

March 1, 2021

Our File: 00046-002

Attention: Community Planning Department

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



Dear Sirs/Mesdames:

RE: Supplemental Letter in Support of Development Proposal Application Package for 4350 June Springs Road, Kelowna, B.C. (the “Property”)

I have been retained as counsel by Mr. Frank Vezer (the “Owner”) in relation to two Bylaw Offence Notices issued by the City of Kelowna Bylaw Services Department for alleged violations of sections 4.3.7(g) and 4.3.7(h) of the City of Kelowna Zoning Bylaw No. 8000 (the “Zoning Bylaw”) in relation to the Property legally described as:

PID: 023-331-062
LOT 6 SECTION 35 TOWNSHIP 29 OSOYOOS DIVISION YALE DISTRICT
PLAN KAP56325

A. Chronology of Events

In 2003 the Owner wished to construct a studio (the “Studio”) on the Property. Prior to construction of the Studio, the Owner did his due diligence as required by the City of Kelowna, including:

1. having a percolation test conducted on the Property;
2. having a second septic system installed and approved by the City of Kelowna; and
3. having all drawings of the Studio (which clearly indicated a kitchen) signed off by a City of Kelowna inspector.

Once the Owner completed his due diligence and the requisite permits were obtained, the Studio was constructed. When construction of the Studio was complete, the Owner

subsequently obtained and passed all permitting inspections with the City of Kelowna Inspection Services Department.

The Studio remains structurally unchanged from that which was approved by the City of Kelowna in 2003.

In 2014 security became a serious concern in the neighbourhood and on the Property. To address the issue, the Owner's daughter and son-in-law began residing full time and year round in the Studio so that they could care for the Property, including the principal dwelling unit, while the Owner and his wife were in the United States operating their family business.

On or about June 18, 2018, the Owner was issued two Bylaw Offence Notices under ticket numbers KN 0041127 & KN 0041128 (the "Bylaw Offence Notices") by the City of Kelowna Bylaw Services department for alleged violations of sections 4.3.7(g) and 4.3.7(h) of the Zoning Bylaw for having permitted "use contrary to zone" and "occupancy of secondary dwelling unit contrary to zone", respectively, on the basis that the occupancy of the Studio by the Owner's daughter and son-in-law deems the building a "carriage house" for purposes of the Zoning Bylaw.

On or about August 10, 2018 a compliance agreement was executed in respect of the Bylaw Offence Notices pursuant to which the Owner was provided the opportunity to ameliorate the offences.

On or about March 20, 2020 a Development Proposal Application Package was submitted on behalf of the Owner to rezone the Property from its current RR1 zoning to RR1C.

B. The Owner's Development Proposal Application

In order to ameliorate the offences noted under the Bylaw Offence Notices the Owner hereby applies to the City of Kelowna for:

1. consent to rezone the Property from its current RR1 zoning to RR1C zoning on the basis of subsection 1.8.2 of Section 1 [General Administration] of the Zoning Bylaw such that the Studio now deemed a "carriage house" under the Zoning Bylaw may remain as-constructed on the Property; or
2. in the alternative, issuance of a Development Variance Permit to be registered against title to the Property such that the Studio now deemed a "carriage house" under the Zoning Bylaw may remain as-constructed on the Property as a "non-conforming use" as defined under the Zoning Bylaw.

Rezoning of the Property from RR1 to RR1C

Section 12 [Rural Residential Zones] of the Zoning Bylaw, subsection 12.1.S(c) provides that the minimum lot size of any RR1 or RR1C zoned property is 1.0 ha.

While the Property is only surveyed as being 0.91 ha in size, Section I [General Administration] of the Zoning Bylaw provides as follows:

1.8.2 A principal or secondary use is permitted on a lot less than the minimum lot size in that zone, provided that the lot was created before adoption of this Bylaw and the development otherwise complies with all the regulations of this Bylaw.

The Owner submits that though the surveyed lot size of the Property is marginally less than the minimum lot size under Section 12 for any newly subdivided RR1C lots, the Property was created before adoption of the Zoning Bylaw and the "carriage house" otherwise complies with all the regulations of the Zoning Bylaw.

The Owner also submits that the proposed rezoning of the Property to RR1C is aligned with that of the intended future use (REP) of the Property as laid out in the City of Kelowna's Official Community Plan as well as the current zoning of the properties immediate adjacent to the Property that already hold an RR1C zoning designation.

