

REPORT TO COUNCIL



Date: January 23, 2018

RIM No. 1250-30

To: City Manager

From: Community Planning Department (TB)

Application: Z16-0069

Owner: Aqua Resort Ltd. Inc. No.
BC0796165, City of Kelowna,
Sujata Randhawa

Address: 550 Truswell Rd
3814, 3820, 3828, 3832, 3838 Capozzi Road
3786 Lakeshore Road

Applicant: Mission Group

Subject: Rezoning Application (Waiver of Condition of Adoption)

Existing OCP Designation: MXT – Mixed Use Tourism

Existing Zone: RU₁ – Large Lot Residential, C₉ – Tourism Commercial, P₁ – Major Institutional

Proposed Zone: C₉ – Tourism Commercial, P₁ – Major Institutional

1.0 Recommendation

THAT Rezoning Bylaw No. 11384 be amended at third reading to revise the legal description of one of the subject properties from Lot 5, Sec 1, Twp 25, Plan 2714 located at 3838 Capozzi Road, Kelowna, BC; to Lot 5, Sec 1, Twp 25, and Sec 6, Twp, 26, ODYD, Plan 2912 except plan 35979 and Plan KAP56428;

AND THAT Council waives the requirement for final adoption of Rezoning Bylaw No. 11384 to be considered subsequent to the completion of the land exchange between the applicant and the City of Kelowna;

AND THAT Council amends the requirement for final adoption of Rezoning Bylaw No. 11384 to be considered subsequent to the closure of Capozzi Road along 3814 through 3838 Capozzi Road; to require that final adoption of the Rezoning Bylaw No. 11384 to be considered in conjunction with the closure of Capozzi Road along 3814 through 3838 Capozzi Road;

AND THAT Council waives the requirement for final adoption of Rezoning Bylaw No. 11384 for Item 5. Subdivision of Schedule "A", attached to the Report by Community Planning dated April 10, 2017;

AND FURTHER THAT Final Adoption of Rezoning Bylaw No. 11384 be considered by Council.

2.0 Purpose

To amend the legal description of one of the subject properties; to waive a requirement for final adoption of Rezoning Bylaw No. 11384; to amend a requirement for final adoption of the Rezoning Bylaw; and to adopt the Rezoning Bylaw.

3.0 Community Planning

Community Planning Staff recommend that Council supports the recommendation to amend the legal description of one of the subject properties; waives one requirement for final adoption; and amends one requirement of final adoption of Rezoning Bylaw No. 11384. These changes are to correct administrative errors and ensure the correct procedural and legal process is in place to allow the Land Agreement between Aqua and the City of Kelowna to be executed.

4.0 Proposal

4.1 Amended Legal Description

Community Planning Staff are recommending that Council amends the legal description of one of the subject properties at third reading in order to correct an error in the legal description. The correct legal description of 3838 Capozzi Road is Sec 6, Twp, 26, ODYD, Plan 2912 except plan 35979 and Plan KAP56428.

4.2 Waived & Amended Requirements

Community Planning Staff are recommending that Council waives one requirement, and amends another requirement of final adoption of Rezoning Bylaw No. 11384, as well as waiving one requirement of Schedule "A" attached to the Report by Community Planning dated April 10, 2017.

Staff negotiated a Land Agreement in July 2016 to allow the closure of Capozzi Road and a Land Exchange to facilitate the development of Aqua. The Agreement has specific requirements prior to the execution of the agreement. These requirements include that the property be rezoned, a Development Permit issued, and Capozzi Road be closed. Therefore, the order of processes must be for Council to give final reading to Rezoning Bylaw No. 11384 **prior to** rather than **subsequent to** the completion of the land exchange. As such, the following condition should be waived to allow proper procedural process:

*AND THAT final adoption of the Rezoning Bylaw be considered **subsequent to** the completion of the land exchange between the applicant and the City of Kelowna;*

It is important to note that waiving this requirement from the Council resolution does not waive the requirement from the Land Agreement or the ultimate land exchange, and that the Aqua development cannot proceed until the land exchange is complete.

Should Council not adopt Rezoning Bylaw No. 11384, then the Road Closure Bylaw for Capozzi Road would not be adopted and the Land Agreement would not be executed. As such, the Road Closure Bylaw will be considered at the same Council meeting as final adoption of the rezoning. Therefore, the following requirement of final adoption should be amended from:

*AND THAT final adoption of the Rezoning Bylaw be considered **subsequent to** the closure of Capozzi Road along 3814 through 3838 Capozzi Road;*

To:

*AND THAT final adoption of the Rezoning Bylaw be considered **in conjunction with** the closure of Capozzi Road along 3814 through 3838 Capozzi Road.*

In addition, Staff are recommending that Council waives Item 5. Subdivision, of Schedule "A" attached to the Report by Community Planning dated April 10, 2017. This item requires that subdivision and lot consolidation be completed **prior to** fourth reading and adoption of the Rezoning Bylaw. This is contrary to the process outlined in the Land Agreement, whereby the lot consolidation and subdivision must occur **subsequent to** adoption of the rezoning, issuance of a Development Permit and Development Variance Permit, and **subsequent to** the Road Closure Bylaw.

These amendments will allow the adoption of the Rezoning Bylaw, the Development Permit, Development Variance Permit, and the Road Closure Bylaw to be considered with the correct procedural process and will allow the Land Agreement to be executed following adoption of both bylaws and permits.

Report prepared by: Trisa Brandt, Planner

Reviewed by: Terry Barton, Urban Planning Manager

Approved for Inclusion: Ryan Smith, Community Planning Department Manager