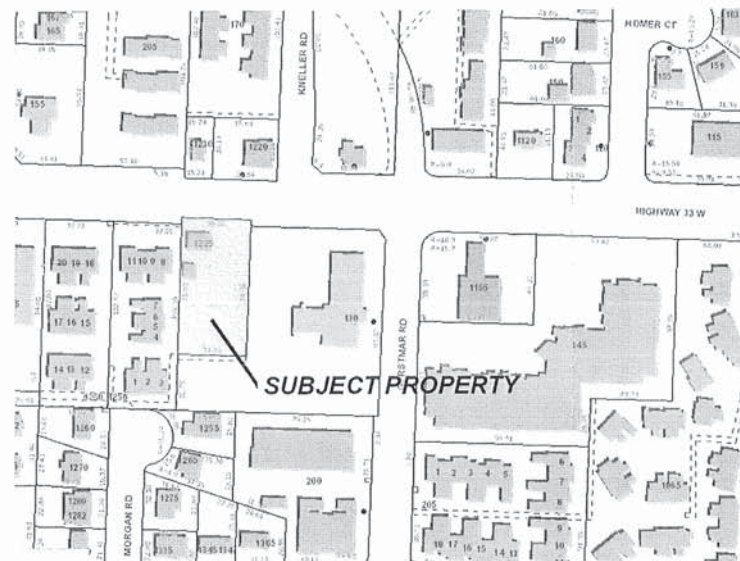
Approved for Inclusion by: Ryan Smith, Community Planning Department Manager

Attachments:

Site Plan

Schedule "A" Dated January 9, 2017

¹ City of Kelowna Official Community Plan Chapter 10 Policy 10.3.1



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This document is

- ☒ NOT controlled. Revisions may be made without notice.
- ☐ A CONTROLLED document. Revision is to be advised.
- ☒ The first issue of the document.
- ☐ A complete revision. Remove previous issues from use.
- ☐ A partial revision. Remove previous issues of corresponding sheets / pages from use.
- ☐ Not for Construction.