Furthermore, the Owner submits that the Studio, including the kitchen, as well as the second septic system, were approved and permitted by the City of Kelowna prior to and after construction. This is not a situation where the Owner deviated away from what the City of Kelowna had given him the green light for. Nor is it a situation where the Owner acted dishonestly or surreptitiously. The Owner's actions were proper, transparent and authorized by the City of Kelowna.

Finally, the City of Kelowna itself has made clear there is a housing crisis in the area. The Owner submits that the Studio, which is structurally the same as it was in 2003, fills an articulated need in the community.

Accordingly, the Owner requests that the City of Kelowna consent to the proposed rezoning of the Property from its current RR1 zoning to RR1C zoning under subsection 1.8.2 of Section 1 [General Administration] of the Zoning Bylaw such that the Studio now deemed a "carriage house" under the Zoning Bylaw may remain as-constructed on the Property.

Issuance of A Development Variance Permit to allow "non-conforming use" of the Property

If the City of Kelowna should decline to rezone the Property from RR1 to RR1C, there are no practical nor cost-feasible options in relation to bringing the Property

into compliance with RR1 zone requirements under the Zoning Bylaw, particularly given the existing construction of the Studio or "carriage house" and the long-standing use of the Property.

Additionally, prior to the Owner's daughter and son-in-law occupying the Studio, the Property had been subject to multiple break-and-enters. Security had become such an issue that the insurers of the Property advised they would not provide coverage for losses incurred due to the Owner's extended vacancy of the Property. Since the Owner's daughter and son-in-law began occupying the building in 2014, there have been no further break-and-enters at the Property.

Thus the Owner submits that the occupancy of the building by his daughter and son-in-law have mitigated the risk of further uninsured break-and-enters at the Property and serves to further general City of Kelowna objectives with respect to general deterrence of crime in the surrounding neighbourhood where nearby rural properties have also been subject to break-and-enters in previous years while owners have been away during winter months.

The Owner also submits that the practical "use" of the Property has remained unchanged since acquired in 2002. The only change in "use" has been the result of the City of Kelowna's Bylaw Services department determination as of July 2018 that the occupancy of the Studio by the Owner's daughter and son-in-law now deems the building a "carriage house" for purposes of the Zoning Bylaw.

Finally, the Owner submits that given the current housing shortage, the current and intended use of the Studio fills a need and meets the City of Kelowna's objectives with respect to creating more and affordable housing.

Section 1 [General Administration] of the Zoning Bylaw provides as follows:

1.4.1 Except for legal non-conforming uses or development approved by a development variance permit or a Board of Variance order, or another agreement or permit as authorized by the Local Government Act, the use, buildings, structures, in each zone or area shall be in accordance with the uses listed in the zone and all the appropriate regulations and requirements of this Bylaw.

Section 2 [Interpretation] of the Zoning Bylaw defines a "non-conforming use" as follows:

NON-CONFORMING USE means a lawful existing use made of a lot or building, intended to be made of a building lawfully under construction, or a development which is approved under provisions of Section 1.7 of this Bylaw at the date of Council adoption of this Bylaw, or amendment thereof, which on the date this Bylaw or an amendment thereto becomes effective, would no longer comply with this Bylaw.

Accordingly, should rezoning be denied, the Owner requests that the City of Kelowna issue a Development Variance Permit to be registered against title to the Property such that the Studio now deemed a "carriage house" under the Zoning Bylaw may remain as-constructed on the Property as a "non-conforming use", despite non-compliance with RR1 lot restrictions under Section 12 [Rural Residential Zones] disallowing a "carriage house" on the Property.

C. Conclusion

The Owner thanks the City of Kelowna for considering his requests. He would like to make clear that in approving his request for rezoning, the City of Kelowna will not be setting an improper precedent with regard to use and lot size. This is a unique situation. In granting the requested rezoning application the City of Kelowna will simply be confirming what it already approved in the past while simultaneously fulfilling a housing need for the future.

Should you have any questions regarding the Owner's Development Proposal or require any further documentation in order to make a decision in respect of the Owner's Development Proposal, please contact me directly at my contact information above.

The Owner looks forward to any further guidance the City of Kelowna may be able to offer in respect of the Development Proposal and working towards an amicable resolution of the matter.

