



Regular Council Meeting
to be held at
City of Penticton Council Chambers
171 Main Street, Penticton, B.C.

Tuesday, May 23, 2017
at 1:00 p.m.

1. **Call Regular Council Meeting to Order**
2. **Introduction of Late Items**
3. **Adoption of Agenda**
4. **Recess to Committee of the Whole**
5. **Reconvene the Regular Council Meeting**
6. **Adoption of Minutes:**

6.1	Minutes of the May 2, 2017 Committee of the Whole Meeting	1-2	Receive
6.2	Minutes of the May 2, 2017 Public Hearing	3-6	Receive
6.3	Minutes of the May 2, 2017 Regular Council Meeting	7-13	Adopt
7. **Committee and Board Reports:**

7.1	Official Community Plan Task Force Minutes of April 20, 2017 <i>Recommendation: THAT Council receive the draft minutes of the Official Community Plan Task Force meeting of April 20, 2017.</i>	14-16	
7.2	Arts, Creative and Cultural Innovations Minutes of April 21, 2017 <i>Recommendation: THAT Council receive the draft minutes of the Arts, Creative and Cultural Innovations Committee meeting of April 21, 2017.</i> <i>Committee Recommendation: THAT Council approve the allocation of \$18,000 from the Public Art Reserve Fund to the Valley First Public Sculpture project.</i>	17-28	
8. **Correspondence**

8.1	Petition – Atkinson Street safety concerns	29-35	
8.2	First Coyote Hills Girl Guides - concerns	36-46	
8.3	World Ocean Day	47-48	

9. Staff Reports:			
GMI	9.1	Fees and Charges Amendment Bylaw No. 2017-36 Re: Transit Fares <i>Staff Recommendation: THAT Council give first, second and third reading to "Fees and Charges Amendment Bylaw No. 2017-36", a bylaw to amend Fees and Charges Bylaw No. 2014-07 to set new Transit Fares effective July 1, 2017.</i>	49-56
GMI	9.2	Gas Tax Strategic Priorities Fund Grant Application - Facilities GIS <i>Staff Recommendation: THAT Council endorses a grant application to the Capacity Building Stream of the Gas Tax Strategic Priorities Fund to create a Building Facility GIS Database; AND THAT the Building Facility GIS Database project be included in the 2018 budget showing 100% grant funding; AND FURTHER THAT the General Manager of Infrastructure and the Chief Financial Officer be authorized to sign any required forms related to the grant application.</i>	57-58
GMI	9.3	Gas Tax Strategic Priorities Fund Grant Application - Arena <i>Staff Recommendation: THAT Council endorses a grant application to the Capital Infrastructure Project Stream of the Gas Tax Strategic Priorities Fund to either upgrade Memorial Arena or to build a new arena; AND THAT once the Penticton Arena Task Force has made their recommendation to Council on how to proceed with arena upgrading or replacement that the grant application be updated to reflect the recommendation; AND THAT the Arena upgrade / replacement project be included in the 2018 budget and that any funding required in excess of \$6,000,000 be funded by the City of Penticton through reserves, other grants, borrowing, donations and/or funding partners as recommended by the Arena Task Force and endorsed by Council; AND FURTHER THAT the Manager of Facilities and the Chief Financial Officer be authorized to sign any required forms related to the grant application.</i>	59-61
GMI	9.4	Amendment to the Warren Oxbow Servicing Agreement <i>Staff Recommendation: THAT Council approve the Warren Avenue Oxbow Servicing Termination Agreement with the Penticton Indian Band as contained in Attachment "B"; AND THAT Council approve the Warren Avenue Oxbow Servicing Agreement with Warren Avenue Development Corporation to provide City electricity, sanitary sewer and water services to the Warren Avenue Oxbow lands as contained in Attachment "C"; AND THAT the Mayor and Corporate Officer be authorized to execute both of these agreements.</i>	62-95
DE	9.5	Development Cost Charges Amendment Bylaw No. 2016-72 <i>Staff Recommendation: THAT Council rescind third reading of "Development Cost Charges Amendment Bylaw No. 2016-72", a bylaw to amend "Development Cost Charges Bylaw No. 2007-79", AND THAT Council give third reading as amended to "Development Cost Charges Amendment Bylaw No. 2016-72", amending Section 8 as recommended by the Inspector of Municipalities; AND THAT in accordance with Section 560 of the Local Government Act, the bylaw be forwarded to the Inspector of Municipalities for approval.</i>	96-101
PWM	9.6	Provincial Licence of Occupation Re: Howard Lake Dam Access <i>Staff Recommendation: THAT Council authorize the Mayor and the Corporate Officer to enter into a License of Occupation, Attachment "A" with the Province of British Columbia for the purposes of constructing an access road to Howard Lake Dam.</i>	102-125
PWM	9.7	Upper Carmi Fire Protection <i>Staff Recommendation: THAT Council support adding Upper Carmi area, up to the 11.5km mark from Fire Station 202, into the RDOS Fire Protection Agreement with conditions outlined in this report.</i>	126-128
PWM	9.8	Mobile Retail Vending <i>Staff Recommendation: THAT Council support an amendment to the one-year pilot program for Mobile Retail Vending endorsed on March 21, 2017 to include:</i> <ul style="list-style-type: none"> • A location for one Mobile Retail Vending truck at a time along the north-west corner of Power Street and Lakeshore Drive (Attachment A) AND/OR • Two locations for Mobile Retail Vending trucks in the Gyro Hub location (Attachment A). 	129-135

10. **Public Question Period**

11. **Recess to In-Camera Meeting**

Resolution: THAT Council recess to a closed meeting of Council pursuant to the provisions of the Community Charter section 90 (1) as follows:

- (e) the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;
- (g) litigation or potential litigation affecting the municipality;
- (i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;
- (j) information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 21 of the Freedom of Information and Protection of Privacy Act;

12. **Public Hearing at 6:00 p.m.**

13. **Reconvene the Regular Council Meeting following the Public Hearing**

14. **Reconsideration of Bylaws and Permits:**

14.1	Zoning Amendment Bylaw No. 2017-21 Re: 634 Westminster Avenue W & 201 Maple Street DVP PL2016-7826 & DP PL2016-7825	136-145	Adopt Approve
14.2	Zoning Amendment Bylaw No. 2017-27 Re: 180 Industrial Avenue W DVP PL2017-7878	146-149	Adopt Approve
14.3	Zoning Amendment Bylaw No. 2017-32 Re: 747 Government Street	150-151	2 nd /3 rd
14.4	Zoning Amendment Bylaw No. 2017-33 Re: 285 Nanaimo Ave. W.	152-153	2 nd /3 rd
14.5	Zoning Amendment Bylaw No. 2017-34 Re: 532/536 Main Street	154-155	2 nd /3 rd /Adopt
14.6	Zoning Amendment Bylaw No. 2017-35 Re: Administrative Amendment	156	2 nd /3 rd

15. **Land Matters:**

BPM	15.1	Liquor-Primary Licence Permanent Amendment and Structural Change Re: Mile Zero Wine Bar, 200 Ellis Street <i>Staff Recommendation:</i> 1. THAT Council recommends to the Liquor Control and Licensing Branch (LCLB) that it supports the application from Mile Zero Wine Bar located at 200 Ellis Street for a Permanent change for: • hours of service (interior) from 11:00am to 12:00am (midnight) to 11:00am to 2:00am, Sunday to Saturday, and • an interior occupant load increase from 60 persons to 100 persons; 2. AND THAT Council supports the structural change application to add an exterior licensed patio with: • Maximum occupant load of 40 persons, • Hours of service from 11:00am to 10:00pm, with • No exterior amplified music.	157-174	Del/Sub
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BPM	15.2	Liquor-Primary Licence Permanent Change Re: LUSO Canadian Multicultural Club (Portuguese Sporting Club of Penticton) <i>Staff Recommendation: THAT Council recommends to the Liquor Control and Licensing Branch (LCLB) that it supports the application from the LUSO Canadian Multicultural Club (Portuguese Sporting Club of Penticton) located at 135 Winnipeg Street for a Permanent change of hours of service from:</i> • From: 4:00pm to 1:00am Monday, Tuesday, Thursday and Friday; • To 2:00pm to 1:00am, Monday, Tuesday, Thursday and Friday.	175-181	Del/Sub
DDS	15.3	Temporary Use Permit Application PL2016-7761 Re: 1704 Government Street <i>Staff Recommendation: THAT Council approve "Temporary Use Permit PL2016-7761", a permit to allow for 'temporary offices in portable trailers' on Lot A, District Lot 3429S, Similkameen Division Yale District, Plan 23195, Except Plan 37288, located at 1704 Government Street, for a period of 3 years.</i>	182-189	Del/Sub
DDS	15.4	Re-issuance of Development Variance Permit PL2016-7608 Re: 838 Oakville Street (formerly 798 Revelstoke Avenue) <i>Staff Recommendation: THAT "Development Variance Permit PL2016-7608" for Lot A, Plan EPP65038, District Lot 2, Similkameen Division Yale District, Group 7, located at 838 Oakville Street (formerly 798 Revelstoke Avenue), be re-issued with a drawing outlining the off-site works required as part of the development.</i>	190-200	Del/Sub
DDS	15.5	Adoption of Zoning Amendment Bylaw No. 2017-07 Re: 1830 Ridgedale Avenue <i>Staff Recommendation: THAT Council amend the conditions for approval of "Zoning Amendment Bylaw No. 2017-07", outlined in Council Resolution 25/2017, as follows:</i> • Amending Condition 2 (off site traffic calming) and Condition 3 (tree replacement) removing the requirement to bond for the works prior to zoning adoption; and • Removing Condition 5 (geotechnical covenant) in its entirety AND THAT Council rescind third reading and give third reading as amended to "Zoning Amendment Bylaw No. 2017-07", changing the Zoning Bylaw number from 2011-23 to 2017-08; AND THAT Council adopt "Zoning Amendment Bylaw No. 2017-07".	201-209	
DDS	15.6	Zoning Amendment Bylaw No. 2017-37 DVP PL2017-7904 & DP PL2017-7905 Re: 380 White Avenue East <i>Staff Recommendation: THAT "Zoning Amendment Bylaw No. 2017-37" a bylaw to add Section 10.6.4.6: "In the case of that part of Lots 18-20 shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755, located at 380 White Avenue East, two duplexes with a combined Floor Area Ratio of 1.15 are permitted," be given first reading and forwarded to the June 6, 2017 Public Hearing; AND THAT prior to adoption of "Zoning Amendment Bylaw No. 2017-37," a 4.0m x 4.0m corner cut on the North East portion of the property is registered with the Land Title Office; AND THAT prior to adoption of "Zoning Amendment Bylaw No. 2017-37," a lot consolidation of Lots 18-20 shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755, is registered with the land title office.</i> <i>THAT delegations and submissions be heard for "Development Variance Permit PL2017-7904" for that part of Lots 18-20 shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755, located at 380 White Avenue East, a permit to waive the requirement to provide on-site parking for four duplex suites, to decrease the minimum front yard from 4.5m to 3.0m and to decrease the minimum rear yard from 6.0m to 3.0m; AND THAT "DVP PL2017-7904" be considered only after adoption of "Zoning Amendment Bylaw No. 2017-37". THAT Council, subject to adoption of "Zoning Amendment Bylaw No. 2017-37," approve "Development Permit PL2017-7905", for Lots 18-20 shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755, located at 380 White Avenue East, a permit that allows for the construction of two duplexes.</i>	210-230	
DDS	15.7	Zoning Amendment Bylaw No. 2017-38 Official Community Plan Amendment Bylaw No. 2017-39 DVP PL2017-7900 Re: 1498 Leir Street	231-254	

Staff Recommendation: THAT "Zoning Amendment Bylaw No. 2017-38", a bylaw to amend Zoning Bylaw No. 2017-08 to rezone Lot 3, District Lot 250, Similkameen Division Yale District, Plan 8818 located at 1498 Leir Street, from R1 (Large Lot Residential) to C1 (Commercial Transition) be introduced, read a first time and be forwarded to the June 6, 2017 Public Hearing;

THAT delegations and submissions for "Development Variance Permit PL2017-7900" for Lot 3, District Lot 250, Similkameen Division Yale District, Plan 8818 located at 1498 Leir Street, a permit to reduce the required parking from 11 stalls to 4 stalls and, to reduce the minimum distance from the driveway to the flanking street curb from 10 metres to 7 metres, be heard at the June 6, 2017 Public Hearing;

AND THAT "Official Community Plan Amendment Bylaw No. 2017-39" being a bylaw to include Lot 3, District Lot 250, Similkameen Division Yale District, Plan 8818 located at 1498 Leir Street, in the General Tourist Commercial Development Permit Area Schedule "H" of Official Community Plan Bylaw No 2002-20 be introduced, read a first time and forwarded to the June 6, 2017 Public Hearing; AND THAT Council consider "DVP PL2017-7900" following the adoption of "Zoning Amendment Bylaw No. 2017-38".

16. **Notice of Motion**
17. **Business Arising**
18. **Council Round Table**
19. **Public Question Period**
20. **Adjournment**

Committee of the Whole
held at City of Penticton Council Chambers
171 Main Street, Penticton, B.C.

Tuesday, May 2, 2017

Recessed from the Regular Council Meeting at 1:00 p.m.

- Present:** Mayor Jakubeit
Councillor Konanz
Councillor Sentes
Councillor Picton
Councillor Watt
Councillor Martin
- Absent:** Councillor Sayeed (with notice)
- Staff:** Peter Weeber, Chief Administrative Officer
Ian Chapman, Acting General Manager of Infrastructure
Jim Bauer, Chief Financial Officer
Anthony Haddad, Director of Development Services
Dana Schmidt, Corporate Officer
Angie Collison, Deputy Corporate Officer

1. Call to order

The Mayor called the Committee of the Whole meeting to order at 1:02 p.m.

2. Adoption of Agenda

It was MOVED and SECONDED

THAT the agenda for the Committee of the Whole meeting held on May 2, 2017 be adopted as circulated.

CARRIED UNANIMOUSLY

3. Delegations:

- 3.1 Proclamation – National Hospice Palliative Care Week
May 7 – 13, 2017

Mayor Jakubeit proclaimed May 7 – 13, 2017 as "National Hospice Palliative Care Week" in the City of Penticton.

3.2 RDOS – Amendment of Solid Waste Management Plan

Cameron Baughen, RDOS Solid Waste Management Coordinator, provided Council with an overview of the plan amendment which is to choose a site for a regional compost facility for residential and commercial food scrapes, wastewater treatment sludge, yard waste and wood waste.

3.3 Penticton Creek Restoration Master Plan and 2017 Project Delegation

Ian Chapman, City Engineer and Bryn White, Chair of the Penticton Creek Restoration Committee, provided Council with an update on the background work of the Penticton Creek Master Plan and the construction work planned for the summer.

4. Adjourn to Regular Meeting

It was MOVED and SECONDED

THAT Council adjourn the Committee of the Whole at 1:49 p.m. and reconvene the Regular Meeting of Council.

CARRIED UNANIMOUSLY

Certified correct:

Confirmed:

Dana Schmidt
Corporate Officer

Andrew Jakubeit
Mayor

Public Hearing
City of Penticton, Council Chambers
171 Main Street, Penticton, B.C.

Tuesday, May 2, 2017
at 6:00 p.m.

- Present:** Mayor Jakubeit
Councillor Sentes
Councillor Watt
Councillor Picton
Councillor Martin
Councillor Konanz
- Absent:** Councillor Sayeed (with notice)
- Staff:** Peter Weeber, Chief Administrative Officer
Dana Schmidt, Corporate Officer
Jim Bauer, Chief Financial Officer
Anthony Haddad, Director of Development Services
Blake Laven, Planning Manager
Angie Collison, Deputy Corporate Officer

1. Call to order

Mayor Jakubeit called the public hearing to order at 6:00 p.m. for "OCP Amendment Bylaw No. 2017-26", "Zoning Amendment Bylaw No. 2017-27", OCP Amendment Bylaw No. 2017-30" and Zoning Amendment Bylaw No. 2017-31". He explained that the public hearing was being held to afford all persons who considered themselves affected by the proposed bylaws an opportunity to be heard before Council.

The Corporate Officer read the opening statement and introduced the purpose of the bylaws. She then explained that the public hearing was being held to afford all persons who considered themselves affected by the proposed bylaws and related DVPs an opportunity to be heard before Council. She further indicated that the public hearing was advertised pursuant to the *Local Government Act*.

"Official Community Plan Amendment Bylaw No. 2017-26" and "Zoning Amendment Bylaw No. 2017-27" (180 Industrial Avenue W)

The purpose of "Official Community Plan Amendment Bylaw No. 2017-26" is to amend Official Community Plan Bylaw 2002-20 as follows:

Amend Schedule 'B' Future Land Use designation for a portion of Amended Lot A (DD244437F), DL 115, Similkameen Division Yale, District Plan 3494 Except Plans 20051 and 26786 located at 180 Industrial Avenue W, from LR (Low Density Residential) to MR (Medium Density Residential) and include in Schedule 'H' General Multiple Development Permit Area.

The purpose of "Zoning Amendment Bylaw No. 2017-27" is to amend Zoning Bylaw No. 2017-08 as follows:

Rezone portion of Amended Lot A (DD 244437F), DL 115, Similkameen Division Yale, District Plan 3494 Except Plans 20051 and 26786 located at 180 Industrial Avenue W from P1 (Public Assembly) to RM2 (Low Density Multiple Housing).

The applicant is proposing to subdivide 180 Industrial Avenue W into two lots and construct a non-market rental, one storey apartment building consisting of ten units for individuals with intellectual disabilities and/or seniors and a five unit congregate housing building for individuals with intellectual disabilities.

The Corporate Officer advised that seven letters have been received after the printing of the agenda.

DELEGATIONS

Mayor Jakubeit asked the public for the first time if anyone wished to speak to the application.

- Tony Lang, Executive Director Community Living, tried to take the feedback from neighbourhood and create something that is part of Bruce Court neighbourhood. Want it to be a residential neighbourhood. Addressed landscaping concerns, held public meeting, good support, don't want the access off of Industrial Avenue, size of development is restricted by funding.

Mayor Jakubeit asked the public for the second time if anyone wished to speak to the application.

- No one spoke.

Mayor Jakubeit asked the public for the third and final time if anyone wished to speak to the application.

- Lynn Kelsey, Oakville Street, spoke in support of the development.
- Mike Robinson, Penticton, read submission from owner of 162 Bruce Court, plan will increase traffic into cul-de-sac, suggest front of development face Industrial Avenue.

The public hearing for "OCP Amendment Bylaw No. 2017-26" and "Zoning Amendment Bylaw No. 2017-27" was terminated at 6:17 p.m. and no new information can be received on this matter.

2. "Official Community Plan Amendment Bylaw No. 2017-30" and "Zoning Amendment Bylaw No. 2017-31" (352, 398 Eckhardt Ave E)

The purpose of "Official Community Plan Amendment Bylaw No. 2017-30" is to amend Official Community Plan Bylaw 2002-20 as follows:

Amend Schedule 'B' Future Land Use designation for Lot A, District Lot 202, Similkameen Division Yale District Plan 26857, located at 352 Eckhardt Ave E from I (Institutional) to MR (Medium Density Residential) and Amend Schedule 'H' General Multiple Development Permit Area to include Lot A, District Lot 202, Similkameen Division Yale District Plan 26857, located at 352 Eckhardt Avenue E and That Part of the West ½ of Lot 24 included in Plan B4852, Block 37 District Lot 202 Similkameen Division Yale District, Plan 356 located at 398 Eckhardt Avenue E.

The purpose of "Zoning Amendment Bylaw No. 2017-31" is to amend Zoning Bylaw No. 2017-08 as follows:

Rezone Lot A, District Lot 202, Similkameen Division Yale District Plan 26857, located at 352 Eckhardt Avenue E from P1 (Public Assembly) to RM3 (Medium Density Multiple Housing) AND That Part of the West ½ of Lot 24 included in Plan B4852, Block 37 District Lot 202 Similkameen Division Yale District, Plan 356 located at 398 Eckhardt Avenue E from RM2 (Low Density Multiple Housing) to RM3 (Medium Density Multiple Housing).

The applicant is proposing to consolidated 352 and 398 Eckhardt Ave E and construct a twenty-four (24) unit townhouse development.

The Corporate Officer advised that four letters of support and two of opposition have been received after the printing of the agenda.

DELEGATIONS

Mayor Jakubeit asked the public for the first time if anyone wished to speak to the application.

- Bruce Schoenne, developer, spoke in support of the application. This proposal includes on-site parking, held open house, positive responses to the development.
- Brijit Kemp, Warren Avenue W, KVR trail runs behind development, presume will not impact the trail.
- Lynn Kelsey, Oakville Street, location is perfect, schools close by, easy transport, densify in a smart way, spoke in support of the development.
- Julianna Martin, Gahan Avenue, concerned with parking, limited parking now.
- Brad Martin, Gahan Avenue, recently purchased home, in favour of developments but concerned with lack of parking. Narrow street, reduced setbacks will have more impact on street, reconsider set back and sight lines and down to two storeys.

Mayor Jakubeit asked the public for the second time if anyone wished to speak to the application.

- No one spoke.

Mayor Jakubeit asked the public for the third and final time if anyone wished to speak to the application.

- Bruce Schoenne, 36 on site stalls, require 24. Addition parking on Gahan Avenue as developing street to sidewalk, will widen the Avenue the length of property.
- Mike Robinson, Penticton, parking concerns, asked for clarity on what area is being paved.

The public hearing for "OCP Amendment Bylaw No. 2017-30" and "Zoning Amendment Bylaw No. 2017-31" was terminated at 6:30 p.m. and no new information can be received on this matter.

Certified correct:

Confirmed:

Dana Schmidt
Corporate Officer

Andrew Jakubeit
Mayor

Regular Council Meeting
held at City of Penticton Council Chambers
171 Main Street, Penticton, B.C.

Tuesday, May 2, 2017
at 1:00 p.m.

- Present:** Mayor Jakubeit
Councillor Konanz
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Councillor Sentes
Councillor Picton
- Absent:** Councillor Sayeed (with notice)
- Staff:** Peter Weeber, Chief Administrative Officer
Ian Chapman, Acting General Manager of Infrastructure
Dana Schmidt, Corporate Officer
Jim Bauer, Chief Financial Officer
Anthony Haddad, Director of Development Services
Angie Collison, Deputy Corporate Officer

1. Call to Order

The Mayor called the Regular Council meeting to order at 1:01 p.m.

2. Introduction of Late Items

3. Adoption of Agenda

It was MOVED and SECONDED

THAT Council adopt the agenda for the Regular Council meeting held on May 2, 2017 as amended to include item 9.3 OCP Update.

CARRIED UNANIMOUSLY

4. Recess to Committee of the Whole

Council recessed to a Committee of the Whole Meeting at 1:02 p.m.

5. Reconvene the Regular Council Meeting

Council reconvened the Regular Council Meeting at 1:49 p.m.

6. Adoption of Minutes:

6.1 Minutes of the April 18, 2017 Regular Council Meeting

279/2017

It was MOVED and SECONDED

THAT Council adopt the minutes of the April 18, 2017 Regular Council Meeting as presented.

CARRIED UNANIMOUSLY

7. Committee and Board Reports

7.1 Penticton Arena Task Force Minutes of March 20, 2017

280/2017

It was MOVED and SECONDED

THAT Council receive the minutes of the Penticton Arena Task Force meeting of March 20, 2017.

CARRIED UNANIMOUSLY

7.2 Penticton Creek Restoration Committee Minutes of April 5, 2017

281/2017

It was MOVED and SECONDED

THAT Council receive the draft minutes of the Penticton Creek Restoration Committee meeting of April 5, 2017.

CARRIED UNANIMOUSLY

8. Correspondence

9. Staff Reports:

9.1 2016 Financial Statements

Jonathan McGraw, BDO Canada LLP, provided Council with the 2016 Financial Statements for the City of Penticton.

282/2017

It was MOVED and SECONDED

THAT Council receive the Financial Statements as presented by BDO Canada LLP for the year ending December 31, 2016.

CARRIED UNANIMOUSLY

9.2 Non-Motorized Boat Access Points to Okanagan Lake

283/2017

It was MOVED and SECONDED

THAT Council approves the installation of 3 non-motorized boat launch sites to service Okanagan Lake waterfront as follows:

1. Marina Way Beach – West of the rock groin
2. West of Martin Street Parking Lot – West of Pier Water Sports lease area
3. SS Sicamous – West side of SS Sicamous boat

CARRIED UNANIMOUSLY

9.3 Official Community Plan Update

The Director of Development Services provided Council with an update and invitation to attend the May public sessions for the Official Community Plan.

10. Public Question Period

11. Recess to In-Camera Meeting

284/2017

It was MOVED and SECONDED

THAT Council recess at 2:46 p.m. to a closed meeting of Council pursuant to the provisions of the *Community Charter* section 90 (1) as follows:

- (c) *labour relations or other employee relations;*
- (e) *the acquisition, disposition or expropriation of land or improvements, if the council considers that disclosure could reasonably be expected to harm the interests of the municipality;*
- (f) *law enforcement, if the council considers that disclosure could reasonably be expected to harm the conduct of an investigation under or enforcement of an enactment;*
- (g) *litigation or potential litigation affecting the municipality;*
- (i) *the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;*
- (j) *information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 21 of the Freedom of Information and Protection of Privacy Act;*
- (2) (b) *the consideration of information received and held in confidence relating to negotiations between the municipality and a provincial government or the federal government or both, or between a provincial government or the federal government or both and a third party.*

CARRIED UNANIMOUSLY

12. Public Hearing at 6:00 p.m.

13. Reconvene the Regular Council Meeting following the Public Hearing

Council reconvened the Regular Council Meeting at 6:31 p.m.

14. Reconsideration of Bylaws and Permits

14.1 Phase 1 – Main Street Local Area Service Parcel Tax Bylaw No. 2017-03

285/2017

It was MOVED and SECONDED

THAT Council adopt "Phase 1 – Main Street Local Area Service Parcel Tax Bylaw No. 2017-03".

CARRIED UNANIMOUSLY

14.2 Tax Rates Bylaw No. 2017-25

286/2017

It was MOVED and SECONDED

THAT Council adopt "Tax Rates Bylaw No. 2017-25".

CARRIED UNANIMOUSLY

14.3 Official Community Plan Amendment Bylaw No. 2017-26
Re: 180 Industrial Avenue W

287/2017

It was MOVED and SECONDED

THAT Council give second and third reading to "Official Community Plan Amendment Bylaw No. 2017-26";

AND THAT Council adopt "Official Community Plan Amendment Bylaw No. 2017-26".

CARRIED UNANIMOUSLY

14.4 Zoning Amendment Bylaw No. 2017-27
Re: 180 Industrial Avenue W

288/2017

It was MOVED and SECONDED

THAT Council give second and third reading to "Zoning Amendment Bylaw No. 2017-27".

CARRIED UNANIMOUSLY

14.5 Bylaw Notice Enforcement Amendment Bylaw No. 2017-28

289/2017

It was MOVED and SECONDED

THAT Council adopt "Bylaw Notice Enforcement Amendment Bylaw No. 2017-28".

CARRIED UNANIMOUSLY

14.6 Municipal Ticketing Information Amendment Bylaw No. 2017-29

290/2017

It was MOVED and SECONDED

THAT Council adopt "Municipal Ticketing Information Amendment Bylaw No. 2017-29".

CARRIED UNANIMOUSLY

14.7 Official Community Plan Amendment Bylaw No. 2017-30
Re: 352, 398 Eckhardt Avenue E

291/2017

It was MOVED and SECONDED

THAT Council give second and third reading to "Official Community Plan Amendment Bylaw No. 2017-30";

AND THAT Council adopt "Official Community Plan Amendment Bylaw No. 2017-30".

CARRIED UNANIMOUSLY

14.8 Zoning Amendment Bylaw No. 2017-31
Re: 352, 398 Eckhardt Avenue E

292/2017

It was MOVED and SECONDED

THAT Council give second and third reading to "Zoning Amendment Bylaw No. 2017-31".

CARRIED UNANIMOUSLY

13. Land Matters:

13.1 Winery Lounge and Special Event Area (SEA) Endorsement
Re: Township 7 Vineyards and Winery, 1450 McMillan Avenue

Delegations/Submissions:

- Nil

293/2017

It was MOVED and SECONDED

THAT Council recommend to the Liquor Control and Licencing Branch (LCLB) that it support the application from Township 7 Vineyards & Winery (Penticton), located at 1450 McMillan Ave, for the proposed Winery Lounge & Special Event Area (SEA) Endorsement.

CARRIED UNANIMOUSLY

15.2 Development Variance Permit PL2017-7907
Development Permit PL2017-7908
Re: 251 Rigsby Street

Delegations/Submissions: Kathy Reese, Spiller Road, developer, application was approved before for three units but price point wouldn't be supported. Decided to move to four units.

294/2017

It was MOVED and SECONDED

THAT delegations and submissions be heard for "Development Variance Permit PL2017-7907" for Lot 25, District Lot 4 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1035 Except Plan EPP70206, located at 251 Rigsby Street, a permit to decrease the minimum front yard from 3.0m to 2.7m, to decrease the minimum south interior side yard from 3.0m to 1.5m, to decrease the minimum exterior side yard from 4.5m to 4.4m and to decrease the minimum rear yard from 6.0m to 3.5m;

AND THAT Council approve "Development Variance Permit PL2017-7907" and "Development Permit PL2017-7908", for Lot 25 District Lot 4 Group 7 Similkameen Division Yale (Formerly Yale-Lytton) District Plan 1035 Except Plan EPP70206, located at 251 Rigsby Street, a permit that allows for the construction of a 4-unit townhouse.

CARRIED UNANIMOUSLY

15.3 Zoning Amendment Bylaw No. 2017-32
Development Variance Permit PL2017-7910
Development Permit PL2017-7911
Re: 747 Government Street

295/2017

It was MOVED and SECONDED

THAT "Zoning Amendment Bylaw No. 2017-32," a bylaw to Rezone Lot 1 District Lots 202 and 249 Similkameen Division Yale District Plan 3562 Except Plan KAP68121, located at 747 Government Street from R2 (Small Lot Residential) to RM2 (Low Density Multiple Housing), be given first reading and forwarded to the May 23, 2017 Public Hearing;

AND THAT prior to adoption of "Zoning Amendment Bylaw No. 2017-32," a 1.75m road dedication on the east side of the property (along Government Street) is registered with the Land Title Office.

THAT delegations and submissions be heard for "Development Variance Permit PL2017-7910" for Lot 1 District Lots 202 and 249 Similkameen Division Yale District Plan 3562 Except Plan KAP68121, located at 747 Government Street, a permit to waive the requirement for trees and shrubs to be planted in the landscape buffer area, to waive the visitor parking space requirement for cluster housing, to decrease the minimum interior side yards from 3.0m to 1.5m and to waive the requirements for street frontage upgrades along Bird Street as per Section 9.3 of the City of Penticton Subdivision and Development Bylaw No. 2004-81;

AND THAT "DVP PL2017-7910" be considered only after adoption of "Zoning Amendment Bylaw No. 2017-32".

THAT Council, subject to adoption of "Zoning Amendment Bylaw No. 2017-32," approve Development Permit PL2017-7911 for Lot 1 District Lots 202 and 249 Similkameen Division Yale District Plan 3562 Except Plan KAP68121, located at 747 Government Street, a permit that allows for the construction of two duplexes.

CARRIED

Councillors Watt and Sentes, Opposed

- 15.4 Zoning Amendment Bylaw No. 2017-33
Development Permit PL2017-7913
Re: 285 Nanaimo Avenue W

296/2017

It was MOVED and SECONDED

THAT "Zoning Amendment Bylaw No. 2017-33," a bylaw to amend Zoning Bylaw 2017-08, allowing ground floor residential in the C5 zone, as a site specific allowance, for Lot 1, District Lot 4, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District, Plan EPP57755, located at 285 Nanaimo Ave W, be given first reading and forwarded to the May 23, 2017 Public Hearing;

AND THAT Council, approve Development Permit PL2017-7913, a permit that allows for the construction of a four storey, 52 unit apartment building on Lot 1, District Lot 4, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District, Plan EPP57755, located at 285 Nanaimo Ave W, subject to adoption of Zoning Amendment Bylaw 2017-33.

CARRIED UNANIMOUSLY

- 15.5 Zoning Amendment Bylaw No. 2017-34
Re: 532/536 Main Street

297/2017

It was MOVED and SECONDED

THAT "Zoning Amendment Bylaw No. 2017-34", a bylaw adding section 11.5.4.7: "In the case of Lot 5, Block 19, District Lot 202, Similkameen Division Yale District Plan 269, located at 532/536 Main Street, dwelling units on the first storey behind commercial spaces shall be permitted", be introduced, read a first time and be forwarded to the May 23, 2017 Public Hearing.

CARRIED UNANIMOUSLY

- 15.6 Development Permit PL2017-7882
Re: 32 – 56 Backstreet Boulevard

298/2017

It was MOVED and SECONDED

THAT Council approve "DP PL2017-7882", a permit to allow the construction of an eight (8) storey building on Lot 36, Lot 37, Lot 39, Lot 40, Block 6, District 202, Similkameen Division Yale District, Plan 269, located at 56, 52, 40 and 32 Backstreet Boulevard, The Easterly 15 Feet of Lot 38 Being The Easterly 15 Feet Frontage on Westminster Avenue By The Full Depth of Said Lot; Block 6, District Lot 202, Similkameen Division Yale District, Plan 269 located at 48 Backstreet Boulevard; and Lot 38, Block 6, District 202, Similkameen Division Yale District, Plan 269 Except the Easterly 15 Feet Measured Along Westminster Avenue By The Full Depth of Said Lot located at 44 Backstreet Boulevard; AND THAT the 6 lots be consolidated prior to issuance of the Development Permit.

CARRIED UNANIMOUSLY

- 15.7 Zoning Amendment Bylaw No. 2017-35
Re: Administrative Amendment

299/2017

It was MOVED and SECONDED

THAT Council give first reading to "Zoning Amendment Bylaw No. 2017-35", an administrative amendment bylaw that fixes a clause in the C5 (City Centre Commercial) zone regarding residential units at the ground floor;

AND THAT Council direct staff to advertise the waiving of the Public Hearing for "Zoning Amendment Bylaw No. 2017-35", in accordance with Section 467 of the *Local Government Act*.

CARRIED UNANIMOUSLY

16. Notice of Motion

17. Business Arising

18. Council Round Table

19. Public Question Period

20. Adjournment

300/2017

It was MOVED and SECONDED

THAT Council adjourn the Regular Council meeting held on Tuesday, May 2, 2017 at 7:32 p.m.

CARRIED UNANIMOUSLY

Certified correct:

Confirmed:

Dana Schmidt
Corporate Officer

Andrew Jakubeit
Mayor

Minutes



Official Community Plan Task Force Meeting

held at City of Penticton, Council Chambers
171 Main Street, Penticton, B.C.

Thursday, April 20, 2017
at 5:30 p.m.

Present: Andrew Jakubeit, Mayor
Judy Sentes, Councillor
Andre Martin, Councillor
Tracy Van Raes, Penticton Wine & Country Chamber of Commerce Representative
Lynn Allin, Downtown Penticton Association Representative
Kristi Estergaard, Interior Health Representative
Dawn Russell, Penticton Indian Band Representative
Jill Bateman, Penticton Industrial Development Association Representative
Evelyn Riechert, Regional District of the Okanagan Similkameen Representative
Garrett Cruickshank, Member at Large
Sharon Fletcher, Member at Large
Lynn Kelsey, Member at Large
Randy Kowalchuk, Member at Large
Randy Manuel, Member at Large
Suzanne Moccia, Member at Large
Denis O’Gorman, Member at Large
Warren Sanders, Member at Large
Bruce Schoenne, Member at Large
Jillian Tamblyn, Member at Large

Staff: Ben Johnson, Special Projects Manager
Anthony Haddad, Director of Development Services
Blake Laven, Planning Manager
JoAnne Kleb, Communication Engagement Officer
Lorraine Williston, Corporate Committee Secretary

1. Call to Order

The Official Community Plan Task Force was called to order by Mayor Jakubeit at 5:35 p.m.

2. Task Force Member Introductions

The Mayor and the Special Projects Manager welcomed the members and provided an overview of this Task Force. Roundtable introductions were done by all members and staff. Each member provided their perspective on what they love about Penticton, hopes and concerns for the future of Penticton and expectations for the OCP process.

3. Adoption of Agenda

It was **MOVED** and **SECONDED**

THAT the Official Community Plan Task Force adopt the agenda for the meeting held on April 20, 2017 as circulated.

CARRIED UNANIMOUSLY

4. Confidentiality, Conflict of Interest and Committee Overview

Confidentiality, Conflict of Interest and Commercial Electronic Message Consent Forms were distributed to members and collected. The Committee Secretary provided an overview of the forms.

5. New Business

5.1 Terms of Reference

The Terms of Reference were reviewed as circulated. Discussion followed on the content and mandate for the Official Community Plan Task Force. A concern was raised regarding the statement contained in paragraph 8 and its meaning. Staff to review and consider wording that paragraph for clearer understanding. Item to be brought back to the next meeting.