01 2575296 ISSUED FOR BIDDING
no. 488 County Road



NOVATION
DESIGN STUDIO
301 - 1845 CRAWFORTH DR. SUITE 520
KELOWNA BC V1Y 9

Seventh-Day Adventist Church
Property

1225 HWY 33 W, Kelowna, BC
PROJECT NO: Misc

drawing title
EXISTING SITE PLAN

designed	PS	100	1 st = 20
drawn	PS		
checked	PS		
drawings			

A1.02

2016-04-30 12:10:3

REFERENCE PLAN OF LOTS A AND B SECTION 22 TOWNSHIP 26 ODYD PLAN 12600 EXCEPT PLAN 39705

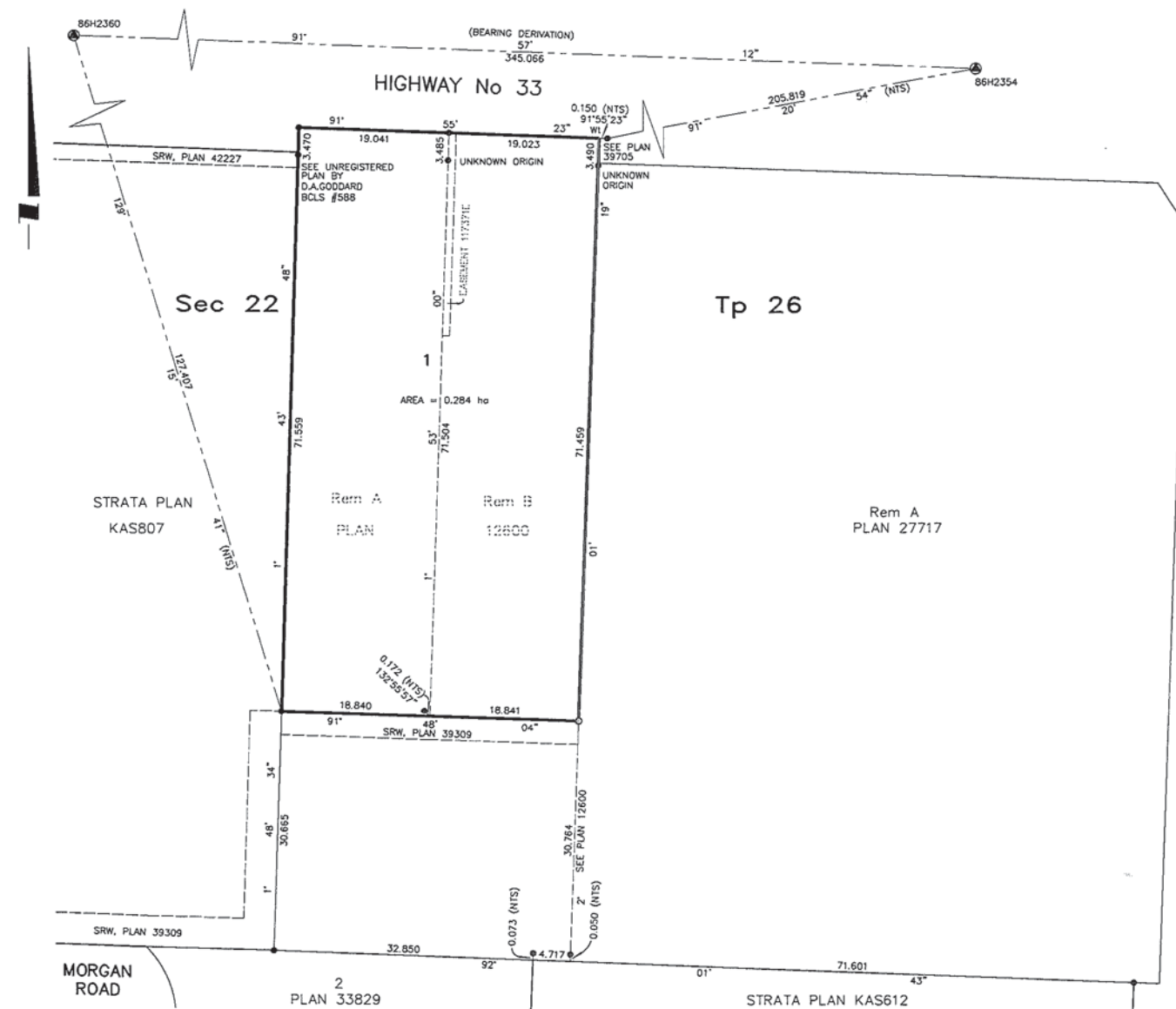
PURSUANT TO SECTION 100(1)(b) OF THE LAND TITLE ACT

BCGS 82E.083

10 5 0 10 25 50 METRES

THE INTENDED PLOT SIZE OF THIS PLAN IS 560mm IN WIDTH BY 432mm IN HEIGHT (C SIZE) WHEN PLOTTED AT A SCALE OF 1:400

PLAN EPP64302



86H2360
DATUM: NAD83(CSRS) 4.0.0.BC.1 UTM ZONE 11
NORTHING: 5529075.226
EASTING: 326712.348
COMBINED FACTOR: 0.9999111
ESTIMATED HORIZONTAL POSITIONAL ACCURACY=0.02m

86H2354
DATUM: NAD83(CSRS) 4.0.0.BC.1 UTM ZONE 11
NORTHING: 5529063.466
EASTING: 327057.182
COMBINED FACTOR: 0.9999091
ESTIMATED HORIZONTAL POSITIONAL ACCURACY=0.02m

LEGEND

INTEGRATED SURVEY AREA NO. 4, CITY OF KELOWNA,
NAD83 (CSRS) 4.0.0.BC.1

GRID BEARINGS ARE DERIVED FROM GNSS OBSERVATIONS
BETWEEN GEODETIC CONTROL MONUMENTS 86H2360 AND
86H2354.

THE UTM COORDINATES AND ESTIMATED HORIZONTAL
POSITIONAL ACCURACY ARE DERIVED FROM THE MASCOT
PUBLISHED COORDINATES AND STANDARD DEVIATIONS FOR
GEODETIC CONTROL MONUMENTS 86H2360 AND 86H2354.

THIS PLAN SHOWS HORIZONTAL GROUND-LEVEL
DISTANCES UNLESS OTHERWISE SPECIFIED. TO COMPUTE
GRID DISTANCES, MULTIPLY GROUND-LEVEL DISTANCES
BY THE AVERAGE COMBINED FACTOR OF 0.9999111
WHICH HAS BEEN DERIVED FROM GEODETIC CONTROL
MONUMENTS 86H2360 AND 86H2354.