Yours truly,

ARAYA LAW Corporation

per:



Rina E. Jeyakumar, B.A. (Hons.), J.D.
Director and Principal Lawyer

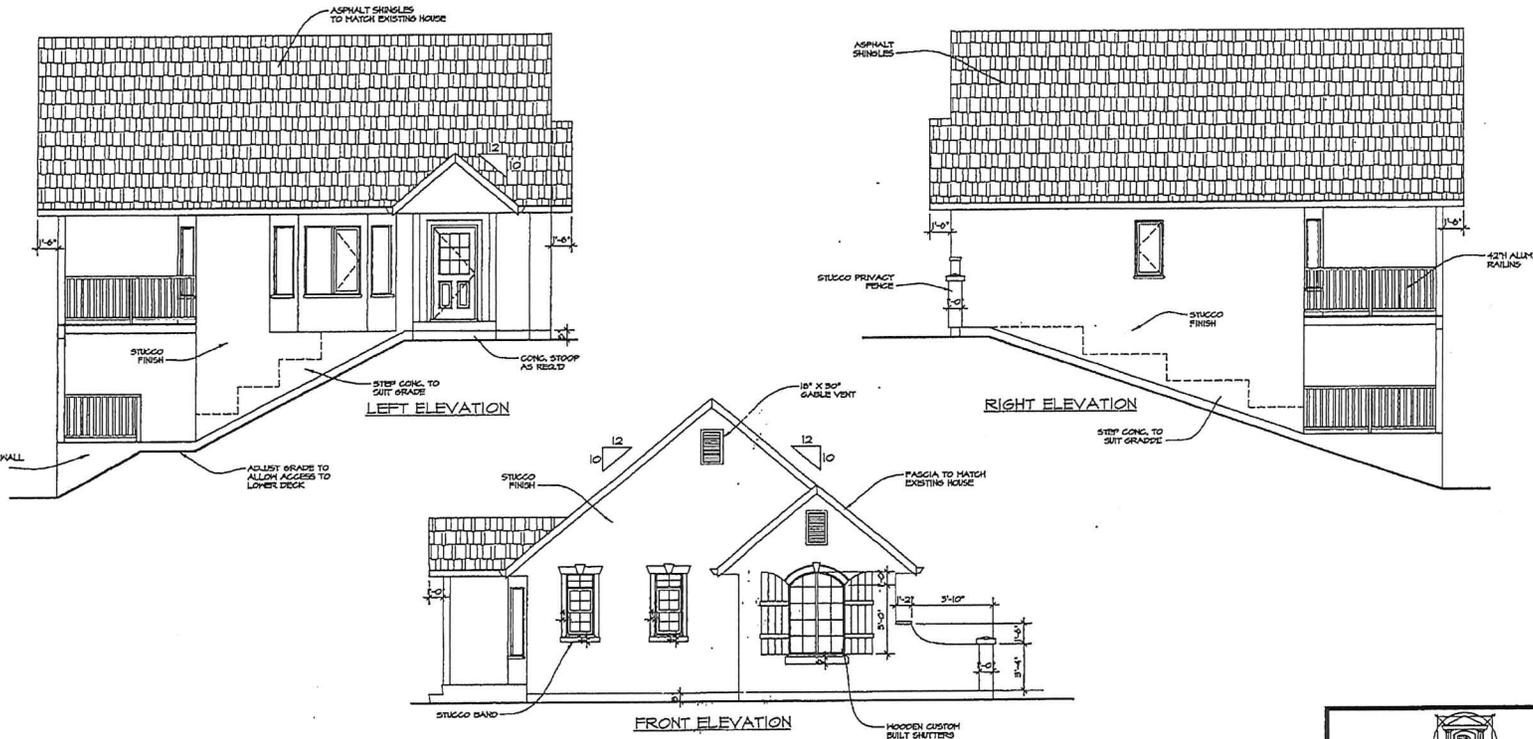
This forms part of application

Z20-0032



City of Kelowna DEVELOPMENT PLANNING

Planner Initials TC




BAXTER DESIGN
 Custom Building Design
 ph: (250) 862-9662
 FRANK VEEZER - JUNE SPRINGS RD.
 KELOWNA, B.C.