5.2 Update on Process Guiding Principles, Timelines and Engagement Process to Date

The Special Projects Manager presented an overview of the process and rationale for the OCP update. Key points of what's in an OCP were noted as follows:

- City-wide future land use plan
- Area-specific principles and policies
- Implementation and monitoring strategies

The five (5) OCP principles were reviewed as follows:

- Innovative, broad and inclusive engagement
- Knowledge sharing and capacity building
- Clarity and openness
- Sustainability
- Action while planning

The Special Projects Manager reported staff launched the OCP engagement process with a Valentine's Day blitz at various locations within the City canvassing people on what they loved about Penticton. To date staff had a booth set up at the Home Show as well as information posted on the Shape Your City website, Facebook and Twitter. Booths will also be set up at the Downtown Community Market and through public open houses. Discussion and questions followed. A question was asked if other community OCP's will be used as a reference and if consultants will be hired. Staff stated the majority of the update will be done in house and consultants will be hired for specific items. Staff noted Abbotsford and Squamish have good examples of what a newer OCP should contain. Staff to send out a link.

5.3 Draft Open House Material Review

The Special Projects Manager presented for review and discussion the information boards that will be displayed at the various community engagement events noting they are still a work in progress. Discussion followed on the format and questions to be asked. It was generally agreed by the Task Force to keep the questions open ended to allow the public to tell us what their priorities are. The PIB representative recommended an accurate map is displayed clearly outlining PIB and Locatee land boundaries in relation to the City of Penticton boundaries and stated the importance of PIB involvement in this process. Other suggestions included using a triple bottom line format for the boards and highlighting current projects that are in the forefront e.g. YES Project.

5.4 Community Engagement Discussion

The Special Projects Manager stated the City will have a booth set up at the first Downtown Farmers Market on May 6, 2017 noting this will be a good test pilot. Members of this Task Force are welcome and are invited to all community engagement events.

5.5 Meeting Date Discussion

Future dates and times were discussed. It was agreed that Monday evenings are the preferred night. The next meeting was set for May 15, 2017 at 5:30 p.m. Future meeting dates to be discussed at the next meeting.

6. Appointment of Committee Chair & Vice Chair

It was MOVED and SECONDED

THAT Suzanne Moccia be appointed as Chair and Lynn Kelsey be appointed as Vice-Chair for the Official Community Plan Task Force for the 2017 term.

CARRIED UNANIMOUSLY

7. Next Meeting

The next regularly scheduled meeting of the Official Community Plan Task Force will be Monday, May 15, 2017 at 5:30 p.m.

8. Adjournment

It was MOVED and SECONDED

THAT the Official Community Plan Task Force adjourn the meeting held on Thursday, April 20, 2017 at 8:28 p.m.

CARRIED UNANIMOUSLY

Certified Correct:

Lorraine Williston
Corporate Committee Secretary



Arts, Creative & Cultural Innovations Committee Meeting

held at City of Penticton Committee Room A
171 Main Street, Penticton, B.C.

Friday, April 21, 2017
at 8:00 a.m.

Present: Robin Robertson, Vice-Chair
Jane Shaak, Okanagan School of the Arts, Shatford Centre Representative
Paul Crawford, Penticton Art Gallery Representative
Gerald Kenyon, South Okanagan Performing Arts Representative
Vaelei Walkden-Brown, Penticton & District Arts Council Representative
Murray Swales, Member at Large
Jason Cox, Member at Large

Staff: Lori Mullin, Recreation and Culture Manager
Lorraine Williston, Committee Secretary

1. Call to Order

The Arts, Creative & Cultural Innovations Committee was called to order by the Vice-Chair at 8:03 a.m.

2. Adoption of Agenda

It was MOVED and SECONDED

THAT the Arts, Creative & Cultural Innovations Committee adopt the agenda for the meeting held on April 21, 2017 as amended (refer to item 4.3).

CARRIED UNANIMOUSLY

3. Adoption of Minutes

It was MOVED and SECONDED

THAT the Arts, Creative & Cultural Innovations Committee adopt the minutes of the December 15, 2016 meeting as circulated.

CARRIED UNANIMOUSLY

4. **Business Arising from Prior Meetings**

4.1 Valley First Public Sculpture Proposal Update

The Recreation & Culture Manager stated staff require a Council resolution to allocate \$18,000 from the Public Art Reserve Fund to the Valley First public sculpture project before staff can move forward with the project that was endorsed by this committee at the October 20, 2016 meeting. Through the 2017 budget process, Council did approve \$32,000 for the Public Art Reserve Fund. Discussion and questions followed.

It was MOVED and SECONDED that the Arts, Creative & Cultural Innovations Committee recommends:

THAT Council approve the allocation of \$18,000 from the Public Art Reserve Fund to the Valley First Public Sculpture project.

CARRIED UNANIMOUSLY

The Recreation & Culture Manager stated the next steps would be to appoint two members from this committee to be a part of the committee for this project. Item to be discussed at a future meeting.

4.2 Public Sculpture Project Update

The Vice-Chair reported everything is on schedule. The sculptures will be installed on May 5 and the opening will be held on May 6 at 10:00 a.m. in the park beside City Hall. Artists, media and dignitaries will be in attendance for this event. Committee members are encouraged and invited to attend. The DPA has produced the map showing the locations of the sculptures and will be available for distribution at the opening event and for the duration of the exhibition. They will be a news release prepared for the opening. A news release was issued yesterday highlighting the artist profiles.

The Vice-Chair asked members to volunteer as artist hosts on May 6 from 10:00 a.m. to 12:00 noon. Several members were willing to help. Members were also asked for suggestions and ideas on ways to promote this event. Discussion followed.

4.3 Visitor's Centre Artwork Update

With respect to the removal of the art work from the building that formerly housed the Visitor's Centre, the Recreation & Culture Manager reported that staff did spend considerable time in discussions with the new tenant on preserving the art work, however in the end, the art did not fit into the branding for the new building and the art was decommissioned. An attempt was made by the Chair to reach out to the artist to discuss the process and get feedback, however a response was never received.

5. **New Business**

6. **Art Funding Opportunities**

The Penticton & District Arts Council representative provided some information on a recent workshop on how to build a better relationship with sponsors that was put on by artsVest, an organization which provides matching dollars for organizations involved and a service they have recently signed up for that aides in sourcing/finding grants.

The Vice-Chair stated she has established a fund through Community Foundations of the South Okanagan-Similkameen specifically to be used for public art and is looking for ways help to raise funds. If anyone has any suggestions, please let her know.

Murray Swales left at 8:33 a.m.

7. **Representative Updates**

7.1 Okanagan School of the Arts, Shatford Centre

The Okanagan School of the Arts, Shatford Centre representative reported on upcoming events and noted they are currently working on new branding. The next project will be improving the grounds around the building and noted the sculpture in the front was recently donated to the centre.

7.2 Penticton Art Gallery

The Penticton Art Gallery representative reported that the current exhibition doing well. The Art Gallery was recently interviewed by the Canadian Art magazine about their pot show. The Syrian art show will be heading next to Grand Forks and the Calgary War Museum. The Tibetan monks will be coming back to Penticton in September.

7.3 Penticton & District Community Arts Council

The Penticton & District Community Arts Council representative reported on their upcoming events including the Arts Arising Festival noting they have received good media sponsorship for this event. Additional information is available on their website. An update was provided with respect to the Penticton Regional Hospital's Art Committee and its upcoming projects.

Jane Shaak left at 8:43 a.m.

7.4 South Okanagan Performing Arts Centre

The SOPAC representative reported SOPAC cannot move forward with any planning until they receive a decision from Council regarding the Nanaimo Avenue property.

8. **Council Outcome**

Council Resolutions 14/2107, 15, 2017 and 16/2017 from the minutes dated December 15, 2016 were received.

9. **Next Meeting**

The next regularly scheduled meeting of the Arts, Creative & Cultural Innovations Committee to be determined.

10. **Adjournment**

It was MOVED and SECONDED

THAT the Arts, Creative & Cultural Innovations Committee adjourn the meeting held on Friday, April 21, 2017 at 8:50 a.m.

CARRIED UNANIMOUSLY

Arts, Creative & Cultural Innovations Committee

Council Recommendation



Arts, Creative & Cultural Innovations Committee

- Allison Markin, Chair, Member at Large
- Robin Robertson, Vice-Chair, Member at Large
- Vaelei Walkden-Brown, Penticton Arts Council
- Paul Crawford, Penticton Art Gallery
- Jane Shaak, Okanagan School of the Arts, Shatford Centre
- Gerald Kenyon, SOPAC
- Tracey Kim Bonneau, E'nowkin Centre
- Murray Swales, Member at Large
- Jason Cox, Member at Large
- Councillor Campbell Watt

Canada 150 Mosaic Tile Project

- 22 -





- 23 -



Valley First Public Sculpture Project

- 24 -

Objective:

The City of Penticton and Valley First work jointly on implementing an art piece for the corner of Westminster Avenue and Main Street to complement Valley First and the beautification and enjoyment of the city.



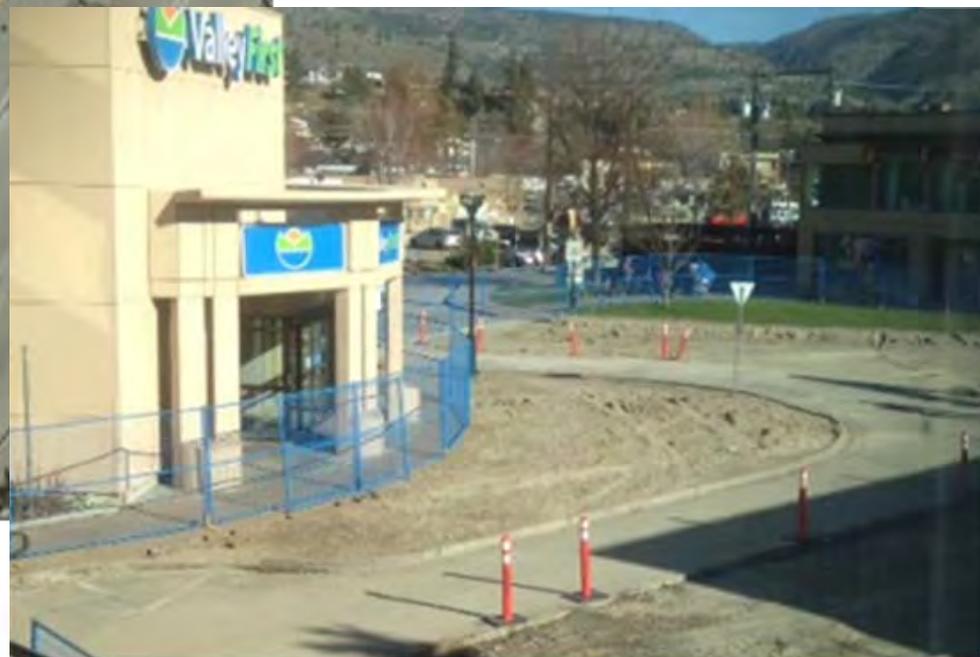
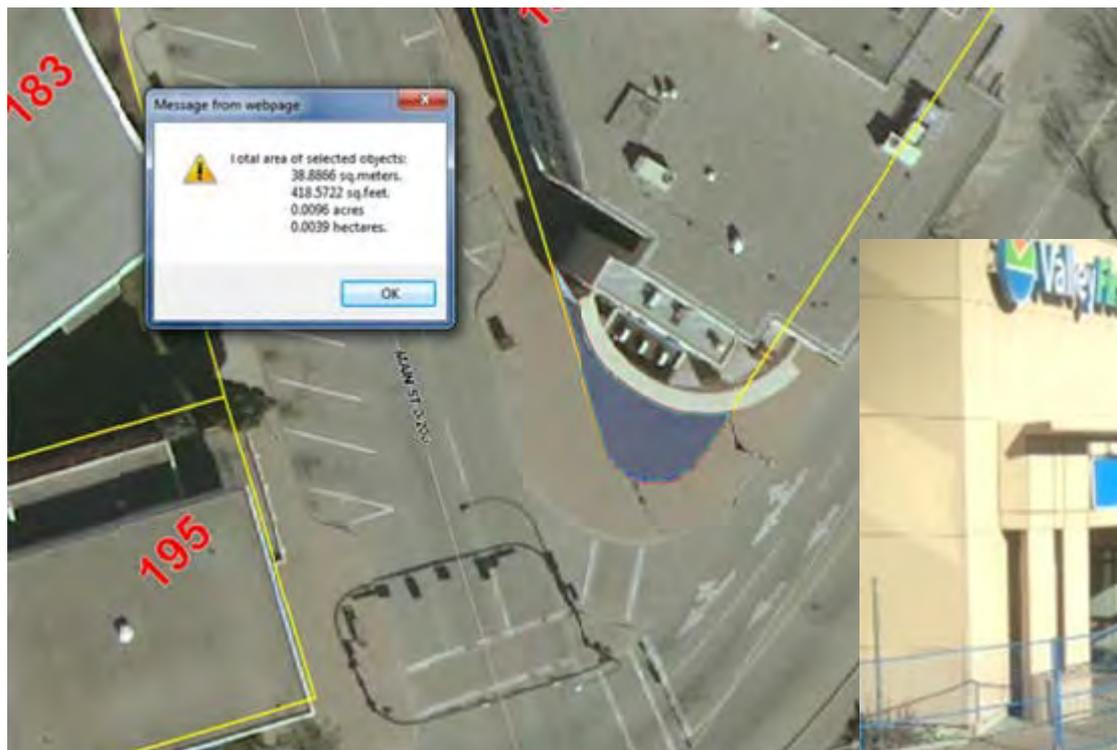
Valley First Public Sculpture Project

- 25 -

Background:

- As part of the downtown revitalization project, the City offered Valley First \$18,000 for the purchase of 38.8 sq.m of sidewalk space directly in front of the Valley First entrance which Valley First accepted.
- The City approached Valley First to see if there would be interest in Valley First contributing the \$18,000 to go towards an art piece to be located on that land.
- Valley First agreed to provide matching funds of up to \$18,000 for this program.
- A Proposal was drafted which was agreed upon by the City staff and Valley First and was endorsed by the City's Arts, Creative and Cultural Innovations Committee.





Public Art Reserve Funding

- 27 -

As part of the 2017 Budget Process, Council allocated \$32,000 to the Public Art Reserve.

The current balance in the Arts Reserve is \$42,011.



Recommendation

- 28 -

2017-04-21 It was **MOVED** and **SECONDED** that the Arts, Creative & Cultural Innovations Committee recommends:

THAT Council approve the allocation of \$18,000 from the Public Art Reserve Fund to the Valley First Public Sculpture project.



May 5, 2017

Dear Mayor and Council,

My letter of May 5, 2016 to Council, regarding safety concerns on Atkinson Street, and asking for pedestrian crossings, was referred to staff. This resulted in a letter dated October 17, 2016 from Ian Chapman, stating that data collection completed in August 2016 determined pedestrian volumes too low at the locations mentioned.

However, both my request and the action taken had failed to consider a number of other factors that should have been noted in determining the traffic-related safety issues that are faced by residents living on this street. Please see a list of many of these on the attached petition.

Discussions with Ctr. Sentes and Mr. Chapman indicate that a petition for council would be advisable. Therefore, myself and others have obtained a fairly representative group of signatures for you. These are from moms with children using Granby Park; from handicapped people in motorized wheelchairs; from older people, and from teenagers; and from other residents who walk, or need to walk, between Cherry Lane Mall and Duncan Avenue.

In addition, the support from young families with children who live along the street is overwhelming in their expressions of gratitude and of relief— that finally, someone is going to do something! Please do not let these young families down! Every single person using this street whom we have talked to, is relieved to know that a petition is going before Council about pedestrian and traffic safety on this street!! Because of this immense support, I think we have enough signatures to demonstrate the need.

We are not asking for speed bumps. We need and request your approval for:

1. Safe crossing at Granby Park (currently traffic does not slow down there at all).
2. Safe crossing at a suitable location between Industrial and Warren.
3. Lowered speed limit between Warren and Duncan, because this is a 100% residential area. It would facilitate safer crossing, which is increasingly dangerous for West side residents.

Ian had some suggestions, he mentioned flashing lights. A push-light crossing similar to the one near the hospital would be ideal for Okanagan, I think.

Attached is a copy of the petition (original to Mayor) and photos of two quail killed by traffic in front of our home. Could you please approve our requests, and please—do not let the next body be one of your constituents?

Yours truly,



Sharon Sadler, on behalf of Atkinson Street residents, pedestrians & Granby Park users
1645 Atkinson Street
Penticton, B.C. V2A 6B4

cc: Dana Schmidt, CO
Peter Weeber, CAO

To: Mayor Jakubeit, Councillors Konanz, Martin, Picton, Sayeed, Sentes, Watt;

cc: P. Weeber, CAO

Contact Sharon Sackler Faithson @shaw.ca

WHEREAS:

A request for traffic calming of any kind to be placed on Atkinson Street and Granby/Okanagan Avenues has been denied. The reasons given by Ian Chapman, City Engineer in a letter dated October 17, 2016 are 1. Data collection in August 2016 deemed pedestrian volume to be too low, and 2. Atkinson St, is a commercial collector, therefore traffic calming is not in accordance with The Transportation Safety Policy.

However, the facts remain that:

1. The residents on Atkinson Street have no safe crossing and are forced to "jaywalk" through traffic to get anywhere on foot or scooter.
2. Atkinson is 100% residential, from Duncan to Warren (which would seem to contradict the purpose of collector roads)
3. Traffic flow is both fast and heavy at times, and always constant, AND increasing each year! Drivers use this street instead of Main because they can move along faster.
4. There is a playground on Granby & Atkinson, a slight corner in the street is adjacent.
5. There are no sidewalks on the West side of Atkinson Street.
6. Perhaps so few pedestrians, because it is dangerous to get to the sidewalk, and then back across again.
7. Many have narrowly missed being hit by vehicles while crossing.
8. Small children must cross right in the middle of Atkinson St. to get to school. It is alarming to watch them try to be careful as they cross, especially after school with the heavy volumes of traffic.
9. There are many handicapped people and seniors in this area who walk or ride because of proximity to the malls--or they cannot drive a vehicle, or afford a bus for 3 blocks.

AND:

Council has the power to over-ride the policy that disallows safe crossings on Atkinson St. Ian advises that a safer, less costly alternative could include a flashing crosswalk near the Granby Avenue park, as well as where Okanagan Street crosses over.

WE THE UNDERSIGNED:

Request council to seriously consider the safety of residents on Atkinson Street, and to proceed with implementing these two safe crossings on Atkinson Street for the residents here, who risk their lives whenever they need to walk or use scooters to schools, shopping or appointments. AND/OR REDUCE SPEED LIMIT ON ATKINSON ST.

Name	Address	Date
Sharon Adler	1445 Atkinson Street	APR 12/17
P. D. Archibald	1680 ATKINSON ST.	APR. 12/17.
Sharon	1682 FAIRFOLD DR	04/17/17
Sharon (YOUR NEXT MAYOR)	1685 ATKINSON STREET	AT April 17 2017
Cathy Meeks	114 Huth Ave	Apr 17 2017
Tony Hetman	1645 Atkinson St.	Apr 17/17
Yvonne Walker-Brown	119 Bruce Court	18 April 2017
Belinda Scott	1650 Scotia Street	April 19/2017
Joann Meeks	114 Huth Ave	Apr 19/2017
Elizabeth ANDERSON	1665 Atkinson St	APR 20/2017

Continued.....

To: Mayor Jakubeit, Councillors Konanz, Martin, Picton, Sayeed, Sentes, Watt;
 cc: P. Weeber, CAO

WE THE UNDERSIGNED:

Request council to seriously consider the safety of residents on Atkinson Street, and to proceed with implementing these two safe crossings on Atkinson Street for the residents here, who risk their lives whenever they need to walk or use scooters to schools, shopping or appointments, and/or reduce speed limit on Atkinson Street.

Name	Address	Date
Jennifer Koopmans	1665 Atkinson Ave St	Apr 20/2017
Joan Koopmans	1665 Atkinson St	Apr 20/2017
R. BERNST	1740 Atkinson St	Apr 25/17
Jurgen Hannam	1660 Scotia St.	April 26/17
Robert O'HARA	1696 Scotia St	April 26/17
JOAN HOPPENBROWERS	1696 Scotia St.	Apr. 26/17
LARRY OLSON	125 PHOENIX AVE.	APR 26/17
CARMEN OLSON	125 PHOENIX AVE	APR 26/17
Kailee Gehrman	125 Phoenix Ave	Apr 26/17
NICKI LOCK	1910 Ponderosa Pl	Apr 26/17
Bainah Bunyan	35 Okanagan St Ave	Apr 26/17
Amanda Rickarby	35 Okanagan Ave	April 26/17
Kevin Hughes	123 Granby Ave	April 26/17
Andre Jung	162 BRADLYN CRES	April 26/17
Bailey Styles	88 Duncan Ave West	April 26/17
Matthew Johnson	181 Granby Ave	April 26
Maree Malachuk	181 GRANBY AVE	April 26/17
TRISHA PASESKA	464 W. WINNIPEG ST	Apr 26/17
R. Baker	1743 Fairford Dr	Apr 26/17
Cara Schiele	1008 Huth Ave.	Apr 26/17
Joanne Pearson	1640 Scotia St.	Apr. 26/17
Cherish Forster	100 Huth Ave	Apr 26/17
Jake Forster	100 Huth Ave	April 26/17
Tyler Thorne	1650 Atkinson St	April 26/17
CARIS EMMONS	24-1825 Atkinson St	April 27/17
Faith McDonald	24-1825 Atkinson St	April 27/17
JASMINE MORAN	23-1825 Atkinson St	April 27/17
Christy Anderson	44-1825 Atkinson St	April 27/17
Kyle Mitchell	53-1825 Atkinson St	April 27/17
Jewel Zipton	53-1825 Atkinson St.	✓
Sarita Willock	109 Okanagan Ave	✓
Rona Michant	1947 Atkinson Ave	April 27/17
Cherise Hoffman	91 D KAWAHAU	APRIL 27
Aprno	1716 Atkinson St	April 27
Dave Michael	1655 Scotia St.	Apr. 28.
Troy Michael	1655 Scotia St.	Apr 28.

HEATHER BENTON (315) 288 DUNCAN AVENUE APR 28

Photos of two quail killed crossing Atkinson St. January/17 & March/17. These are two different quail.



MEMORANDUM

Date: August 8, 2016
To: Ian Chapman, P.Eng. -City of Penticton
cc: James Donnelly
From: Natasha Elliott
File: 1017.0053.16
Subject: Atkinson St and Granby Ave Crosswalk Warrant -2016 Crosswalk Warrants and Design Reviews

Atkinson Street and Granby Avenue

This memo is part of a series of 2016 memos that summarize the pedestrian crossing control warrants and/or design reviews completed for various locations identified by the City of Penticton. The 2012 TAC Pedestrian Crossing Control Guide has been used for all pedestrian crossing warrants and the TAC Stop Control Warrant in the Manual of Uniform Traffic Control Devices for Canada has been applied for the intersection control reviews.

The application of the 2012 Pedestrian Crossing Control Guide is a two-step process. The first step is a flow chart that takes into account the following factors:

- Whether a traffic signal is warranted,
- Average hourly pedestrian volume (threshold is 15 Equivalent Adult Units (EAUs)),
- Vehicular volume (threshold is 1,500 vehicles/day),
- Pedestrian desire lines or if there is a requirement for system connectivity, and
- Distance from another traffic control device (threshold is 100m to 200m, depending upon jurisdictional norms and local characteristics).

The result of using the flow chart is a preliminary assessment which indicates whether or not the site is a candidate for pedestrian crossing control. Then, if pedestrian crossing control is warranted, there is a treatment selection matrix. The treatment selection matrix considers the following factors:

- Average daily traffic ($1500 < ADT \leq 4500$, $4500 < ADT \leq 9000$, $9000 < ADT \leq 12000$, $12000 < ADT \leq 15000$, or $ADT > 15000$),
- Speed limit ($\leq 50\text{km/h}$, 60km/h , or 70km/h), and
- Total number of lanes (1 or 2 lanes, 3 lanes, 2 or 3 lanes per direction with raised refuge, or 2 lanes per direction without raised refuge).

Based on these three factors, the warrant will recommend a crosswalk with side-mounted signs, crosswalk with overhead-mounted signs, special crosswalk, or traffic signal.



MEMORANDUM

Date: August 8, 2016
 File: 1017.0053.16
 Subject: Atkinson St and Granby Ave Crosswalk Warrant -2016 Crosswalk Warrants and Design Reviews
 Page: 2 of 3

There is currently no marked crossing on Atkinson Street at Granby Avenue. Atkinson Street has one through lane in each direction with parking permitted on both sides. The carriageway has a total width of 12m. The main focus of this analysis is to determine if a marked pedestrian crossing is warranted. The nearest pedestrian crossing control device is the zebra crossing located at the intersection of Atkinson Street and Duncan Avenue.

Data Collection

A 7-hour traffic and pedestrian count was completed on August 19, 2016 between 8am and 3:30pm with a 30-minute break. Table 1, below, summarizes the pedestrian and vehicular data. This corresponds to an average of 3.5 Equivalent Adult Unit (EAU) pedestrians per hour crossing Atkinson Street and an ADT of 5800 vehicles.

Table 1: Pedestrian and Vehicle Volumes

User	7-hour Total
Adults	17
Seniors	5
Total EAU Pedestrians	25
Vehicles	2950

Crossing Warrant

Table 2 summarizes the site characteristics used to determine whether this site is a candidate for pedestrian crossing control.

Table 2: Site Characteristics

Site Characteristic	Value
Is a traffic signal warranted at this location?	No
Average Hourly Pedestrian Volume (EAUs)	3.5
Vehicular Volume (veh/day)	5,800
Distance from another traffic control device (m)	175
d value for jurisdiction (100-200m)	100
Is this location on pedestrian desire line or is there requirement for system connectivity?	No

MEMORANDUM

Date: August 8, 2016
 File: 1017.0053.16
 Subject: Atkinson St and Granby Ave Crosswalk Warrant -2016 Crosswalk Warrants and Design Reviews
 Page: 3 of 3

This location is not a candidate for pedestrian crossing control. The two critical factors that result in this site not being a candidate for pedestrian crossing control are:

- the average hourly pedestrian volume is too low (needs to be at least 15 EAU compared to the current 3.5 EAU), and
- the site is not located on a pedestrian desire line.

If either, the average hourly pedestrian volume was 15 EAU, or the site was located on a pedestrian desire line, then the location would be a candidate for pedestrian crossing control.

If the City of Penticton wishes to implement a new pedestrian crossing control despite the site not being a candidate, the recommended treatment is a crosswalk with side mounted signs. Table 3, below, summarizes the treatment selection characteristics.

Table 3: Treatment Selection Parameters

Treatment Selection Tool Questions	Value
What is the vehicular volume?	4500 < ADT ≤ 9000
What is the speed limit?	≤50
How many lanes?	1 or 2 lanes

Sincerely,

URBAN SYSTEMS LTD.

Natasha Elliott, EIT
Transportation Engineer

Reviewed by:

James Donnelly, P.Eng., PTOE
Sr. Transportation Engineer

Dear Protector (Government)

Me and the other girl guides have some concerns about the litter (mostly cigarette buds) at the beach. We did a clean up but we feel like it isn't enough. I reccomend putting up more signs, posters, and more. Please read these letters and make our wishes come true.

Thanks for listening,



- 1st Eogote Hills
girl guides



Dear Penticton, the First Coyote Hills Girl Guides
(at Skaha Park?)

Picked up 658 cigarettes all together and when we
were walking we found more people smoking and it smelled
terrible. Can you please do something to prevent people
from smoking at public parks please? Small kids could breathe
in the smoke and that would be really really bad.

In conclusion we want people to stop smoking at
Skaha beach and Okanagan beach and both of the
beaches parks? We would really appreciate it if you
would!

THANKS!



Dearest pentiction, this is the 1st
 Coyote Hills Guides. We did a garbage
 pick-up and found 658 cigarette butts
 and we were not very happy
 about it. Please Stop this
 chaos and Start looking after
 your City! Or else the World
 as we know it will not be
 the same.

Your helpers,
 The Girl Guides



Dear City of Penticton

We need to inform you that there are too many cigarette butts on the beach and the sidewalk beside it. In fact, we found roughly 658 cigarette butts. We would appreciate if something was done about it. Thank you.

Sincerely

Maddy, Rachel, Mykenna from the
First Coyote Hills Girl Guides

Dear City of Penticton,

Us Girl Guides found LOTS of Cigarettes on the beach and We are writing this letter to inform you that we would like your help to put a stop to this. We were out there for an hour and found about 658 cigarette butts and we need you to put more cigarette poles and signs, or make a law to stop this.

Sincerely Katrynag, Annikag, Mackenzie and Sophie from the first Coyote Hill girl guides

I hope you ~~can~~ know that peopl are smoking and
I want you to know that because it is bad of
the Earth and ~~it is bad of the Earth~~ I would

Love you to stop it thank you
From: Erikka

PLEASE HELP US

STOP LITERING

Dear City of Penticton

We found ~~many~~^{around} 652 cigarette

butts on Skaha Lake

PLEASE HELP US STOP

THIS FROM HAPPENING!

From The
Penticton

Girl Guides

Please help us so people do not
litter so we can be clean
and to stop smoking people
do not ^{like} cleaning Earth so
please talk to every body so
they do not litter or
no smoking. Thank you so
much. From
Emily

do not

Dear Penticton, this is us, the 1st Coyote Hills Guides. We did a Garbage Pick-up and we found 658 cigarettes and we are not very pleased about it.

If there's only way to stop it we will try to. It's bad. Please try to put up more signs, cigarette trash things, and anything else that will help!

From: The First ~~Coyote~~ Coyote Hills Girl Guides* 



NO MORE SMOKING!



*I know I spelled "Guides" wrong.

LISTEN!



Subject: World Oceans Day June 8

WORLD OCEANS DAY CANADA

www.WorldOceansDay.ca

May 15, 2017
Honorable City Mayor or Reeve and Council

Re: WORLD OCEANS DAY June 8

Dear Honorable Mayor or Reeve and Council;
As you know, your city or town is near or on an important watershed with all creeks, rivers and lakes flowing to an ocean.

June 8 is World Oceans Day around the world. Our oceans need our help, each of us can help. Oceans generate 80% of our oxygen and give us food, medicine and jobs yet oceans are plugged with plastics and carbon.

This year we are not asking you to prepare a Proclamation. This year we are respectfully asking you to take action, simple small steps towards protecting our water, waterways, oceans and marine life.

We ask you to include an announcement in your council meeting stating your city recognizes and supports the need to protect our water, waterways and oceans for the life they give us. We ask you to help educate.

Cigarette Butts kill fish and diminish water quality:

Cigarette butts are not biodegradable.

Does your city or town provide enough cigarette butt containers and are local citizens aware of the long term damage a single cigarette butt can do?

San Diego State University completed a study regarding the long term negative effects of cigarette butts:

“The study revealed that a single cigarette butt soaked in a liter of water for one day resulted in vastly diminished water quality and the death of 50 percent of the fish therein.”

<http://naturalsociety.com/cigarette-butt-water-kill-fish-four-days/>

Tops on garbage cans?

Does your city or town have tops on all garbage containers, especially those near the water? The wind blows styrofoam and plastics out of containers if there is no lid. Fish and birds eat the styrofoam and plastics which kills them. Local citizens and visitors may be trying to pick up and dispose of waste at your beaches and parks but if there is no top the wind or birds will spread the styrofoam and plastics around. If your city already has tops on all garbage cans please let us know and we will give you two stars on our website.

<http://www.worldoceansday.ca/in-action1/cities-towns-in-action>

Every country is contributing to plastics in our oceans. All oceans are plugged with plastics. In Canada we can do better, we can reduce plastics in rivers and lakes all of which flow to an ocean.

<http://www.worldoceansday.ca/education-resources/6-plastic-garbage-patches-in-oceans>

Bottle Water is NOT regulated by any government department. Consumers really do not know what is in bottled water. It is safer to drink tap water. Put tap water in the fridge overnight for a tasty healthy beverage if they do not like the taste of fluoride or natural minerals. Carry tap water in a reusable bottle, one more step to reduce plastics and save money at the same time.

Education tips for local citizens:

Solutions to help our oceans:

<http://www.worldoceansday.ca/education-resources/15-solutions-to-help-our-oceans>

Consider an environmental event, here are some examples:

Surrey BC has environmental activities from Earth Day in April until World Oceans Day in June

<http://www.worldoceansday.ca/events/british-columbia>

<http://www.surrey.ca/culture-recreation/533.aspx>

Calgary Alberta Mayor hosts an Environment Expo

<http://www.worldoceansday.ca/events/alberta>

<http://www.calgary.ca/UEP/ESM/Pages/Mayors-Environment-Expo/Mayors-Environment-Expo.aspx>

Kamloops BC offers free household hazardous waste dropoff

<http://www.worldoceansday.ca/events/british-columbia>

Event Ideas: <http://www.worldoceansday.ca/events/event-ideas>

We will list any events in your city or town, just let us know please as we have a page for each province and territory.

We respectfully thank you for taking action to protect our water, waterways and oceans for the life they give us.

Sincerely,

Debbie White

Founding Board Member www.WorldOceansDay.ca

866 415-8020 250 979-0222

Debbie@WorldOceansDay.ca

Council Report

penticton.ca

Date: May 23, 2017 File No:
To: Peter Weeber, Chief Administrative Officer
From: Mitch Moroziuk, General Manager of Infrastructure
Subject: **Fees and Charges Amendment Bylaw No. 2017-36**

Staff Recommendation

THAT Council give first, second and third reading to "Fees and Charges Amendment Bylaw No. 2017-36", a bylaw to amend Fees and Charges Bylaw No. 2014-07 to set new Transit Fares effective July 1, 2017.

Strategic priority objective

The recommendation supports the strategic pillar of Sustainability by setting Transit fees that balance the needs of the City of Penticton with the ability of citizens to pay and by creating a regional transit fare structure.

Background

On February 28, 2017 Council supported, via Council Resolution 143/2017, see Attachment "B", the move to a consolidated Regional Riders Guide, a comprehensive and consistent menu of fares and fare products for local, regional and inter-regional transit services, and the adoption of service standards and route performance guidelines for transit services within and outside of Penticton.

The above was subsequently endorsed by the other member municipalities and the Regional District and it is now time to complete the required amendment to the Fees and Charges Bylaw.

Financial implication

The financial impact of the new fare structure was calculated by BC Transit and is expected to increase revenues to Penticton by 13% or \$41,940 per year.

Alternate recommendations

1. THAT Council provide alternate direction to staff.

Attachments

Attachment "A" – Fees and Charges Amendments
Attachment "B" – Council Resolution 143/2017

Respectfully submitted,

Mitch Moroziuk P.Eng. MBA
General Manager of Infrastructure
City of Penticton

Approvals

CAO
<i>PM</i>

Attachment "A" – Fees and Charges Amendments

Appendix 27
Transit

CONVENTIONAL TRANSIT**Cash Fares**

		Effective 2014	Effective July 1 2017
1	Adult	\$2.00	Not Applicable
2	Senior (with valid BC Pharmacare card)	\$1.75	Not Applicable
3	Student (to Grade 12 with valid ID card)	\$1.75	Not Applicable
4	Child (aged 6 and under)	Free	Not Applicable
5	Local Fare	Not Applicable	\$2.25
6	Regional Fare	Not Applicable	\$4.00

Book of Ten Tickets

		Effective 2014	Effective July 1 2017
7	Adult	\$15.00	Not Applicable
8	Senior or Student	\$12.50	Not Applicable
9	Local Fare	Not Applicable	\$20.25
10	Regional Fare	Not Applicable	\$36.00

Monthly Passes

		Effective 2014	Effective July 1 2017
11	Adult	\$45.00	Not Applicable
12	Senior (with valid BC Pharmacare card)	\$32.00	Not Applicable
13	Student (to Grade 12 with valid ID card)	\$27.00	Not Applicable
14	Post-Secondary ¹ Student (with proof of attendance)	\$38.00	Not Applicable
15	Local Fare	Not Applicable	\$45.00
16	Regional Fare	Not Applicable	\$60.00
17	Discounted ² Local Fare	Not Applicable	\$35.00
18	Discounted ² Regional Fare	Not Applicable	\$40.00
19	Note 1 Effective 2014 - Post Secondary institution refers to universities, vocational universities, community colleges, liberal arts colleges, institutes of technology and other collegiate level institutions, such as vocational schools, trade schools and career colleges that award academic degrees or professional certifications.		
20	Note 2 Effective July 1 2017 - Discounted Fares counts apply to: Seniors over 65 years of age with valid ID; Students 20 or under in full-time attendance to Grade 12 with valid ID; Post-secondary with proof of attendance. Post-Secondary institution refers to universities, vocational universities, community colleges, liberal arts colleges, institutes of technology and other collegiate level institutions, such as vocational schools, trade schools and career colleges that award academic degrees or professional certifications.		

CONVENTIONAL TRANSIT Continued

Day Pass

		Effective 2014	Effective July 1 2017
21	Adult	\$4.00	Not Applicable
22	Senior / Student	\$3.50	Not Applicable
23	Local Fare	Not Applicable	\$4.50
24	Regional Fare	Not Applicable	\$8.00

CUSTOM TRANSIT

Cash Fares

		Effective 2014	Effective July 1 2017
25	Adult	\$2.00	\$2.00
26	Child (aged 6 and under)	Free	Free

Attachment "B" – Council Resolution 143/2017

8.4 Regional Transit Integration Project

143/2017

It was MOVED and SECONDED

THAT Council support moving to an integrated Regional Riders Guide for Conventional Transit as contained in Attachment "A";

AND THAT Council support a consistent Fare Strategy in the Region as contained in Table 4 of the Background section of this Council Report;

AND THAT Council support the Service Design Standards and Performance Guidelines as contained in Attachment "B";

AND THAT staff bring back an amendment to the Fees and Charges Bylaw at the appropriate time to support the new Fare Strategy;

AND FURTHER THAT Council authorize the General Manager of Infrastructure to execute the Memorandum of Understanding between the City of Penticton and BC Transit, as contained in Attachment "C", to facilitate the implementation of Regional Transit Guide and new Fare Strategy.