- ⊙ DENOTES CONTROL MONUMENT FOUND
- DENOTES STANDARD IRON POST FOUND
- DENOTES STANDARD IRON POST SET
- NTS DENOTES NOT TO SCALE

THIS PLAN LIES WITHIN THE REGIONAL DISTRICT OF
CENTRAL OKANAGAN.

THE FIELD SURVEY REPRESENTED BY THIS PLAN WAS
COMPLETED ON THE 30th DAY OF JUNE, 2016
CAMERON HENRY, BCLS 857

Ferguson Land Surveying & Geomatics Ltd.
B.C. AND CANADA LAND SURVEYORS
404-1630 PANDOSY STREET, KELOWNA, B.C.
TELEPHONE (250) 763-3115 FAX (250) 763-0321

JOB No: 20625-REF

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CITY OF KELOWNA
MEMORANDUM

Date: March 23, 2017 (Revised)
File No.: 216-0071
To: Land Use Management (TB)
From: Development Engineering Manager (SM)
Subject: 1225 Hwy 33 W Plan EPP64302 Lot 1 Zone: **RU1 to P2**

The Development Engineering Branch comments and requirements regarding this application to rezone from RU1 to P2 to allow for Religious Assembly Purposes are as follows:

The Development Engineering Technologist for this project is Jason Ough.

Road Dedication and Subdivision Requirements

- (a) The developer is required dedicate 3.65m of fronting property to roadway for Hwy 33 in accordance with Bylaw 7900
- (b) Subject Property will be required to be consolidated with 130 Gerstmar Rd.

James Kay

James Kay, P. Eng.
Development Engineering Manager

jo

REPORT TO COUNCIL



Date: April 10, 2017

RIM No. 1250-20

To: City Manager

From: Community Planning Department (RR)

Application: OCP17-0008

Owner: Various

Address: Various Arab and Appaloosa
Addresses

Applicant: City of Kelowna

Subject: Official Community Plan Amendment

Existing OCP Designation: IND-L Industrial Limited

Proposed OCP Designation: REP – Resource Protection

1.0 Recommendation

THAT Council waive the requirement of the Development Application Procedures Bylaw 10540 that a defeated bylaw not be reconsidered for 6 months from the date of its defeat;

AND THAT Official Community Plan Map Amendment Application No. OCP16-0020 to amend Map 4.1 in the Kelowna 2030 – Official Community Plan Bylaw No. 10500 by changing the Future Land Use Designation of the properties identified in Appendix 'A' attached to the Community Planning report dated April 10, 2017, from the Industrial – Limited (IND-L) designation to the Resource Protection Area (REP) designation be considered by Council;

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

AND THAT Council considers the public processes detailed in the Report from the Community Planning Department dated February 27, 2017, to be appropriate consultation for the purpose of Section 475 of the *Local Government Act*.

AND FURTHER THAT Council directs staff to pursue an escalating Bylaw Enforcement process on non-compliant properties in the subject area.

2.0 Purpose

To consider Official Community Plan amendments to change the Future Land Use of 31 properties that are without ready access to sewer and industrial standard roads.

3.0 Community Planning

The land use of the subject properties have been the subject of almost a decade of review and debate. The current Official Community Plan designation of transitional industrial use is not supported by a detailed plan for financing the necessary servicing. Without a clear strategy and vision for neighbourhood buildout, bylaw enforcement had been subsequently curtailed, which allowed unlawful uses to expand unchecked - resulting in the current land use challenges and conflicts that currently exist.

Staff proposed redesignating the properties off of Arab and Appaloosa Roads to Resource Protection, which would restrict the property zoning to A1 – Agriculture. The A1 zone allows a limited suite of businesses, include larger scale home based businesses and agriculture businesses such as nurseries. These uses are seen as an appropriate transition between the industrialized Sexsmith properties and the single family residential properties to the north.

By designating the subject properties for future REP, Council will be sending a clear message that these properties are to house low impact transitional uses. The uses allowed in the zone are ideal transitional uses, with low population densities, low numbers of customers, and minimal traffic generation.

4.0 Proposal

4.1 Background

This is a City initiated amendment prepared at the request of Council, per staff recommendations.

On February 27th, 2017, Council considered the outcome of the public interest survey in establishing a local area service over the neighbourhood. Council resolved that:

AND THAT Council direct staff to prepare Official Community Plan amendments as identified in the staff report attached as Schedule 'A' regarding the Arab/Appaloosa Land Use and Bylaw Enforcement Strategy.

