

REPORT TO COUNCIL



Date: October 7, 2019

To: Council

From: City Manager

Department: Development Planning

Application: A19-0011

Owner: Sukhjit Singh Sidhu and
Bhupinder Kaur Sidhu

Address: 2568 KLO Road

Applicant: Benson Law LLP

Subject: ALR Application

1.0 Recommendation

THAT Agricultural Land Reserve Appeal No. A19-0011 for Lot B Section 9 Township 26 ODYD Plan 26528, located at 2568 KLO Road, Kelowna for a Non-Adhering Residential Use on agricultural land in the Agricultural Land Reserve pursuant to Section 25 of the *Agricultural Land Commission Act* be supported by Council;

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

2.0 Purpose

To support an application to the Agricultural Land Commission for a Non-Adhering Residential Use to use an existing additional dwelling on the subject property as temporary farm worker housing to accommodate six (6) temporary farm workers.

3.0 Development Planning

Development planning staff are supportive of forwarding this Non-Adhering Residential Use application to the Agricultural Land Commission for consideration. This application is to use an existing secondary dwelling for temporary farm worker housing (TFWH) and is in general accordance with municipal regulations related to TFWH as outlined in Zoning Bylaw No. 8000. Specifically, the parcel is classified as a farm, the farm unit size meets size requirements to qualify for TFWH, and the property owners have demonstrated the need for temporary farm workers by completing a Labour Market Impact Assessment and by providing employment contracts for six temporary foreign workers. Additionally, the TFWH proposed in this application meets TFWH footprint regulations. Furthermore, the Zoning Bylaw states that an existing structure may be used for TFWH if a Building Permit was approved for that structure at least two years prior to the TFWH application.

The application is also consistent with the OCP. On properties with existing dwellings, preference is given to using the existing dwellings for TFWH rather than building new TFWH. Agriculture is the principal use on

the parcel and the buildings and structures on the subject property are located within 50m of KLO Road in a somewhat contiguous layout.

4.0 Proposal

4.1 Background

The proposal aims to legitimize the use of an existing dwelling on the subject property as temporary farm worker housing (TFWH). This proposal requires two approvals:

1. Non-Adhering Residential Use Permit (A19-0011) – Owners of land within the Agricultural Land Reserve (ALR) are required to obtain approval from the Agricultural Land Commission for dwellings to be used for TFWH.
2. Farm Worker Housing Permit (FH18-0002) – A Farm Worker Housing permit must be approved by Development Planning to confirm that the proposal meets City of Kelowna regulations related to TFWH. In keeping with the Ministry of Agriculture's Guide to Bylaw Development in Farming Areas and the City's regulations for TFWH, the property owner would be required to register Section 219 restrictive covenants on title that generally state:
 - The TFWH will be used for temporary farm workers only;
 - The owner will remove the TFWH if the farm operation changes such that it is no longer required; and
 - The TFWH will only be used for farm workers for a specified number of months of the year (typically a maximum of eight, though may be increased to ten).

The Sidhus purchased the subject property in 2016, and at the time of purchase the subject property had three dwellings on it (Map 1): dwelling 1 built in 1979, dwelling 2 built in 2001, and dwelling 3 built in 1970. There is also a large shed for farm use on the property east of dwelling 3. Historically, dwelling 1 was permitted to be built on the condition that one dwelling would be used for farm help or family only as per an affidavit signed in 1979 by a previous owner. Affidavits do not run with the land, and therefore the affidavit that was signed in 1979 is no longer applicable to this property. In 2001, dwelling 2 was permitted to be built on the condition that either dwelling 1 or dwelling 3 be demolished or decommissioned. Neither dwelling 1 nor dwelling 3 was decommissioned as per the conditions outlined in these past building permits, bringing dwelling 1 and dwelling 3 into a state of non-compliance. Overall, the property has a history of Bylaw investigations.

Development Planning staff and the Sidhus were in contact regarding the subject property prior to the Sidhus' purchase of the property. The Sidhus were made aware that only the newest dwelling is permitted, and that the other two dwellings on the property are unpermitted, non-conforming. After meeting with Development Planning staff to discuss options for bringing the subject property into compliance with City Bylaws, the Sidhus applied for a farm help permit for dwelling 2. The decommissioning of dwelling 3 was a requirement of this farm help permit application and was completed in 2018 as per BP 59188. Dwelling 1 is currently being rented out to long-term tenants who help with the farm on a contract, part-time basis. The Sidhus reside at 1605 Geen Road, which is also within the farm unit. As per Agricultural Land Commission (ALC) regulations that have come into place since the Sidhus' original application, the TFWH proposed in this application is considered a non-adhering residential use and therefore must seek ALC approval.

Map 1: Subject Property Overview



As per Table 1, the total farm unit area¹ owned and/or operated by Sukhjot and Bhupinder Sidhu (the Sidhus) is approximately 31 hectares. One property within the farm unit, located at 1605 Geen Road, was previously approved for TFWH.