DEC. 3 / 02

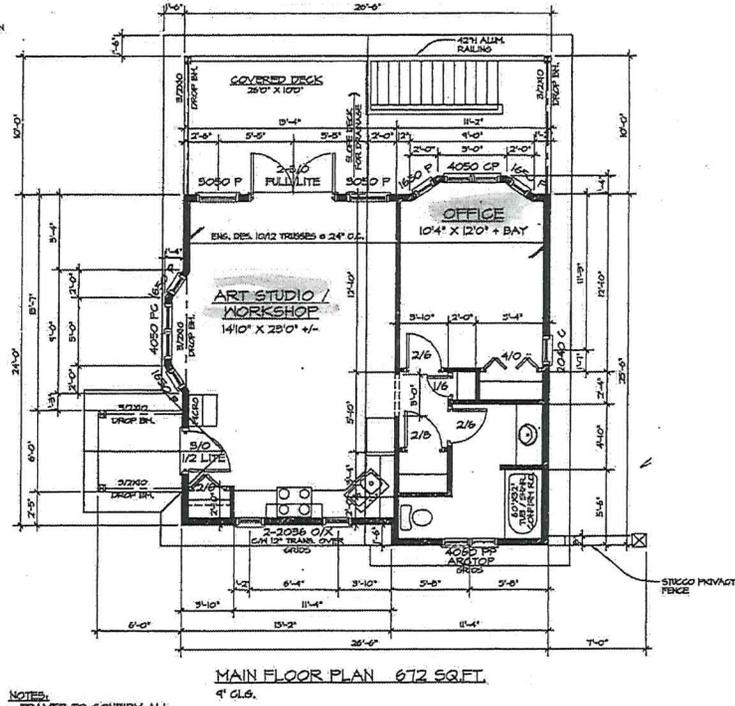
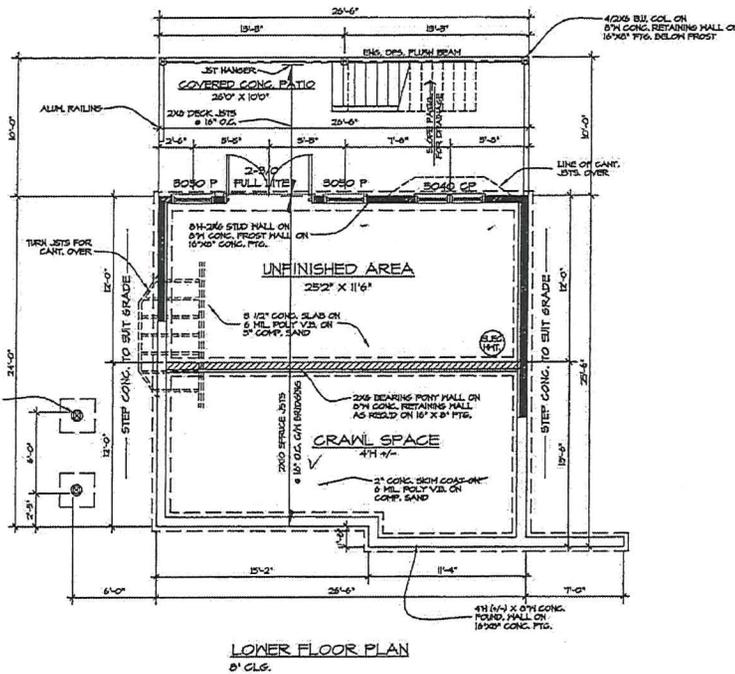
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Z20-0032