The proposed Official Community Plan amendments will redesignate 31 properties from IND-L – Industrial Limited to REP – Resource Protection.

4.2 Project Description

Should Council redesignate the subject properties as 'Resource Protection Area', the lands would remain zoned A1 – Agriculture, and could not be rezoned without an OCP amendment.

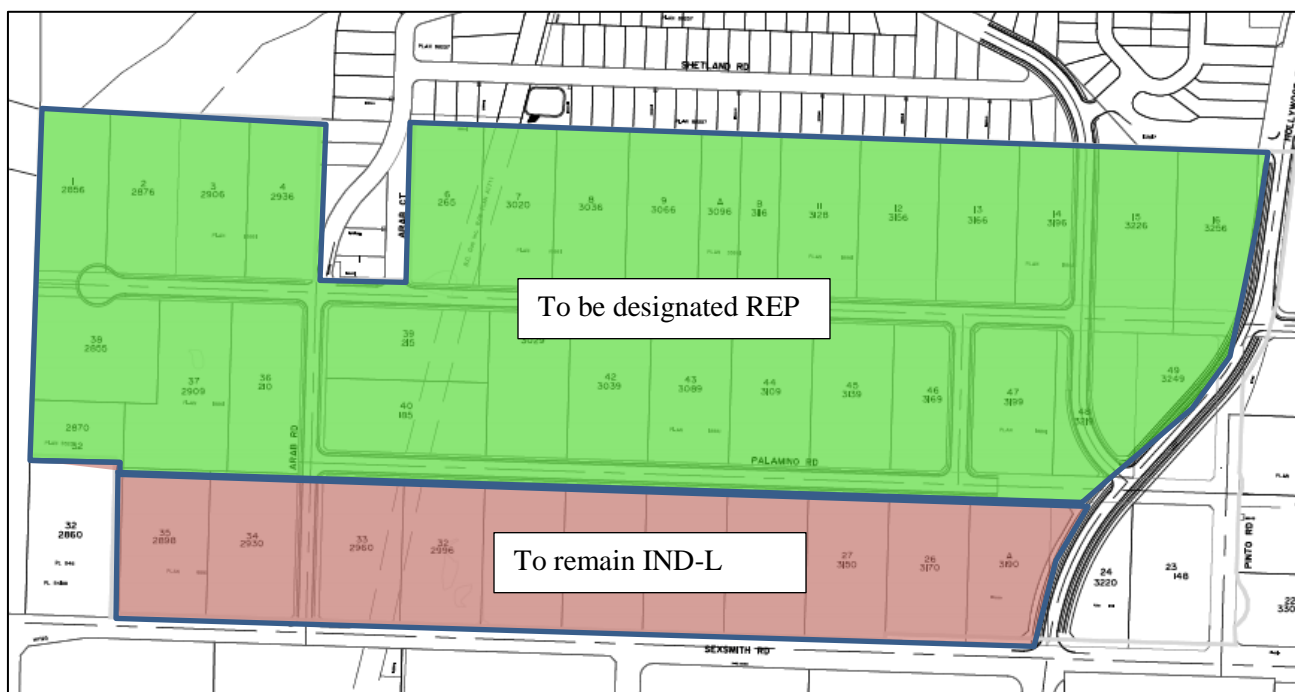
The A1 – Agriculture zone has a number of business and commercial uses appropriate for a transition. Properties in the A1 zone have the right to be developed for agricultural uses, plant nurseries and greenhouses, animal clinics and kennels or stables. As well, owners would have access to the full suite of home based business uses, including the option to have up to two non-resident employees. The A1 zone will allow some commercial activity on the properties, to a scale that is more appropriate for a transition between other uses.

Larger scale businesses would be required to relocate. None of the larger scale businesses in the neighbourhood are currently permitted by zoning. If the properties are redesignated as 'Resource Protection Area', City Bylaw Enforcement staff will commence an escalating bylaw enforcement program to bring land use into bylaw compliance.

4.3 Context

The neighbourhood is made up of agriculturally zoned lots averaging 0.8 ha in area. Many of the properties were being used for light industrial and storage uses, not conforming to zoning restrictions of the day. The intent of the Industrial – Limited designation was to recognize the character of the neighborhood and give owners a path to conformity by allowing properties to be re-zoned for transitional industrial use.