CARRIED UNANIMOUSLY

Bylaw No. 2017-36

A bylaw to amend the Fees and Charges Bylaw No. 2014-07

WHEREAS the Council of the City of Penticton has adopted a Fees and Charges Bylaw pursuant to the *Community Charter*;

AND WHEREAS the Council of the City of Penticton wishes to amend the "Fees and Charges Bylaw No. 2014-07";

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This Bylaw may be cited as "Fees and Charges Amendment Bylaw No. 2017-36".

2. **Amendment:**

2.1 Amend "Fees and Charges Bylaw No. 2014-07" by deleting and replacing the following appendix in its entirety:

- Appendix 27 – Transit

2.2 Appendix 27 attached hereto forms part of this bylaw.

READ A FIRST time this day of , 2017

READ A SECOND time this day of , 2017

READ A THIRD time this day of , 2017

ADOPTED this day of , 2017

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

Appendix 27

TRANSIT	Effective 2014	Effective July 1, 2017
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CONVENTIONAL TRANSIT

Cash Fares

Adult	\$2.00	
Senior (with valid BC Pharmacare card)	\$1.75	
Student (to Grade 12 with valid ID card)	\$1.75	
Child (aged 6 and under)	Free	
Local Fare		\$2.25
		\$4.00

Book of Ten Tickets

Adult	\$15.00	
Senior or Student	\$12.50	
Local Fare		\$20.25
Regional Fare		\$36.00

Monthly Passes

Adult	\$45.00	
Senior (with valid BC Pharmacare card)	\$32.00	
Student (to Grade 12 with valid ID card)	\$27.00	
Post Secondary Student (with proof of attendance)	\$38.00	
Semester pass (4 months)	\$120.00	
Local Fare		\$45.00
Regional Fare		\$60.00
Discounted Local Fare		\$35.00
Discounted Regional Fare		\$40.00

Discounted Fares apply to: Seniors over 65 years of age with valid ID; Students 20 or under in full-time attendance to Grade 12 with valid ID; Post-Secondary with proof of attendance. Post-Secondary institution refers to universities, vocational universities, community colleges, liberal arts colleges, institutes of technology and other collegiate level institution, such as vocational schools, trade schools and career colleges that award academic degrees or professional certifications.

Appendix 27

TRANSIT	Effective 2014	Effective July 1, 2017
Day Passes		
Adult	\$4.00	
Senior/Student	\$3.50	
Local Fare		\$4.50
Regional Fare		\$8.00

CUSTOM TRANSIT

Cash Fares

Adult	\$2.00	\$2.00
Child (aged 6 and under)	Free	Free

Council Report

Date: May 23, 2017 File No:
To: Peter Weeber, Chief Administrative Officer
From: Mitch Moroziuk, General Manager of Infrastructure
Subject: **Gas Tax Strategic Priorities Fund Grant Application Facilities GIS**

Staff Recommendation

THAT Council endorses a grant application to the Capacity Building Stream of the Gas Tax Strategic Priorities Fund to create a Building Facility GIS Database;

AND THAT the Building Facility GIS Database project be included in the 2018 budget showing 100% grant funding;

AND FURTHER THAT the General Manager of Infrastructure and the Chief Financial Officer be authorized to sign any required forms related to the grant application.

Strategic priority objective

This project supports the City's Strategic Pillar of Sustainable by planning for future infrastructure renewal and the City's Strategic Pillar of Smart by providing access to information that will yield a fact, risk, and consequence based plan for decisions, infrastructure and facilities (example: service levels).

Background

UBCM has announced a June intake for the Gas Tax Strategic Priorities Fund. Eligible projects under the Capacity Building Stream include Asset Management, Long-Term Infrastructure Planning, and Integrated Community Sustainability Planning. There is an application limit of one capacity building project. The grant will fund up to 100% of the net eligible costs of approved projects up to a maximum federal Gas Tax fund contribution of \$6,000,000. The application deadline is June 1, 2017.

Staff have reviewed possible projects and feel that the most appropriate project would be a project that would see the City Building Facilities incorporated into our GIS system.

Financial implication

The cost to incorporate the City Building Facilities into our GIS system is estimated at \$30,000. Submitting a grant application will make the City eligible to receive up to \$30,000 in grant funding.

Analysis

Passing of the resolution will make the grant eligible for consideration under the grant submission process and open the possibility for grant funding.

Should Council choose they could provide alternate direction to staff.

Alternate recommendations

THAT Council provide alternate direction to staff.

Respectfully submitted,

Mitch Moroziuk P.Eng. MBA
General Manager of Infrastructure

Approvals

CAO PW	CFO <i>LWB</i>
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Council Report

Date: May 23, 2017 File No:
To: Peter Weeber, Chief Administrative Officer
From: Mitch Moroziuk, General Manager of Infrastructure
Subject: **Gas Tax Strategic Priorities Fund Grant Application Arena**

Staff Recommendation

THAT Council endorses a grant application to the Capital Infrastructure Project Stream of the Gas Tax Strategic Priorities Fund to either upgrade Memorial Arena or to build a new arena;

AND THAT once the Penticton Arena Task Force has made their recommendation to Council on how to proceed with arena upgrading or replacement that the grant application be updated to reflect the recommendation;

AND THAT the Arena upgrade / replacement project be included in the 2018 budget and that any funding required in excess of \$6,000,000 be funded by the City of Penticton through reserves, other grants, borrowing, donations and/or funding partners as recommended by the Arena Task Force and endorsed by Council;

AND FURTHER THAT the Manager of Facilities and the Chief Financial Officer be authorized to sign any required forms related to the grant application.

Strategic priority objective

This project supports the City's Strategic Pillar of Sustainable by planning for future infrastructure renewal and the City's Strategic Pillar of Livable by maintaining recreation and culture services and facilities that balance need and ability to fund.

Background

UBCM has announced a June intake for the Gas Tax Strategic Priorities Fund. Eligible projects under the Capital Infrastructure Project Stream include Public Transit: Local Roads and Bridges; Community Energy Systems; Drinking Water; Solid Waste; Wastewater; Highways and Major Roads; Local and Regional Airports; Short-Line Rail; Short-Sea Shipping; Broadband Connectivity; Brownfield Redevelopment; Disaster Mitigation; and Cultural, Tourism, Sport and Recreation Infrastructure. There is an application limit of two capital infrastructure projects. The grant will fund up to 100% of the net eligible costs of approved projects up to a maximum federal Gas Tax fund contribution of \$6,000,000. The application deadline is June 1, 2017.

As preparatory work the staff examined several candidate projects:

- New Arena or an upgrade to Memorial Arena, estimated cost \$7,000,000 to 16,000,000;
- Main Street 300 Block revitalization, estimated cost \$3,030,000;
- Main Street Industrial to Warren failing infrastructure replacement and incorporation of a bike trail or multi use path, estimated cost \$3,000,000 to 5,000,000 of which \$1,500,000 is land acquisition and not eligible for grant funding;
- Kinney Avenue and Main Street intersection estimated cost \$3,500,000 of which \$1,500,000 is land acquisition and not eligible for grant funding;
- An underground infrastructure project to replace undersized or failing mains estimated cost \$6,000,000;
- Penticton Creek Naturalization Front Street to Ellis Street estimated cost \$4,650,000 to \$5,000,000; and

Staff have reviewed possible projects and feel that the most appropriate project to advance for a grant is either to upgrade or replace Memorial Arena. The reasons are as follows:

- The Draft Parks and Recreation Master Plan supports the replacement / renovation of Memorial Arena with minimal disruption to user groups;
- The Memorial arena project is the most advanced in terms of gathering cost estimates, letters of support, timelines and feasibility studies including technical and design information to meet the scoring and selection criteria as documented in the grant program guidelines;
- The Asset Management Plan indicates that:
 - The biggest gap between what we should be spending and what we are spending is General Funded Infrastructure of which Facilities is a large component;
 - That the largest Infrastructure Deficit is in the Facility area \$22,900,000 to \$26,500,000; and
 - That the Average Annual Life Cycle Investment for Facilities, the highest of all categories, should be 4,700,000 to \$7,100,000;
- The Memorial Arena project is the largest and most costly recommendation in the Draft Parks and Recreation Master Plan and will allow us to maximize our access to grant money.

Staff also do not recommend applying for more than one Capital project so as to not dilute our chances for the Memorial arena project.

Staff have spoken to representatives from UBCM to explain our situation, i.e. that at this time we do not know if we will rebuild or replace Memorial Arena. The advice we received was to apply for a grant to either rebuild or replace, indicate that the land is in place, indicate that the Penticton Arena Task Force is evaluating the options and will be making a recommendation to Council and that once this recommendation is made the City will revise our grant application accordingly. UBCM did indicate that we should get the revision in as soon as possible, ideally by end of July 2017.

Financial implication

The order of magnitude costing to upgrade or replace Memorial Arena is estimated to be between \$7,000,000 and \$16,000,000 in capital costs. Estimates are currently being refined to get more accurate

numbers. Submitting a grant application will make the City eligible to receive up to \$6,000,000 in grant funding.

Analysis

Passing of the resolution will make the grant eligible for consideration under the grant submission process and open the possibility for grant funding.

Should Council choose they could provide alternate direction to staff.

Alternate recommendations

THAT Council provide alternate direction to staff.

Respectfully submitted,

Mitch Moroziuk P.Eng. MBA
General Manager of Infrastructure

Approvals

CAO	CFO
PW	

Date: May 23, 2017
To: Peter Webber, Chief Administrative Officer
From: Mitch Moroziuk, General Manager of Infrastructure
Subject: **Warren Avenue Oxbow Servicing Agreement Amendment**

File No:

Staff recommendation

THAT Council approve the Warren Avenue Oxbow Servicing Termination Agreement with the Penticton Indian Band as contained in Attachment "B";

AND THAT Council approve the Warren Avenue Oxbow Servicing Agreement with Warren Avenue Development Corporation to provide City electricity, sanitary sewer and water services to the Warren Avenue Oxbow lands as contained in Attachment "C";

AND THAT the Mayor and Corporate Officer be authorized to execute both of these agreements.

Strategic priority objective

The Recommendation supports the Strategic Pillar of Sustainable by providing shared services to the Penticton Indian Band and the Strategic Pillar of Liveable by allowing the developer to bring forty eight (48) dwelling units into the housing inventory.

Background

On October 3, 2011 Council passed Resolution 868/2011, see Attachment "A" approving entering into an agreement with the Penticton Indian Band to provide municipal services to the Warren Avenue Oxbow lands. The Agreement saw the City providing water, sanitary sewer, fire protection as well as the possibility of electrical and building inspection services if requested by the Band for a term of 25 years. The agreement allows for residential / commercial / park development to take place.

Subsequent to the signing of that agreement the City has been in discussion with the Penticton Indian Band and The Warren Avenue Development Corporation for the last 5 years and the involved parties would like to alter the terms of the agreement as well as change who the City would enter into an agreement with.

The 2011 agreement is between the City of Penticton and the Penticton Indian Band. There is also a lease agreement between the Warren Avenue Development Corporation and the Locatee Land owner and there would need to be a third agreement between the Penticton Indian Band and the Warren Avenue Development Corporation which would transfer responsibilities under the City of Penticton / Penticton Indian Band Agreement from the Penticton Indian Band to the Warren Avenue Development Corporation.

In short the Penticton Indian Band is a middle man in an agreement that really sees the City providing services to the Warren Avenue Development Corporation and as such they would like to be removed from the arrangement. The Termination Agreement contained in Attachment "B" achieves this. The Termination Agreement has been executed by the Penticton Indian Band.

In order to have an agreement that is workable for the City, the Penticton Indian Band and the Warren Avenue Development Corporation some changes are required to the original 2011 agreement. They are as follows:

1. Delete the requirement to pay an Offsite Service Charge (Tax Equivalent Payment). The Penticton Indian Band is the taxing authority over the Warren Avenue Oxbow lands. The way the 2011 agreement is structured it would see the Warren Avenue Development Corporation paying the City a Tax Equivalent Payment and the Penticton Indian Band property taxes. This creates a situation where the developer of the lands is in a non-competitive position as compared to adjacent properties that pay taxes to only one authority;
2. Delete provision of fire protection. This is covered under the existing March 1, 2015 Fire Services Agreement between the City of Penticton and the Penticton Indian Band and duplication is not required;
3. Delete the requirement for the Developer to pay a 10% premium for water.
4. Require that each unit on the development lands be metered for electricity and water and that there be a shut off for water and electricity for each unit;
5. Require that the City bill each customer in the development lands directly. Bills would be branded City of Penticton;
6. Replace of the provision of a Letter of Credit as security for non-payment with a provision in the agreement that in the event of non-payment by a customer the City will bill the Developer directly and the Developer will pay the City within 30 days. In the event that the Developer does not pay the City within 30 days the City has the right to disconnect water, sanitary sewer or electrical services to the lands;
7. Require that the City be provided a no cost easement prior to the start of service provision so that it could maintain the electrical system on the lands and so that it could read the electrical and water meters and terminate water and electrical service in the event of non-payment;
8. Eliminate the payment of the Parks DCC to a Park Fund jointly managed by the City and the Penticton Indian Band. The DCC payment would come directly to the City;
9. The City would own and be responsible to maintain electrical infrastructure saving and excepting street lighting and privately owned service conductors;
10. The Developer would be responsible to maintain all other onsite infrastructure (water, sanitary sewer, storm, roads, sidewalk, street lighting etc.);
11. The Warren Avenue Development Corporation will be responsible to undertake or pay to have the City undertake an evaluation of the impact of the proposed development on City Infrastructure outside of the development area. Any required upgrades required to City Infrastructure outside of the development area will be made by the Warren Avenue Development Corporation at their cost.

The Agreement contained in Attachment "B" is now between the City of Penticton and the Warren Avenue Oxbow Corporation and has incorporated the above noted points into the 2011 agreement.

Financial implication

The loss of the 10% premium on water estimated at \$2,650 per year. The loss due to the removal of the requirement to pay the Offsite Service Fee is calculated to be \$0.00 as the development would not take place with this provision contained in the agreement.

Analysis

The City, the Penticton Indian Band and the Developer have been in discussions for some time to arrive at a workable solution for all parties that would see the Warren Avenue Oxbow land develop. The proposed development would create some 48 residential lots.

The agreements contained in Attachment "B" and "C" achieve a workable solution for all parties and is now ready for the consideration of Council.

Should Council choose they could provide staff with specific direction on changes that they would like to see to the two agreements.

Alternate recommendations

1. THAT Council provide specific directions to staff as to changes that they would like to see in the Warren Avenue Oxbow Agreements.

Attachments

Attachment "A" – Council Resolution 868/2011

Attachment "B" – City Penticton Indian Band Termination Agreement

Attachment "C" – City Warren Avenue Development Corporation Warren Avenue Servicing Agreement

Respectfully submitted,

Mitch Moroziuk P.Eng. MBA
General Manager of Infrastructure

Approvals

CAO <i>PM</i>

Attachment "A" – Council Resolution 868/2011

5.3 Penticton Indian Band – Servicing Agreement

868/2011

It was MOVED and SECONDED

THAT Council ratify the attached Servicing Agreement between the City of Penticton and the Penticton Indian Band for Warren Avenue Oxbow which was endorsed at the September 17, 2011 in-camera meeting of Council.

CARRIED UNANIMOUSLY

Attachment "B" – City Penticton Indian Band Termination Agreement

[2017 05 23 Attachment B to Warren Ave agreement.pdf](#)

Attachment "C" – City Warren Avenue Development Corporation Warren Avenue Servicing Agreement

[2017 05 23 Attachment C to Warren Ave agreement.pdf](#)

**TERMINATION OF
COMPREHENSIVE SERVICES AGREEMENT (WARREN AVENUE OXBOW)**

THIS AGREEMENT made as of the 2nd day of May, 2017

BETWEEN:

THE CITY OF PENTICTON, a municipality incorporated pursuant to the *Local Government Act*, having its offices at 171 Main Street, Penticton, British Columbia, V2A 5A9

(the "City")

AND:

THE PENTICTON INDIAN BAND, being a band pursuant to the *Indian Act*, represented by its Chief and Council, and having a postal address at RR#2, Site 80, Comp. 19, Penticton, British Columbia, V2A 6J7

(the "Band")

WHEREAS:

- A. The City and the Band are governments providing services to their residents, and as such entered into the Comprehensive Services Agreement (Warren Avenue Oxbow) made October 7th 2011, to provide services to the Band lands (the "Previous Agreement");
- B. The Council of the Band authorized the Previous Agreement on behalf of the Band by a Council Resolution duly passed at a meeting of the Council held the 20th day of September, 2011;
- C. The City Council authorized the Previous Agreement on behalf of the City by a City Council Resolution duly passed at a meeting of the City Council held on the 3rd day of October, 2011; and
- D. The parties desire to terminate the Previous Agreement, and intend the termination of any and all benefits or interests conferred between the parties under that agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the promises and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto covenant and agree with each other as follows:

1.0 CONSENT AND TERMINATION

- 1.1 Upon execution of this Agreement, the Previous Agreement between the City and the Band shall be deemed terminated and there shall be no right to severance or other related benefits thereunder.
- 1.2 The Band hereby consents to the City providing services directly to the developer of the Warren Avenue Oxbow lands in lieu of providing the services to the Band.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

THE CORPORATE SEAL OF THE CITY OF PENTICTON was hereunto affixed in the presence of:

Signed, Sealed and Delivered by the PENTICTON INDIAN BAND pursuant to the consent of a majority of the Councillors of the Band present at a Council meeting duly convened:

Mayor Andrew Jakubait

Chief Chad Eneas

Corporate Officer Dana Schmidt

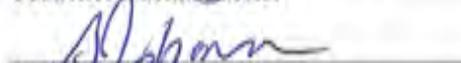


Councillor Jonathan Kruger

Councillor Timmothy Lezard



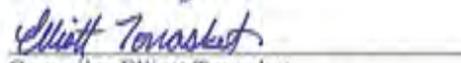
Councillor Naomi Gabriel



Councillor Suzanne Johnson



Councillor Clint George



Councillor Elliott Tonasket



Councillor Joseph Pierre

WITNESS

ADDRESS



**BAND COUNCIL RESOLUTION
PENTICTON INDIAN BAND**

BCR No. _____ -70-

UNR RES PRO

A quorum for a duly convened Band Council Meeting consists of five Council Members

NOTE: The words, "From our Band Funds" "Capital" or "Revenue" whichever is the case, must appear in all resolutions requesting expenditures from Band Funds

THE COUNCIL OF THE	PENTICTON INDIAN BAND	PIB Capital Fund Balance	\$ _____
DISTRICT	BRITISH COLUMBIA REGION	PIB Revenue Fund Balance	\$ _____
PLACE	ADMINISTRATION BUILDING		
DATE	May 2, 2017		
PROGRAM	Lands Department		

WHEREAS: The Penticton Band Council do recognize and accept their duties and responsibilities in relation to effective governance of all affairs for the Penticton Band; and

WHEREAS: The City of Penticton and the Penticton Indian Band are governments providing services to their residents, and as such entered into the Comprehensive Services Agreement (Warren Avenue Oxbow) made October 7th 2011, to provide services to the Band lands (the "Previous Agreement");

The Council of the Band authorized the Previous Agreement on behalf of the Band by a Council Resolution duly passed at a meeting of the Council held the 20th day of September, 2011;

The City Council authorized the Previous Agreement on behalf of the City by a City Council Resolution duly passed at a meeting of the City Council held on the 3rd day of October, 2011; and

The parties desire to terminate the Previous Agreement, and intend the termination of any and all benefits or interests conferred between the parties under that agreement.

WHEREAS: The Penticton Indian Band agrees and consents to the termination upon the execution of this Agreement, that the Previous Agreement between the City and the Band shall be deemed terminated and there shall be no right to severance or other related benefits there under.

(Councillor Naomi Gabriel)

(Chief Chad Enns)

(Councillor Clinton George)

(Councillor Suzanne Johnson)

(Councillor Jonathan Kruger)

(Councillor Denise Lecoy)

(Councillor Timmothy Lazard)

(Councillor Joseph Pierre)

(Councillor Elliott Tonasket)



**BAND COUNCIL RESOLUTION
PENTICTON INDIAN BAND**

BCR No. 71

UNR RES PRO

A quorum for a duly convened Band Council Meeting consists of five Council Members

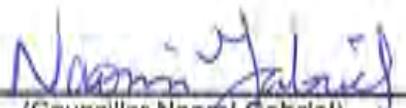
NOTE: The words, "From our Band Funds" "Capital" or "Revenue" whichever is the case, must appear in all resolutions requesting expenditures from Band Funds

THE COUNCIL OF THE	PENTICTON INDIAN BAND	PIB Capital Fund Balance	\$ _____
DISTRICT	BRITISH COLUMBIA REGION	PIB Revenue Fund Balance	\$ _____
PLACE	ADMINISTRATION BUILDING		
DATE	May 2, 2017		
PROGRAM	Lands Department		

WHEREAS: The Penticton Indian Band hereby consents to the City providing services directly to the developer of the Warren Avenue Oxbow lands in lieu of providing the services to the Band.

THEREFORE BE IT RESOLVED:

The Penticton Indian Band agrees and consents to the termination of the previous agreement between the City and the Band and further consents to the City to provide services directly to the developer of the Warren Avenue Oxbow lands in lieu of providing the services to the Penticton Indian Band.



(Councillor Naomi Gabriel)

(Chief Chad Eneas)



(Councillor Clinton George)

(Councillor Suzanne Johnson)



(Councillor Jonathan Kruger)



(Councillor Denise Lecoy)

(Councillor Timothy Lezard)



(Councillor Joseph Pierre)



(Councillor Elliott Tonasket)

COMPREHENSIVE SERVICES AGREEMENT (WARREN AVENUE OXBOW)

THIS AGREEMENT made as of the ____ day of _____, 2017

BETWEEN:

THE CITY OF PENTICTON, a municipality incorporated pursuant to the *Local Government Act*, having its offices at 171 Main Street, Penticton, British Columbia, V2A 5A9

(the "City")

AND:

WARREN AVENUE DEVELOPMENT CORP, being business duly incorporated pursuant to the *Business Corporations Act*, and having a postal address at Suite 2400, 745 Thurlow Street, Vancouver, British Columbia, V6E 0C5

(the "Developer")

WHEREAS:

- A. The City is a government providing services to its residents and the Developer wishes to provide services on the Lands;
- B. The City and the Developer have agreed to cooperate where possible in the delivery of those services for the respective advantage of each party, and for the benefit of the residents of the region generally;
- C. Her Majesty the Queen in Right of Canada holds legal title to the Lands. The Lands have been set apart for the use and benefit of the Band, pursuant to the *Indian Act*;
- D. The parties wish to enter into a comprehensive services agreement to provide for the delivery of municipal services by the City to the Lands and occupiers of the Lands;
- E. Pursuant to Section 8 of the *Community Charter*, the City may enter into agreements to provide services to lands;

NOW THEREFORE THIS AGREEMENT WITNESSES that for and in consideration of the promises and agreements contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto covenant and agree with each other as follows:

1.0 INTERPRETATION

1.1 Definitions

In this Agreement, except as expressly provided or as the context otherwise requires:

- (a) "**Agreement**" means this agreement, including the recitals and schedules hereto, as amended and supplemented from time to time;
- (b) "**Band**" means the Penticton Indian Band being a band pursuant to the *Indian Act*, represented by its Chief and Council, and having a postal address at RR#2, Site 80, Comp. 19, Penticton, British Columbia, V2A 6J7
- (c) "**Billing Policy**" means the City Billing Policy dated December 7, 2015 as amended or superseded from time to time;

- (d) "City Bylaws" means collectively, the City bylaws described in Schedule D hereto, each as amended or superseded from time to time;
- (e) "City Director" means the General Manager of Infrastructure for the City and his or her designate;
- (f) "City-Electric Utility" means the City of Penticton Electric Utility;
- (g) "Collections Disconnect Policy" means the City Collections Disconnect Policy dated August 23, 2016 as amended or superseded from time to time;
- (h) "CP Holder" means that person who is lawfully in possession of a Certificate of Possession or Location Ticket as defined in and issued under the *Indian Act* (R.S.C., 1985, c. I-5) in relation to the Lands;
- (i) "Customer" means that person living in a unit on the Lands or a business operating out of a unit on the lands for which the City has established a utility account for water, sanitary sewer, storm, sewer and electricity;
- (j) "Electrical Infrastructure" means any and all electrical utility infrastructure including electrical distribution system on or under the Lands constructed for the purposes of providing Electrical Services on the Lands or Improvements thereon and excluding streetlights;
- (k) "Electrical Services" means general lighting and residential services as defined in electrical regulation bylaw 2000-36 funded as noted ordinarily provided from time to time by the City to the properties and Improvements within the City of Penticton in accordance with all then applicable City Bylaws and City policies;
- (l) "Environmental Laws" means all laws relating to protection of the environment and health and safety of the workplace, including all common law and the *Canadian Environmental Protection Act* (Canada), the *Fisheries Act* (Canada), the *Workers Compensation Act* (British Columbia), the *Environmental Management Act* (British Columbia) and all rules, regulations, policies and criteria promulgated thereunder from time to time;
- (m) "Fire Protection Agreement" means the City Band Fire Services Agreement with a reference date of March 1, 2015;
- (n) "Improvements" means improvements as defined in the *Assessment Act*, B.S.B.C. 1996 c. 20, s. 1, as amended from time to time;
- (o) "Land Infrastructure" means any and all streets, roadways, bridges and sidewalks, curbs and gutters, streetlights, parks and walkways, traffic lights and traffic control signs on the Lands for the provision of access to or from the Lands, driveways for access to and from the Improvements, and all storm and sanitary sewers, water lines and associated works and all utility infrastructure on or under the Lands constructed for the purposes of providing Services to the Lands or Improvements thereon, but excluding Electrical Infrastructure, telephone, gas and cable;
- (p) "Lands" means the Band lands identified in Schedule A hereof and known generally as the Warren Avenue Oxbow lands;
- (q) "Minor Modification Addenda" has the meaning given in paragraph 7.2 of this Agreement;
- (r) "Off-Site Infrastructure" means any additional or upgraded infrastructure required outside the Lands for the purpose of enabling development on the Lands;
- (s) "Offsite Infrastructure Fee" has the meaning given in paragraph 5.5 of this Agreement;
- (t) "OIF Development" has the meaning given in paragraph 5.5(a) of this Agreement;

- (u) **"Representative"** means, an authorized representative of the Developer identified in writing to the City;
- (v) **"Services"** means, subject to paragraph 2.3, the following services funded out of the City's operating budget and not its capital budget and ordinarily provided from time to time by the City to the lands and Improvements within the City of Penticton in accordance with all then applicable City Bylaws and City policies:
 - (i) sanitary sewer services, from the property lines of the Lands; and
 - (ii) treated water service, to the property lines of the Lands.and notwithstanding the foregoing, specifically excluding the following services:
 - (iii) police protection;
 - (iv) garbage collection;
 - (v) fire inspection and suppression services;
 - (vi) maintenance of related Land Infrastructure, for which the Developer will be solely responsible, subject to the terms of this Agreement;
 - (vii) ambulance service;
 - (viii) gas, telephone or cable services;
 - (ix) development service;
 - (x) replacement, repair or upgrading or other capital improvement of Land Infrastructure, for which the Developer will be solely responsible;
 - (xi) services provided by other local, regional, provincial or federal authorities or governments;
- (w) **"Term"** has the meaning given in paragraph 8.1 of this Agreement; and
- (x) **"Utilities Bills, Fees and Charges"** means all fees, charges and amounts referenced in the *Community Charter* as being amounts that may be collected by a municipality in the same manner and with the same remedies as property taxes, and includes, without limitation, electrical, water and sanitary sewer billings, connection and disconnection charges, fees for afterhours call outs, fees for unauthorized activation, all costs for illegal power and water diversion, Offsite Infrastructure Fees, and any other fees, costs and charges as set out in this Agreement.

1.2 Governing Law

This Agreement will be governed by and construed in accordance with the laws of British Columbia and Canada and, subject to paragraph 9.5 (Dispute Resolution), the parties hereby attorn to the Courts of British Columbia and Canada.

1.3 Severability

If any provision of this Agreement, or part thereof, is judged invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions will continue in full force and effect, provided that if the intent of the parties is not thereby preserved then either party may require the other party to negotiate in good faith a replacement for the invalid, illegal or unenforceable provision that is consistent with the intent of the parties hereto. If a replacement provision is not agreed within ninety (90) days, then either party may terminate this Agreement on six (6) months' notice to the other.

1.4 Gender

Wherever the singular or masculine is used in this Agreement, the same will be deemed to include the plural, the feminine or the body corporate or politic where the context so requires, and vice versa.

1.5 Schedules

The following schedules are incorporated into and form a part of this Agreement:

Schedule A	-	Lands - Warren Avenue Oxbow
Schedule B	-	Proposed Development Plan for the Lands
Schedule C	-	Fees and Charges
Schedule D	-	City Bylaws
Schedule E	-	Offsite Infrastructure Fee

1.6 Use of the Word "Including"

The word "**including**" when following any general term or statement will not be construed as limiting the general term or statement to the specific matter immediately following the word "including" or to similar matters, and the general term or statement will be construed as referring to all matters that reasonably could fall within the broadest possible scope of the general term or statement.

1.7 Headings

The division of this Agreement into paragraphs and the insertion of headings are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement.

2.0 PROVISION OF SERVICES

2.1 Services

Subject to the terms and conditions of this Agreement, the City will provide the Services and Electrical Services to the Lands for the benefit of the Developer. Terms and conditions relating to the fire protection and suppression component of the Services are set forth in the Fire Protection Agreement.

2.2 Standard of Services

The City will provide the Services and to same standard and qualities as such services are ordinarily provided by the City to strata developments within the City of Penticton. For certainty, this means that the City will not be obligated to provide Services within the boundaries of the Lands.

2.3 Limitation

Notwithstanding the foregoing, nothing in this Agreement will:

- (a) require the City to provide Services or Electrical Services to the Lands or any part thereof or any occupiers of the Lands if at any time the City, acting reasonably, determines:
 - (i) that it does not have the capacity or foreseeable capacity to provide such Services or Electrical Services;
 - (ii) the provision of such Services or Electrical Services would require the extension or upgrading of existing Services or Electrical Services or infrastructure and the City and the Developer are unable to conclude an agreement acceptable to them whereby the cost of the extension or upgrading is paid by or on behalf of the Developer (to the extent it benefits the Developer or the Lands);

- (iii) the Land Infrastructure and/or the Electrical Infrastructure has not been designed and constructed in accordance with Bylaw 2004-81 and Bylaw 2000-36, unless the failure has been remedied in accordance with paragraph 2.4;
 - (iv) or the Land Infrastructure and/or the Electrical Infrastructure is not being operated in accordance with the applicable City Bylaws described in Schedule D hereto, unless the failure has been remedied in accordance with paragraph 2.4.
- (b) require the City to provide the Services or Electrical Services to the Developer in any manner other than the Services or Electrical Services being subject to the availability of City equipment and personnel and the discretion of the City, acting reasonably, to determine the priority of the use of its equipment and personnel as well as the allocation of the equipment to be employed in regards to providing the Services or Electrical Services;
 - (c) require the City to provide Services or Electrical Services to the Lands where the Lands or any Improvement thereon is or will be used for any purpose which, in the reasonable opinion of the City, would reasonably be considered to be inconsistent with any Environmental Laws or applicable bylaws of the City or the Band then in force for similar lands or improvements; or
 - (d) require the City to provide Services that are delivered in whole or in part by means of Land Infrastructure or Electrical Infrastructure or works on the Lands that do not meet the safety, engineering and environmental standards of the City generally applicable to such works.

2.4 Discontinuance of Services

The City may interrupt or discontinue Services or Electrical Services as follows:

- (a) without notice in the event of an emergency;
- (b) in accordance with paragraph 8.3 for nonpayment of Utilities Bills, Fees and Charges;
- (c) with verbal notice in the event of a violation of Subdivision and Development Bylaw 2004-81, Electrical Bylaw 1277, Electrical Regulation Bylaw 2000-36 or Irrigation, Sewer and Water Bylaw 2005-02, of a health or safety nature;
- (d) following discussion and written notice in the event of planned operational maintenance; and
- (e) with thirty (30) days written notice in the event that the Developer does not comply with a mediated resolution or the findings of an arbitrator, as applicable, pursuant to paragraph 9.5.

The City will re-instate the Services or Electrical Services as soon as reasonably practical if the default or breach is remedied to the satisfaction of the City, acting reasonably.

3.0 MEASUREMENT AND PAYMENT FOR SERVICES

3.1 Fee Calculation and Payment

The City will charge the Developer and the Developer and will pay to the City, the fees, costs and charges as set out in this Agreement. The Developer will make all invoice and bill payments on the same payment schedule as required of the residents of the City of Penticton, unless specified otherwise in this Agreement. As specified in paragraph 3.2, 3.3 and 3.5(a)(i)(B), the City will charge the Customer and the Customer will pay to the City the fees associated with consumption or use of treated water, sanitary sewer services and electricity. The City will bill Customers in accordance with the Billing Policy and will address non-payment of services in accordance with the Collections Disconnect Policy.

3.2 Treated Water

The Developer will at its cost provide and install a water meter, RF transmitter and water curb stop, manufactured and installed to City standards, on each unit on the Lands for each Customer consuming treated water to measure water consumption, to facilitate billing by the City for water consumed at the unit and to allow for water turn off.

The City will read the water meter and will charge the Customer on a monthly basis for water use at the unit in accordance with the fees for treated water as set out in the Fees and Charges Bylaw, and the Customer will pay the City, in accordance with the Billing Policy and the Collections Disconnect Policy.

3.3 Sanitary Sewer Services

The City will charge for sanitary sewer based on water consumption. The City will read water meters and will charge the Customer for sewage generated at the unit on a monthly basis in accordance with the fees for sanitary sewage as set out in the Fees and Charges Bylaw, and the Customer will pay the City, in accordance with the Billing Policy and the Collections Disconnect Policy.

3.4 Storm Sewer Services

The City is in the process of developing a separate charge for Storm Sewer Services. Should the Developer connect to the City storm water system the Developer will be required to pay the charges that apply for the provision of Storm Sewer Services.

3.5 Electrical Services

The parties agree that the following provisions will apply to Electrical Services:

- (a) In relation to the electrical distribution system on the Lands:
 - (i) Electrical consumption and demand charges:
 - A. The City will, at the Developers cost, install a City revenue electrical meter and RF transmitter manufactured and installed to City standards on each unit on the Lands consuming electricity to measure consumption and facilitate billing by the City; and
 - B. The City will read the electrical meter and charge the Customer on a monthly basis for electricity use at the unit as set out in the Fees and Charges Bylaw, and the Customer will pay the City, in accordance with the Billing Policy and the Collections Disconnect Policy.
 - (ii) The Developer agrees that individual electrical service connections for buildings or units on the Lands will be installed by the Developer/property owner, upon receipt by the City of an application for such connection, in which case the following will apply:
 - A. the City or the City-Electric Utility will estimate the cost of the service connection and will issue an invoice for the charges to the building owner;
 - B. upon receipt of payment from the building owner, the City will complete the installation.
 - (iii) Transformers and related service connections:
 - A. The City will:
 - (1) supply and install all transformers and high voltage cables that will be required to provide electrical service to the Lands, and will charge the Developer for such supply and installation;
 - (2) direct City-Electric Utility to calculate and determine the cost referenced in paragraph (A)(1) above upon review of the applicable servicing characteristics and requirements, and with reference to City's Fees and Charges Bylaw 2014-07 or at actual cost including mark up;

- (3) issue bills and invoices in a timely fashion for the costs referenced in paragraph (A)(1) above.
- B. The Developer acknowledges and agrees that:
 - (1) until all amounts determined and invoiced under paragraph 3.5(a)(ii)(A) or paragraph 3.5(a)(iii)(A) above are paid in full as advance payments, neither the City nor City-Electric Utility will be under any obligation whatsoever to supply and install any transformers or other goods or carry out any electrical or related services to or on the Lands; and
 - (2) all conduits, wiring, concrete foundations, grounding systems, service boxes, etc. are to be supplied and installed by the developer at their cost. Inspections of said infrastructure to be inspected by the City-Electric Utility at the Developers cost.
 - (3) any conduits, wiring and related matters beyond the supply and installation of transformers and or service boxes and which are deemed by City-Electric Utility to be part of an individual(s) service, will not be the responsibility of the City.
- (b) In relation to street lighting on the Lands:
 - (i) The City will charge, and the Developer will pay charges for street lighting, as follows:
 - A. Electrical consumption charge:
 - (1) The City will, at the cost of the Developer, install a City revenue electrical meter and RF transmitter at a City or City-Electric Utility approved location on the property line of the Lands to measure electricity consumption and facilitate billing by the City for bulk electricity consumed on the Lands by street lighting; and
 - (2) The City or the City-Electric Utility will charge the Developer for basic, consumption and demand charges, in accordance with the City's Fees and Charges Bylaw 2014-07 and the applicable rate therein. The City will bill the Developer monthly for electricity consumed on the Lands by the street lighting.