Table 1: Farm Unit Parcels

Address	Farmed Hectares	Summary	City Sector
1605 Geen Rd	3.88	Sidhus are joint owners; TFWH granted (FH09-0003)	Belgo-Black Mountain
1865 Belgo Rd	4.17	Sidhus are joint owners	Belgo-Black Mountain
2568 KLO Rd	2.55	Subject property	Southeast Kelowna
1591 Saucier Rd	3.40	Sidhus manage farming as per an orchard agreement expiring in 2019	Southeast Kelowna – covenant restricting TFWH required
3288 Reid Rd	6.68	Sidhus manage farming as per an orchard agreement expiring in 2035	Southeast Kelowna – covenant restricting TFWH required
4201 Spiers Rd	3.12	Sidhus manage farming as per an orchard agreement expiring in 2022	Southeast Kelowna – covenant restricting TFWH required
2190 Gulley Rd	3.52	Sidhus manage farming as per an orchard agreement expiring in 2025	Southeast Kelowna – covenant restricting TFWH required
1390 Geen Rd	2.99	Sidhus manage farming as per an orchard agreement expiring in 2033	Belgo-Black Mountain
1601 Saucier Rd	1.00	Sidhus manage farming as per an orchard agreement expiring in 2019	Southeast Kelowna – covenant restricting TFWH required
	Total: 31.31 ha		

4.2 Site Context

The subject property is 3.86 ha (9.57 acres) in size and is located between Hall Road and East Kelowna Road in the Southeast City Sector of Kelowna. As per Maps 2 – 4 below, the subject property is zoned A1 –

¹ One or more contiguous or non-contiguous parcels, that may be owned, rented or leased, within City limits, which forms and is managed as a single farm.

Agriculture, is located within the Agricultural Land Reserve (ALR), is located outside of the Permanent Growth Boundary, and has a Future Land Use Designation of REP – Resource Protection Area. The area surrounding the subject property is predominantly agricultural, with single dwelling housing and outdoor participant recreation services also in proximity. Adjacent land uses are listed in Table 2.

Table 2: Zoning and Land Use of Adjacent Properties

Direction	Zoning	ALR	OCP Designation	Land Use
North	A1	Yes	REP	Agriculture, Single Dwelling Housing
East	A1	Yes	REP	Agriculture
South	A1, P3LP	Yes	REC, REP	Participant Recreation Services, Outdoor
West	RR3	No	REP, S2RES	Single Dwelling Housing

Map 2: Subject Property Context



5.0 Current Development Policies

5.1 Kelowna Official Community Plan (OCP)

Chapter 5: Development Process

Objective 5.33 Protect and enhance local agriculture

Policy 5.33.1 Protect Agricultural Land. Retain the agricultural land base by supporting the ALR and by protecting agricultural lands from development, except as otherwise noted in the City of Kelowna Agricultural Plan. Ensure that the primary use of agricultural land is agriculture, regardless of parcel size.

Objective 5.34 Preserve productive agricultural land

Policy 5.34.2 Farm Help Housing. Accommodation for farm help on the same agricultural parcel will be considered only where:

- Agriculture is the principal use on the parcel, and
- The applicant demonstrates that the additional housing is necessary to accommodate farm employee(s) whose residence on the farm property is considered critical to the overall

operation of the farm. The primary consideration is whether the scale of the farm operation is large enough that permanent help is deemed necessary.

Temporary farm worker housing (e.g. bunkhouse accommodation on non-permanent foundations) is the preferred solution where the need for farm worker housing is justified.

Policy 5.34.3 Homeplating. Locate buildings and structures, including farm help housing and farm retail sales area and structures, on agricultural parcels in close proximity to one another and where appropriate, near the existing road frontage. The goal should be to maximize use of existing infrastructure and reduce impacts on productive agricultural land.

Chapter 15: Farm Protection Development Permit Guidelines

Guideline 1.2. On agricultural lands, where appropriate, locate all buildings and structures, including farm help housing and farm retail sales, within a contiguous area (i.e. homeplate). Exceptions may be permitted where the buildings or structures are for farm use only.

Guideline 1.8. Design temporary farm working housing such that:

- Temporary farm worker housing should use all existing dwellings within the farm unit, prior to building new temporary farm worker housing, unless the existing dwellings are used for a use consistent with the Agriculture Land Commission Act. Alternatively, the existing dwellings on the farm unit must be removed, decommissioned to an approved use or demolished including decommissioning the existing septic system, prior to the authorization of a new temporary farm worker housing structure.
- Temporary farm worker housing footprint should be contiguous with the residential footprint (i.e. homeplate) and / or within 50 metres of the road and / or located to maximize agricultural potential and limit negative impacts on the farm parcel.
- Temporary farm worker housing should have a minimum 3-metre-wide vegetated buffer for screening to adjacent property lines and between the temporary farm worker housing and active farming areas.

6.o Application Chronology

Date of Application Received: June 27, 2019

Agricultural Advisory Committee August 8, 2019

The above noted application was reviewed by the Agricultural Advisory Committee at the meeting held on August 8, 2019 and the following recommendations were passed but have not yet been adopted:

THAT the Agricultural Advisory Committee recommends that Council support Agricultural Land Reserve Application No. A19-0011 for the property located at 2568 KLO Road to allow for an existing secondary dwelling on the subject property as temporary farm worker housing to accommodate six (6) temporary farm workers.

The following anecdotal comments from the Agricultural Advisory Committee were provided:

- *The Committee recommends that part of the process when being required to decommission a property needs to include the demolition of the building and planting of the area.*
- *The Committee recommends that enforcement oversight of the property conforming with the regulations be followed through when a building is being decommissioned. Specifically, to ensure the dwelling use be enforced as per the regulations to only be used 10 months of the year.*

- *The Committee recognizes that in supporting this application, there is a risk of setting a precedent with future applications with regards to allowing rental housing and farm worker housing to exist on the same site.*

Report prepared by: Arlene Janousek, Planner

Reviewed by: Dean Strachan, Community Planning & Development Manager

Approved for Inclusion: Terry Barton, Development Planning Department Manager

Attachments:

Attachment A: Site Plan