Subject Property Map:



5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Resource Protection Area

Rural land preserved for agricultural, environmental and recreational purposes, including the ALR, other resource lands with environmental value and protected natural open spaces, including private open space, steeply sloped lands, Natural Environment/Hazardous Condition DP Areas, and other natural features such as watercourses, water bodies, wetlands, plant and wildlife habitat, and significant aesthetic value. Allowable uses would be agriculture / resource use including farming, forestry, wood lots and silviculture as well as public or private open space on lands considered environmentally sensitive or hazardous (steep slopes). Generally, land areas within this designation (whether they are within the permanent growth boundary or not) will not be supported for exclusion from the ALR or for more intensive development than that allowed under current zoning regulations, except in specific circumstances where the City of Kelowna

will allow exceptions to satisfy civic objectives for the provision of park/recreation uses. Non-ALR land outside the Permanent Growth Boundary will not be supported for any further parcelization.

Report prepared by:

Ryan Roycroft, Planner

Approved for Inclusion:



Ryan Smith, Community Planning Department Manager

Attachments:

February 27th Council Report
Subject Properties

APPENDIX A - SUBJECT PROPERTIES

Number	Legal Description	Address
1	LOT 38 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2855 Appaloosa Rd
2	LOT 1 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2856 Appaloosa Rd
3	LOT 2 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2876 Appaloosa Rd
4	LOT 3 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2906 Appaloosa Rd
5	LOT 37 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2909 Appaloosa Rd
6	LOT 4 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	2936 Appaloosa Rd
7	LOT 7 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3020 Appaloosa Rd
8	LOT 41 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3029 Appaloosa Rd
9	LOT 8 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3036 Appaloosa Rd
10	LOT 42 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3039 Appaloosa Rd
11	LOT 9 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3066 Appaloosa Rd
12	LOT 43 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3089 Appaloosa Rd
13	LOT A SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 35661	3096 Appaloosa Rd
14	LOT 44 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3109 Appaloosa Rd
15	LOT B SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 35661	3116 Appaloosa Rd
16	LOT 11 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3128 Appaloosa Rd
17	LOT 45 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3139 Appaloosa Rd
18	LOT 12 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3156 Appaloosa Rd
19	LOT 13 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3166 Appaloosa Rd
20	LOT 46 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3169 Appaloosa Rd
21	LOT 14 SECTIONS 2 AND 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3196 Appaloosa Rd
22	LOT 47 SECTIONS 2 AND 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	3199 Appaloosa Rd
23	LOT 6 SECTION 3 TOWNSHIP 23 OSOYOOS	265 Arab Ct

	DIVISION YALE DISTRICT PLAN 18861	
24	LOT 40 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	185 Arab Rd
25	LOT 36 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	210 Arab Rd
26	LOT 39 SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 18861	215 Arab Rd
27	THAT PART OF LOT 32 SHOWN ON PLAN B5251; SECTION 3 TOWNSHIP 23 OSOYOOS DIVISION YALE DISTRICT PLAN 546	2870 Sexsmith Rd

Report to Council



Date: February 28, 2017
File: 1250-30
To: City Manager
From: Ryan Roycroft, Community Planning Supervisor
Subject: Arab Appaloosa Public Interest Survey

Recommendation:

THAT Council receive for information the supplementary report from Community Planning dated February 28, 2017, with respect to the establishment of a Local Area Service along Arab and Appaloosa Roads;

AND THAT Council direct staff to follow the future land use and bylaw enforcement strategy as identified in the staff report attached as Schedule 'A';

AND THAT Council direct staff to prepare Official Community Plan amendments as identified in the staff report attached as Schedule 'A' regarding the Arab/Appaloosa Land Use and Bylaw Enforcement Strategy.

Purpose:

To receive the results of the public interest survey conducted in the Arab and Appaloosa neighbourhoods and to obtain Council direction on land use and servicing for the area.

Background/History:

In 2011, Council adopted the City of Kelowna Official Community Plan (OCP). The OCP designated the properties along Arab and Appaloosa Roads as being for future Industrial – Limited use.

The neighbourhood is made up of agriculturally zoned lots averaging 0.8 ha in area. Many of the properties were being used for light industrial and storage uses, not conforming to zoning restrictions of the day. The intent of the Industrial – Limited designation was to recognize the character of the neighborhood and give owners a path to conformity by allowing properties to be re-zoned for transitional industrial use.