3.6 Interest on Overdue Payments

Any Developer accounts overdue and unpaid in accordance with the provisions of this Agreement shall bear interest at the same rate that the City charges to the residents of Penticton as revised from time to time (currently 2% per month on work order type items, 10% on property taxes, and forfeiture of the 10% discount on monthly billings for utilities).

3.7 Additional Developer Billing and Payment Obligations

The Developer covenants, agrees and acknowledges that:

- (a) the City will be solely responsible for charging, billing and collecting payment from the owner or occupier of each property, building or unit on the Lands for each Customer consuming treated water, sanitary sewer services, and electricity, and the Developer shall be responsible for distributing the cost of communal services such as street lighting between Customers and residents on the Lands;
- (b) bills will be distributed under the City of Penticton brand;

- (c) in the event of non-payment of more than 90 days by a Customer for any Services or Electrical Services, the City will bill the Developer directly for the amount owed and the Developer will pay the City such amount within thirty (30) days. In any event the City will retain the authority to shut off service to individual Customer at the City's sole discretion.

4.0 INFRASTRUCTURE

4.1 General Scope of Land Infrastructure

The Developer will, at its sole cost, design and construct all Land Infrastructure and connections necessary for the provision of Services on the Lands. All Land Infrastructure will be and remain the sole property of the Developer. The Developer will, at its own expense, install the following Land Infrastructure in conformity with the health, safety and engineering standards and specifications established from time to time by the City, including the standards contained in Subdivision and Development Bylaw 2004-81 and Irrigation, Sewer and Water Bylaw 2005-02, as required by the City, acting reasonably:

- (a) treated water main improvements;
- (b) sanitary sewer improvements;
- (c) storm sewer and/or on-site drainage improvements, if connected to the City's storm drainage system;
- (d) streetlights; and
- (e) connection lines to connect the Land Infrastructure within the Lands to the City's infrastructure at such connection points as may be determined by the parties pursuant to paragraph 4.14 [connection lines] below.

4.2 Pre-design Reports

Prior to any construction of the Land Infrastructure, the Developer will submit to the City, in a form and content satisfactory to the City, acting reasonably, pre-design reports from duly qualified professional engineers registered in the Province of British Columbia, that address all the elements of the Land Infrastructure, including any Off-Site Infrastructure required as a result of the Land Infrastructure or Electrical Infrastructure:

4.3 Off-Site Infrastructure

The Developer will, at its sole cost, design and construct Off-Site Infrastructure required as a result of the pre-design reports referenced above, such design and construction to be in accordance with the standards contained in the City's Subdivision and Development Bylaw 2004-81. If, as a result of such construction by the Developer, the City will need to undertake works and incur costs, the following will apply, subject to paragraph 4.3(c) below:

- (a) the Developer will give the City between four (4) and six (6) months' prior notice of the construction to facilitate the City's internal budgeting processes;
- (b) the City will provide the Developer with a cost estimate of the City works and costs, prior to the City undertaking the works and incurring the costs. The Developer will pay to the City, within thirty (30) days of receipt of the City's invoice, all costs incurred by the City relating to the construction of the Off-Site Infrastructure; and

- (c) if the Developer is unable to provide the City with notice in accordance with paragraph 4.3(a), the Developer may proceed with the construction of the required Off-Site Infrastructure provided that the Developer pays to the City, in advance of commencing any works, the City's estimated costs relating to the construction of the Off-Site Infrastructure. Once the Off-Site Infrastructure work has been completed by the Developer they are to submit a letter under the seal of a Professional Engineer registered in the province of BC that indicates that the Off-Site Infrastructure work was completed in accordance with the Subdivision and Development Bylaw. Upon review of the letter and inspection of the work the City will either return the amounts of money that the Developer paid to the City in advance of commencing work or provide a list of deficiency items to be rectified. Once the deficiency items are rectified to the satisfaction of the City the City will return the amounts of money that the Developer paid to the City in advance of commencing work.

4.4 Specific Scope - Road and Sidewalk Improvements

The parties agree that the Developer will set and determine the standards to be used for road and sidewalk improvements. The Developer agrees that the road standards will be capable of providing for the passage and turning movements of City of Penticton fire suppression vehicles.

4.5 Specific Scope – Curb and Gutter Improvements

The parties agree that the Developer will set and determine the standards to be used for curb and gutter improvements.

4.6 Specific Scope – Park and Walkway Improvements

The parties agree that the Developer will set and determine the standards to be used for park and walkway improvements.

4.7 Specific Scope – Treated Water Main Improvements

The Developer will, at its sole cost, design and construct all water systems located on the Lands and all necessary connections to the City's treated water system, in accordance with the standards contained in the City's Subdivision and Development Bylaw 2004-81. The Developer will install an individual water service to each unit on the Lands complete with a water shut off valve accessible on the outside of the unit acceptable to the City. The Developer will maintain all the water systems on the Lands in accordance with the standards contained in the City's Irrigation, Sewer and Water Bylaw 2005-01. The City will install and maintain one water meter and RF transmitter in each unit at the cost of the Developer.

4.8 Specific Scope – Sanitary Sewer Improvements

The Developer will, at its sole cost, design and construct all sanitary sewer systems located on the Lands, and all connections to the City's sanitary sewer system, in accordance with the standards contained in the City's Subdivision and Development Bylaw 2004-81. The Developer will maintain at its sole cost the sanitary sewer systems constructed on the Lands, in accordance with the standards contained in the City's Irrigation, Sewer and Water Bylaw 2005-01.

4.9 Specific Scope – Storm Sewer and/or On-Site Drainage Improvements

The parties agree that if the storm sewer and/or on-site drainage improvements on the Lands are not connected to the City storm sewer system, the Developer will set and determine the design, maintenance and operations standards to be used for storm sewer and/or on-site drainage improvements on the Lands. If the storm sewer and/or on-site drainage improvements on the Lands are connected to the City storm sewer system, then:

- (a) the design, maintenance and operations standards used for the storm sewer and/or on-site drainage improvements on the Lands shall be as per those contained in the City's Subdivision and Development Bylaw 2004-81 and the City's Irrigation, Sewer and Water Bylaw 2005-01; and
- (b) the Developer will pay the Offsite Infrastructure Fee for storm as noted in Schedule E.

4.10 Specific Scope – Gas, Telephone and Cable Television Improvements

The parties agree that the Developer will set and determine the standards for gas, telephone and cable television.

4.11 Specific Scope – Infrastructure for Fire Protection and Suppression Services

- (a) The Developer will, at its sole cost:
 - (i) design and upgrade the access to the Lands from the north curb line of Warren Avenue across the oxbow to provide for two travel lanes, a separate pedestrian walking area and railing and guide rail meeting Transportation Association of Canada standards; and
 - (ii) design and construct the water systems so that water for fire flow purposes and fire hydrant spacing as required in Subdivision and Development Bylaw 2004-81 is provided.

4.12 Specific Scope – Street Lighting

The parties agree that the Developer will set and determine the standards to be used for the street lighting system. The Developer will pay all costs associated with the design, construction, operation, maintenance and replacement of the street lighting system they decide upon. The Developer will work with the City to coordinate the power supply and meter location and the City will take the power to the meter at the cost of the Developer.

4.13 Specific Scope – Electrical Distribution System

In the provision of Electrical Services, the following will apply:

- (a) The Developer will:
 - (i) at its sole cost, design and construct, subject to paragraph 4.13(a)(iv), the electrical distribution system on the Lands, to current City-Electric Utility standards and specifications;
 - (ii) have the design approved by the Manager of the City-Electric Utility prior to construction;
 - (iii) at its sole cost, only engage the services of persons approved by the Manager of the City-Electric Utility and who are certified to perform such electrical distribution system works and have the works constructed;
 - (iv) ensure that the final design and subsequent installation of the electrical distribution system will be approved and inspected by the Manager of the City-Electric Utility or his or her designate;
 - (v) permit the City to complete all primary cable terminations and all secondary terminations in service boxes as part of the construction process, and will not undertake or allow any person other than the City to undertake such terminations.
- (b) The parties agree that the City will not, beyond the supply and installation of transformers and high voltage cables, be responsible for the provision and installation of any conduits, wiring or other necessary electrical and related works deemed by the City to be part of electrical service provided to individuals; and
- (c) Subject to paragraph 3.5(a)(ii)(B) and paragraph 3.5(a)(iii)(B), the City will arrange for City-Electric Utility to supply and install all transformers and high voltage cables that will be required either individually or collectively to provide electrical service to various buildings constructed on the Lands.

4.14 Specific Scope – Connection Lines

The Developer and the City agree that the locations of connections from the Lands to the City infrastructure should be as efficient and cost-effective as possible. To that end, the Developer and the City agree that the locations of connections will be selected to maximize efficient use of the Lands, including shared infrastructure where prudent. The parties agree that no connection will be made from the Lands or any Improvement thereon to the City infrastructure or the Electrical Infrastructure until the Developer has supplied the City with a certificate, signed and sealed by a qualified professional engineer, confirming that the proposed connection and the applicable Land Infrastructure and/or Electrical Infrastructure has been inspected by the engineer and the engineer is satisfied that such connection and Land Infrastructure and Electrical Infrastructure conforms with the standards and specifications required herein.

4.15 Regulatory Signage

The Developer will, at its sole cost, design and construct regulatory signage at intersections to City roadways to all applicable Transportation Association of Canada standards, including design and installation standards. The Developer will, at its sole cost, maintain all such signage.

4.16 Land Infrastructure Upgrade

- (a) The Developer will:
 - (i) carry out capital improvements, including replacements and upgrades, to Land Infrastructure as required at the Developers cost; but, so as to ensure the same standard of infrastructure, not less frequently than the schedule employed by the City for upgrades on City infrastructure; and
 - (ii) carry out all such upgrades to Land Infrastructure in accordance with City standards for such upgrades,

failing which the City may provide notice to the Developer to upgrade any Land Infrastructure which does not meet the same caliber as City infrastructure, and the Developer will perform such upgrades within six (6) months of such notice. The City may, but will not be obliged to, consider any request from the Developer for the City to assist in remedying any Land Infrastructure defects on the Lands, on a fee for service basis.

4.17 Electrical Infrastructure Upgrade

In the provision of Electrical Services, the following will apply:

- (a) The Developer will:
 - (i) carry out capital improvements, including replacements and upgrades to Electrical Infrastructure as required at the Developers cost; but, so as to ensure the same standard of infrastructure, not less frequently than the schedule employed by the City for upgrades on City infrastructure; and
 - (ii) carry out all such upgrades to Electrical Infrastructure in accordance with City standards for such upgrades,

failing which the City may provide notice to the Developer to upgrade any Electrical Infrastructure which does not meet the same caliber as City electrical infrastructure, and the Developer will perform such upgrades within six (6) months of such notice. The City may, but will not be obliged to, consider any request from the Developer for the City to assist in remedying any Electrical Infrastructure defects on the Lands, on a fee for service basis.

4.18 Electrical Infrastructure Transfer

The Developer will transfer full ownership of the Electrical Infrastructure to the City immediately upon completion of construction, inspection and approval by the Manager of the City-Electric Utility of the Electrical Infrastructure, or upon request by the City, whichever is the earlier.

5.0 LAND, ELECTRICAL AND OFF-SITE INFRASTRUCTURE

5.1 Charge and Payment

The City will charge the Developer or any Customer, and the Developer or any Customer will pay to the City, all the fees, costs and charges as set out in this Agreement. Unless the City has expressly agreed to undertake maintenance responsibilities at its own cost under this Agreement, the City will carry out its maintenance obligations at the sole cost of the Developer.

5.2 Design and Construction

The Developer will, at its sole cost, be fully responsible for all costs and work associated with the pre-design, detailed design and construction of Land Infrastructure and any Off-Site Infrastructure. The City will pay any costs associated with over sizing to accommodate additional capacity desired by the City.

5.3 Maintenance of Land Infrastructure

The Developer will, at its sole cost, be fully responsible for replacement, maintenance, repair, and upgrade of the Land Infrastructure.

5.4 Maintenance of Electrical Infrastructure

The City will be fully responsible for maintenance, repair and upgrade of Electrical Infrastructure saving and excepting street lighting and privately owned service conductors which will be maintained, repaired and upgraded by and at the sole cost of the Developer/property owner.

5.5 Offsite Infrastructure Fee

In each year of the Term, the City will generate an invoice for a fee known as the "Offsite Infrastructure Fee," on the following terms and conditions:

- (a) The City will calculate and charge the Offsite Infrastructure Fee annually on January 1 in each year of the Term based on:
 - (i) the single-family dwellings, multi-family residential developments, and commercial and industrial developments constructed on the Lands (each an "OIF Development") in the previous calendar year of the Term; and
 - (ii) the information provided to the City under paragraph 9.12 of this Agreement.
- (b) For certainty, an OIF Development that is included in the calculation of the Offsite Infrastructure Fee in a year of the Term will not be included in the Offsite Infrastructure Fee calculations in subsequent years of the Term, unless any single-family dwellings, multi-family residential developments, commercial or industrial OIF Development are added to or expanded during the Term, in which case the City will charge and the Developer will pay Offsite Infrastructure Fees related to such addition or expansion;
- (c) The Offsite Infrastructure Fee will be computed in accordance with Schedule E to this Agreement, which Schedule E will be adjusted by the City in accordance with any changes made to the City's Development Cost Charges Bylaw 2007-7; and
- (d) The Developer will tender payment of the Offsite Infrastructure Fee to the City in each year of the Term in accordance with the terms of the City's invoice within 30 days of invoice receipt;

6.0 BYLAWS AND EXISTING REGULATIONS

6.1 Compliance with Existing Regulations

The Developer will comply and take all reasonable steps to ensure compliance by any person receiving the Services with all City Bylaws referred to in Schedule D with respect to the Services, and any amendments thereto or replacements thereof.

7.0 PLANNING, LAND USE AND EASEMENTS

7.1 Land Use

The Developer and the City agree that the Lands will be developed in accordance with the proposed development plan attached hereto as Schedule B. In summary, the plan attached as Schedule B provides for:

- (a) residential uses, and structures auxiliary to residential use; and
- (b) commercial uses including recreational vehicle sale and services, and structures auxiliary to commercial uses, adjacent to Highway 97.

7.2 Land Use Amendments

The parties agree that the specified land uses for the Lands set out in this Agreement may be mutually amended in the following manner:

- (a) All proposed amendments will be initially discussed by both parties at staff level for purposes of determining whether the proposed amendments are minor or major in nature;
- (b) Proposed amendments that are determined to be minor in nature and are agreed upon by both parties will be documented by staff and will be added to this Agreement as addenda ("**Minor Modification Addenda**"), and this Agreement will be considered to have been amended accordingly; and
- (c) Proposed amendments that are determined to be major in nature will be referred to the Representative and the City Director, and any subsequently agreed amendment will be effected in accordance with paragraph 9.2 (Amendment) of this Agreement.

7.3 Planning and Development

The parties acknowledge that it may be necessary to modify, extend or supplement the Land Infrastructure or Electrical Infrastructure or other works outside the Lands to accommodate any agreed amendments to the specified land uses for the Lands as set out in this Agreement. The Developer will provide the City with plans and specifications relating to agreed amendments as early as possible so as to reduce the need for such modifications and all costs of any such modifications of Land Infrastructure or Electrical Infrastructure or any off-Land Infrastructure but only to the extent required to serve the Lands will be paid by the Developer in the amount or amounts to be agreed in advance between the Developer and the City.

7.4 Easements

The Developer agrees that prior to the City providing Services or Electrical Services, the Developer will provide to the City all necessary easements or other legal rights to use, access, service, and maintain the Electrical Infrastructure at no cost to the City and to read meters and shut off Services or Electrical Services to Customers for non-payment.

8.0 TERM, DEFAULT, SECURITY AND TERMINATION

8.1 Term

The term of this Agreement (the "**Term**") will commence on the date first written above and continue for a period of twenty-five (25) years, subject to the following:

- (a) earlier termination in accordance with the terms of this Agreement;
- (b) renewal or extension of the Term on such terms as the parties agree to in writing. If the parties agree to an extension of the Term, then the following will apply:
 - (i) the parties will update all the Schedules to this Agreement;
 - (ii) the parties will mutually amend such provisions of this Agreement as deemed necessary;
 - (iii) all terms and conditions of this Agreement not mutually amended will remain the same; and
 - (iv) the Term will be extended for the period(s) agreed to by the parties.

8.2 Termination for Defaults

Subject to paragraph 8.3, if there is a breach of any term of this Agreement by a party, the other party may, at its option, notify the party in breach and give the party responsible for the breach such time as is reasonable in view of the nature of the breach to remedy the breach. If the breach continues after the period of time provided to remedy the breach and the matter has not been referred to dispute resolution pursuant to paragraph 9.5 hereof, or if the matter has been referred to and resolved by dispute resolution and the breach continues thereafter, the party not in breach may, at its option, terminate this Agreement. Either party may terminate this Agreement on one year's written notice if the other party fails to fulfill its material obligations hereunder.

8.3 Termination for Nonpayment

If the Developer or any Customer is in default of any of its obligations in respect of this Agreement, the City may pursue the remedies below to secure compliance with the terms of this Agreement or to fulfill any payment obligations of the Developer or any Customer that remain unpaid. If:

- (a) the Customer fails to pay the amounts specified by the City in accordance with the Collections Disconnect Policy the City will after ninety (90) days bill the Developer who will then pay the City the full amount owed within thirty (30) days of receipt of invoice. The City reserves the right to turn off water and electrical service to any unit or to common property for non-payment. The Dispute Resolutions of paragraph 9.5 below do not apply to recovery of outstanding Customer payments from the Developer; and
- (b) the Developer fails to pay amounts invoiced by the City after a thirty (30) day period the City will contact the Developer to discuss the reason for the non-payment. If the issue is not resolved within a thirty (30) day period the City may disconnect water, sewer and electrical service to the Lands.

8.4 Negotiation of a Further Agreement

If the Developer duly and punctually performs the covenants, agreements, conditions and provisos of this Agreement on the part of the Developer to observe and perform, the City shall in its sole discretion at the expiration of the term of this Agreement at the written request of the Developer to the City no later than two years prior to the expiration of the term of this Agreement, enter into discussions with the Developer to renegotiate the terms of this Agreement.

9.0 GENERAL PROVISIONS

9.1 CP Holder Consent and Right to Withhold Services

The Developer acknowledges and agrees that all necessary rights and consents have been obtained, including obtaining the consent of the CP Holder to this Agreement and consent of the Band as required by section 9.4(c) hereto, as a condition precedent to the provision of the Services by the City. The Developer acknowledges and agrees that until the written consent of the CP Holder to this Agreement is received by the City, the City will be under no obligation whatsoever to provide the Services or any part or portion thereof.

9.2 Amendment

Subject to paragraph 7.2 in relation to minor land use amendments and paragraph 5.5(c) in relation to Schedule B updates only, no amendment, waiver, termination or variation of the terms, conditions, warranties, covenant, agreements and undertakings set out herein will be of any force or effect unless the same is reduced to writing duly executed by all parties hereto in the same manner and with the same formality as this Agreement, and no waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar) and no waiver will constitute a continuing waiver unless otherwise expressly provided. Notwithstanding the foregoing, Schedule D and E may be amended from time to time without requiring an amendment of this Agreement.

9.3 Force Majeure

No party will be liable for its failure to perform any of its obligations under this Agreement due to a cause beyond its reasonable control including acts of God, fire, flood, explosion, strikes, lockouts or other industrial disturbances, civil disobedience, riots, or other acts of external interference or disturbance, laws, rules and regulations or orders of any duly constituted governmental authority (excluding the City) or non-availability of materials or transportation, each of which will be a force majeure event.

9.4 Access and Easements

The Developer agrees that it will:

- (a) at no cost to the City, grant to the City, its employees, contractors and agents such rights of access to the Lands during business hours as are necessary for the provision of Services and Electrical Services by the City and to enable the City to inspect the Electrical Infrastructure and water meters from time to time as necessary for the purpose of determining whether the Electrical Infrastructure and water meters conforms with the necessary standards and specifications, and in particular to:
 - (i) read the electrical and water meters;
 - (ii) terminate Services or Electrical Services as necessary;
 - (iii) shut off water or electricity to a Customer;
 - (iv) repair and maintain the electrical distribution system; and
 - (v) conduct regular maintenance and inspections of any Improvements on the Lands as may be necessary for the provision of Services and Electrical Services, in the same manner and frequency as conducted by the City generally within the City of Penticton;
- (b) reasonably consider any request by the City to allow other users to connect to the Land Infrastructure and Electrical Infrastructure for the purpose of accessing the City's infrastructure;
- (c) contemporaneously with the transfer of the Electrical Infrastructure to the City under paragraph 4.18 of this Agreement, facilitate such legal access, easement or registered utility right of way agreements in favour of the City, as recommended by the City or the City's legal counsel, at no cost to the City, for the electrical distribution system components of the Electrical Infrastructure. The terms of the legal access, easement or registered utility right of way agreements shall be for the same Term as this Agreement, with the ability to extend such term and make amendments; and
- (d) generally recompense the City from all taxation or any fees for the use of land under the Band's bylaws in respect of the City's use or occupation of any easements, rights of way or other access permits required for the purpose of providing the Services under this Agreement, if the Band does not grant the City an exemption therefrom.

9.5 Dispute Resolution

Except to the extent other remedies are available to the parties as provided herein, and subject to paragraphs 2.4 (Discontinuance of Service), 8.2 (Termination for Defaults) and 8.3 (Termination for Nonpayment), if the parties to this Agreement are unable to agree on the interpretation or application of any provision herein, or are unable to resolve any other issue in dispute pertaining to this Agreement, on notice by either party to the other, the parties agree:

- (a) first, to promptly, diligently and in good faith take all reasonable measures to negotiate an acceptable resolution to the disagreement in dispute;
- (b) second, if the parties are unable to negotiate a resolution pursuant to subparagraph (a) above, within sixty (60) days of the notice of dispute or disagreement, to request the assistance of a skilled commercial mediator, such mediator to be mutually agreed upon by the parties within 30 days of a receipt by a party of written notice requiring the mediation, failing which the mediator will be appointed by the British Columbia International Commercial Arbitration Centre (BCICAC). Any mediator selected must be qualified and experienced in the subject matter of the Agreement. Such mediation will be conducted under the Commercial Mediation Rules of this BCICAC to resolve a dispute unless otherwise agreed by the parties. If a mediator is appointed under this subparagraph (b), the mediated negotiations will be terminated sixty (60) days after the appointment, unless the parties agree otherwise; and
- (c) third, if the negotiations in (b) are terminated without resolution, to request the assistance of a single arbitrator by consent or, if the parties cannot agree on the selection of an arbitrator within thirty (30) days, the arbitrator will be appointed pursuant to the *Commercial Arbitration Act* of British Columbia, and the decision of the arbitrator, including any decision as to costs, will be binding on both parties and final.

9.6 Costs of Dispute Resolution

The parties agree that each party will bear its own costs and expenses incurred in respect of the dispute resolution processes in paragraph 9.5 above, and neither party will seek recovery against the other party for any of those costs and expenses.

9.7 Insurance

The Developer will, at its own cost:

- (a) obtain and maintain throughout the Term of this Agreement, and any renewal thereof, commercial general liability insurance against claims for personal injury, death or property damage occurring upon or in and about the Lands in the amount of \$5,000,000 per occurrence to an annual aggregate amount of \$10,000,000;
- (b) cause its insurance policies to contain a waiver of the insurer's rights of subrogation against the City, its employees, agents, contractors and subcontractors and the Developer hereby waives its rights of subrogation against the City;
- (c) cause its insurance policies to name the City as an additional insured; and
- (d) forthwith on demand from the City, furnish to the City insurance certificates with respect to such policies.

If the Developer fails to purchase or to keep in force such insurance, then the City may effect such insurance, at the Developer's cost.

9.8 Reciprocal Indemnities

The parties covenant and agree with each other as follows:

- (a) the Developer will, subject to paragraph 9.3 above, indemnify and save harmless the City (and any related officer, official, employee, volunteer or agent thereof) from and against any and all losses, damages, costs, liabilities, suits, claims or expenses arising out of any breach by the Developer of any of its obligations under this Agreement. This covenant of indemnity will survive the expiration or termination of this Agreement; and
- (b) the City will, subject to paragraph 9.3 above, indemnify and save harmless the Developer (and any related officer, official, employee, volunteer or agent thereof) from and against any and all losses, damages, costs, liabilities, suits, claims or expenses arising out of any breach by the City of any of its obligations under this Agreement. This covenant of indemnity will survive the expiration or termination of this Agreement.

9.9 Communication and Contact Protocol

All the parties to this Agreement will appoint one or more representatives, with notice to the other parties of such appointments, as the principal contacts for official communications about this Agreement, and as the principal contacts for operational matters pursuant to this Agreement. The parties further agree to establish a communications protocol to manage issues arising under this Agreement.

9.10 Notice

Any notice or other communication to be given under the provisions of this Agreement by any party will be deemed sufficiently given if signed by or on behalf of the party giving such notice and delivered or mailed by prepaid registered post (except during mail disruption in which case notice will not be deemed to be received until actually received), or telefaxed, as addressed as follows:

- (a) To the City at:
171 Main Street
Penticton, British Columbia
V2A 5A9
Attention: Corporate Officer
Fax No: (250) 490-2402
- (b) To the Developer at:
101-1531 Fairview Road
Penticton, British Columbia
V2A 6P6
Att: Doug Kenyon

Any such notice mailed shall be deemed to have been received on the fifth (5th) business day following the date of mailing. Any such notice telefaxed shall be deemed to have been received on the first (1st) business day following the date of transmission. Each of the parties may by notice in writing to the other from time to time designate any other address to which the notices may be sent. For the purposes of this paragraph 9.10 the term "business day" shall mean Monday to Friday inclusive of each week, excluding days which are statutory holidays in the Province of British Columbia.

9.11 Execution in Counterparts

This Agreement may be executed in counterpart and copies of the execution pages delivered by each party to the other by facsimile or any other reasonable method, and such copies together will be deemed as effective as if a single Agreement had been executed by each party.

9.12 Provision of Information

The Developer will provide the City with the following information on an annual basis:

- (a) a list and map showing all Residential and Multi-Family Residential buildings where construction commenced in the preceding year; and
- (b) a list and building permit plans for all Commercial and Industrial buildings where construction commenced in the preceding year.

9.13 Compliance with City Bylaws

The Developer agrees to comply with all applicable City of Pentleton Bylaws as noted in Schedule E, or such Band Bylaws that mirror the requirements of the City's Bylaws, provided that such compliance will be limited to compliance as required by this Agreement.

9.14 Joint and Several

All the obligations, covenants and agreements of one or more of the Developer and any of its permitted assignees, are deemed to be joint and several.

9.15 Annual Meeting

The parties agree to meet and share information regarding matters of mutual interest at least once each year, on a date or dates to be mutually agreed, in the interest of fostering a cooperative and mutually beneficial relationship between all the parties.

9.16 Assignment and New Parties

This Agreement and the rights and duties hereunder may be assigned by the Developer, and a new party or parties may be added to or substituted in for any one of the parties, provided that the prior written consent of the City, which consent will not be unreasonably withheld, has been obtained. The City agrees that this Agreement and the rights and duties hereunder may be assigned to a strata corporation at the Developer's discretion but upon written approval by the City. The City and Developer contemplate and agree that the City and strata corporation referred to in this section 9.16 shall enter into an assumption agreement at the time of assignment. Any attempt to assign or add or substitute a party without such consent will be of no force and effect. This Agreement shall be binding upon the Developer, its successors and assigns.

9.17 Timing of execution

The parties agree that this Agreement will only be executed after the City receives written acknowledgment of the consent of the CP Holder and the Band for the Developer to enter into this Agreement as contemplated in paragraph 9.1.

9.18 Prior Agreement

This Agreement supersedes and replaces any and all previous agreements between the parties.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

THE CORPORATE SEAL OF THE CITY OF PENTICTON was hereunto affixed in the presence of:

Mayor, Andrew Jakubiet

Corporate Office, Dana Schmidt

WARREN AVENUE DEVELOPMENT CORP.
by its authorized signatories



President, Douglas Allan Kenyon

SCHEDULE A
WARREN AVENUE OXBOW LANDS



OK

SCHEDULE B

PROPOSED DEVELOPMENT PLAN FOR WARREN AVENUE OXBOW LANDS



SCHEDULE C
FEES AND CHARGES

MONTHLY OR PERIOD CHARGES

Water as per Appendix 29 of Fees and Charges Bylaw 2014-07 or as amended or superseded.

Electrical as per Appendix 7 of Fees and Charges Bylaw 2014-07 or as amended or superseded.

Sanitary Sewer as per Appendix 25 of Fees and Charges Bylaw 2014-07 or as amended or superseded.

Storm Sewer as per the rate structure developed by the City.

OTHER CHARGES

Administration Rates as per Appendix 1 of Fees and Charges Bylaw 2014-07 or as amended or superseded.

Equipment Rates as per Appendix 8 of Fees and Charges Bylaw 2014-07 or as amended or superseded.

Service Connection Fees as per Appendix 7, 25 and 29 Fees and Charges Bylaw 2014-07 or as amended or superseded.



SCHEDULE D

CITY BYLAWS

The following bylaws, as amended, superseded or replaced from time to time, are the City Bylaws for the purposes of this Agreement:

- Bylaw 1277 Electrical Bylaw
- 97-24 Municipal Ticketing Information Bylaw
- 2014-07 Fees and Charges Bylaw
- 2000-36 Electrical Regulation Bylaw
- 2004-57 Fire and Life Safety Bylaw
- 2004-71 Controlled Substance Bylaw
- 2004-81 Subdivision and Development Bylaw
- 2005-02 Irrigation, Sewer and Water Bylaw



SCHEDULE E
OFFSITE INFRASTRUCTURE FEE

Item	Residential Bare Land Strata Lot or Residential Dwelling Unit	Commercial	Industrial
	per lot or per unit	per ft 2	per ft 2
Water Filtration	\$ 64.00	\$ 0.13	\$ 0.13
Parks	\$ 1,054.00	\$ -	\$ -
Roads	\$ -	\$ -	\$ -
Water	\$ 304.00	\$ 0.61	\$ 0.60
Sanitary	\$ 2,913.00	\$ 2.81	\$ 0.85
Storm ¹	\$ 470.00	\$ 0.56	\$ 0.64

Note 1 - Applies only if storm sewer Land Infrastructure connects to City storm sewer infrastructure.

Council Report

penticton.ca

Date: May 23, 2017 **File No:** RMS
To: Peter Weeber, Chief Administrative Officer
From: Michael Hodges, Development Engineer
Subject: **Development Cost Charges Amendment Bylaw No. 2016-72**

Staff Recommendation

THAT Council rescind third reading of "Development Cost Charges Amendment Bylaw No. 2016-72", a bylaw to amend "Development Cost Charges Bylaw No. 2007-79",

AND THAT Council give third reading as amended to "Development Cost Charges Amendment Bylaw No. 2016-72", amending Section 8 as recommended by the Inspector of Municipalities;

AND THAT in accordance with Section 560 of the *Local Government Act*, the bylaw be forwarded to the Inspector of Municipalities for approval.

Strategic Priority Objectives

Development Cost Charges are a way to ensure that new development does not create a capital cost burden on the existing city taxpayers. An efficient and fair DCC program can promote development and lead to a more fiscally secure asset management program.

Background

Council provided third reading to the "Development Cost Charges Amendment Bylaw 2016-72" and this was forwarded to the Inspector of Municipalities for approval. A minor change was requested to ensure the proposed changes confirmed with the overarching legislation.

This amendment to Bylaw 2016-72 changes a single section: Section 8. The intent of Section 8 is to close the loophole allowing duplex's to be constructed on Multi Family Zoned parcels without being subject to DCC's. This amendment to "Development Cost Charges Amendment Bylaw 2016-72" clarifies this intent and specifically references the Section with the Local Government Act that is being affected. It was the opinion of the Inspector of Municipalities that the specific reference to the Local Government Act would be required.

Proposal

Staff are proposing that Council Amend bylaw 2016-72 to ensure it is compliant with the intention of the original Staff recommendation and the comments made by the Inspector of Municipalities.

In Bylaw 2016-72 Staff proposed the following change to section 8.

Amend Section 8

Delete existing

Development cost charges will be imposed at the time of building permit issuance on the number of residential dwelling units over two units in any building and/or mobile home.

Replace with

Development cost charges will be imposed at the time of building permit issuance on the number of residential dwelling units in any building and/or mobile home, on a parcel that are not Single Family Zoned or Duplex Zoned.

Section 561 of the Local Government Act details an exemption that Development Cost Charges are not payable if the building permit is for less than 4 dwelling units.

Currently any developer that constructs a duplex on a multi-family zoned lot does not pay Development Cost Charges if they submit the building permits for each duplex separately. So if a Developer were to build a fourplex a DCC would apply, but if one were to build two duplexes, DCCs would not apply. This was not the intent of the DCC Bylaw.

It was Staff's intention was to close this loophole as it was being exploited to avoid DCC's. The Inspector of Municipalities saw no concerns with closing this exemption, but felt it was important to specifically reference this exemption and that it will no longer apply.

The amended Section 8 is as follows.

Amend Section 8

Delete existing

Development cost charges will be imposed at the time of building permit issuance on the number of residential dwelling units over two units in any building and/or mobile home.

Replace with

Development cost charges will be imposed at the time of building permit issuance on the number of residential dwelling units in any building and/or mobile home, on a parcel that is not Single Family Zoned or Duplex Zoned. The exemption under 561 (5) of the *Local Government Act* does not apply, and Development Cost Charges are payable on all dwelling units, including if the building permit is for less than 4 dwelling units.

Financial Implications

None

Analysis

Support

These minor amendments to the DCC bylaw are intended to make the bylaw easier to use and to apply DCC's in a fair and transparent way.

Deny / refer

Council may feel that some or all of the proposed amendments are not in the public interest. If that is the case, Council may amend the bylaw prior to giving first reading or refer the bylaw back to staff for further research as directed by Council.

Alternate Recommendations

1. THAT Council deny third reading of "Development Cost Charges Amendment Bylaw 2016-72" as amended.
2. THAT Council support "Development Cost Charges Amendment Bylaw 2016-72" as amended with conditions that Council feels are appropriate.

Attachments

Attachment A: Development Cost Charges Amendment Bylaw No. 2016-72

Respectfully submitted,

Michael Hodges
Development Engineer

Approvals

Director <i>AH</i>	Chief Administrative Officer PW
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Bylaw No. 2016-72

A Bylaw to Amend Development Cost Charges Bylaw 2007-79

WHEREAS the Council of the City of Penticton has adopted a Development Cost Charges Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Development Cost Charges Bylaw 2007-79;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Development Cost Charges Amendment Bylaw No. 2016-72".

2. **Amendments:**

Development Cost Charges Bylaw 2007-79 is hereby amended as follows:

2.1 Delete and replace section 2 with the following:

ADMINISTRATION

2. The Director of Development Services is hereby appointed to administer this bylaw.

2.2 Delete and replace the following existing definitions from section 3:

DEFINITIONS

"boarding home" is defined as a building in which the owner or manager supplies accommodation and/or sleeping unit accommodation for remuneration. It may or may not include meal service. It includes lodges for senior citizens but does not include hotels, motels, temporary shelter services, congregate housing, or bed and breakfast homes.

"development" means the increase in commercial, industrial or institutional floor area; or the construction of dwellings.

"Director of Development Services" means the Director of Development Services of the City or an authorized representative.

"institutional" means development in the Public Assembly land use zones as designated in the Zoning Bylaw and boarding homes that provide sleeping units only, not dwelling units.

"parcel" refer to "lot" definition.

"Zoning Bylaw" means the City Zoning Bylaw No. 2011-23 as amended from time to time.

- 2.3 Delete the definition for “gross floor area” and replace with the following definition:
“floor area” means the total floor area of all storeys of all buildings or structures with a clear ceiling height of 1.8 meters or more, measured from the outside face of the exterior walls. This does not include the following sub-areas:
- Garages, other enclosed or open parking areas
 - balconies, decks and patios.
- 2.4 Add the following new definitions:
“duplex zoned lot” is a lot that is currently zoned RD1 or RD2 in accordance with the Zoning Bylaw.
“single family zoned lot” is a lot that is currently zoned R1, R2 or R3 in accordance with the Zoning Bylaw.
“lot” means a parcel of land, including Crown Land, which is legally defined either by registered plan or legal description.
- 2.5 Delete the definition for “net increase in floor area” and replace with the following definition:
“increase in floor area” means the difference between the floor area that exists on the development lands at the time a building permit is issued and the amount that will exist when the construction authorized by the building permit has been completed, and in the case of development lands in respect of which a demolition permit has been issued within a 24 month period immediately preceding the issuance of the building permit, or the difference between the greatest gross floor area that existed on the development lands within that 24 month period and the gross floor area that will exist on the development lands when the construction authorized by the building permit has been completed.
- 2.6 Delete the definition “senior citizens boarding home”.
- 2.7 Delete and replace with the following:

SUBSTANTIVE PROVISIONS

4. Every person who obtains approval of a subdivision of a parcel of land under the *Land Title Act* or the creation of a bare land strata under the *Strata Property Act* shall pay to the City at the time of approval of the subdivision the applicable development cost charges as set out in Schedule “A1”, Schedule “A2” and Schedule “B” and in accordance with Sector Map “A”, Sector Map “B1” and Sector Map “B2”.