City of
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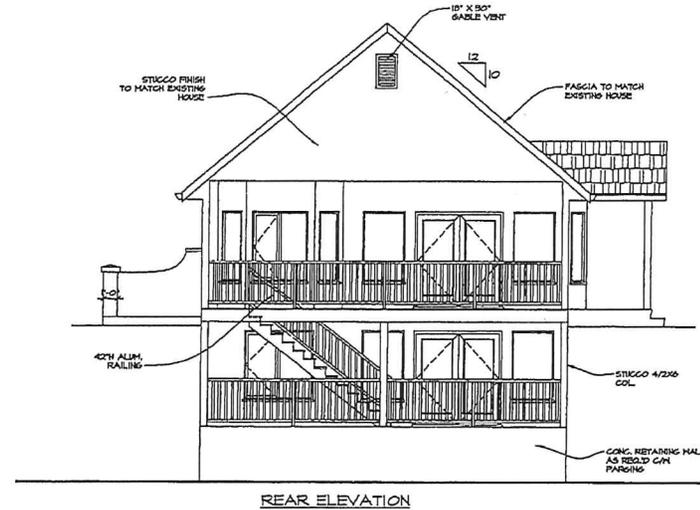
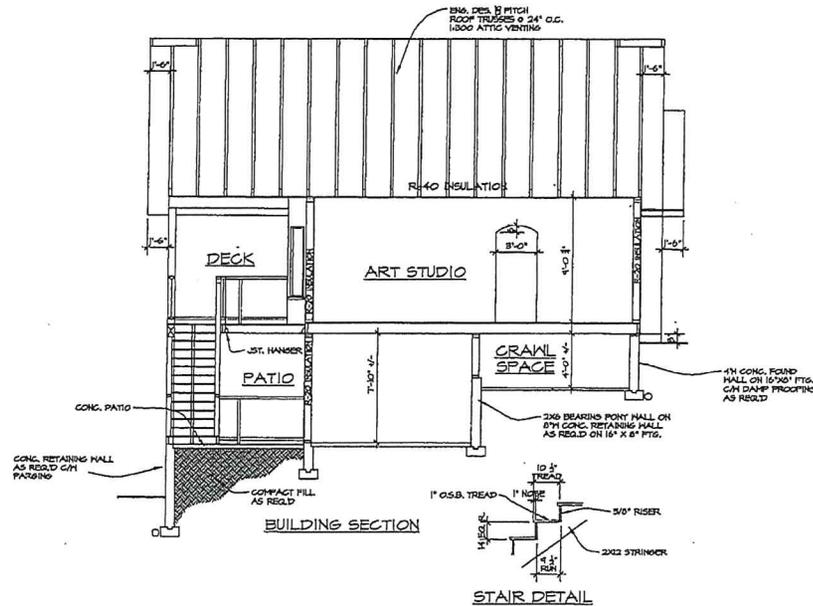
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ROOF CONSTRUCTION

- ASPHALT SHINGLES
- 30# ROOFING FELT
- 1/16" O.S.B. ROOF SHEATHING
- C/M H' CLIPS
- ENGINEER DESIGNED ROOF TRUSS SYSTEM
- R-40 INSULATION
- 6 MIL. POLY. VAPOUR BARRIER
- 1/2" GYPSUM BOARD

EXTERIOR WALL CONSTRUCTION

- STUCCO ON STUCCO LATH
- PERMAK PAPER
- 5/8" O.S.B. WALL SHEATHING
- 2X6 SPRUCE STUDS @ 24" O.C.
- R-20 INSULATION
- 6 MIL. POLY. VAPOUR BARRIER
- 1/2" GYPSUM BOARD

INTERIOR WALL CONSTRUCTION

- 1/2" GYPSUM BOARD TO BOTH SIDES OF 2X4 SPRUCE STUDS @ 16" O.C.

INTERIOR FLOOR CONSTRUCTION

- FINISHED FLOORING
- 1/4" UNDERLAY (STURDI-HOOD) @ LINO AREAS
- 5/8" T.&G. SPRUCE PLYWOOD SUB-FLOOR
- 2X10 SPRUCE FLOOR JOISTS @ 16" O.C. (GLUED, SCREWED, AND BRIDGED)
- 1/2" GYPSUM BOARD TO FINISHED AREAS

DECK CONSTRUCTION

- WEATHER PROOF MEMBRANE
- 5/8" T.&G. SPRUCE PLYWOOD DECKING
- 2X8 SPRUCE DECK JOISTS @ 16" O.C.

STAIR CONSTRUCTION

- 14 EQUAL RISERS OF 5/8" PLYWOOD
- 1 1/2" RUN
- 10 1/2" TREADS OF 1" O.S.B.
- 2X12 STRINGERS
- 2'-8" HANDRAIL HEIGHT

BASEMENT SLAB

- 8 1/2" CONG. SLAB @ 20 MPa
- 6 MIL. POLY. VAPOUR BARRIER
- 5" COMPACTED SAND

CRAWL SPACE SLAB

- 2" CONG. SKIM COAT @ 15 MPa
- 6 MIL. POLY. VAPOUR BARRIER
- 5" COMPACTED SAND

BAXTER DESIGN
Custom Building Design
ph: (250) 862-9662
FRANK VEEZER - JUNE SPRINGS RD.
KELOWNA, B.C.