2012 Consideration:

In November of 2012, a moratorium was placed on development applications in the area, pending a resolution to servicing and land use concerns.

At the meeting, Council resolved that:

THAT Council direct staff to report back with proposed amendments to the I6 – Low-Impact Transitional Industrial Zone to ensure consistency of intent and purpose with the Kelowna 2030 – Official Community Plan;

AND THAT Council direct staff to accept no further Rezoning applications to the I6 – Low-Impact Transitional Industrial Zone, pending completion of the proposed amendments to the I6 Zone.

At a subsequent meeting on December 3, 2012, Council requested that staff "...report back with options for amending the I6 – Low-Impact Transitional Industrial Zone, to ensure consistency of intent and purpose with the Kelowna 2030 – Official Community Plan (OCP)".

2013 Considerations:

At the December 16, 2013 Council Meeting, Council resolved:

THAT Council directs staff to follow Option 1 as identified in the Utilities Planning Manager, Bylaw Services Manager & Urban Planning Managers report, dated December 16, 2013 regarding the Arab/Appaloosa Land Use and Servicing Options;

AND THAT Council directs staff to bring forward the proposed amendments to the I6 Zone, including a provision for outdoor storage, and to require Development Permits, to ensure consistency with the intent and purpose of the Kelowna 2030 OCP and Industrial-Limited designation;

AND THAT Council directs staff to ensure that the fire flow and servicing with respect to the I6 zone be required as per Subdivision, Development & Servicing Bylaw No. 7900;

AND THAT Council directs staff to commence bylaw enforcement action against the two (2) most prolific offenders;

AND FURTHER THAT Council directs staff to hold a Local Area Service meeting in order to gauge support for a Local Area Service Bylaw and to explain the proposed changes to the I6 zone.

Options were developed and presented to Council at the March 25, 2013 Council meeting and at this meeting Council resolved:

THAT Council receive for information, the supplementary report from the Manager of Urban Land Use dated March 19, 2013, with respect to the Industrial – Limited future land use designation contained in the Kelowna 2030 – Official Community Plan;

AND THAT Council direct staff to pursue Land Use Alternative 1, as identified below;

AND THAT Council direct staff to initiate the process to advance Sanitary Sewer Connection Area #35 to a Specified Sanitary Sewer Service Area;

AND FURTHER THAT Council direct staff to accept no further Rezoning applications for the Arab Appaloosa road area, pending final resolution of land uses for the area.

On May 16, 2013, Council authorized funds necessary to create a pre-design for the water, sewer, and roads, and associated drainage works for the Arab/Appaloosa area.

At the September 30, 2013 Council meeting staff reviewed the Focus Engineering pre-design, the costs of the infrastructure required to meet zoning requirements, and the various service areas, their costs, and the typical and maximum costs that a homeowner on Appaloosa Road would be required to fund if a Local Service Area were adopted.

2015 Servicing Considerations:

At the February 23, 2015 Council meeting, Council directed staff to pursue Bylaw amendments to the Official Community Plan and affirmed its desire to pursue a local service area to build the infrastructure required to rezone to the new I6 designation.

THAT Council receive for information the supplementary report from the Urban Planning Manager dated January 26, 2015, with respect to the Industrial –Limited Future Land Use designation and the land use issues along Arab and Appaloosa Roads;

AND THAT Council direct staff to bring bylaw amendments to the Official Community Plan and Zoning Bylaw amending Industrial development guidelines and policies to Council for consideration after a public open house has been held.

AND FURTHER THAT Council direct staff to conduct a public open house to survey support for a Local Area Service to pay for the extension of Sanitary Sewer Service to lots along Arab and Appaloosa Roads to facilitate industrial development. This consultation will take place after the adoption of the Zoning Bylaw and Official Community Plan amendments.

The OCP amendments were completed in September 2015 and the project was redesigned to accommodate a change in the Clydesdale road design. The designs and costs for the project were completed by a consulting firm and reviewed by the infrastructure division.

2016 Public Interest Survey:

In early 2016 a public open house and survey was completed. Personalized letters were sent out to each home owner that outlined their share of the costs for infrastructure improvements and a description of the opportunity to rezone their property should a local service area be successful. An information sheet about the survey process, background and next steps; specific costs for improvements were identified for each type of improvement; and a self-addressed, self-stamped response form was provided to each household, in order to receive feedback from the residents.