5. Except as provided in the *Local Government Act*, every person who obtains a building permit shall pay to the City at the time of issuance of the building permit the applicable development cost charges as set out in Schedule “A1”, Schedule “A2” and Schedule “B” and in accordance with Sector Map “A”, Sector Map “B1” and Sector Map “B2”.

7. Development cost charges will be imposed at the time of building permit issuance on the basis of the increase in floor area of commercial, industrial and institutional development, as the case may be.

8. Development cost charges will be imposed at the time of building permit issuance on the number of residential dwelling units in any building and/or mobile home, on a parcel that is not Single Family Zoned or Duplex Zoned. The exemption under 561 (5) of the *Local Government Act* does not apply, and Development Cost Charges are payable on all dwelling units, including if the building permit is for less than 4 dwelling units.

2.8 Amend Schedule A1 and A2 Classification from "Single Family Residential per lot" to read "Single Family Zoned and Duplex zoned per lot" and "Multi Family Residential in the C3 Zone per unit" to read "Multi Family Residential in the C5 Zone per unit".

2.9 Amend Schedule B Classification from "Single Family Residential per lot" to read "Single Family Zoned and Duplex zoned per lot".

READ A FIRST time this	20	day of	December, 2016
READ A SECOND time this	20	day of	December, 2016
READ A THIRD time this	20	day of	December, 2016
RESCIND THIRD and READ THIRD as AMENDED		day of	, 2017
RECEIVED the approval of the Inspector of Municipalities on the ADOPTED this		day of	, 2017

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

Council Report

penticton.ca

Date: May 23, 2017 File No: 5605.20
To: Peter Weeber, Chief Administrative Officer
From: Len Robson, Public Works Manager
Subject: **Provincial License of Occupation**
Re: Howard Lake Dam Access

Staff Recommendation

THAT Council authorize the Mayor and the Corporate Officer to enter into a License of Occupation, Attachment "A" with the Province of British Columbia for the purposes of constructing an access road to Howard Lake Dam.

Strategic priority objective

N/A

Background

The Howard Lake Reservoir, shown on the Attachment "B" – Location Map, is located on a tributary of Wilkinson Creek, which flows east into the West Kettle River near Carmi. The dam enables water storage and diversion of the entire runoff into Penticton Creek, a tributary of Okanagan Lake. The elevation of the reservoir is 1910 meters and only accessible by helicopter, ATV in summer, or snowmobile in winter.

The available history of the dam and reservoir is limited, but it appears from the water licenses, that the control dam and spillway, ditch, and a low cutoff dam were constructed in 1933. The dams and ditch divert water from the Howard Lake watershed into Penticton Creek. The City abandoned the water licenses in 1997, but the dams were not decommissioned and the reservoir and diversion ditch remained. City crews cleared the brush and large debris from the dams in 2012, removed the gate from the control dam and constructed a log boom across the entrance to the control dam. This reduced the live storage but runoff from the watershed continues to go to Penticton Creek although the City no longer held a water license authorizing the diversion.

On August 21, 2012, the Assistant Regional Manager of the Water Stewardship Division considered the reservoir to be a potential threat to downstream landowners and the environment, and ordered the City to remove the dam and decommission the reservoir.

Since 2012 the City has applied, and was successful in securing the water licenses for storage and diversion of water into the Penticton Creek water shed and is in process of decommissioning the dam to lower the consequence rating and the corresponding level of maintenance.

The City is required to secure a "Licence of Occupation" on Crown Land for the purposes of constructing approximately 800 meters of road to access the dam for decommissioning and required inspections.

Financial implication

There are no fees applied to the Licence of Occupation however, from time to time there may be a requirement for the City to provide maintenance to the section of road. The maintenance is expected to be minimal and can be addressed through the annual operating budget.

The dam decommissioning and all related work is financed through the existing carry forward capital budget.

Analysis

In order to perform the maintenance and inspections required on Howard Lake Dam, an 800 meter access road must be developed. This access road will enable equipment to be brought to the site to complete the lowering and decommissioning of the structure as well as providing safe vehicle access for the purposes of conducting the required monthly inspections.

Failure to secure the Licence of Occupation will result in extra-ordinary costs to get equipment to the site for the decommissioning and ongoing increased costs and risks for employees accessing the structure to complete inspections.

Alternate recommendations

N/A

Attachments

Attachment "A" – License of Occupation

Attachment "B" – Location Map

Respectfully submitted,



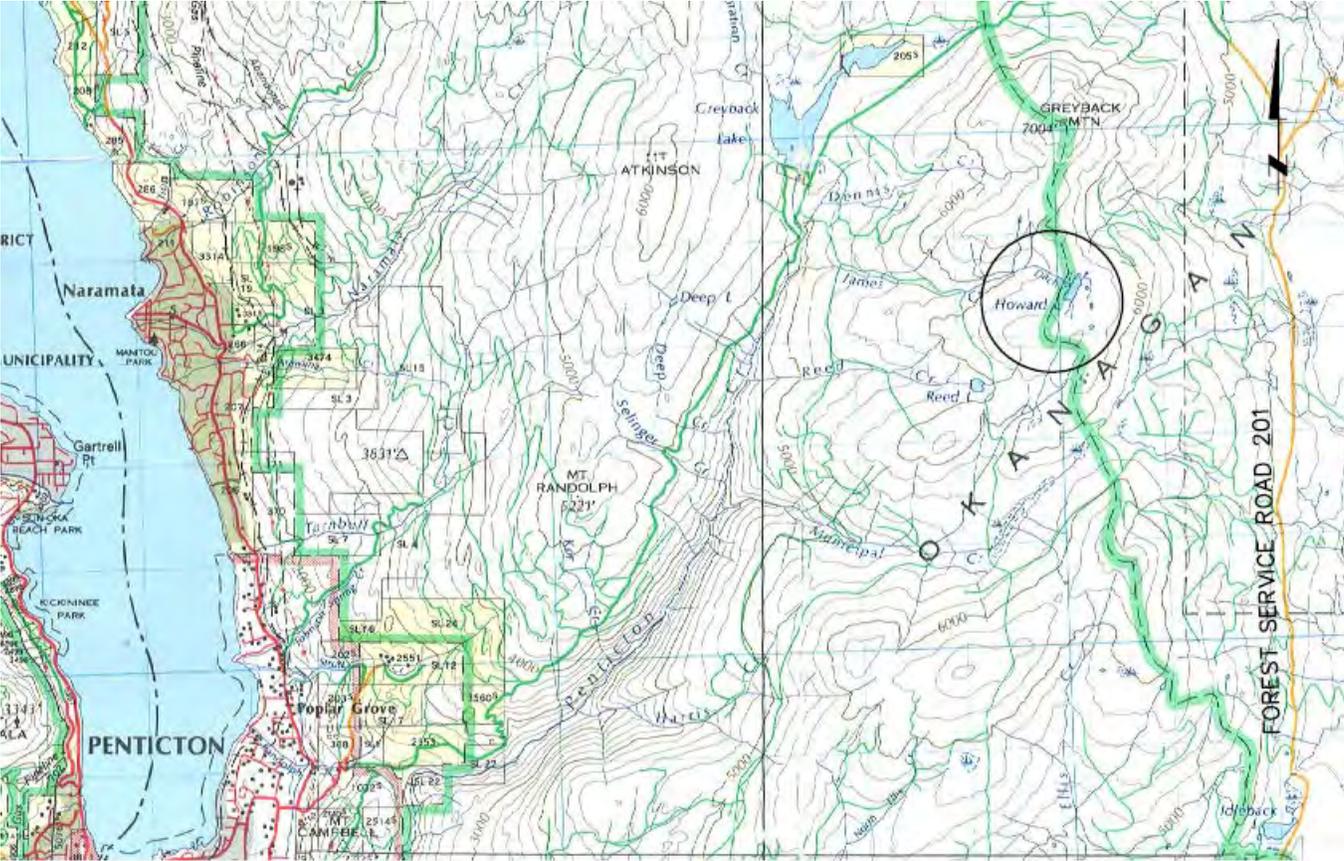
Approvals

General Manager of Infrastructure	CAO
	PW

Attachment "A" – License of Occupation

[License of Occupation for Road to Howard Lake Dam.pdf](#)

Attachment "B" - Location Map





LICENCE OF OCCUPATION

Licence No.:

File No.: 3413123

Disposition No.: 926767

THIS AGREEMENT is dated for reference May 1, 2017 and is made under the *Land Act*.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA, represented by the minister responsible for the *Land Act*, Parliament Buildings, Victoria, British Columbia

(the "Province")

AND:

CORPORATION OF THE CITY OF PENTICTON
171 Main St
Penticton, BC V2A 5A9

(the "Licensee")

The parties agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 In this Agreement,

"**Agreement**" means this licence of occupation;

"**Commencement Date**" means May 1, 2017;

"**disposition**" has the meaning given to it in the *Land Act* and includes a licence of occupation;

"**Fees**" means the fees set out in Article 3;

"**Hazardous Substances**" means any substance which is hazardous to persons, property or the environment, including without limitation

(a) waste, as that term is defined in the *Environmental Management Act*; and

- (b) any other hazardous, toxic or other dangerous substance, the use, transportation or release into the environment of which, is now or from time to time prohibited, controlled or regulated under any laws or by any governmental authority, applicable to, or having jurisdiction in relation to, the Land;

"Improvements" includes anything made, constructed, erected, built, altered, repaired or added to, in, on or under the Land, and attached to it or intended to become a part of it, and also includes any clearing, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under the Land;

"Land" means that part or those parts of the Crown land either described in, or shown outlined by bold line on, the schedule attached to this Agreement entitled "Legal Description Schedule" except for those parts of the land that, on the Commencement Date, consist of highways (as defined in the *Transportation Act*) and land covered by water;

"Management Plan" means the most recent management plan prepared by you in a form approved by us, signed and dated by the parties, and held on file by us;

"Realty Taxes" means all taxes, rates, levies, duties, charges and assessments levied or charged, at any time, by any government authority having jurisdiction which relate to the Land, the Improvements or both of them and which you are liable to pay under applicable laws;

"Security" means the security referred to in section 6.1 or 6.2, as replaced or supplemented in accordance with section 6.5;

"Term" means the period of time set out in section 2.2;

"we", "us" or "our" refers to the Province alone and never refers to the combination of the Province and the Licensee: that combination is referred to as **"the parties"**; and

"Works" means the works set out in the Management Plan;

"you" or "your" refers to the Licensee.

- 1.2 In this Agreement, "person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law and wherever the singular or masculine form is used in this Agreement it will be construed as the plural or feminine or neuter form, as the case may be, and vice versa where the context or parties require.
- 1.3 The captions and headings contained in this Agreement are for convenience only and do not define or in any way limit the scope or intent of this Agreement.

- 1.4 This Agreement will be interpreted according to the laws of the Province of British Columbia.
- 1.5 Where there is a reference to an enactment of the Province of British Columbia or of Canada in this Agreement, that reference will include a reference to every amendment to it, every regulation made under it and any subsequent enactment of like effect and, unless otherwise indicated, all enactments referred to in this Agreement are enactments of the Province of British Columbia.
- 1.6 If any section of this Agreement, or any part of a section, is found to be illegal or unenforceable, that section or part of a section, as the case may be, will be considered separate and severable and the remainder of this Agreement will not be affected and this Agreement will be enforceable to the fullest extent permitted by law.
- 1.7 Each schedule to this Agreement is an integral part of this Agreement as if set out at length in the body of this Agreement.
- 1.8 This Agreement constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Agreement except as expressly set out in this Agreement and this Agreement may not be modified except by subsequent agreement in writing between the parties.
- 1.9 Each party will, upon the request of the other, do or cause to be done all lawful acts necessary for the performance of the provisions of this Agreement.
- 1.10 Any liabilities or obligations of either party arising, or to be performed, before or as a result of the termination of this Agreement, and which have not been satisfied or remain unperformed at the termination of this Agreement, any indemnity and any release in our favour and any other provision which specifically states that it will survive the termination of this Agreement, shall survive and not be affected by the expiration of the Term or the termination of this Agreement.
- 1.11 Time is of the essence of this Agreement.
- 1.12 Wherever this Agreement provides that an action may be taken, a consent or approval must be obtained or a determination must be made, then you or we, as the case may be, will act reasonably in taking such action, deciding whether to provide such consent or approval or making such determination; but where this Agreement states that you or we have sole discretion to take an action, provide a consent or approval or make a determination, there will be no requirement to show reasonableness or to act reasonably in taking that action, providing that consent or approval or making that determination.
- 1.13 Any requirement under this Agreement for us to act reasonably shall not require us to act in a manner that is contrary to or inconsistent with any legislation, regulations, Treasury Board directives or other enactments or any policy, directive, executive direction or other such

guideline of general application.

- 1.14 Wherever this Agreement provides that you may not undertake some activity or do something without our prior written approval or consent, our prior approval of the Management Plan will constitute our approval of, or consent to, the activity or thing to the extent the same is specifically and expressly described in the Management Plan and subject always to any conditions or qualifications that may be set in the Management Plan.

ARTICLE 2 - GRANT AND TERM

- 2.1 On the terms and conditions set out in this Agreement, we grant you a licence of occupation of the Land for the purpose of construction and maintenance of works for access road as set out in the Management Plan. You acknowledge this licence of occupation does not grant you exclusive use and occupancy of the Land.
- 2.2 The term of this Agreement commences on the Commencement Date and terminates on the 10th anniversary of that date, or such earlier date provided for in this Agreement. We reserve the right to terminate this Agreement in certain circumstances as expressly provided in this Agreement.
- 2.3 In using the Land as permitted by this Agreement, you will not restrict, or permit the restriction of, the use of any service or facility (set out in section 2.1) to a defined or limited group of persons, it being the intention of the parties that such services and facilities will be available for use by all members of the public.

ARTICLE 3 - FEES

- 3.1 The Fee for the Term is \$1.00, the receipt of which we acknowledge.

ARTICLE 4 - COVENANTS

- 4.1 You must
- (a) pay, when due,
 - (i) the Fees to us at the address set out in Article 10,
 - (ii) the Realty Taxes, and
 - (iii) all charges for electricity, gas, water and other utilities supplied to the Land for

- use by you or on your behalf or with your permission;
- (b) deliver to us, immediately upon demand, receipts or other evidence of the payment of Realty Taxes and all other money required to be paid by you under this Agreement;
 - (c) observe, abide by and comply with
 - (i) all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements including without limitation all laws, bylaws, orders, directions, ordinances and regulations relating in any way to Hazardous Substances, the environment and human health and safety, and
 - (ii) the provisions of this Agreement;
 - (d) in respect of the use of the Land by you or by any person who enters upon or uses the Land as a result of your use of the Land under this Agreement, keep the Land and the Improvements in a safe, clean and sanitary condition satisfactory to us, and at our written request, rectify any failure to comply with such a covenant by making the Land and the Improvements safe, clean and sanitary;
 - (e) not commit any wilful or voluntary waste, spoil or destruction on the Land or do anything on the Land that may be or become a nuisance to an owner or occupier of land in the vicinity of the Land;
 - (f) use and occupy the Land only in accordance with and for the purposes set out in the Management Plan;
 - (g) not construct, place or affix any Improvement on or to the Land except as permitted in the Management Plan;
 - (h) pay all accounts and expenses as they become due for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, except for money that you are required to hold back under the *Builders Lien Act*;
 - (i) if any claim of lien over the Land is made under the *Builders Lien Act* for work performed on or materials supplied to the Land at your request, on your behalf or with your permission, immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by you and you have taken the steps necessary to ensure that the claim of lien will not subject the Land or any interest of yours under this Agreement to sale or forfeiture;
 - (j) not cut or remove timber on or from the Land without being granted the right under the *Forest Act* to harvest Crown timber on the Land;

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- (k) prior to beginning construction leading onto any public highway, obtain an access permit from the District Engineer, Ministry of Transportation and Infrastructure for the Highways District in which the Land is situated;
- (l) prior to the construction of any Works or changes in and about a stream:
- (i) obtain prior written approval from the Water Manager, as required under the *Water Sustainability Act*, or
 - (ii) comply with section 11 Regulations under the *Water Sustainability Act* for the construction of works or changes in and about a stream;
- (m) not construct the Works to a width exceeding 5 meters without our prior written consent;
- (n) notify us in writing of the completion of the construction of the Works within 30 days of the date of completion;
- (o) construct suitable cattleguards at all points where the Works you construct cross any fence lines or natural boundaries, to our satisfaction;
- (p) obtain our consent in writing prior to constructing any Works which may obstruct or limit access to or passage along existing roads or trails;
- (q) construct the Works wholly within the area outlined in red on the Legal Description Schedule attached to this Agreement;
- (r) stump all cleared areas and dispose of all slash on the Land in accordance with Ministry of Forests, Lands and Natural Resource Operations regulations and level all dirt piles, not allowing sidecasting of earth or debris onto adjacent lands;
- (s) sow all disturbed surfaces with a rhizomatous species of grass seed;
- (t) contract a Qualified Professional to construct the road;
- (u) adhere to the Road Specifications in the Crown Land Use Operational Policy;
- (v) maintain public access at all times, without restriction;
- (w) remove any and all structures that impede public access on Crown Land;
- (x) not alter or add to any Improvement without our prior written consent;

- (y) seed road right of way with a seed mixture appropriate for both site and elevation to restore all disturbed surfaces of the Land in a manner that will effectively control erosion and prevent the spread of noxious weeds;
- (z) take all reasonable precautions to avoid disturbing or damaging any archaeological material found on or under the Land and, upon discovering any archaeological material on or under the Land, you must immediately notify the ministry responsible for administering the *Heritage Conservation Act*;
- (aa) permit us, or our authorized representatives, to enter on the Land at any time to inspect the Land and the Improvements, including without limitation to test and remove soil, groundwater and other materials and substances, where the inspection may be necessary or advisable for us to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances, provided that we take reasonable steps to minimize any disruption of your operations;
- (bb) indemnify and save us and our servants, employees and agents harmless against all claims, actions, causes of action, losses, damages, costs and liabilities, including fees of solicitors and other professional advisors, arising out of one or more of the following:
- (i) any breach, violation or non-performance of a provision of this Agreement,
 - (ii) any conflict between your use of the Land under this Agreement and the lawful use of the Land by any other person, and
 - (iii) any personal injury, bodily injury (including death) or property damage occurring or happening on or off the Land by virtue of your entry upon, use or occupation of the Land,
- and the amount of all such losses, damages, costs and liabilities will be payable to us immediately upon demand; and

- (cc) on the termination of this Agreement,
- (i) peaceably quit and deliver to us possession of the Land and, subject to paragraphs (ii), (iii) and (iv), the Improvements in a safe, clean and sanitary condition,
 - (ii) within 90 days, remove from the Land any Improvement you want to remove, if the Improvement was placed on or made to the Land by you, is in the nature of a tenant's fixture normally removable by tenants and is not part of a building (other than as a tenant's fixture) or part of the Land and you are not in default of this Agreement,

- (iii) not remove any Improvement from the Land if you are in default of this Agreement, unless we direct or permit you to do so under paragraph (iv),
- (iv) remove from the Land any Improvement that we, in writing, direct or permit you to remove, other than any Improvement permitted to be placed on or made to the Land under another disposition, and
- (v) restore the surface of the Land as nearly as may reasonably be possible, to the condition that the Land was in at the time it originally began to be used for the purposes described in this Agreement, but if you are not directed or permitted to remove an Improvement under paragraph (iii), this paragraph will not apply to that part of the surface of the Land on which that Improvement is located,

and all of your right, interest and estate in the Land will be absolutely forfeited to us, and to the extent necessary, this covenant will survive the termination of this Agreement.

4.2 You will not permit any person who enters upon or uses the Land as a result of your use of the Land under this Agreement to do anything you are restricted from doing under this Article.

4.3 You must not use all or any part of the Land

- (a) for the storage or disposal of any Hazardous Substances; or
- (b) in any other manner whatsoever which causes or contributes to any Hazardous Substances being added or released on, to or under the Land or into the environment from the Land;

unless

- (c) such storage, disposal, release or other use does not result in your breach of any other provision of this Agreement, including without limitation, your obligation to comply with all laws relating in any way to Hazardous Substances, the environment and human health and safety; and
- (d) we have given our prior written approval to such storage, disposal, release or other use and for certainty any such consent operates only as a consent for the purposes of this section and does not bind, limit, or otherwise affect any other governmental authority from whom any consent, permit or approval may be required.

4.4 Despite any other provision of this Agreement you must:

- (a) on the expiry or earlier termination of this Agreement: and

- (b) at any time if we request and if you are in breach of your obligations under this Agreement relating to Hazardous Substances;

promptly remove from the Land all Hazardous Substances stored, or disposed of, on the Land, or which have otherwise been added or released on, to or under the Land;

- (c) by you; or

- (d) as a result of the use of the Land under this Agreement;

save and except only to the extent that we have given a prior written approval expressly allowing specified Hazardous Substances to remain on the Land following the expiry of the Term.

4.5 We may from time to time

- (a) in the event of the expiry or earlier termination of this Agreement;
- (b) as a condition of our consideration of any request for consent to an assignment of this Agreement; or
- (c) if we have a reasonable basis for believing that you are in breach of your obligations under this Agreement relating to Hazardous Substances;

provide you with a written request to investigate the environmental condition of the Land and upon any such request you must promptly obtain, at your cost, and provide us with, a report from a qualified and independent professional who has been approved by us, as to the environmental condition of the Land, the scope of which must be satisfactory to us and which may include all such tests and investigations that such professional may consider to be necessary or advisable to determine whether or not you have complied with your obligations under this Agreement with respect to Hazardous Substances.

- 4.6 You must at our request from time to time, but not more frequently than annually, provide us with your certificate (and if you are a corporation such certificate must be given by a senior officer) certifying that you are in compliance with all of your obligations under this Agreement pertaining to Hazardous Substances, and that no adverse environmental occurrences have taken place on the Land, other than as disclosed in writing to us.

ARTICLE 5 - LIMITATIONS

5.1 You agree with us that

- (a) in addition to the other reservations and exceptions expressly provided in this

Agreement this Agreement is subject to the exceptions and reservations of interests, rights, privileges and titles referred to in section 50 of the *Land Act*;

- (b) other persons may hold or acquire rights to use the Land in accordance with enactments other than the *Land Act* or the *Ministry of Lands, Parks and Housing Act*, including rights held or acquired under the *Coal Act*, *Forest Act*, *Geothermal Resources Act*, *Mineral Tenure Act*, *Petroleum and Natural Gas Act*, *Range Act*, *Water Sustainability Act* or *Wildlife Act* (or any prior or subsequent enactment of the Province of British Columbia of like effect); such rights may exist as of the Commencement Date and may be granted or acquired subsequent to the Commencement Date and may affect your use of the Land;
- (c) other persons may hold or acquire interests in or over the Land granted under the *Land Act* or the *Ministry of Lands, Parks and Housing Act*; such interests may exist as of the Commencement Date; following the Commencement Date we may grant such interests (including fee simple interests, leases, statutory rights of way and licences); you acknowledge that your use of the Land may be affected by such interests and the area or boundaries of the Land may change as a result of the granting of such interests;
- (d) you have no right to compensation from us and you release us from all claims, actions, causes of action, suits, debts and demands that you now have or may at any time in the future have against us arising out of any conflict between your use of the Land under this Agreement and any use of, or impact on the Land arising from the exercise, or operation of the interests, rights, privileges and titles described in subsections (a), (b), and (c);
- (e) this Agreement does not limit any right to notice, compensation or any other benefit that you may be entitled to from time to time under the enactments described in subsection (b), or any other applicable enactment;
- (f) you will not commence or maintain proceedings under section 65 of the *Land Act* in respect of any interference with your use of the Land as permitted under this Agreement that arises as a result of the lawful exercise or operation of the interests, rights, privileges and titles described in subsections (a), (b) and (c);
- (g) you will not remove or permit the removal of any Improvement from the Land except as expressly permitted or required under this Agreement;
- (h) any interest you may have in the Improvements ceases to exist and becomes our property upon the termination of this Agreement, except where an Improvement may be removed under paragraph 4.1(cc)(ii), (iii) or (iv) in which case any interest you may have in that Improvement ceases to exist and becomes our property if the Improvement is not removed from the Land within the time period set out in paragraph 4.1(cc)(ii) or the time period provided for in the direction or permission given under paragraph

4.1(cc)(iii); and

- (i) if, after the termination of this Agreement, we permit you to remain in possession of the Land and we accept money from you in respect of such possession, a tenancy from year to year will not be created by implication of law and you will be deemed to be a monthly occupier only subject to all of the provisions of this Agreement, except as to duration, in the absence of a written agreement to the contrary.

ARTICLE 6 - SECURITY AND INSURANCE

- 6.1 On the Commencement Date, you will deliver to us Security in the amount of \$0.00 which will
- (a) guarantee the performance of your obligations under this Agreement;
 - (b) be in the form required by us; and
 - (c) remain in effect until we certify, in writing, that you have fully performed your obligations under this Agreement.
- 6.2 Despite section 6.1, your obligations under that section are suspended for so long as you maintain in good standing other security acceptable to us to guarantee the performance of your obligations under this Agreement and all other dispositions held by you.
- 6.3 We may use the Security for the payment of any costs and expenses associated with any of your obligations under this Agreement that are not performed by you or to pay any overdue Fees and, if such event occurs, you will, within 30 days of that event, deliver further Security to us in an amount equal to the amount drawn down by us.
- 6.4 After we certify, in writing, that you have fully performed your obligations under this Agreement, we will return to you the Security maintained under section 6.1, less all amounts drawn down by us under section 6.3.
- 6.5 You acknowledge that we may, from time to time, notify you to
- (a) change the form or amount of the Security; and
 - (b) provide and maintain another form of Security in replacement of or in addition to the Security posted by you under this Agreement;

and you will, within 60 days of receiving such notice, deliver to us written confirmation that the change has been made or the replacement or additional form of Security has been provided by you.

6.6 You must

- (a) without limiting your obligations or liabilities under this Agreement, at your expense, purchase and maintain during the Term the following insurance with insurers licensed to do business in Canada:
 - (i) Commercial General Liability insurance in an amount of not less than \$2,000,000.00 inclusive per occurrence insuring against liability for personal injury, bodily injury (including death) and property damage, including coverage for all accidents or occurrences on the Land or the Improvements. Such policy will include cross liability, liability assumed under contract, provision to provide 30 days advance notice to us of material change or cancellation, and include us as additional insured;
- (b) ensure that all insurance required to be maintained by you under this Agreement is primary and does not require the sharing of any loss by any of our insurers;
- (c) within 10 working days of Commencement Date of this Agreement, provide to us evidence of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (d) if the required insurance policy or policies expire or are cancelled before the end of the Term of this Agreement, provide within 10 working days of the cancellation or expiration, evidence of new or renewal policy or policies of all required insurance in the form of a completed "Province of British Columbia Certificate of Insurance";
- (e) notwithstanding subsection (c) or (d) above, if requested by us, provide to us certified copies of the required insurance policies.

6.7 We may, acting reasonably, from time to time, require you to

- (a) change the amount of insurance set out in subsection 6.6(a); and
- (b) provide and maintain another type or types of insurance in replacement of or in addition to the insurance previously required to be maintained by you under this Agreement;

and you will, within 60 days of receiving such notice, cause the amounts and types to be changed and deliver to us a completed "Province of British Columbia Certificate of Insurance" for all insurance then required to be maintained by you under this Agreement.

6.8 You shall provide, maintain, and pay for any additional insurance which you are required by law to carry, or which you consider necessary to insure risks not otherwise covered by the insurance specified in this Agreement in your sole discretion.

- 6.9 You waive all rights of recourse against us with regard to damage to your own property.
- 6.10 Despite sections 6.6 and 6.7, your obligations under those sections are suspended for so long as we in our sole discretion acknowledge our acceptance to you in writing your alternative risk financing program in respect of the matters covered by those sections.

If, in our sole discretion, your alternative risk financing program in respect of the matters covered by sections 6.6 and 6.7 is no longer acceptable to us, we will provide written notice to you and you must, within 60 days of such notice, obtain and provide to us evidence of compliance with section 6.6 of this Agreement.

ARTICLE 7 - ASSIGNMENT

- 7.1 You must not sublicense, assign, mortgage or transfer this Agreement, or permit any person to use or occupy the Land, without our prior written consent, which consent we may withhold.
- 7.2 Prior to considering a request for our consent under section 7.1, we may require you to meet certain conditions, including without limitation, that you provide us with a report as to the environmental condition of the Land as provided in section 4.5.

ARTICLE 8 - TERMINATION

- 8.1 You agree with us that
- (a) if you
 - (i) default in the payment of any money payable by you under this Agreement, or
 - (ii) fail to observe, abide by and comply with the provisions of this Agreement (other than the payment of any money payable by you under this Agreement),and your default or failure continues for 60 days after we give written notice of the default or failure to you,
 - (b) if, in our opinion, you fail to make diligent use of the Land for the purposes set out in this Agreement, and your failure continues for 60 days after we give written notice of the failure to you;
 - (c) if you
 - (i) become insolvent or make an assignment for the general benefit of your creditors,

- (ii) commit an act which entitles a person to take action under the *Bankruptcy and Insolvency Act* (Canada) or a bankruptcy petition is filed or presented against you or you consent to the filing of the petition or a decree is entered by a court of competent jurisdiction adjudging you bankrupt under any law relating to bankruptcy or insolvency, or
- (iii) voluntarily enter into an arrangement with your creditors;
- (d) if you are a corporation,
 - (i) a receiver or receiver-manager is appointed to administer or carry on your business, or
 - (ii) an order is made, a resolution passed or a petition filed for your liquidation or winding up;
- (e) if you are a society, you convert into a company in accordance with the *Society Act* without our prior written consent;
- (f) if this Agreement is taken in execution or attachment by any person; or
- (g) if we require the Land for our own use or, in our opinion, it is in the public interest to cancel this Agreement and we have given you 60 days' written notice of such requirement or opinion;

this Agreement will, at our option and with or without entry, terminate and your right to use and occupy the Land will cease.

8.2 If the condition complained of (other than the payment of any money payable by you under this Agreement) reasonably requires more time to cure than 60 days, you will be deemed to have complied with the remedying of it if you commence remedying or curing the condition within 60 days and diligently complete the same.

8.3 You agree with us that

- (a) you will make no claim against us for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 8.1; and
- (b) our remedies under this Article are in addition to those available to us under the *Land Act*.

ARTICLE 9 - DISPUTE RESOLUTION

- 9.1 If any dispute arises under this Agreement, the parties will make all reasonable efforts to resolve the dispute within 60 days of the dispute arising (or within such other time period agreed to by the parties) and, subject to applicable laws, provide candid and timely disclosure to each other of all relevant facts, information and documents to facilitate those efforts.
- 9.2 Subject to section 9.5, if a dispute under this Agreement cannot be resolved under section 9.1, we or you may refer the dispute to arbitration conducted by a sole arbitrator appointed pursuant to the *Commercial Arbitration Act*.
- 9.3 The cost of the arbitration referred to in section 9.2 will be shared equally by the parties and the arbitration will be governed by the laws of the Province of British Columbia.
- 9.4 The arbitration will be conducted at our offices (or the offices of our authorized representative) in Kamloops, British Columbia, and if we or our authorized representative have no office in Kamloops, British Columbia, then our offices (or the offices of our authorized representative) that are closest to Kamloops, British Columbia.
- 9.5 A dispute under this Agreement in respect of a matter within our sole discretion cannot, unless we agree, be referred to arbitration as set out in section 9.2.

ARTICLE 10 - NOTICE

- 10.1 Any notice required to be given by either party to the other will be deemed to be given if mailed by prepaid registered mail in Canada or delivered to the address of the other as follows:

to us

MINISTRY OF FORESTS, LANDS AND NATURAL RESOURCE OPERATIONS
441 Columbia Street
Kamloops, BC V2C 2T3;

to you

CORPORATION OF THE CITY OF PENTICTON
171 Main St
Penticton, BC V2A 5A9;

or at such other address as a party may, from time to time, direct in writing, and any such notice will be deemed to have been received if delivered, on the day of delivery, and if mailed, 7 days after the time of mailing, except in the case of mail interruption in which case actual receipt is

required.

- 10.2 In order to expedite the delivery of any notice required to be given by either party to the other, a concurrent facsimile copy of any notice will, where possible, be provided to the other party but nothing in this section, and specifically the lack of delivery of a facsimile copy of any notice, will affect the deemed delivery provided in section 10.1.
- 10.3 The delivery of all money payable to us under this Agreement will be effected by hand, courier or prepaid regular mail to the address specified above, or by any other payment procedure agreed to by the parties, such deliveries to be effective on actual receipt.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No provision of this Agreement will be considered to have been waived unless the waiver is in writing, and a waiver of a breach of a provision of this Agreement will not be construed as or constitute a waiver of any further or other breach of the same or any other provision of this Agreement, and a consent or approval to any act requiring consent or approval will not waive or render unnecessary the requirement to obtain consent or approval to any subsequent same or similar act.
- 11.2 No remedy conferred upon or reserved to us under this Agreement is exclusive of any other remedy in this Agreement or provided by law, but that remedy will be in addition to all other remedies in this Agreement or then existing at law, in equity or by statute.
- 11.3 The grant of a sublicense, assignment or transfer of this Agreement does not release you from your obligation to observe and perform all the provisions of this Agreement on your part to be observed and performed unless we specifically release you from such obligation in our consent to the sublicense, assignment or transfer of this Agreement.
- 11.4 This Agreement extends to, is binding upon and enures to the benefit of the parties, their heirs, executors, administrators, successors and permitted assigns.
- 11.5 If, due to a strike, lockout, labour dispute, act of God, inability to obtain labour or materials, law, ordinance, rule, regulation or order of a competent governmental authority, enemy or hostile action, civil commotion, fire or other casualty or any condition or cause beyond your reasonable control, other than normal weather conditions, you are delayed in performing any of your obligations under this Agreement, the time for the performance of that obligation will be extended by a period of time equal to the period of time of the delay so long as
- (a) you give notice to us within 30 days of the commencement of the delay setting forth the nature of the delay and an estimated time frame for the performance of your obligation; and

- (b) you diligently attempt to remove the delay.

11.6 You acknowledge and agree with us that

- (a) this Agreement has been granted to you on the basis that you accept the Land on an "as is" basis;
- (b) without limitation we have not made, and you have not relied upon, any representation or warranty from us as to
- (i) the suitability of the Land for any particular use, including the use permitted by this Agreement;
 - (ii) the condition of the Land (including surface and groundwater), environmental or otherwise, including the presence of or absence of any toxic, hazardous, dangerous or potentially dangerous substances on or under the Land and the current and past uses of the Land and any surrounding land and whether or not the Land is susceptible to erosion or flooding;
 - (iii) the general condition and state of all utilities or other systems on or under the Land or which serve the Land;
 - (iv) the zoning of the Land and the bylaws of any government authority which relate to the development, use and occupation of the Land; and
 - (v) the application of any federal or Provincial enactment or law to the Land;
- (c) you have been afforded a reasonable opportunity to inspect the Land or to carry out such other audits, investigations, tests and surveys as you consider necessary to investigate those matters set out in subsection (b) to your satisfaction before entering into this Agreement;
- (d) you waive, to the extent permitted by law, the requirement if any, for us to provide you with a "site profile" under the *Environmental Management Act* or any regulations made under that act;
- (e) we are under no obligation, express or implied, to provide financial assistance or to contribute toward the cost of servicing, creating or developing the Land or the Improvements and you are solely responsible for all costs and expenses associated with your use of the Land and the Improvements for the purposes set out in this Agreement; and
- (f) we are under no obligation to provide access or services to the Land or to maintain or

improve existing access roads.

- 11.7 You agree with us that nothing in this Agreement constitutes you as our agent, joint venturer or partner or gives you any authority or power to bind us in any way.
- 11.8 This Agreement does not override or affect any powers, privileges or immunities to which you are entitled under any enactment of the Province of British Columbia.

The parties have executed this Agreement as of the date of reference of this Agreement.