MEMORANDUM

To: Okanagan Local Government Administrators
From: Anna Warwick Sears, Executive Director
Date: January 20, 2014
Subject: Sewage Facilities Grant Program Policy on Small-lot Accessory Dwellings

Summary: The purpose of this memo is to update local governments on OBWB's sewage grants 1.0-hectare policy. This policy, which requires grant recipients to enact bylaws prohibiting the subdivision of small lots on septic, has now been expanded to include accessory dwellings (carriage houses) on lots smaller than 1.0-hectare. **The OBWB requests Okanagan local governments to update their bylaws to exclude development of accessory dwellings (carriage houses) on lots less than 1.0 hectare that rely on on-site sewage disposal. The OBWB further requests an update of zoning and/or subdivision and development servicing bylaws, requiring that secondary suites be tied to the sewage disposal system of the existing dwelling.**

This request only applies to the areas of your jurisdiction within the Okanagan Basin drainage area. Secondary suites that are tied into the existing domestic septic system are accepted (although not recommended) if the sewage disposal system has adequate capacity per health regulations.

Background: The OBWB's Sewage Facilities Assistance program provides funding for Okanagan communities to upgrade wastewater treatment plants and extend community sewer to areas on septic. The program was initiated in 1975.

Since 2007, the OBWB has required sewage grant recipients to have bylaws prohibiting subdivision of lots smaller than 1.0 hectare (see attached Terms of Reference). The 1.0 Hectare (minimum subdivision) Policy is in line with provincial government rules, and was established recognizing that much of the pollution entering lakes and streams comes from failing septic systems. Septic is the highest human-produced source of phosphorus in the watershed.

The premise behind the 1.0 hectare rule is that the more dwelling units there are using septic systems in a given area, the greater the chance that systems may malfunction and less opportunity to find sufficient, suitable, available land for replacement effluent dispersal fields – potentially leading to water pollution and health threats.

- The 1.0 Hectare Policy is based on a scientific assessment by the Ministry of Community, Sport and Cultural Development in the 1990s. Exceptions cannot be made for in-fill subdivision properties, because of the risk of cumulative impacts from many closely-spaced septic systems, and because for fairness reasons we must have a uniform policy throughout the Basin.
- There are many advances in on-site sewage treatment available. However, each of these solutions requires long-term maintenance or else there are continued risks of system failure. Following Provincial policy, the Water Board allows the 1.0 Hectare Policy to be waived only if a Liquid Waste Management Plan is prepared for the site, and if the system itself is adopted by the local government as permanent infrastructure.

In October, the OBWB received an inquiry whether development of secondary suites and detached accessory dwellings (carriage houses) on properties less than 1.0 hectare violates the 1.0 Hectare Policy within the OBWB sewage grant program. With respect to septic systems, adding a carriage house creates similar risks for system failure and water quality impairment as small-lot subdivision, without creating a separate title.

For this reason, the OBWB has now expanded the 1.0 Hectare Policy, and now requires all sewage grant recipients to have bylaws in place restricting carriage houses to properties greater than 1.0 hectare, or to properties with community sewer connections (see Terms of Reference section 3.6.1). Secondary suites that are tied into the existing domestic septic system are accepted (although not recommended) if the sewage disposal system has adequate capacity per health regulations.

Please do not hesitate to contact me with any questions, by email at: anna.warwick.sears@obwb.ca, or phone at: (250) 469-6251.

Sincerely,



Anna Warwick Sears
Executive Director

ATTACHMENT		C
This forms part of application		
# Z20-0032		
Planner Initials	TC	 City of Kelowna DEVELOPMENT PLANNING

CITY OF KELOWNA MEMORANDUM

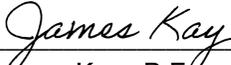
Date: April 29, 2020
File No.: Z20-0032
To: Land Use Planning Manager (AK)
From: Development Engineering Manager (JK)
Subject: 4350 June Springs Road Lot 2 Plan 56325 RR1 to RR1C

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

1. Domestic water and fire protection.
 - a) The subject property is within the service area of the former South East Kelowna Irrigation District (SEKID). The utilisation of existing and proposed services, as well as fire protection will be reviewed by Building & Permitting.

2. Sanitary Sewer.
 - a) This subject parcel is currently not within the City service area. Sanitary sewage is presently handled by an on-site sewage disposal system.
 - b) Existing and proposed on-site servicing will be reviewed by the Interior Health Authority and Building & Permitting.

3. General and Access
 - a) Foliage shall be kept cleared in both directions for the existing driveways to ensure that when egressing the properties, sightlines are not obstructed


James Kay, P.Eng.
Development Engineering Manager
JF

ATTACHMENT	D
This forms part of application # Z20-0032	
Planner Initials	TC
 City of Kelowna DEVELOPMENT PLANNING	