An invitation to a public open house was also provided. Residents had the choice of either submitting their survey at the open house or by mailing in the same. The Open House took place on January 27, 2016 and survey results were finalized on February 19, 2016.

Of the 48 properties that were asked to vote, 29 responded:

59 % for NO for a LAS (roads, drainage, sewer)
41 % for YES

Based on the public interest survey results, on the March 21, 2016 meeting, Council directed staff to prepare Official Community Plan amendments removing the Industrial – Transitional designation from properties in the neighborhood, and re-designating them as Resource Protection.

AND THAT Council direct staff to follow the future land use and bylaw enforcement strategy as identified in the Utilities Planning Manager report, dated March 7, 2016 regarding the Arab/Appaloosa Land Use and Bylaw Enforcement Strategy;

AND THAT Council direct staff to prepare Official Community Plan amendments as identified in the Utilities Planning Manager report, dated March 21, 2016 regarding the Arab/Appaloosa Land Use and By Enforcement Strategy;

AND FURTHER THAT Council direct staff to process Zoning Bylaw Applications submitted for properties designated for Industrial – Transitional Use, and advance any bylaws in progress to Council for consideration and any required public consultation.

2016 Bylaw Consideration and Enforcement:

Based on previous directives of Council, staff prepared bylaw amendments to the Official Community Plan and completed additional neighborhood correspondence (2 mailouts) indicating the proposed bylaw enforcement strategy. This occurred prior to preparation and consideration of the Official Community Plan amendments considered by Council. Council supported first reading of the bylaw and moved it to a Public Hearing.

At the November 15th, 2016 Public Hearing the proposed Official Community Plan amendment bylaw was defeated by Council, and Council directed staff to propose alternative options for future land use and servicing in the area.

At the November 28th Council meeting Council considered options presented by staff and resolved that:

THAT Council receive for information, the supplementary report from the Community Planning Department dated November 28, 2016, with respect to the Industrial – Limited future land use designation for properties along the Arab and Appaloosa Roads;

AND THAT Council direct staff to pursue Option 3 as outlined in the report from the Community Planning Department dated November 28, 2016.

Option 3 included:

- Commission WSP to update LAS costs
- Send all owners in the neighborhood new cost estimates by registered mail
- Hold a public information session
- Provide options for residents to initiate property-owner led Local Area Service
- Provide a final report to Council to either pursue an LAS or recommending Official Community Plan amendments.

Staff held a public meeting on December 14th, 2016, hosting approx. 22 area residents in Council Chambers and giving a presentation on the Local Area Service costs and processes, and responding to questions on land use, zoning and bylaw enforcement.

Additionally, a further public interest survey was conducted to gauge public support for a Local Area Service (LAS) in the neighbourhood. To maximize response, staff sent two survey mail-outs, made surveys available at the Public Meeting, and hand-delivered surveys to all properties.

LAS Survey Results:

The public interest survey closed on January 15th, 2017. Response to the survey was considerably stronger than in January 2016, with 38 of 44 eligible properties responding to the survey (the 45th property is owned by the City of Kelowna).

Properties representing 57 per cent **of the area assessment** support a Local Area Service.

The survey responses were:

- In support of the LAS – 29 votes, 66%
- Opposed to the LAS – 9 votes, 20%
- No response - 7 properties 14%

Based on these responses, the majority of the neighbourhood has indicated support for a Local Area Service, at this stage in the process.

Planning Rationale

Despite the result of the public survey, staff do not recommend a Local Area Service as a means to provide services to the neighbourhood for the purposes of facilitating industrial development.

While staff's recommendation for not support of the LAS is rooted in the appropriate land use for the area, other considerations also come into play. An LAS imposes costs on all property owners, regardless of whether they supported or opposed the LAS, therefore the impacts on non-supporters must be carefully considered.

Each property is responsible for paying their portion of the LAS, payable in either a lump sum or added to the property taxes of the property for 25 years. The average annual levy per property over 25 years will be approximately \$7,500, with some levies in excess of \$13,000 per year. If paid in lump sum these costs range from \$12,500 to more than \$180,000. The LAS levy is payable regardless of whether a

resident chooses to re-zone their property or not. Should a property owner not wish to re-zone and redevelop their property, they will nonetheless be subsidizing the required services for those who do.