SIGNED on behalf of **HER MAJESTY
THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**
by the minister responsible for the *Land Act*
or the minister's authorized representative

Minister responsible for the *Land Act*
or the minister's authorized representative

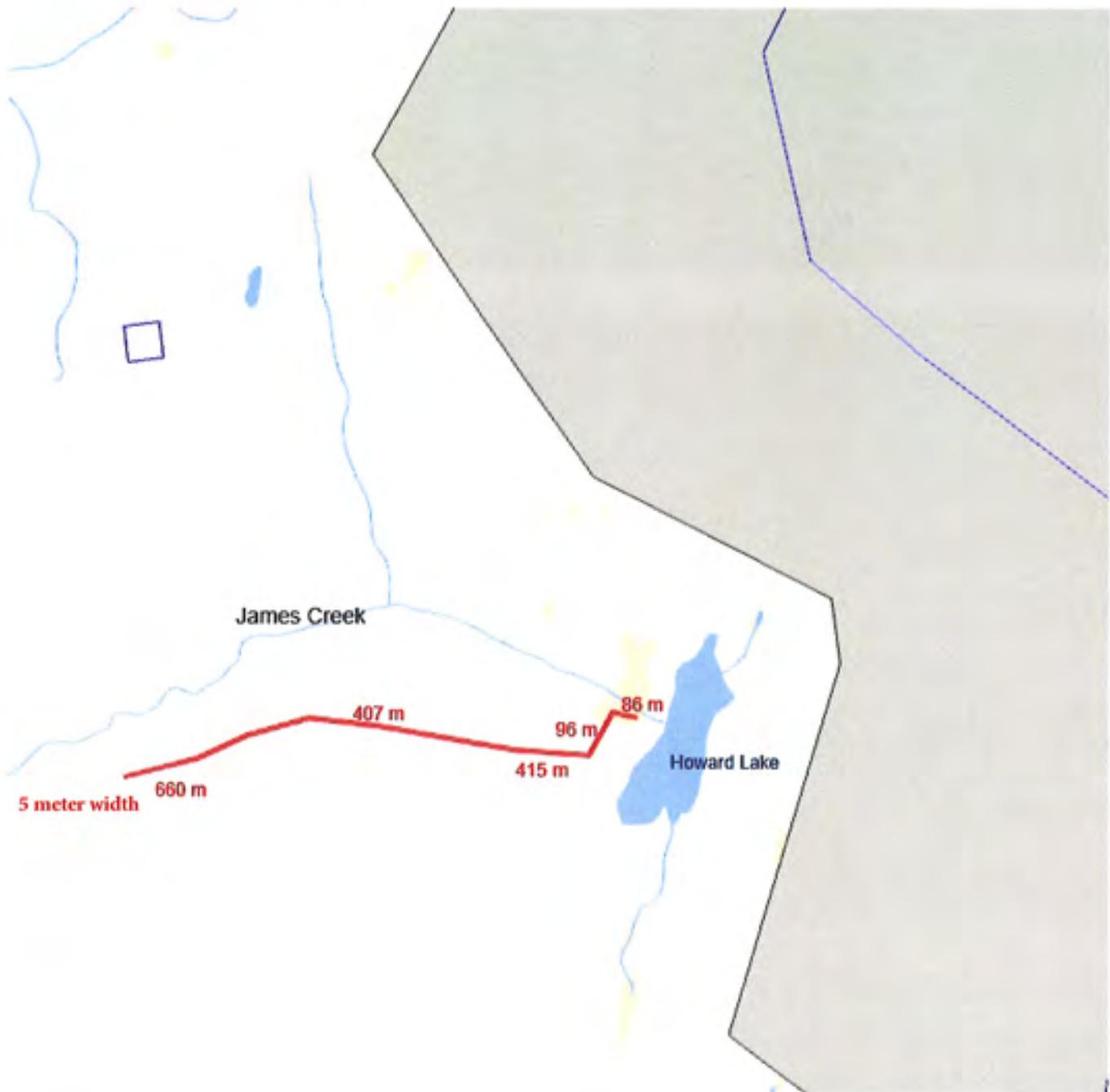
SIGNED on behalf of **CORPORATION OF THE CITY OF PENTICTON**
By its authorized signatories

Authorized Signatory

Authorized Signatory

Legal Description Schedule

All that Unsurveyed Crown Land in the vicinity of Howard Lake, Similkameen Division Yale District, containing 0.832 hectares, more or less



Scale: 1:16,250

BCGS Mapsheet(s): 82E064



MANAGEMENT PLAN SCHEDULE

As defined in Article 1.1 the Management Plan is further defined as the Legal Description Schedule along with Article 2.1.

Council Report



Date: May 23, 2017
To: Peter Weeber, Chief Administrative Officer
From: Larry Watkinson, Fire Chief
Subject: **Upper Carmi Fire Protection**

File No:

Staff Recommendation

THAT Council support adding Upper Carmi area, up to the 11.5km mark from Fire Station 202, into the RDOS Fire Protection Agreement with conditions outlined in this report.

Background

The Fire Chief presented the concept of expanding the Fire Service Agreement in closed council meeting November 21, 2016 with the following resolution:

IC230/2016 **It was MOVED and SECONDED**

THAT Council direct staff to draft a proposal for the Regional District Okanagan Similkameen (RDOS) that will add Upper Carmi area (up to the 8km mark from Fire Station 202) into the Fire Protection Agreement which will satisfy the requirements of the Fire Underwriters Survey (FUS) for semi protected.

CARRIED UNANIMOUSLY

March 21, 2017 Council received a report from the Fire Chief outlining the above resolution of expanding the Fire Service Agreement in open council meeting November 21, 2016 with the following resolution:

189/2017 **It was MOVED and SECONDED**

THAT Council support adding Upper Carmi area, up to the 8 km mark from Fire Station 202, into the RDOS Fire Protection Agreement.

CARRIED UNANIMOUSLY

April 28, 2017, I received a formal request from Bill Newell CAO of the RDOS (**Attachment A**) requesting that the entire Upper Carmi area be included in the RDOS Fire Protection Agreement and to add Upper Carmi area up to the 11.5 Km mark from Fire Station 202.

Financial implication

RDOS payment for services would be applied exactly as outlined in the RDOS Fire Protection Agreement and based on the total assessed value before exemptions. More properties would be applied to the tax roll calculation if extended up to 11.5km mark. \$25.9 million is the assessed value that would be protected under this extension up Carmi and based on 2016 actual expenses we would increase our revenues by approximately \$44,000.

Analysis

Response times and operational fire suppression capacity will be adversely affected by the long hill and no water supply. As the Fire Chief, I would be willing to accept the extended response area with conditions at the expense of the RDOS:

1. That a fire access road be connected to the end of Carmi Road and Beaverdell Road.
2. A Fire Dept. water reservoir is installed at a location determined by the Penticton Fire Chief.

In Summary

The residents of the Upper Carmi area have, for many years, experienced wildfires and structure fires with no response to the area. It is not uncommon for a fire department to have areas that extend far beyond the recognized FUS 8km mark, particularly in very rural areas like the RDOS Upper Carmi. It is also not uncommon for residents to want a fire protection service, even with very limited scope, due to water supplies and long response times. Residents knowingly reside in these areas, but can feel vulnerable to fire, medical emergencies and rescue operations.

Alternate recommendations

Not to extend the fire protection boundaries to the end of Carmi Road.

Attachments

Attachment A – Bill Newall Request.

Respectfully submitted,

Larry Watkinson.
Fire Chief

Approvals Director	Chief Administrative Officer PW
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Attachment A



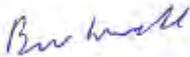
April 28, 2017

Larry Watkinson, CFO, C.Mgr.
Fire Chief
c/o City of Penticton
250 Nanaimo Ave. W
Penticton, BC V2A 1N5

Dear Chief Watkinson;

The Regional District Okanagan-Similkameen would like to propose that the entire Upper Carmi area be included in the RDOS Fire Protection Agreement to add Upper Carmi area up to the 11.5km mark from Fire Station 202. We have attached a map of the area.

Sincerely,


Bill Newell
Chief Administrative Officer



REGIONAL DISTRICT OF OKANAGAN-SIMILKAMEEN
101 Martin Street, Penticton, BC V2A 5J9 | 250-492-0237 | www.rdos.bc.ca | info@rdos.bc.ca
Serving the citizens of the Okanagan-Similkameen since 1966.

Council Report



Date: May 23, 2017
To: Peter Weeber, Chief Administrative Officer
From: Anthony Haddad, Director of Development Services

File No: RMS4300

Subject: Mobile Retail Vending

Staff Recommendation

THAT Council support an amendment to the one-year pilot program for Mobile Retail Vending endorsed on March 21st 2017, to include:

- A location for one Mobile Retail Vending truck at a time along the north-west corner of Power Street and Lakeshore Drive (Attachment A)

AND/OR

- Two locations for Mobile Retail Vending trucks in the Gyro Hub location (Attachment A)

Strategic priority objective

Mobile vending supports the vision of a vibrant waterfront City and downtown core.

Background

Council, at its meeting on March 21st passed the following resolution with regards to Mobile Retail Vending:

191/2017 **It was MOVED and SECONDED**

THAT Council support the creation of a one-year pilot program for Mobile Retail Vending as part of the Mobile Food Vending License Program for 2017 that allows for:

- A maximum of two mobile retail vendors to be in operation at any one time in any of the locations approved for Mobile Food Vending, except the 'Gyro hub' or 'Winnipeg St & Lakeshore' locations.
- All applicable fees associated with Mobile Food Vending Licenses and business Licences be paid for 2017;

AND THAT Council direct staff deny approval for any mobile retail vending operations within vacant commercial sites in the Downtown 'Core' for 2017, as identified in Attachment C;

AND FURTHER THAT staff report back to Council in fall 2017 with a summary of issues and recommendations.

CARRIED UNANIMOUSLY

Direction from Council was provided for further consultation to occur with the Downton Penticton Association (DPA) to look at the potential for mobile retail vendors to be located downtown after hours – to reduce potential conflicts with existing businesses.

Update

Since the Council meeting on March 21st 2017, the two mobile retail vendors assessed the potential for the sites that were identified to be part of the pilot program and have advised that those locations (Sicamous and Skaha Park locations) were not appropriate for their use – given the locations, conflicts with the food vendors and lack of walk-by traffic – in particular with regards to the Skaha Lake locations.

Staff have also consulted with the DPA with regards to Council's request and the following summary was provided:

- Retail trucks are welcomed into the DPA Community Market every Saturday from May 6 to October 7th 2017
- The two retail trucks that are seeking to sell in the DPA boundaries sell similar inventory, (and in one case the exact merchandise from the same supplier of summer clothing) to what is sold in downtown merchant stores
- The property owners, who also run the retail shop in their building, pay property tax, DPA annual levy, hire local residents full and part time, and pay their share of the Revitalization cost when needed.
- Parking the trucks will take up 1-3 parking spots on downtown streets which is taking customer/client parking for the businesses who are retail and non-retail
- DPA cannot see how retail trucks add to the economic development of the downtown when they take parking away, don't hire locals, do not pay property taxes which funds city hall's infrastructure improvements including the roads they want to operate from, and take away from sales in bricks and mortar stores
- Retail is already competing with on-line shopping and the population of shoppers in Penticton is not large enough to support an additional competition from retail trucks
- These retail truck operators are requesting to set up in the DPA area after closing time, which for them has been identified as 6pm, however, we have stores that have the option to stay open later (many do over the summer)
- DPA is concerned about the amount of hours spent on this issue with city staff time and DPA board time for 2 operators that will not work within the permit parameters already in place in Penticton, and keep requesting changes from the city to work for them at the expense of established businesses. If the trucks were to be given approval to set up and sell downtown, the City of Penticton will not see any financial benefits as paying property taxes, Revit cost sharing and jobs for locals will not happen. These vendors are not DPA members like all downtown property owners.

A copy of the DPA's detailed response is provided in Attachment B.

Pilot Program – Additional Location Request

The proposed requested change to the Pilot Program would allow for two spaces along Power Street, adjacent to Lakeshore Drive and the use of the Gyro Hub location, outside of the times when the space is used for special events and festivals. The locations are identified in Attachment A.

The proposed Power Street locations would eliminate two or three parking spaces that exist on the north-west corner of Power Street. The mobile retail vendors would be required to keep all of their operations within the confines of their trucks to limit their impact on Power Street, including the access doors – ensuring that they do not open into the street.

The option of allowing the retail vendors in the Gyro Hub location would allow the retail trucks to be located on the ‘through-street’ that has been constructed for exactly this purpose, following a comprehensive design process with the community in 2013-14. The intention of the ‘through-street’ was not only to provide an alternative vehicle access during events, but to provide a location for vendors to locate, as opposed to being located within the park and impacting the trees and park space. It is noted that the Gyro Park through road is not available for mobile vending trucks when the market or other organized special events occur.

Analysis

The DPA are clearly concerned with allowing mobile retail vendors anywhere in the downtown core, as outlined in their letter (Attachment B). The downtown location that would have the most limited impact is the Gyro Hub location (although this location does potentially compete with Freeride Board Shop and their clothing sales) and should Council support this location, the mobile retail vendors would locate there at times that do not conflict with other organized special events, including the Farmers Market, and in accordance with the mobile Food Vending Program requirements.

With regards to the Power Street location, potential safety concerns exist by allowing the vendor trucks to be in place close to the Lakawanna Playground, on the opposite side of the road to the proposed location. Pedestrians would be required to follow the appropriate road crossing markings when moving across Power Street and the retail vendors would be required to contain sales in their trucks and provide access via the park space on the west side of the location where the retail truck is parked.

If Council are to support this location, it is recommended that only one mobile retail vending truck be parked in this location at any one time and the two vendors would be required to rotate through his location. To allow for the retail vending trucks to be located along the proposed portion of Power Street, approximately two parking spaces would be removed in an area that sees increased use during the peak summer periods.

The proposed pilot program amendments, if supported by Council would only be in place for the 2017 year, with a report being brought back to Council in the Fall of 2017 outlining the successes and failures of the program with recommendations on how to proceed on a more permanent basis.

Alternate recommendations

1. THAT Council direct staff in an alternative manner.

Council could set certain hours of operations for the retail trucks in the two locations proposed, outside the main operating hours of stores in the downtown core, or even limit the use of these locations to certain days – Sundays for example, when some retail establishments are closed, to reduce potential conflicts that have been identified by the DPA.

Should Council wish to see alternative locations in the downtown for the mobile retail vendors, then they should advise staff accordingly so that they can be permitted through the proposed pilot program.

- 2. THAT Council not support the proposed locations for mobile retail vending trucks.

As outlined in the staff report, the two locations proposed come with their issues and should Council not deem these two locations appropriate, they should deny the request for mobile retail vending at this time.

Attachments

Attachment A – Additional Retail Truck Vending Locations Requested

Attachment B – Downtown Penticton Association Letter

Respectfully submitted,

Anthony Haddad
Director of Development Services

Approvals

Director <i>AH</i>	CAO PW
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Attachment A – Additional Retail Truck Vending Locations Requested

Power Street



Gyro Park Locations



Attachment B – Downtown Penticton Association Letter



Updated – May 2017

Downtown Penticton Association's response to Retail Mobile Trucks in the downtown core area:

The DPA's Board of Directors is not in favour in permitting or licensing retail mobile trucks to operate in downtown Penticton. The DPA would not have any issue with Retail Mobile Trucks operating in other areas of the City of Penticton outside of the downtown core area. Many municipal governments are dealing with how to go forward with this type of business but as of yet fashion/retail mobile trucks are not permitted to operate on city properties within most BC cities. For those retail trucks allowed to operate on private properties they must still have a city business license to be permitted to park and sell product.

The DPA understands the appeal of this new business model is lower overhead with considerable savings on rent, staffing, insurance, WCB, taxes and utilities. These are the same reasons the "bricks and mortar" business owners are not in favour of inviting the mobile retail trucks to park on the main streets downtown Penticton competing with them.

The following are comments made from retail shop owners and the DPA Board:

- Retail trucks are welcomed into the DPA Community Market every Saturday from May 6 to October 7th 2017
- The two retail trucks that are seeking to sell in the DPA boundaries sell similar inventory, (and in one case the exact merchandise from the same supplier of summer clothing) to what is sold in downtown merchant stores
- The property owners, who also run the retail shop in their building, pay property tax, DPA annual levy, hire local residents full and part time, and pay their share of the Revitalization cost when needed.
- Parking the trucks will take up 1-3 parking spots on downtown streets which is taking customer/client parking for the businesses who are retail and non-retail
- DPA can not see how retail trucks add to the economic development of the downtown when they take parking away, don't hire locals, do not pay property taxes which funds city hall's infrastructure improvements including the roads they want to operate from, and take away from sales in bricks and mortar stores
- Retail is already competing with on-line shopping and the population of shoppers in Penticton is not large enough to support an additional competition from retail trucks
- These retail truck operators are requesting to set up in the DPA area after closing time, which for them has been identified as 6pm, however, we have stores that have the option to stay open later (many do over the summer)
- DPA is concerned about the amount of hours spent on this issue with city staff time and DPA board time for 2 operators, that will not work within the permit parameters already in place in Penticton, and keep requesting changes from the city to work for them at the expense of established businesses. If the trucks were to be given approval to set up and sell downtown, the City of Penticton will not see any financial benefits as paying property taxes, Revit cost sharing and jobs for locals will not happen. These vendors are not DPA members like all downtown property owners.

The Downtown Penticton Association would ask that the City of Penticton and City Council not permit Retail Mobile Trucks to operate in downtown with the exception of local Community Markets and special events located off the main streets of downtown, and again, the DPA will not have any issue with the operation of Retail Mobile Trucks operating in other locations in Penticton outside of the downtown core area.

Bylaw No. 2017-21

A Bylaw to Amend Zoning Bylaw 2017-08

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the Local Government Act;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. Title:

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2017-21".

2. Amendment:

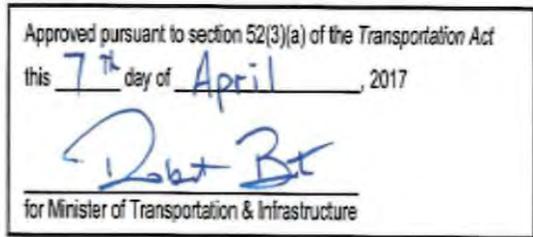
2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone Lot 1, Block 125, District Lot 2, Group 7, Similkameen Division Yale (Formerly Yale Lytton) District Plan 1175, located at 201 Maple Street and That Part of Lot 1, Block 125 shown on Plan B5606, District Lot 2, Group 7, Similkameen (Formerly Yale Lytton) Division Yale District, Plan 1175 located at 634 Westminster Avenue West, from R2 (Small Lot Residential) to RM3 (Medium Density Multiple Housing).

2.2 Schedule 'A' attached hereto forms part of this bylaw.

READ A FIRST time this	21 day of	March, 2017
A PUBLIC HEARING was held this	4 day of	April, 2017
READ A SECOND time this	4 day of	April, 2017
READ A THIRD time this	4 day of	April, 2017
RECEIVED the approval of the	7 day of	April, 2017
Ministry of Transportation on the		
ADOPTED this	day of	, 2017

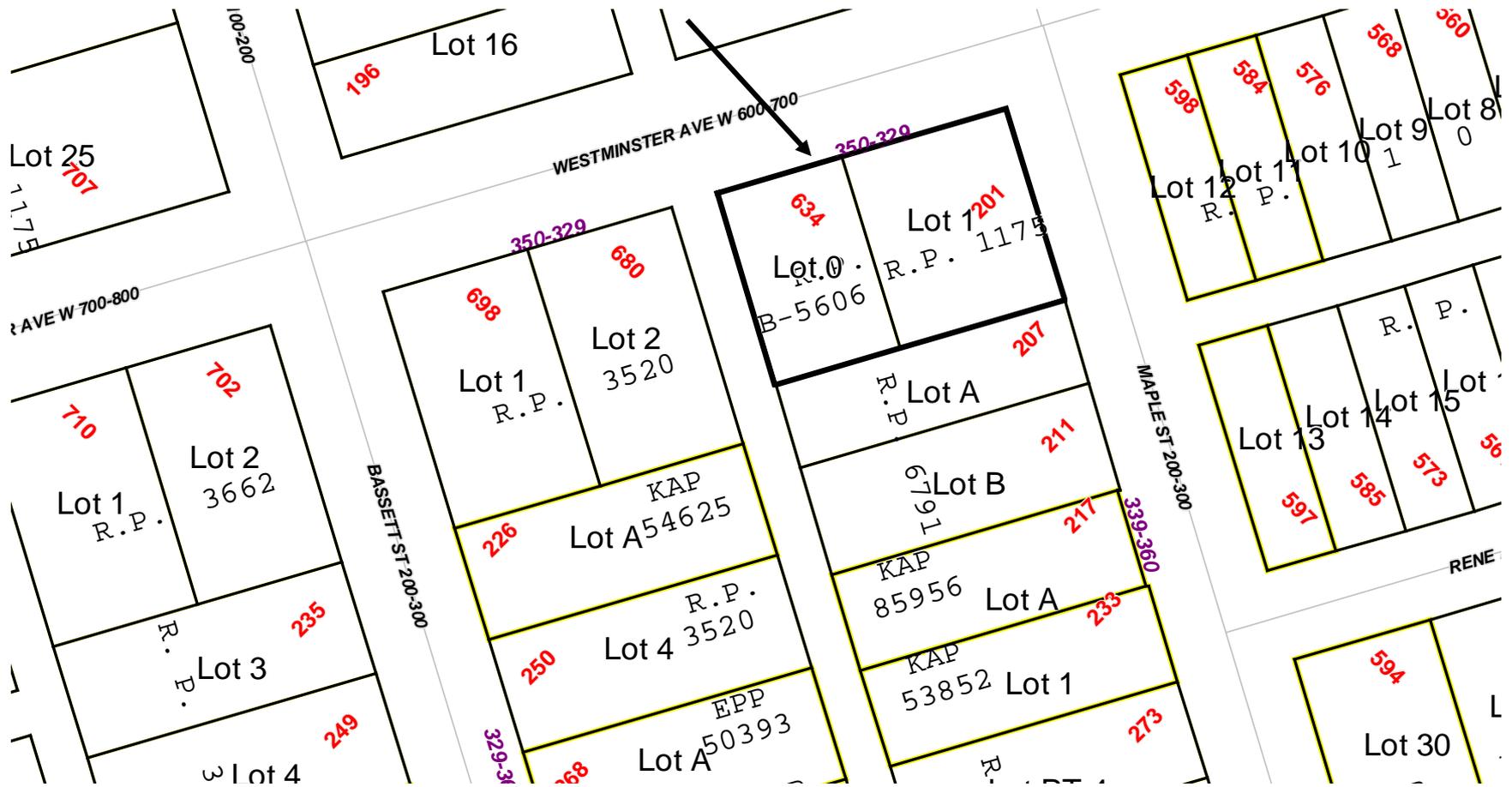
Notice of intention to proceed with this bylaw was published on the 24 day of March, 2017 and the 29 day of March, 2017 in the Penticton Western newspaper, pursuant to Section 94 of the Community Charter.



Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

Rezone 634 Westminster Ave W & 201 Maple Street From R2 (Small Lot Residential) to RM3 (Medium Density Multiple Housing)



City of Penticton – Schedule 'A'

Zoning Amendment Bylaw No. 2017-21

Date: _____

Corporate Officer: _____

Development Variance Permit

Permit Number: DVP PL2016-7826

Conditions of Permit

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.
2. This permit applies to:

Legal: Lot 1, Block 125, District Lot 2, Group 7, Similkameen Division Yale (Formerly Yale Lytton) District Plan 1175, and That Part of Lot 1, Block 125 shown on Plan B5606, District Lot 2, Group 7, Similkameen (FORMERLY YALE LYTTON) Division Yale District, Plan 1175 located at 634 Westminster Avenue West Lot 13, Block 1, District 202, Group 7, Similkameen Division Yale District, Plan 269
Civic: 201 Maple Street and 634 Westminister Avenue
PID: 011-792-698 & 001-729-527
3. This permit has been issued in accordance with Section 498 of the *Local Government Act*, to vary:
 - **Section 7.6.** To reduce the parking requirement for an apartment from 16 stalls to 12 stalls
 - **Section 10.9.2.8** To reduce the rear yard setback from 6m to 4.5m

General Conditions

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.
5. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.
6. This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.
7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.
8. This permit does not include off-site infrastructure costs that may be required at the

building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the

Issued this ____ day of _____, 2017

Dana Schmidt,
Corporate Officer



Development Permit

Permit Number: DP PL2017-7825

Conditions of Permit

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.
2. This permit applies to:

Legal: Lot 1, Block 125, DL2, Group7, SDYD(FORMERLY YALE LYTTON) Plan EPP71894
Civic: 634 Westminster Avenue W
PID: 030-127-696
3. This permit has been issued in accordance with Section 489 of the *Local Government Act*, to permit the construction of an 3 storey building as shown in the plans attached in Schedule A.

General Conditions

4. In accordance with Section 501(2) of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.
5. In accordance with Section 502 of the *Local Government Act* a deposit or irrevocable letter of credit, in the amount of \$13,250 must be deposited prior to, or in conjunction with, an application for a building permit for the development authorized by this permit. The City may apply all or part of the above-noted security in accordance with Section 502(2.1) of the *Local Government Act*, to undertake works or other activities required to:
 - a. correct an unsafe condition that has resulted from a contravention of this permit,
 - b. satisfy the landscaping requirements of this permit as shown in Schedule A or otherwise required by this permit, or
 - c. repair damage to the natural environment that has resulted from a contravention of this permit.
6. The holder of this permit shall be eligible for a refund of the security described under Condition 5 only if:
 - a. the permit has lapsed as described under Condition 8, or
 - b. a completion certificate has been issued by the Building Inspection Department and the Director of Development Services is satisfied that the conditions of this permit have been met.
7. Upon completion of the development authorized by this permit, an application for release of securities, provided in Schedule B, must be submitted to the Planning Department. Staff may carry out inspections of the development to ensure the conditions of this permit have been met.

Inspection fees may be withheld from the security as follows:

1 st Inspection	No fee
2 nd Inspection	\$50
3 rd Inspection	\$100
4 th Inspection or additional inspections	\$200

8. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.
9. This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.
10. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.
11. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the 23 day of May, 2017

Issued this ____ day of _____, 2017

Dana Schmidt,
Corporate Officer

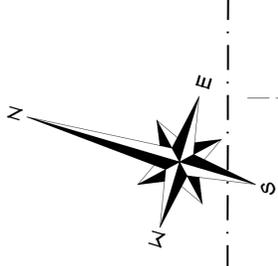
WESTMINSTER AVE WEST

PART LOT 1 PLAN I175
SHOWN ON PLAN B5606

REM 1
PLAN I175

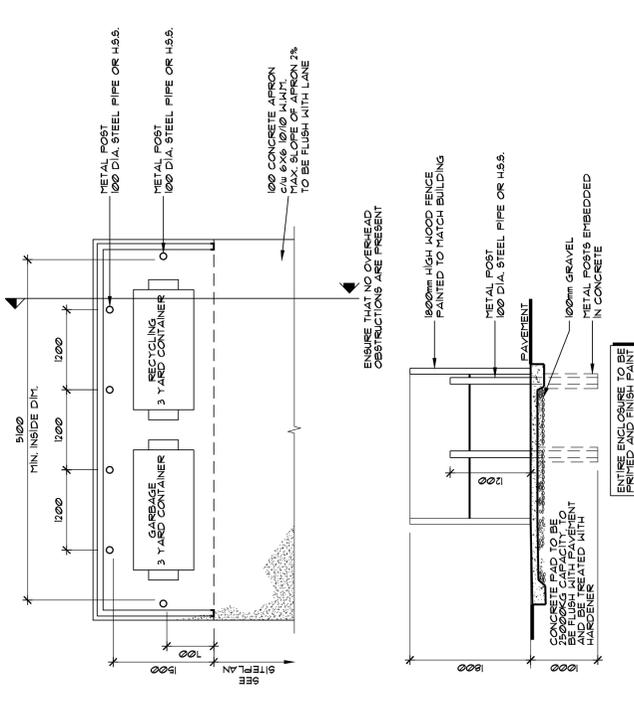
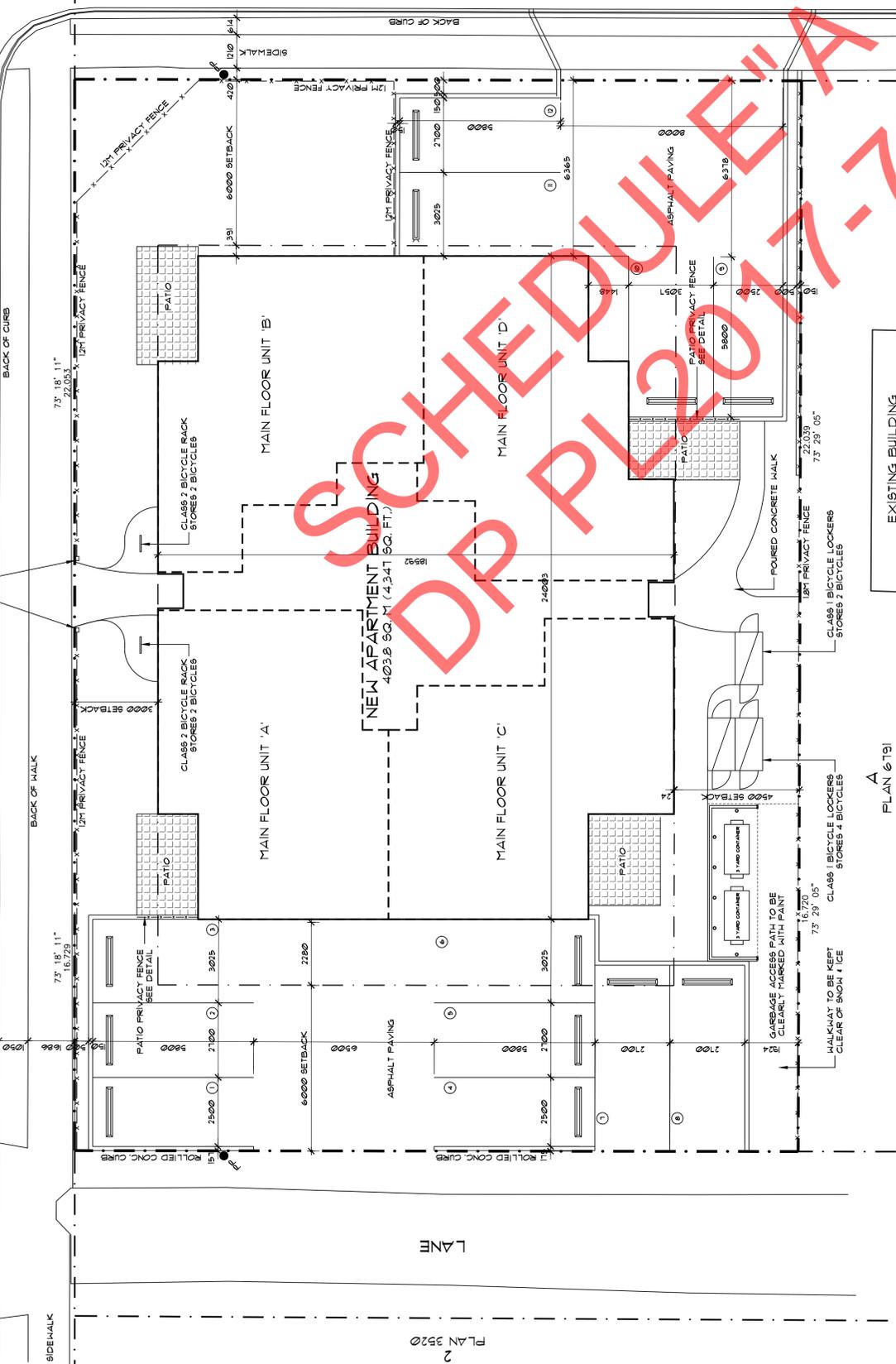
MUNICIPAL ADDRESS
201 MARLE STREET + 634 WESTMINSTER AVENUE WEST
PENTICTON, BC

LOT INFORMATION
SITE AREA : 1013.3m²
BUILDING FOOTPRINT : 381.5m²
BUILDING HEIGHT : 10.1m (33'-2")
NO. OF STOREYS : 3 STOREYS
SITE COVERAGE : 38.2%
FAIR : 1/1
PARKING PROVIDED : 12 STALLS

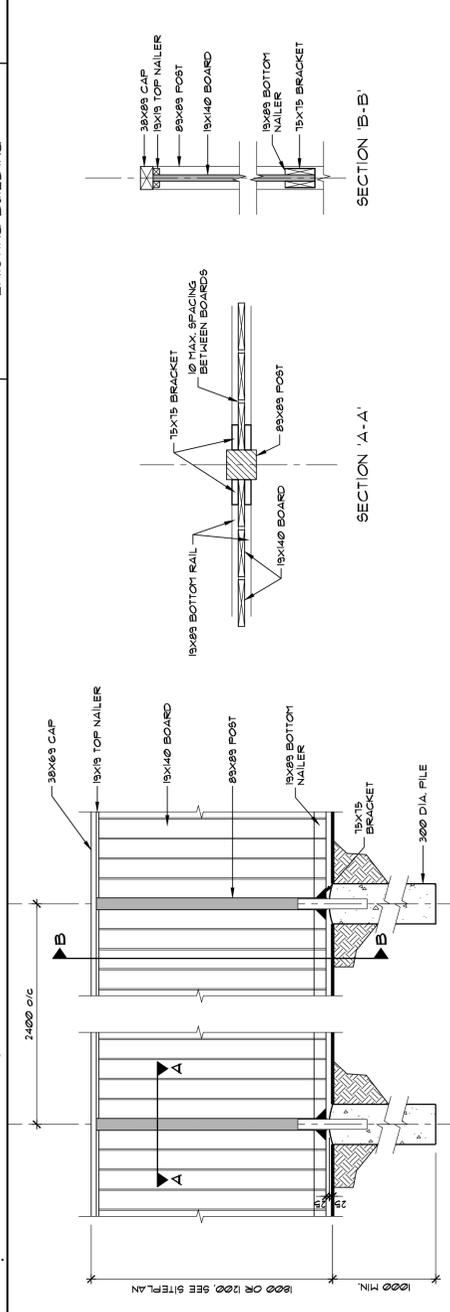


BLOCK 125
DL 2
GROUP 1

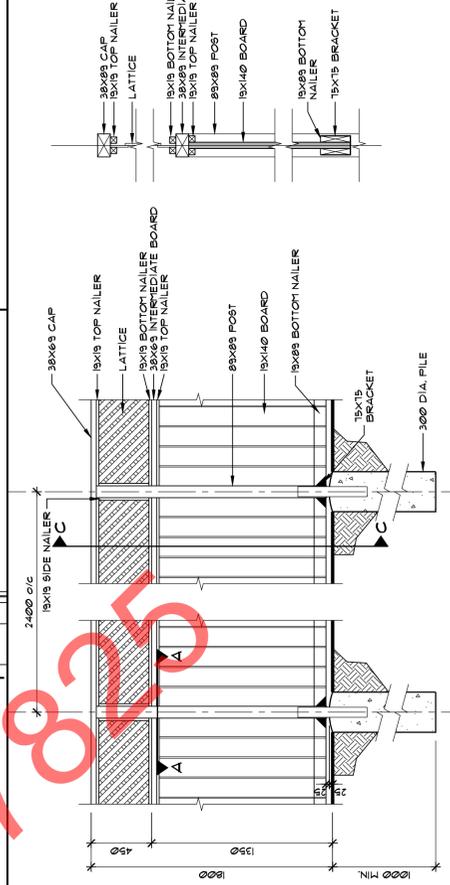
MAPLE STREET



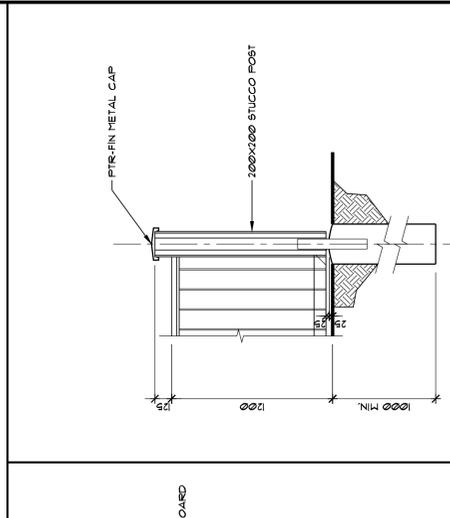
GARBAGE ENCLOSURE DETAIL



STANDARD PRIVACY FENCE DETAIL



PATIO PRIVACY FENCE DETAIL



STUCCO POST DETAIL

NOTES:
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CONSTRUCTION	DATE	BY	NO.	REVISIONS	BY
TENDERING					
BUILDING PERMIT					
DEVELOPMENT PERMIT					
APPROVED FOR ISSUE:					



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Red Deer Tel: (403) 984-2406
www.richardcordnerarchitect.com
info@richardcordnerarchitect.com

PROJECT TITLE
NEW 12 UNIT RENTAL APARTMENT BUILDING
WESTMINSTER AVENUE & MAPLE STREET
PENTICTON, BC

DRAWING TITLE
SITE PLAN

DATE
NOVEMBER 9, 2016

SCALE
1 : 100

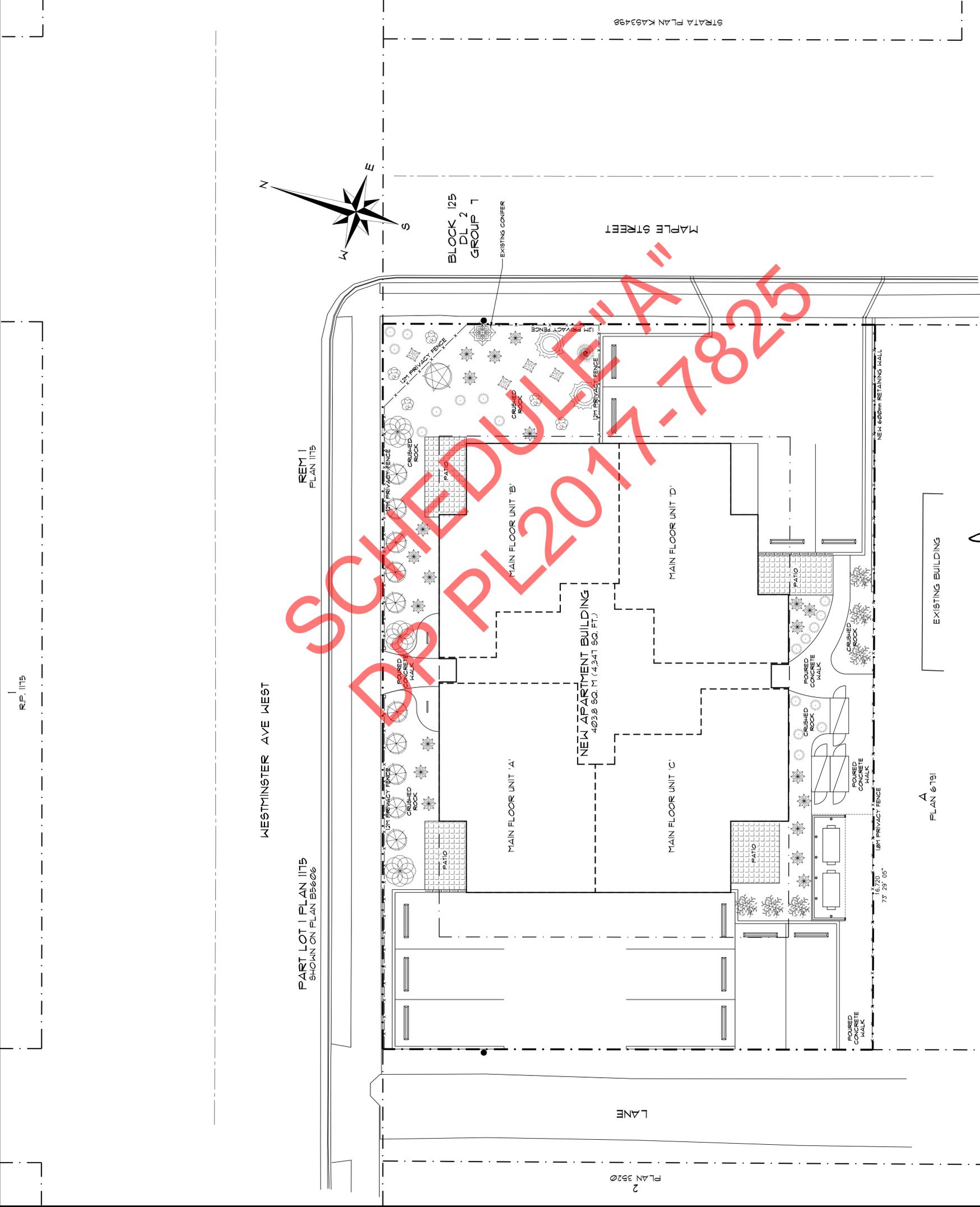
PROJECT NUMBER
16-476

PRINT DATE
MARCH 2, 2017

DRAWN BY
H.E.R.

CHECKED BY

DRAWING NUMBER
A1.0



PLANTING SCHEDULE:
IRRIGATION TO BE SUPPLIED BY UNDERGROUND IRRIGATION SYSTEM

KEY	COTTON/BOTANICAL NAME	QTY.
TREES		
	SKY ROCKET JUNIPER Juniperus Sky Rocket	10
	CRIMSON POINT FLOWERING PLUM Prunus Crispin Point	6
	KENTUCKY COFFEETREE Gymnocladia dioica	3
SHRUBS		
	DWARF BURNING BUSH Euonymus Alatus Compacta	1
	CHERRY BOMB BARBERRY Berberis Cherry Bomb	5
	AMBER JUBILEE NINEBARK Physocarpus Amber Jubilee	2
	BRIGHT EDGE YUCCA Yucca Bright Edge	4
PERENNIALS & GRASSES		
	HARDY PANHANS GRASS Saxifraga Pavonae	1
	KARL FOERSTER GRASS Calamagrostis Karl Foerster	20
	HIDCOTE LAVENDER Lavandula Hidcote	10

LANDSCAPE DESIGN PROVIDED BY LANI MORRIS, LANDSCAPE PROFESSIONAL

NOTE 1: PATIOS TO BE STAMPED CONCRETE
NOTE 2: FENCES TO BE STAINED WHITE

RP-1175

WESTMINSTER AVE WEST

PART LOT 1 PLAN 1175
SHOWN ON PLAN E5606

REM 1
PLAN 1175



BLOCK 125
DL 2
GROUP 1
EXISTING CONIFER

MAPLE STREET

STRATA PLAN K453498

MAIN FLOOR UNIT 'A'

NEW APARTMENT BUILDING
4038 SQ. M (4341 SQ. FT.)

MAIN FLOOR UNIT 'B'

MAIN FLOOR UNIT 'C'

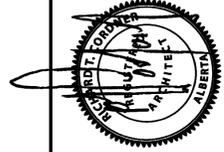
MAIN FLOOR UNIT 'D'

EXISTING BUILDING

PLAN 6791

NOTES:
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CONSTRUCTION	DATE	BY	REVISIONS
TENDERING			
BUILDING PERMIT			
DEVELOPMENT PERMIT			
APPROVED FOR ISSUE:			



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RICHARD CORDER ARCHITECT LTD.
PERMIT NO. 1016
ISSUED PURSUANT TO THE
ARCHITECTS ACT OF ALBERTA

PROJECT TITLE
NEW 12 UNIT RENTAL APARTMENT BUILDING
WESTMINSTER AVENUE & MAPLE STREET
PENTICTON, BC

DRAWING TITLE
LANDSCAPING PLAN

DATE
NOVEMBER 9, 2016

SCALE
1 : 100

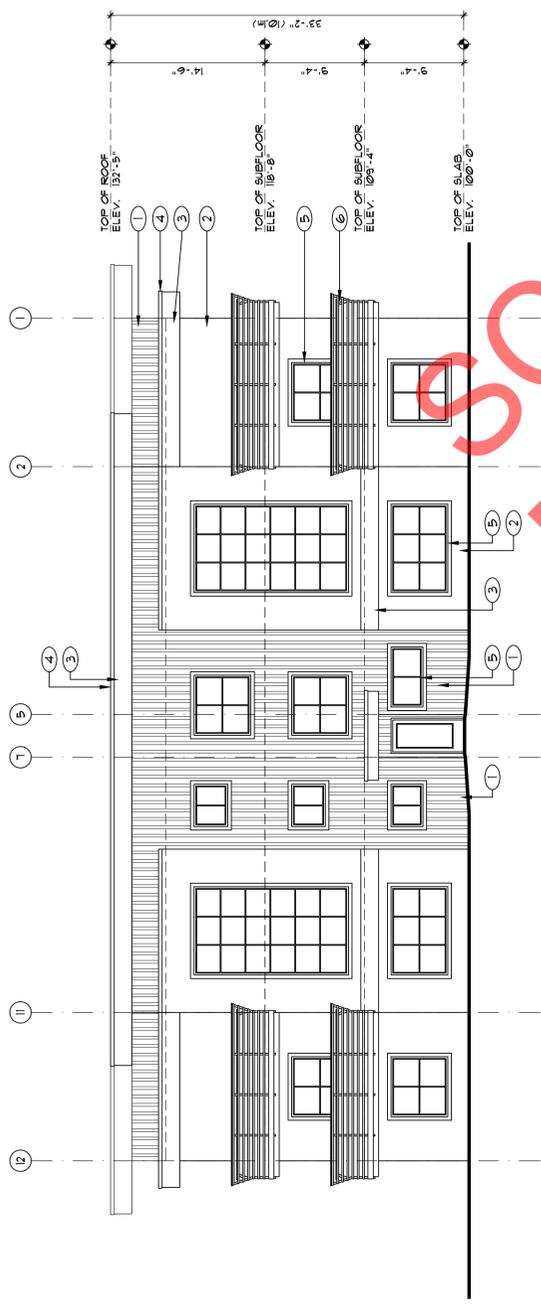
PROJECT NUMBER
16-476

PRINT DATE
MARCH 2, 2017

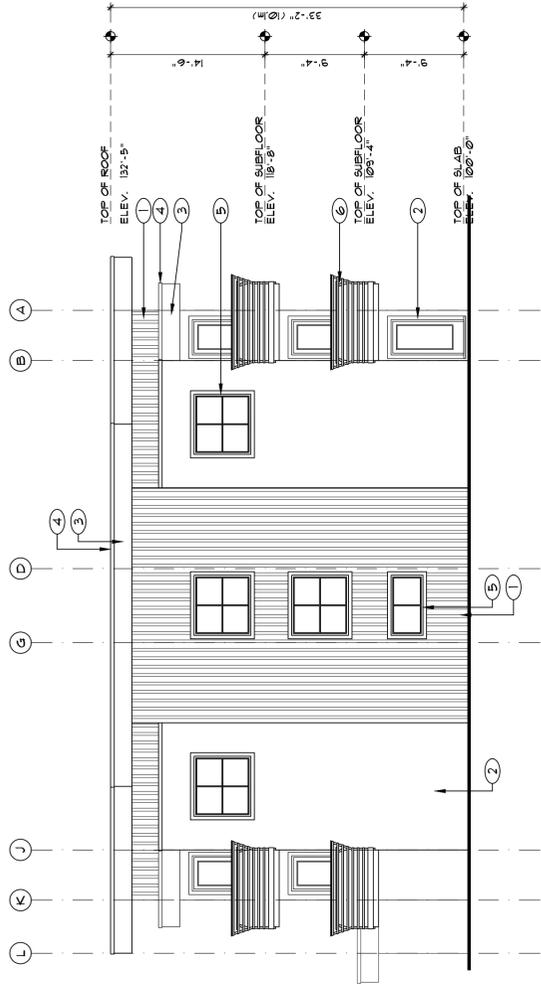
DRAWN BY
H.E.R.

CHECKED BY

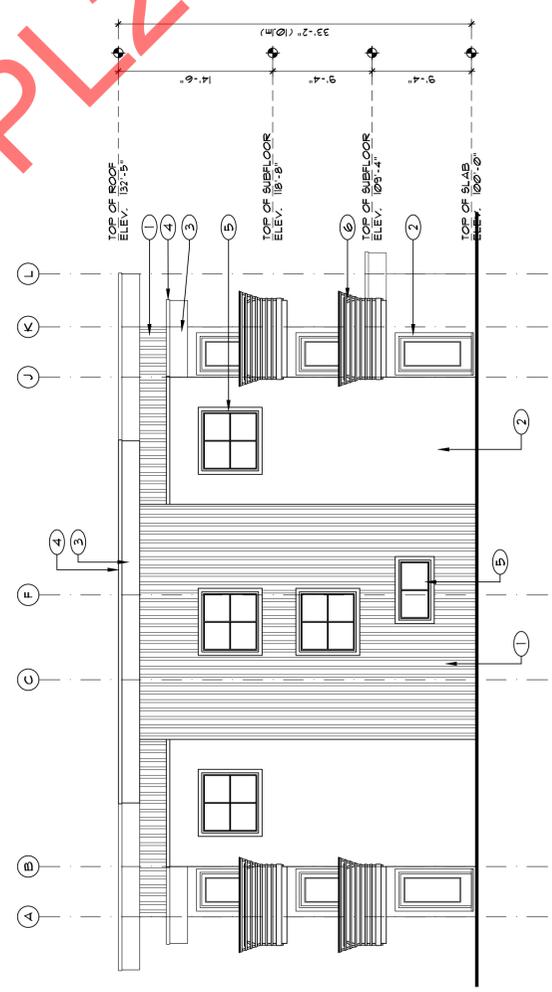
DRAWING NUMBER
A1.1



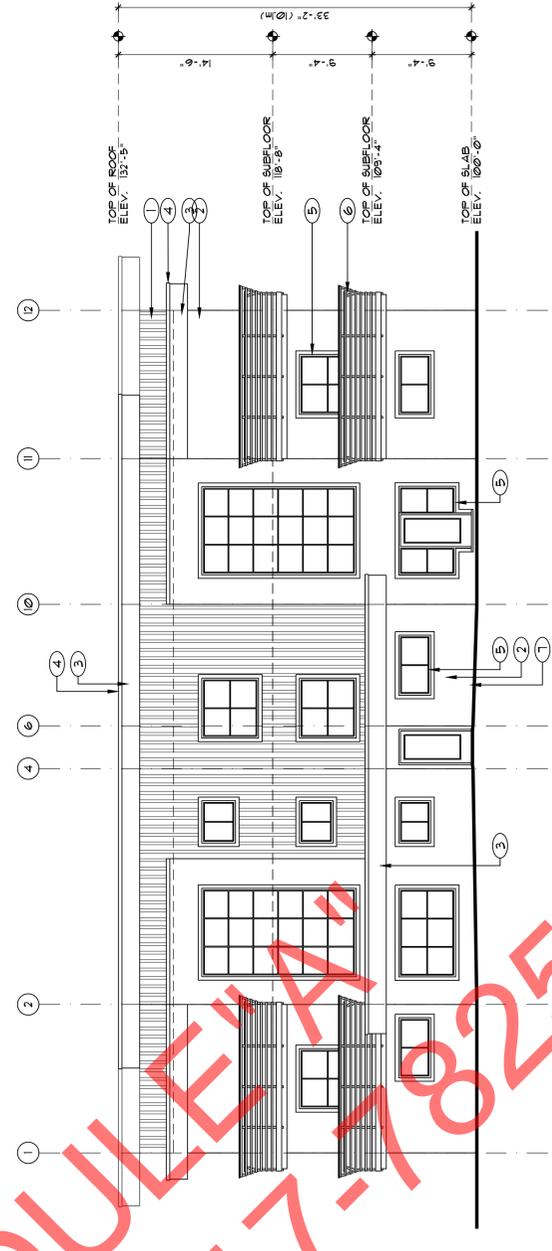
1 NORTH ELEVATION
(VIEW FROM WESTMINSTER AVENUE)
SCALE: 1/8" = 1'-0"
A3.0



2 EAST ELEVATION
(VIEW FROM MAPLE STREET)
SCALE: 1/8" = 1'-0"
A3.0



3 WEST ELEVATION
(VIEW FROM LANE)
SCALE: 1/8" = 1'-0"
A3.0



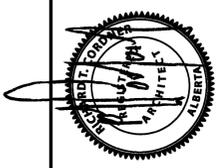
4 SOUTH ELEVATION
(VIEW FROM ADJACENT LOT)
SCALE: 1/8" = 1'-0"
A3.0

- EXTERIOR FINISHES LEGEND
- 1 PRE-FINISHED HARDY BOARD SIDING
- RED BOARD / BATTEN
 - 2 ACRYLIC STUCCO
- GREY
 - 3 PRE-FINISHED HARDY BOARD FASCIA
- GREY
 - 4 PRE-FINISHED METAL TRIM
- GREY
 - 5 VINYL WINDOWS
- BLACK
 - 6 PRE-FINISHED METAL GUARDRAIL
- BLACK

SCHEDULE "A"
 DP PL 2017-1825

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CONSTRUCTION	DATE	BY	NO.	DATE	REVISIONS	BY
CONSTRUCTION						
TENDERING						
BUILDING PERMIT						
DEVELOPMENT PERMIT						
APPROVED FOR ISSUE:						



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RICHARD CORDER ARCHITECT LTD.
 PERMIT No. 1016
 ISSUED PURSUANT TO THE
 ARCHITECTS ACT OF ALBERTA

PROJECT TITLE
 NEW 12 UNIT RENTAL APARTMENT BUILDING
 WESTMINSTER AVENUE & MAPLE STREET
 PENTICTON, BC

DRAWING TITLE
 ELEVATIONS

DATE
 NOVEMBER 9, 2016

SCALE
 1/8" = 1'-0"

PROJECT NUMBER
 16-476

PRINT DATE
 DECEMBER 20, 2016

DRAWN BY
 H.E.R.

CHECKED BY

DRAWING NUMBER
A3.0



1 NORTH-EAST VIEW
SCALE: N.T.S.

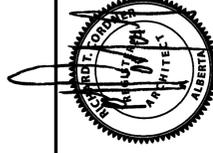


2 NORTH-EAST VIEW
SCALE: N.T.S.

SCHEDULE "A"
 DP PL 2017-7825

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CONSTRUCTION	DATE	BY	NO.	DATE	REVISIONS	BY
TENDERING						
BUILDING PERMIT						
DEVELOPMENT PERMIT						
APPROVED FOR ISSUE:						



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RICHARD CORDNER ARCHITECT LTD.
 PERMIT NO. 1016
 ISSUED PURSUANT TO THE
 ARCHITECTS ACT OF ALBERTA

PROJECT TITLE
 NEW 12 UNIT RENTAL APARTMENT BUILDING
 WESTMINSTER AVENUE & MAPLE STREET
 PENTICTON, BC

DRAWING TITLE
 3D MODEL VIEWS

DATE
 NOVEMBER 9, 2016

SCALE
 1/4" = 1'-0"

PROJECT NUMBER
 16-476

PRINT DATE
 DECEMBER 20, 2016

DRAWN BY
 H.E.R.

CHECKED BY

DRAWING NUMBER
 A5.0

Bylaw No. 2017-27

A Bylaw to Amend Zoning Bylaw 2017-08

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2017-27".

2. **Amendment:**

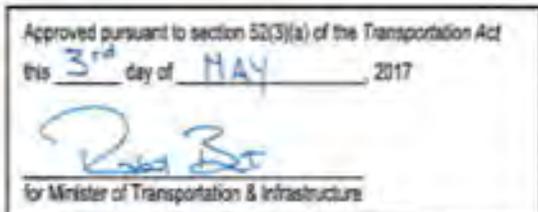
2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone portion of Amended Lot A (DD 244437F), DL 115, Similkameen Division Yale, District Plan3494 Except PLANS 20051 and 26786 located at 180 Industrial Avenue W, from P1 (Public Assembly) to RM2 (Low Density Multiple Housing).

2.2 Schedule 'A' attached hereto forms part of this bylaw.

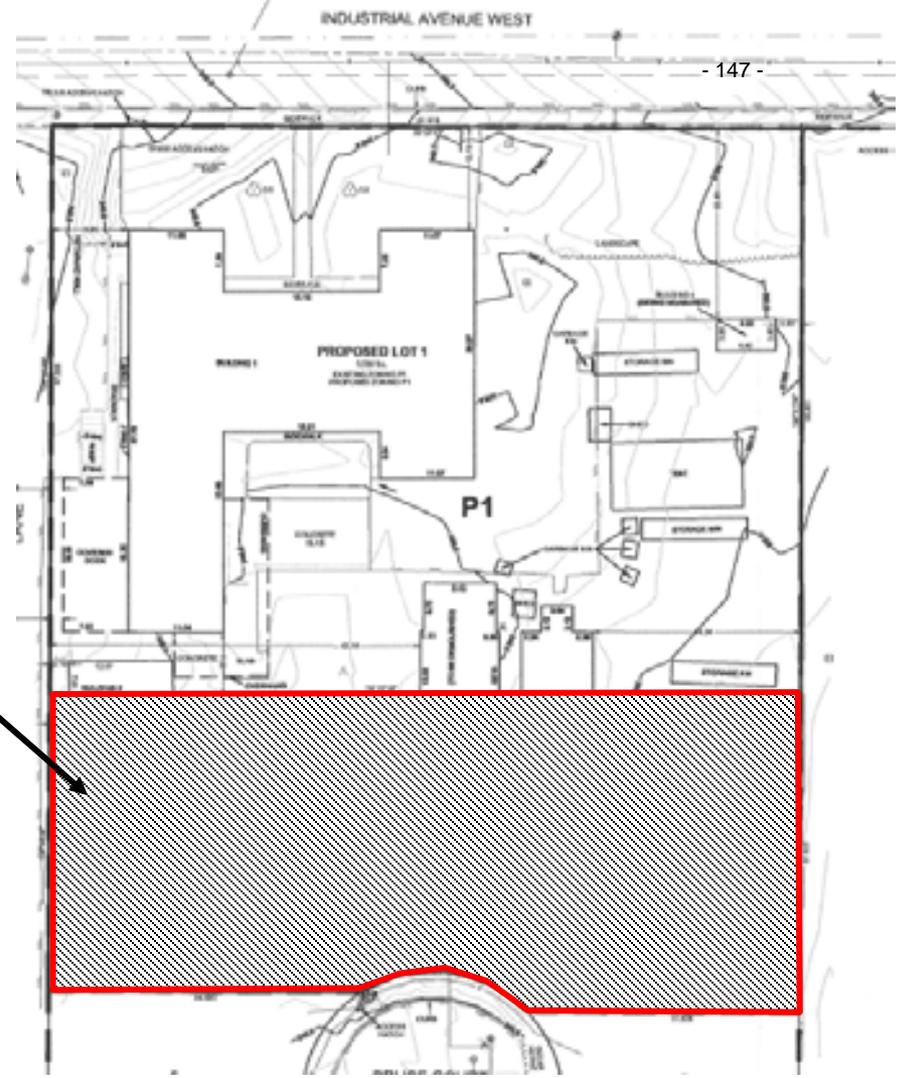
READ A FIRST time this	18 day of	April, 2017
A PUBLIC HEARING was held this	2 day of	May, 2017
READ A SECOND time this	2 day of	May, 2017
READ A THIRD time this	2 day of	May, 2017
RECEIVED the approval of the Ministry of Transporton on the	3 day of	May, 2017
ADOPTED this	day of	, 2017

Notice of intention to proceed with this bylaw was published on the 21 day of April, 2017 and the 26 day of April, 2017 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.



Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer



To rezone a portion of 180 Industrial Avenue W From P1 (Public Assembly) To RM2 (Low Density Multiple Housing)

City of Penticton – Schedule 'A'

Zoning Amendment Bylaw No. 2017-27

Date: _____

Corporate Officer: _____

Development Variance Permit

Permit Number: DVP PL2017-7878

Conditions of Permit

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.

2. This permit applies to:

Legal: AMENDED LOT A (DD 244437F) DISTRICT LOT 115, SIMILKAMEEN DIVISION
YALE, DISTRICT PLAN 3494 EXCEPT PLANS 20051 AND 26786

Civic: 180 Industrial Avenue

PID: 010-843-124

3. This permit has been issued in accordance with Section 498 of the *Local Government Act*, to vary the following section of Zoning Bylaw 2017-08 as shown in the plan attached in Schedule "A":

- *Section 7.6 Parking Requirements Table 7.5 to reduce the number of required parking stalls from 16 to 11 stalls*

General Conditions

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.
5. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.
6. This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.
7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.
8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure

requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the day of , 2017

Issued this _____ day of _____, 2017

Dana Schmidt,
Corporate Officer

Bylaw No. 2017-32

A Bylaw to Amend Zoning Bylaw 2017-08

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2017-32".

2. **Amendment:**

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone Lot 1, District Lots 202 and 249 Similkameen Division Yale District Plan 3562 Except Plan KAP68121, located at 747 Government Street from R2 (Small Lot Residential) to RM2 (Low Density Multiple Housing).

2.2 Schedule 'A' attached hereto forms part of this bylaw.

READ A FIRST time this	2	day of	May, 2017
A PUBLIC HEARING was held this	23	day of	May, 2017
READ A SECOND time this		day of	, 2017
READ A THIRD time this		day of	, 2017
ADOPTED this		day of	, 2017

Notice of intention to proceed with this bylaw was published on the 12 day of May, 2017 and the 17 day of May, 2017 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

Bylaw No. 2017-33

A Bylaw to Amend Zoning Bylaw 2017-08

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the Local Government Act;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. Title:

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2017-33".

2. Amendment:

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Add under 11.5 C5 – Urban Centre Commercial:

11.5.4 SITE SPECIFIC PROVISIONS

.6 On Lot 1, District Lot 4, Group 7, Similkameen Division Yale (Formerly Yale-Lytton) District, Plan EPP57755, located at 285 Nanaimo Ave W, residential uses shall be permitted on the first floor.

2.2 Schedule 'A' attached hereto forms part of this bylaw.

READ A FIRST time this	2	day of	May, 2017
A PUBLIC HEARING was held this	23	day of	May, 2017
READ A SECOND time this		day of	, 2017
READ A THIRD time this		day of	, 2017
RECEIVED the approval of the		day of	, 2017
Ministry of Transportation on the			
ADOPTED this		day of	, 2017

Notice of intention to proceed with this bylaw was published on the 12 day of May, 2017 and the 17 day of May, 2017 in the Penticton Western newspaper, pursuant to Section 94 of the Community Charter.

<p>Approved pursuant to section 52(3)(a) of the <i>Transportation Act</i> this _____ day of _____, 2017</p> <p>_____</p> <p>for Minister of Transportation & Infrastructure</p>

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

Bylaw No. 2017-34

A Bylaw to Amend Zoning Bylaw 2017-08

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2017-34".

2. **Amendment:**

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Add under **11.5 C5 – Urban Centre Commercial:**

11.5.4 SITE SPECIFIC PROVISIONS

.7 In the case of Lot 5, Block 19, District Lot 202, Similkameen Division Yale District Plan 269, located at 532/536 Main Street, dwelling units on the first storey behind commercial spaces shall be permitted.

2.2 Schedule 'A' attached hereto forms part of this bylaw.

READ A FIRST time this	2	day of	May, 2017
A PUBLIC HEARING was held this	23	day of	May, 2017
READ A SECOND time this		day of	, 2017
READ A THIRD time this		day of	, 2017
ADOPTED this		day of	, 2017

Notice of intention to proceed with this bylaw was published on the 12 day of May, 2017 and the 17 day of May, 2017 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

Site Specific Zoning Amendment To permit dwelling units on the first storey behind commercial spaces at 532/536 Main Street (C5 Zone)



City of Penticton – Schedule 'A'

Zoning Amendment Bylaw No. 2017-34

Date: _____

Corporate Officer: _____

Bylaw No. 2017-35

A Bylaw to Amend Zoning Bylaw 2017-08

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. Title:

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2017-35".

2. Amendment:

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Delete and replace 11.5.3.1 OTHER REGULATIONS with the following:

.1 Dwelling units are restricted to second or higher storeys.

READ A FIRST time this	2	day of	May, 2017
PUBLIC HEARING waived	2	day of	May, 2017
READ A SECOND time this		day of	, 2017
READ A THIRD time this		day of	, 2017
RECEIVED the approval of the		day of	, 2017
Ministry of Transportation on the			
ADOPTED this		day of	, 2017

Notice of intention to proceed with this bylaw and waive public hearing was published on the 12 day of May, 2017 and the 17 day of May, 2017 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

<p>Approved pursuant to section 52(3)(a) of the <i>Transportation Act</i> this _____ day of _____, 2017</p> <p>_____</p> <p>for Minister of Transportation & Infrastructure</p>
--

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

Council Report

penticton.ca

Date: May 23, 2017 **File No:** Civic
To: Peter Weeber, Chief Administrative Officer
From: Ken Kunka, Building and Permitting Manager
Address: 200 Ellis Street
Subject: **Liquor-Primary Licence Permanent Amendment and Structural Change Application
Mile Zero Wine Bar**

Staff Recommendation

1. THAT Council recommends to the Liquor Control and Licensing Branch (LCLB) that it supports the application from Mile Zero Wine Bar located at 200 Ellis Street for a Permanent change for:
 - hours of service (interior) from 11:00am to 12:00am (midnight) to 11:00am to 2:00am, Sunday to Saturday, and
 - an interior occupant load increase from 60 persons to 100 persons;
2. AND THAT Council supports the structural change application to add an exterior licensed patio with:
 - Maximum occupant load of 40 persons,
 - Hours of service from 11:00am to 10:00pm, with
 - No exterior amplified music.

Strategic priority objective

N/A

Background & Proposal

The City has received a permanent and structural change application from Christine Cronie, co-owner of Mile Zero Wine Bar at 200 Ellis Street (Attachment A), seeking changes to their Liquor Primary Licence to increase operating hours:

- from the current Sunday to Saturday 11:00am to 12:00 am(midnight); to proposed hours of 11:00 am to 2:00am,
- increase the occupant interior occupant load from 60 persons to 100 persons, and
- Increase the licensed exterior patio to 40 persons occupant load and hours of operation 11:00am to 11:00pm (Attachment B).

History

On May 4th, 2015 Council supported a recommendation to the Liquor Control and Licensing Branch (LCLB) for an application from Cronies Auto Parts Ltd, located at 200 Ellis Street, for a Liquor-Primary Licence Endorsement (30 persons interior) and that staff investigate resident only parking options in this neighbourhood (247/2015) The application also reference to an exterior patio area of a maximum of 10

persons, but it was not installed as part of the business operations. During the initial public consultation some residents and businesses owners had concerns over the potential for noise generation from a liquor establishment during and after hours. There were also concerns regarding patrons parking in residential areas.

On December 15, 2015 Council supported a recommendation to the Liquor Control and Licensing Branch (LCLB) that it supports the application from Mile Zero Wine Bar located at 200 Ellis Street for a Permanent Amendment (structural change) to increase interior occupant load from 30 to 60 people; and hours of service from 11:00am to 11:00pm to 11am to 12:00am (midnight), Sunday to Saturday. During the public consultation process concerns were raised by some local residents of increased noise and parking issues.

To date, there have been no bylaw complaint case files recorded for noise or parking related issues from the neighboring residents since the opening in 2015. Staff have monitored the area and have not witnessed any issues relating to parking since the opening of Mile Zero.

Proposal Intent

The owners wish to make these additional changes to their operations due to the demand from patrons. The applicant has provided a community impact statement to outline their request (Attachment C). This change also includes an increased area and occupant load for an exterior patio use. The patio has not been in operation to date but application for sidewalk/boulevard use has been applied for.

The current interior occupant load maximum is related to the number of washrooms provided for patrons as regulated under the BC Building Code.

Site Context

The current property is zoned C6 – Mixed Use Commercial and the use meets Zoning regulations. There are no restrictions on the hours of operation under the Zoning Bylaw. The property is located in a mixed residential and commercial area (Map – Attachment A). There are four compliant on-site parking spaces and no outstanding Building or Fire Code issues in relation to their current operations.

Current uses near the proposed property include:

- East – mixed residential;
- North – mixed commercial and residential; (including the Cannery Brewery)
- South – mixed residential, commercial; and
- West – mixed commercial, office and residential (downtown core).

Liquor Control and Licencing Branch (LCLB) Legislation, Policy and Bylaw Review

Any business in the hospitality, entertainment or beverage industry - including bars, pubs, lounges, nightclubs, stadiums, theatres, recreation and convention centers - may apply for a Liquor-Primary licence. The only exceptions are businesses geared towards youth (which may not be licensed to serve liquor) and private clubs (which require a Liquor-Primary Club licence.)

The LCLB application process for a permanent change for a Liquor-Primary licence requires a municipal resolution (within 90 days) before the Province will consider the application further. The change request is currently under a parallel review with LCLB.

The Liquor Control and Licensing Regulation requests that the City review and provide resolution related to the following criteria:

- The location of the establishment, person capacity and hours of liquor service of the establishment,
- The impact of noise on nearby residents,
- The impact on the community if the application is approved (example - public nuisance (RCMP), traffic issues, etc.); and
- Public input for the community in the immediate vicinity of the proposed endorsement service area(s) and how input was gathered.

Financial implication

Mandatory public consultation notification costs will be offset through the City's Liquor application review fees.

Analysis

Technical Review

As part of the Liquor Control and Licencing Branch (LCLB) requirements, the City has conducted an assessment of the technical criteria as well as conducting a public consultation review. In consideration of criteria, the following information has been provided from the City's Liquor Licencing Technical Review Committee (LLTRC) with regards to this application.

Location of establishment, person capacity and hours of service

- Ellis Street is classified as an Urban Collector Commercial route with maximum speeds of 30 km/hr.
- No off-street parking is required. There are 4 compliant on-site patron/staff parking.
- There are currently more than 100 street parking spaces along Ellis within two blocks of the proposed location with an additional 50 off-street parking spaces located at the Nanaimo parking lot.
However, there is proposed density increase in the downtown core over the next several years which will impact the availability of off-street parking lots and increased vehicles in the downtown area.
- There is a mix of commercial, industrial and single/multi-family residential development within the consultation area. There are 0 Liquor Primary, 3 Food Primary Licensed and one Brewery Lounge (Cannery) premises within a 2 block (100 meter) radius of the property.
- The increase in internal person occupant load from 60 to 100 will require additional washroom(s) under a Building Permit.
- The hours of service will be later than other establishments in the area. The Cannery Brewery (North of Wine Bar) operates until 11:00pm.

Noise and traffic related issues can be regulated under current City regulations.

The impact of noise on nearby residents:

- Concerns were raised by some members of the Committee in relation to the initial request for expanded hours to 2:00am and were communicated the applicant. These concerns revolved around the applicant's ability to ensure patrons do not use the exterior patio during late hours and noise issues during dispersal at the 2:00am closure.

It is suggested that the hours of operation on the patio be restricted to a 10:00pm closure and the operator ensure there is no loitering by patrons on the patio after 10:00pm or after the final 2:00am closure.

Any potential impact to the surrounding neighborhood will be governed by the City's existing regulations.

The impact on the community if the application is approved:

There are two social and recreation facilities in the local area including:

- o [FitKidz Gymnastics Club](#) (across the road);
- o [The Ooknakane Friendship Centre](#) (one block to the north)

Staff and the LLTRC do not foresee any significant negative impact on these organizations. The establishment provides a service to promoting the local winery industry.

Public Consultation

As this application is an amendment to an existing licence, public notification was commenced as part of staff and the LLTRC review. Input from local residents would allow staff to engage with the applicant to address any concerns and provide mitigation measures prior to final recommendation to Council for endorsement. A notice of application and request for comment was mailed out to the business owners and residents within 100m (Attachment D) of the subject property on April 28th. Public Notice Signage placed along Winnipeg Street and two public notices were placed in the local newspapers.

As a result, there have been letter received at the time of preparation of this report (Attachment D). The concerns revolve around increased parking and traffic, noise and light nuisances as well as smoking.

Citizens are also provided the opportunity to comment on the application the day of the Council meeting held May 23, 2017.

LLTRC Recommendation:

Based upon the comments received by the Liquor Licensing Technical Review Committee and consultation with staff and public, it is recommended that the proposed application be supported with a maximum exterior patio use of 10:00pm.

Council can choose to support the application as presented or modify the request with further restrictions such as use or hours. Should Council deny the application then the applicant will be informed of that decision and a Council resolution outlining the reason for denial will be forwarded to the LCLB.

Alternate recommendations

1. THAT Council denies support of the Permanent change for hours of service (interior) from 11:00am to 12:00am (midnight) to 11:00am to 2:00am, Sunday to Saturday;
2. THAT Council denies support of Permanent change in interior occupant load from 60 persons to 100 persons;

3. THAT Council denies support or modifies the structural change application for the exterior licensed patio; or
2. THAT Council refer back to staff for further review.

Attachments

- Attachment A – Site and Zoning Map
- Attachment B – Exterior Patio layout
- Attachment C – Owner impact statement
- Attachment D – Public Consultation Map
- Attachment E – Public Consultation comments

Respectfully submitted,

Ken Kunka ASCT, RBO
Building and Permitting Manager
LLTRC Chairperson

Approvals

Director of Development Services <i>AK</i>	CAO PW
--	---------------

Attachment A
Site Map



C6 - Zoning



Attachment B Exterior Patio Layout



future wood pergola for shade



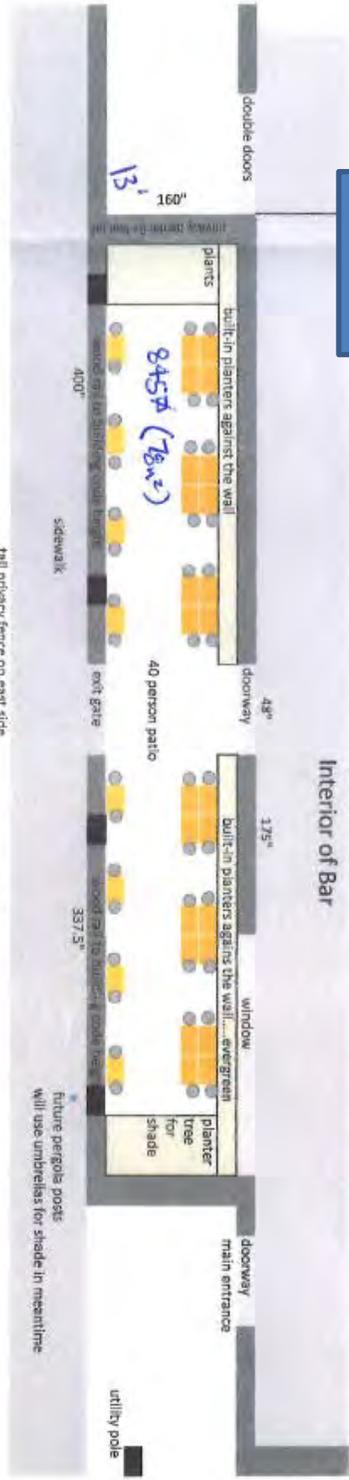
tall trees shrubs



tall privacy fence on east side
built in flower/shrubs along the wall



railing idea



Additional
washroom required
for interior load
increase

CITY OF PENTICTON
ACCEPTANCE
 Date: April 19/17
 Approved by: Kirk Kirk
 exterior patio

OCCUPANT LOAD 40 PERSONS

Will the City of Penticton help share some shade trees on the SE Corner of Westminster and Ellis?

*Mile Zero
200 Ellis Penticton*



Ellis Street

Attachment C Owner Impact Statement

April 20, 2017

Amendments to Mile Zero Wine Bar - Community Impact

200 Ellis Street

Penticton, BC V2A 4L6

- Extension of hours from midnight – 2 am (alcohol service ending @ 1:30am)
- Patio addition (drawing submitted to Ken Kunka)
- Increase in occupancy from 60 – 100

Since opening in October of 2015, Mile Zero has received positive feedback from the residential and business community. A few complaints we have received, is that we have had to turn away customers booking for events due to our limited occupancy and hours of operations. When we opened our wine bar, we did not take into consideration the amount of corporate, winery, retirement, seasonal events and parties that would request to book with us.