Municipalities traditionally adhere to the 'developer pay' model of infrastructure servicing, where any expansion of services required for a development is borne by the developer. Using an LAS as a means to extend services for the purpose of facilitating development would be contrary to this model, forcing those residents who don't support industrial development in the neighbourhood to bear the costs of its servicing. These additional costs may become simply unaffordable for some of these residents, and possibly force them to sell their homes.

Between the industrialization of the neighbourhood and the sharp increase in annual property taxes over the long-term by utilizing an LAS levy, non-industrial property owners would be pressured to redevelop or to sell. Essentially, those property owners who are using the property for its intended legal use would be pressured to leave, while those who have been using their properties contrary to zoning would be rewarded by having their neighbours pay for the servicing of their previously illegal uses.

Despite the early indication of support by some area residents, staff recommend that the LAS process not be undertaken, and that instead the future land use of the properties unable to be serviced be amended to a non-industrial designation.

LAS Process

The formal LAS process would be expected to take approximately 6 months to complete. A further 7 months would be required to construct the works if the formal LAS petition passed. The following these steps are envisioned:

- Report to Council, re: formal steps in the LAS process and any financial implications to the City
- Public open house
- Follow-up Report to Council
- Provincial borrowing approval
- Formal petition process
- Council Report re: petition outcome
- Project design and tender package
- Tender award
- Final project costs determined
- Letter to residents on final costs
- Construction

While the neighbourhood has indicated support for the LAS through a public interest survey, the next phase of approval would have to follow a formal petition process, allowing the City to borrow approximately \$4.5 million dollars to front end the cost of construction. That \$4.5 million would be repaid by the levies added to the property taxes on the 45 properties in the neighbourhood.

Legal/Statutory Authority:

Section 210 of the *Community Charter* gives the municipality the authority to create a Local Area Service.

210 (1) A local area service is a municipal service that is to be paid for in whole or in part by a local service tax under section 216 [*local service taxes*].

(2) The only services that may be provided as local area services are

(a) services that the council considers provide particular benefit to part of the municipality

Legal/Statutory Procedural Requirements:

The Community Charter establishes the Local Area Service process under Sections 211 to 218.

Local Service Areas follow a publically initiated petition process, where residents will have a period of time to submit a certified petition.

For a petition to be sufficient under the Community Charter, at least 50% of affected owners and at least 50% of the total assessed values must approve the local service area.

As part of the LAS process, the petition must provide authorization for a borrowing bylaw which will need to accompany the Local Service Area authorization. This will allow the City to borrow the funds required for the project and collect levies over a 20 year period.

Internal Circulation:

While the review process of development potential and servicing in the Arab Appaloosa area has been spearheaded by Community Planning, the process has been managed by a team consisting of staff from Utilities Planning, Community Planning and Communications. The recommendations presented are those of all of these departments.

Financial/Budgetary Considerations:

No budget has been allocated for the preparation of the Local Area Service bylaws and legal fees associated with their review. Budget will have to be reallocated from projects within the relevant departments or from contingency funds.

Personnel Implications:

Even if the Local Area Service process is led by the community, substantial staff time will be required to develop the Local Area Service bylaws and ensure the process is conducted fairly and transparently. Previous LAS processes have taken approximately six months to roll out, from developing of documents to final notification.

Based on previous LAS processes, an estimated 200 staff hours will be required, involving staff from Utilities Planning, Communications and Community Planning. Staff time will be re-allocated from other workplan items or development file processing.

Alternate Recommendation:

THAT Council receive for information the supplementary report from Community Planning dated February 20, 2017, with respect to the establishment of a Local Area Service along Arab and Appaloosa Roads;

AND THAT Council direct staff to commence the Local Area Service process to create an LAS to provide partial industrial level services to the 45 properties described in the Report from Community Planning.

Considerations not applicable to this report:

Communications Comments:

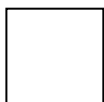
Existing Policy:

External Agency/Public Comments:

Submitted by:

R Roycroft, Planner

Approved for inclusion:



Ryan Smith, Community Planning Department Manager

Attachments:

Utilities Planning Manager report, dated March 21, 2016
Local Area Service Estimates

cc:

Divisional Director, Community Planning and Real Estate
Divisional Director, Infrastructure
Divisional Director, Communications and Information Services.
Utility Planning Manager
Policy and Planning Department Manager
Divisional Director, Financial Services