Occupancy Increase

Mile Zero Wine Bar has a large space that is more than adequate to accommodate 100 persons. The building is 100' x 33'. Parking has been busy mostly on Friday afternoons between the Cannery and Mile Zero. As of this date, we have had one complaint from our neighbour directly behind our business that people were (legally) parking on front of her house and we have dealt with it without any further issues. Other than this parking complaint, we have not had any other concerns regarding parking to our knowledge. We also have room for seven vehicles in the back of our business for customers and staff. There are very few residential buildings that have street-only parking in the 100, 200 and 300 block of Ellis Street leaving ample room for our customers. Many of our customers walk, take public transportation or rideshare to our wine bar.

Hours of Operation

The last year we have had to turn down many corporate, winery and entertainment events due to our current occupancy and the fact that we closed too early. We are looking for an extension of both hours and occupancy so we may facilitate these requests for these special events. It is very unlikely we would be open that late every night of the week. As it stands, we end alcohol service at 10:30 pm five days a week (Sunday – Thursday).

We are mindful of patrons leaving the building late at night and our staff will ask customers to wait indoors until their taxi or ride arrives. We have a posted sign by our door advising customers to keep noise levels to a minimum when leaving the premises.

Patio

We are also requesting to build a patio on the North Side of our building (facing Cannery Brewing). We are losing customers in the warmer weather because many would prefer to sit outside in the fresh air. The drawings and landscape ideas have been submitted with this request and will greatly enhance the look of our building. The patio will be closed before 11pm to comply with the noise bylaw and patrons moved inside our building. There will be no loud music or live entertainment on our patio.

Thank you for considering our requests.

Regards,

Christy Cronie

MAY 02 2017

301-208 Ellis St
Penticton, BC V2A 4L6
May 2, 2017

City of Penticton
Attn: Corporate Officer
171 Main Street
Penticton, BC V2A 5A9

Dear Corporate Officer:

Re: Expansion of liquor licence and addition of outdoor patio at Mile Zero Wine Bar

I am writing to oppose the expansion of the licence to allow Mile Zero to be open until 2:00 am Monday to Sunday. I also oppose the addition of the outdoor patio which is proposed to be open until 11:00 pm Monday to Sunday.

When Mile Zero was first proposed, I expressed my opposition because I purchased my principal residence at 208 Ellis Street based on the quiet neighbourhood and location to downtown. I was told at that time that they were trying to "upgrade" the neighbourhood, and it would only serve to increase property value. I was also assured at that time that it would not be allowed past 11:00 pm.

A second rezoning application was put forth. Again, I wrote to oppose the expansion to include more tables and later closing time. The previous months had shown that the wine bar does not actually have the 10 parking spaces that it claimed to have, and patrons used the space in front of my principal residence to frequent the establishment. This in itself is a problem because it leaves no space for anyone in the building to have visitors with convenient parking. The greater issue, though, is the noise created when customers leave. I know that Mile Zero cannot control what customers do outside the premises, but having a 2:00 am closing time would cause disruption to the area at an unacceptable time.

Their request to increase the interior occupant load, as well as build and outside patio, is not supported by the parking available to the wine bar. Aside from street parking, the wine bar has three available parking spots. One of these, at least, is used by the bar employees, so that reduces available parking even further.

I also take this opportunity to renew my request to have resident parking made available for the 200 block of Ellis St.

Sincerely,



Cindy Sattelberger

Jeanette Beaven

May 8 2017

153 Van Horne st ,Penticton, BC V2A 4K1

MAY 0 8 2017

City of Penticton

re: Subject Property at 200 Ellis st. Penticton.

re: Mile Zero, Liquor Primary Amendment

As joint tenent of 153 Van Horne st. 6 houses away from subject property, I felt we had done due diligence when purchasing our house when we checked the posted opening hours on Mile Zero and The Cannery Brewing co. doors . The stated hours of closing by 9 pm outside were not likely to cause problems in the neighbourhood .

Increasing the operating hours to 2am , 7 days/nights a week is too much - too late . The increase in patio hours is also a concern, how loud will the ambience, music be played? The likelihood of intoxicated people roaming the residential area at 3 am is not a dream if last call for a bottle of wine is 1.59 am.

I urge the City Council of Penticton to take a sober look at this application and deny the increase in hours Mile Zero has applied for.

Thank you
Jeanette Beaven

From: Lois & Greg Burdock <
Sent: May-13-17 1:46 PM
To: corpadmin
Subject: 200 Ellis St Mile Zero Application

May, 13, 2017
RE: Public Notice, 200 Ellis Street
Application: Mile Zero

Public Comments by, Lois & Greg Burdock, 101 – 233 Vanhorne Street Penticton BC V2A 4K3

We do not have any concerns with the Liquor primary amendment to increase the interior occupant load to 100 and to extend the hours of operations.

We do not have concerns with the addition of the patio or its hours of operations, however we do have a few comments.

As residents of the area for 19 years (and using the intersection of Ellis and Westminster) there has been a definite increase in both vehicular and that of pedestrian traffic on the corner of Ellis and Westminster a direct result of the two new business.

Comment 1 –

With the increase in traffic its become difficult to make a south turn off Westminster onto Ellis, adding to this the Ellis street bridge elevation and allowable parking up to the corner has contributed to the difficulty in turning.

Comment 2 –

The speed of the traffic.

We applaud and agree with the Cities initiative to decrease the speed to 30km however adding all the factors above into place and the lack of not providing any out reach notification with the speed decrease has now become our main issue.

Ellis street has always been an artery for residents on lower, middle, and upper bench with the increasing foot traffic by adding another patio it would be very prudent to provide a few "NEW" signs indicating the change.

We spoke to the Public Works staff Mitch Moroziuk as he did not have any plans to provide any signage or out reach information about the change in speed, we feel this would be an opportune time to do so.

By addressing the change in speed we feel a win win for the local residents the general public and the customers using the businesses, and fits into the core plan of getting more foot traffic and less vehicles in our downtown area.

Thanks you for the opportunity to contribute.

Lois and Greg Burdock.

217, Van Horne Street,
Penticton, BC
V2A 4K3

MAY 09 2017

Corporate Officer
City of Penticton
171 Main Street
Penticton V2A 5A9

May 7th 2017

Dear Sir,

Re: Mile Zero Application for Liquor Primary Amendment to Increase Interior Occupant Load from 60 to 100 persons, extension of hours to 2 a.m.; and Outdoor Patio Seating.

I have lived in this neighbourhood for 13 years and chose it because it was quiet and on a non through street. Since this business and the Cannery opened the nature of the neighbourhood has changed dramatically. There is far more casual traffic and parking by patrons of Mile Zero, and the Cannery, and this spills over into the 200 block of Van Horne.

In my letters written in February 2015 and November 2015 I requested "Resident Parking Only" for the 200 block of Van Horne. This was ignored and parking is now a major problem especially in the evenings. I cannot imagine what the increased capacity will do to the parking and traffic problem. Also as vehicles cannot find parking they are continually doing U-turns at the end of Van Horne and this creates a lot of noise and extra traffic. I do not see how the addition of another 100 seats and the resulting increased traffic will be able to be managed safely.

I have a progressive neurological condition and my mobility is poor and I cannot walk outside without the use of a walker. I cannot walk long distances and if friends fetch me for a medical appointment the lack of parking is a major issue. I also worry about the placement of the outdoor patio and how this will affect my mobility as I pass this establishment.

Also I now have Interior Health Homecare coming in twice a day. If they cannot find parking close by and have to walk a long distance, that time comes off my care time and this is a major health issue for me, and I feel totally unacceptable.

In addition to the issues named above, I am concerned about the increased noise late into the night, the increased smoking, and potential for fire from carelessly discarded butts.

It seems totally unfair that a business can get a foot in the door, and then ask for increased hours and a large number of extra patrons including an outdoor patio that is going to make it increasingly difficult for me and other neighbourhood residents with mobility issues.

In summary I am opposed to increasing the occupant load and hours of operation, as well as to the outdoor patio because of:

- 1) Increased traffic and unsafe traffic patterns in this residential neighbourhood including the dead-end 200 block of Van Horne Street
- 2) Serious parking issues affecting local residents. At the very least I am asking for "Resident Only" parking.
- 3) The implications they will have on my position as a person with a disability requiring regular care from Interior Health Home Support
- 4) Noise well into the early hours of the morning
- 5) Smoking outside of the business with the increased potential fire hazard

I trust the concerns of the local residents will be heard and addressed,

Sincerely,



Anne Reinders

218 Van Home St.
Penticton, BC
V2A 4K4

May 12, 2017

Ken Kunka
Building & Permitting Manager
City of Penticton

To Ken Kunka and hopefully all councillors

Re: Mile Zero application for Liquor Amendment to increase interior occupant load from 60 to 100 persons and extension of hours from Mon. to Sun. 11 am to 2 am and outdoor patio from 11am to 11pm Mon. to Sun.

It is 60 paces from my street corner to the corner of this business and I am very concerned about the increase in hours, especially until 2am every single day of the week! I have checked the hours of 2 other similar businesses in this town.

The Cannery Brewing hours of operation are:	Mon.-Thurs. 12 – 8pm	The Bad Tattoo hrs are:
	Fri.- Sat. 12 –9pm.	Mon –Thurs, 11-10 pm.
	Sun. 11 –8pm.	Fri. –Sat. 11- 11 pm
		Sun. 11-10 pm.

I appreciate the Cannery's respect for the residents of this area. They exemplify the true spirit of The Good Neighbour Bylaw 5030. The new hours requested by Mile Zero show no such respect for the residents of this Residential/duplex zoned area and these hours of operation contravene the city's noise bylaws. After talking to city staff at the Bylaw Enforcement Services, I was told the hours that this Good Neighbour Bylaw 2012 5030 is in effect is from 10PM to 7 AM.

If councilors approve these hours, there will be a precedent set whereby all businesses could operate until 2 am, every day of the week. Is Mile Zero hoping to "capture" all the party goers who want to continue on when the other establishments have closed for the evening? Our neighbourhood will become very noisy and have very serious parking issues. We will not be able to have our windows open and sleep will be interrupted. If one has to get up at say, 7am, then one gets a whole 5hrs.of sleep. This is unacceptable and unhealthy.

It is very frustrating that this business started out with reasonable numbers of patrons and hours and then, once it got its foot in the door, now requests these increases.

This neighbourhood is zoned Duplex and it is a residential area. The Good Neighbour Bylaw 2012 5030 states that :

6.6 No person being the owner, occupier or tenant of Real Property shall allow or permit such Real Property to be used so that the noise or sound which occurs therein or emanates there from, disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person or persons on the same property or in the neighbourhood or vicinity of that property.

This paragraph is repeated over and over again in this Good Neighbour Bylaw. See attachment!

Now, imagine yourselves living just 60 paces away, or better yet, put this same business with its unacceptable time of 2am on your RESIDENTIAL street corner.

I am expecting that this request from Mile Zero will be denied and I am expecting council to follow its own Bylaws. It is imperative that council show concern for the residents and not, as is its usual practice, to do whatever business wants.

Sincerely,

Ellen Kildaw
Ellen Kildaw

Richard Kildaw
RICHARD KILDAW

General Prohibitions:

- 6.5 No person shall make or cause, or permit to be made or caused, any noise in or on a highway or other public place in the City which disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person or persons in the neighbourhood or vicinity of that place.
- 6.6 No person being the owner, occupier or tenant of Real Property shall allow or permit such Real Property to be used so that noise or sound which occurs thereon or emanates there from, disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person or persons on the same property or in the neighbourhood or vicinity of that property.

Specific Prohibitions:

- 6.7 Without limiting the generality of Sections 6.5 and 6.6 herein:
- (a) No person shall play or operate any radio, stereophonic equipment or other instrument or any apparatus for the production or amplification of sound either in or on private premises or on any highway or other public place in such a manner as to disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person or persons in the neighbourhood or vicinity of those premises or place.
 - (b) No person being the owner, occupier or tenant of Real Property shall allow or permit his real property to be used by a person or persons for playing or operating any radio or stereophonic equipment or other instrument or other apparatus for the production or amplification of sound in such a manner as to disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person or persons in the neighbourhood or vicinity of said real property.
 - (c) Subject to Sub-Section 6.2 (c), no person shall own, keep or harbor any animal or bird, but excluding dogs, which by its cries or sounds unduly disturbs the peace, quiet, rest or tranquility of the surrounding neighbourhood or of persons in the vicinity.
 - (d) No person may operate, or cause, suffer or permit the operation of, any motorized lawn-grooming or garden equipment in the City between the hours of 2200 hours and 0700 hours.
 - (e) Subject to Section 6.3, no person in the City shall, on any day before 0700 hours or after 2200 hours, construct, erect, reconstruct, alter, repair or demolish any building, structure or thing, or excavate or fill in land in any manner which causes noise or sounds in or on a highway or elsewhere in the City which disturbs or tends to disturb, the quiet, peace, rest, enjoyment, comfort or convenience of any person or persons in the neighbourhood or vicinity.

Attn Corporate Officer May 19/17

-173-

City of Penticton

No: - 200 Ellis St.

Dear Sir - Regarding the extended hours of operation at Mile Zero. Although the extended hours are hardly likely to make or break the business, they do however break the expectation of peace and quiet in the small hours of the morning. I do not support petio hours past 9pm nor inside hours past 11pm as it takes considerable time to disperse the 'happy' patrons

Sincerely,

Jill Beaven

JILL BEAVEN 153 VAN HORN ST

9:44am
RECEIVED
MAY 11 2017

- 174 -

225 Van Home St
Penticton, BC
V2A 4K3

May 5, 2017

Ken Kunka,
Building & Permitting Manager
City of Penticton
171 Main St
Penticton, BC, V2A 5A9

Dear Mr Kunka,

Re: Mile Zero application for Liquor Primary Amendment to increase interior occupant load from 60 to 100 persons, extension of hours to 2 am, & outdoor patio.

I live across the alley and 4 houses down from this business. In the year and a half since it has been open, parking for the nearby residents has become a problem. It is very frustrating to come home with a carload of groceries or luggage and not be able to park close to my home. With an increase of 40% of customers, it is very likely that this will become more of an issue.

As I requested in a letter in Feb 2015 and November 2015, I again reiterate my request for "Area Resident Parking" signs for the 100 and 200 blocks of Van Home St, and the 200 Block of Abbott St.

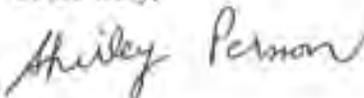
Since staff and patrons are not allowed to smoke inside, they go outside to smoke. My house was built in the 1940s and I do not have brush around it. The houses closest to the wine bar were probably built around that time and many do have bushes in their yards and old garages. We know how dry our city gets in the summer, and it upsets me to see more cigarette butts behind my garage. If one building caught fire, these older neighbouring homes would be at great risk of burning too.

I find it very frustrating that these liquor establishments start out with reasonable numbers of patrons and hours, but as they get their foot in the door, numbers and hours are increased. This changes the nature of the friendly, residential neighbourhood. What will be their next request – live music on the outdoor patio until 2 am?

In summary, I am opposed to increasing the occupant load and hours of operation because of:

1. increased traffic in this residential neighbourhood
2. parking issues
3. noise, well into the night
4. smoking outside of the business and increased risk of fire.

Yours truly,



Shirley Persson

Council Report

penticton.ca

Date: May 23, 2017 **File No:** Civic
To: Peter Weeber, Chief Administrative Officer
From: Ken Kunka, Building and Permitting Manager
Address: 135 Winnipeg Street
Subject: **Liquor-Primary Licence Permanent Change
LUSO Canadian Multicultural Club (Portuguese Sporting Club of Penticton)**

Staff Recommendation

THAT Council recommends to the Liquor Control and Licensing Branch (LCLB) that it supports the application from the LUSO Canadian Multicultural Club (Portuguese Sporting Club of Penticton) located at 135 Winnipeg Street for a Permanent change of hours of service from:

- From: 4:00pm to 1:00am Monday, Tuesday, Thursday and Friday;
- To 2:00pm to 1:00am, Monday, Tuesday, Thursday and Friday.

Strategic priority objective

N/A

Background & Proposal

The City has received an application on April 12, 2017 from the Portuguese Sporting Club located at 135 Winnipeg Street (Attachment A), seeking a permanent amendment to their Liquor Primary Licence to alter their service hours.

The non-profit society has been operating at its current location for over 30 years. The Society has 60 active members who participate in various recreational activities with monthly dinners. The current maximum occupant load is 141 persons. There is no off-street parking, which was approved as part of the building expansion permit in 1999. To date, there have been no complaint case files recorded for noise or parking related issues from the neighboring residents or businesses.

Proposal Intent

The society wishes to make this additional change to their operations to provide expanded services to its members, groups or private functions such as weddings. An outline has been provided by the Society as Attachment B.

Site Context

The current property is zoned C6 – Mixed Use Commercial and the use meets Zoning regulations. There are no restrictions on the hours of operation under the Zoning Bylaw. The property is located in a mixed residential and commercial area (Map – Attachment A).

Current uses near the proposed property include:

- East – commercial;
- North – mixed residential;
- South – mixed residential, commercial; and
- West – mixed residential

There is one (1) Manufacturer/Food Primary premise (Bad Tattoo Brewery) within 100 meter radius of the property.

Liquor Control and Licencing Branch (LCLB) Legislation, Policy and Bylaw Review

Any business in the hospitality, entertainment or beverage industry - including bars, pubs, lounges, nightclubs, stadiums, theatres, recreation and convention centers - may apply for a Liquor-Primary licence. The only exceptions are businesses geared towards youth (which may not be licensed to serve liquor) and private clubs (which require a Liquor-Primary Club licence).

The LCLB application process for a permanent change for a Liquor-Primary licence requires a municipal resolution (within 90 days) before the Province will consider the application further. The change request is currently under a parallel review with LCLB.

The Liquor Control and Licensing Regulation requests that the City review and provide resolution related to the following criteria:

- The location of the establishment, person capacity and hours of liquor service of the establishment;
- The impact of noise on nearby residents;
- The impact on the community if the application is approved (example - public nuisance (RCMP), traffic issues, etc.); and
- Public input for the community in the immediate vicinity of the proposed endorsement service area(s) and how input was gathered.

Financial implication

Mandatory public consultation notification costs will be offset through the City's Liquor application review fees.

Analysis

Technical Review

As part of the Liquor Control and Licencing Branch (LCLB) requirements, the City has conducted an assessment of the technical criteria as well as conducting a public consultation review. In consideration of criteria, the following information has been provided from the City's Liquor Licencing Technical Review Committee (LLTRC) with regards to this application.

Location of establishment, person capacity and hours of service:

- Winnipeg Street is classified as a Minor Collector route;
- No off-street parking is required;
- There are currently more than 100 street parking spaces along Winnipeg St., Estabrook Ave and Westminster Ave W within two blocks of the proposed location;
- There is a mix of commercial, industrial and single/multi-family residential development within the consultation area;
- There is no request to alter the current occupant load of 141 persons. Typically member use of the premise is at a much lower occupant load.

There are no concerns. Any potential impact to the surrounding neighborhood will be governed by the City's existing regulations.

The impact of noise on nearby residents:

- Request is only for earlier opening hours on weekdays. There should be no significant impact to nearby residents;
- There are no complaint files on record regarding noise disturbances.

There are no concerns. Any potential impact to the surrounding neighborhood will be governed by the City's existing regulations.

The impact on the community if the application is approved:

- There are no social or institutional agencies within the vicinity of the society.

There are no concerns and the Society has provided a valuable service to the community and has been a good neighbour to surrounding businesses and residents.

Public Consultation

As this application is an amendment to an existing licence, public notification was commenced as part of staff and the LLTRC review. Input from local residents would allow staff to engage with the applicant to address any concerns and provide mitigation measures prior to final recommendation to Council for endorsement. A notice of application and request for comment was mailed out to the business owners and residents within 100m (Attachment C) of the subject property on April 28th. Public Notice Signage placed along Winnipeg Street and two public notices were placed in the local newspapers. As a result, there have been no comments received at the time of preparation of this report. Citizens are also provided the opportunity to comment on the application the day of the Council meeting held May 23, 2017.

LLTRC Recommendation:

Based upon the comments received by the Liquor Licensing Technical Review Committee and consultation with staff and public, it is recommended that the proposed application be supported.

Council can choose to support the application as presented or modify the request with further restrictions such as use or hours. Should Council deny the application then the applicant will be informed of that decision and a Council resolution outlining the reason for denial will be forwarded to the LCLB.

Alternate recommendations

1. THAT Council denies support of the LUSO Canadian Multicultural Club (Portuguese Sporting Club of Penticton) permanent change request.
2. THAT Council refer back to staff for further review.

Attachments

- Attachment A – Location and Zoning Map
- Attachment B – Applicant statement
- Attachment C - Public Consultation Map

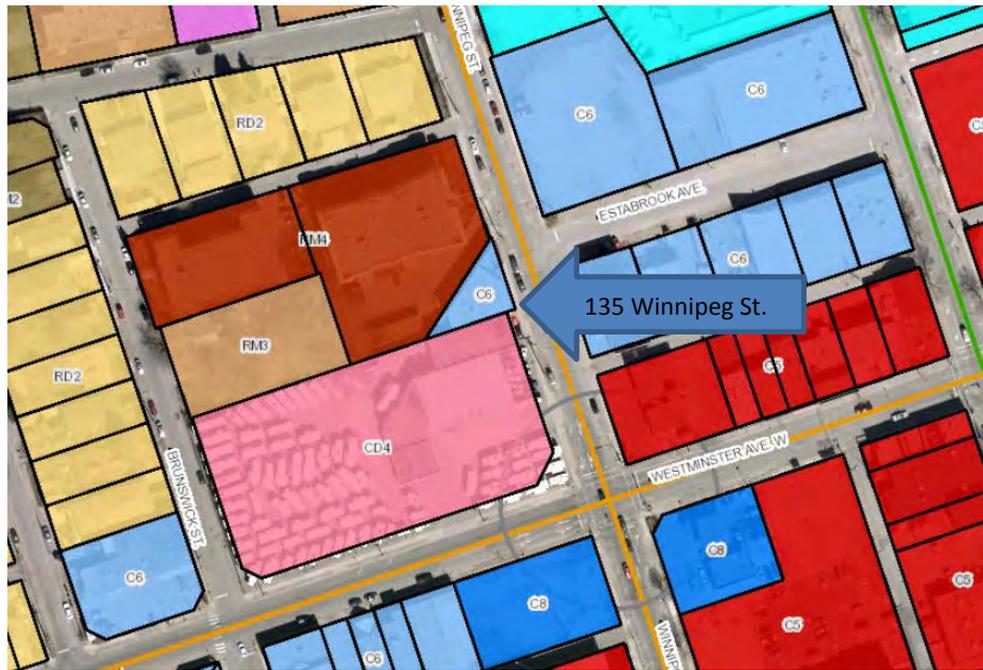
Respectfully submitted,

Ken Kunka ASCT, RBO
Building and Permitting Manager, LLTRC Chairperson

Approvals

Director of Development Services <i>AK</i>	CAO <i>PU</i>
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Attachment A Site Map



C6 Zoning

Attachment B
Applicant Statement

LUSO CANADIAN

135 Winnipeg St.
V2A 6L2



Penticton, B.C.
Ph: 493-9124

20 _____

No: _____

Dear Sir/Madam,

Our Society has currently 60 active senior members. Of those, 15 participate regularly on playing Bocce on **Wednesdays** and playing cards on **Sundays**.

The Club opens at 2pm on these days.

Except for dinners that occur once a month on **Saturdays**, the other activities take place every week and presently our license doesn't permit us to serve alcohol this early except on Saturdays; therefore, the request of the extension of serving alcohol. In addition, last March 2017 a new board of directors was elected and is pondering new activities to provide entertainment for the senior members. Our goal is ultimately to have the club open daily.

We have been open since 1983 not only to provide recreational entertainment but also to host monthly dinners for the members. Only on Saturdays when the dinners take place the occupancy is on average 60 people. The other days the average occupancy is 10 to 15 members. We

don't expect any impact on the community as a result of the change of hours to serve liquor.

Attachment C Public Consultation Map



Front Entrance - Winnipeg

Council Report



Date: May 23, 2017 **File No:** PRJ2016-101
To: Peter Weeber, Chief Administrative Officer
From: Blake Laven, Planning Manager
Subject: Temporary Use Permit Application (TUP) to allow for temporary construction offices

Staff Recommendation

THAT Council approve "Temporary Use Permit PL2016-7761", a permit to allow for 'temporary offices in portable trailers' on Lot A, District Lot 3429S, Similkameen Division Yale District, Plan 23195, Except Plan 37288, located at 1704 Government Street, for a period of 3 years.

Strategic priority objective

The subject application is in support of the patient care tower project leading to a healthier and more livable community.

Background

The subject lands are located directly across Government Street from the where the new Patient Care Tower (David E. Kampe Tower) is currently under construction. The property currently accommodates the Britco factory, a production facility that manufactures modular housing and trailers.

The subject property is split zoned, with the majority of the property zoned M1 (General Industrial), and with a smaller portion fronting Government Street zoned as C4 (General Commercial). The C4 portion of the property was zoned in 1992 with the intent to accommodate a medical office building that never proceeded.

Ellis Don, the P3 partner responsible for the construction and management of the new patient care tower, has leased the portion of the subject lands that are zoned C4 to accommodate their construction field trailers - for themselves and their sub-trades. The C4 zone, however, does not permit



Figure 1: Zoning Bylaw Map showing the split zoning of 1704 Government Street

offices within temporary buildings. As such, Ellis Don has applied for a Temporary Use Permit to allow for the use during the construction of the tower.

Proposal

The applicants are requesting temporary use permit approval for 'temporary offices in portable trailers' at 1704 Government Street for a period of three years.

Financial implication

N/A

Technical Review

This application was discussed by the City's Technical Planning Committee (TPC) in October of 2016. The committee did not have any objections to the use of the property as temporary offices. Issues such as servicing with electrical, potable water and sewer have been accommodated through the building permit process. Concerns were raised, however, over the traffic safety of workers crossing back and forth across Government Street. These concerns have been communicated to the applicant. It is understood that workers should utilize the existing crosswalks at Government Street and Carmi Avenue and at Government Street and Industrial Avenue.

Analysis

Approve Temporary Use Permit "TUP PL2016-7761"

As Britco is currently remodeling their operations to build more modular housing and less construction trailers within their factory, they have excess space in their parking lot. The use of this excess space for portable office trailers is considered a good use of the space during the construction of the hospital tower. The intent is to remove the trailers once the tower is complete (2019).

When considering a Temporary Use Permit, The Official Community Plan provides guidelines to follow.

- Is not noxious or undesirable;
- Does not have a negative impact on adjacent lands;
- Does not create a significant increase on City services or infrastructure;
- Complies with development permit area guidelines;
- Operates at hours that do not disturb the peace and quiet of surrounding neighbourhood;
- Does not permanently alter the site;
- Complies with conditions specified by Council; and
- Complies with all federal and provincial statutes.

In this case, staff consider that the proposal generally meets all of the above objectives. The use is not noxious or undesirable. Generous landscaping exists along the boulevard. Given the location of the use,

there are no immediately adjacent residences or really businesses that will be affected by the temporary offices.

Given the above, staff recommend that Council issue the permit for the full three years permitted by the Local Government Act.

Deny or refer Temporary Use Permit "TUP PL2016-7761"

If Council feels this is not an appropriate use for the subject property, Council may wish to deny the request. Alternatively, Council may wish to approve the request with conditions that Council feels are warranted.

Alternate recommendations

THAT "Temporary Use Permit PL2016-7761" be denied.

THAT "Temporary Use Permit PL2016-7761" be referred back to staff.

Attachments

Attachment A – Subject property location map

Attachment B – Images of subject property

Attachment C – Temporary Use Permit PL2016-7761 for issuance

Respectfully submitted,

Blake Laven, RPP, MCIP
Planning Manager

Approvals

Director <i>BL</i>	Chief Administrative Officer PW
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Attachment A
Subject Property Location Map



Attachment B
Images of Subject Property



Figure 2: Image of trailers from Government Street looking south



Figure 3: Image of trailers (on right) looking north on Government Street

Attachment C
Temporary Use Permit PL2016-7761 for Issuance



City of Penticton
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | ask@penticton.ca

Temporary Use Permit

Permit Number: TUP PL2016-7761

Owner Name
Owner Address

Conditions of Permit

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.
2. This permit applies to:

Legal: Lot A, District Lot 34295, Similkameen Division Yale District, Plan 23195, Except Plan 37288
Civic: 1704 Government Street
PID: 005-033-519
3. This permit has been issued in accordance with Section 493 of the *Local Government Act*, to allow for the temporary use of the above noted lands for temporary offices in portable trailers, as shown in the plans attached in Schedule A.

General Conditions

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.
5. In accordance with Section 497 of the *Local Government Act*, This permit shall expire on **May 31, 2020**.
6. This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.
7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.
8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Temporary Use Permit PL2016-7761 is authorized by City Council, the 23rd day of May, 2017

Issued this ____ day of _____, 2017

Dana Schmidt,
Corporate Officer

Temporary Use Permit PL2016-7761

Page 2 of 2



Google Earth

feet 300
meters 100



SCHEDULED
TUP PL20160716

Council Report

penticton.ca

Date: May 23, 2017 File Nos: DVP PL2016-7608
To: Peter Weeber, Chief Administrative Officer
From: Blake Laven, Planning Manager
Address: **838 Oakville Street (formerly 798 Revelstoke Avenue)**
Subject: **Re-issuance of Development Variance Permit DVP PL2016-7608**

Staff Recommendation

THAT "Development Variance Permit PL2016-7608" for Lot A, Plan EPP65038, District Lot 2, Similkameen Division Yale District, Group 7, located at 838 Oakville Street (formerly 798 Revelstoke Avenue), be re-issued with a drawing outlining the off-site works required as part of the development.

Strategic Priority Objective

N/A

Background

In July of 2016, Council supported a zoning amendment and development variance permit in support of a unique development on 798 Revelstoke Avenue (now 838 Oakville Street). The zoning amendment was required because the developer was looking at constructing two duplexes on one lot and the current zoning only permitted one duplex.

While the zoning amendment was supported by both staff and Council, the application also involved a request by the developer to vary certain off-site upgrade requirements. In accordance with the City's Subdivision and Development Bylaw, the road fronting the development site was required to be upgraded up to the centre line of the road. In this case, the road was in a substandard condition and to bring the road up to City standards, asphalt, curb, gutter, sidewalk and stormwater management were identified as requirements.

The request from the developer was to look at a reduced standard, without sidewalks. The developer made the commitment to *finish off* the shoulder with asphalt and landscaping. No plans, however, were submitted at the time and it was a bit unclear as to what bylaw requirement was actually being waived. Council passed a resolution waiving the requirement to install sidewalks, but did not speak to curb, gutters or stormwater management.

The development is now complete, except for landscaping and off-site works. There has been some confusion, between the Development Engineering Department and the developer over what the expectation are for the offsite works.

Staff's position is that Council only waived the requirement for sidewalks meaning full design with concrete curbing, gutters and stormwater management is required. The developer, on the other hand, is of the opinion that Council agreed to only require the asphaltting of the shoulder, as was the request from the developer. The minutes of the meeting seem to support staff's position, but the intent is unclear.

For these reasons, Staff are bringing the question back to Council.

To provide greater clarity to the question, staff have provided a drawing showing the reduced standard. If it was Council's intent to only require the asphaltting of the shoulder, this drawing will be attached to the variance permit. This will be done through an administrative amendment to the original permit.

Consultation

The Local Government Act requires notification prior to approval of a variance permit. In this case, however, notification has already occurred. Staff have not provided additional notification, nor does staff feel delegations and submissions are warranted in this case, as this really is just the opportunity for Council to provide clarification on an already approved permit.

Financial Implication

If Council were to support waiving the requirement for concrete curb and gutters, the City may at some future time have to install these works at taxpayers' expense. These works, however are not in the immediate City Capital plan.

The total cost of the works including the concrete curbing is estimated at \$20,000. If Council is to support the request, the cost to the developer is estimated at \$13,000 (for just the grading and asphalt).

Development Engineering Review

The City's Development Engineering department recommends that the street be fully upgraded with curb gutter and sidewalk. This is the City standard. In the absence of this standard, the Development Engineer recommends that storm water be taken into account into any design, whether just asphalt or with concrete curb and gutter. With the addition of paving, there is always the risk of changing storm water patterns, perhaps to the detriment of neighbouring properties. Having designed curbing will mitigate this potential hazard.

Analysis

Approve request for administrative change to DVP PL2016-7608

If Council's intent was to support the developer's request to replace the frontage upgrade requirement with just asphalt as was offered in the letter of intent, then Council should support the administrative

amendment to the permit. Attaching the drawing to the permit will ensure that it is clear what Council’s intent is and what the developer is responsible to construct.

Deny request for administrative change to DVP PL2016-7608

If it was not Council’s intention to waive the installation of concrete curb and gutter works, and if Council does not feel that the concrete curb and gutter should be waived, Council should deny the request for administrative amendment. If Council denies the request, the City would go in and build the works to City standards, except for the sidewalks (as was waived in the previous Council resolution) at the developer’s cost.

Alternate Recommendation

1. THAT Council deny the request for administrative change to “Development Variance Permit PL2016-7608”.

Attachments

- Attachment A: Subject Property Location Map
- Attachment B: Images of Subject Property
- Attachment C: Original letter submitted by developer requesting variance and waiving of sidewalk
- Attachment C: DVP PL2016-7608 for re-issuance

Respectfully submitted,

Blake Laven, MCIP, RPP
Planning Manager

Approvals

Director <i>AH</i>	CAO <i>PW</i>
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Attachment A
Subject Property Location Map



Attachment B
Images of the Subject Property



Figure 1: View from the corner of Oakville Street and Revelstoke Avenue



Figure 2: View from corner of Oakville Street and the rear lane

Attachment C –
Letter of Rationale

Rec'd March 5/16



SCHOENNEHOMES

101-114 Frowe Street, Penticton, BC, V2A 1H9
Tel: 250-490-6770
www.schoennehomes.com

February 12, 2016

City of Penticton
171 Main Street
Penticton, BC, V2A 5A9

Attn: Audrey Tanguay, Long Range Planner

Dear Audrey:

Re: Development Variance Permit
798 Revelstoke Avenue, Penticton, BC
Lot C, Plan H98, DL 1, Grp 7 and Lot 2, Plan 5203, DL 2, Grp 7

We understand that an amalgamation of the above noted property from two lots to one lot and a rezoning of the property from R2 - Small Lot Residential to RM2: Low Density Multiple Family triggers an automatic requirement for sidewalks to be installed along the north and west boundary lines of our proposed development.

The RM2: Low Density Residential zoning, and our development proposal, requires that we provide for 4 on-site parking stalls. In order to meet those requirements we were proposing to provide those parking stalls along the west boundary line in a parallel parking configuration. However because of the requirement to install sidewalks along this elevation the ability to provide those parking stalls is no longer available. And there is no alternative parking option under this proposal.

Of two development options that were discussed with staff it was concluded that the proposal that we have put forward would provide for the greatest positive visual impact to the street and the immediate neighbourhood while highlighting a view of the Penticton Golf Course.

Except for a 4-plex development that is located at the easterly most end of Revelstoke Avenue, and on the opposite side of the street, there are no further sidewalks within this entire residential "pocket" made up from between Eckhardt Avenue West to the north, Fairway Avenue to the south, Highway 97 to the east and the Penticton Golf Course to the west. And given the very slow transition of the area it is unlikely that unless the City takes action to install sidewalks along



101-84 Front Street, Portcharlot, BC, V2A 1H1
Tel: 250-490-6770
www.schoennehomes.com

existing properties there will be very little change to the number of new sidewalks. What would more likely occur is unappealing "orphan" sidewalks littered throughout this neighbourhood.

Therefore given the inability for us to provide for adequate on-site parking facilities as well as the fact that there are, for the most part, no sidewalks within this residential "pocket" development we are requesting that Council considers waving the requirement for sidewalks. We would however recommend that the street shoulder along the entire westerly boundary line of our development be asphalt paved, at our cost. Further we would agree to gift to the city the corner cut-off as identified.

Respectfully submitted



Bruce Schoenne, President
Schoenne Homes Inc.



Attachment D
DVP



City of Penticton
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | ask@penticton.ca

Development Variance Permit

Permit Number: DVP PL2016-7608 (Re-issued)

SCHOENNE HOMES INC
205-166 MAIN ST
PENTICTON BC V2A 5A4

Conditions of Permit

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.
2. This permit applies to:

Legal: Lot A, District Lot 2, Group 7, Similkameen Division Yale District, Plan EPP65038
Civic: 838 Oakville Street (798 Revelstoke Avenue)
PID: 029-916-712
3. This permit has been issued in accordance with Section 498 of the *Local Government Act*, to vary the following sections of Zoning Bylaw 2011-23 as shown in the plan attached in Schedule "A":
 - Section 10.8.2.7 i. to vary the minimum interior side yard setback from 3m to 2.35m
 - Section 10.8.2.7 ii. to vary the minimum exterior side yard setback from 6m to 2.35m
 - Section 10.8.2.8 to vary the minimum rear yard setback from 6m to 4.6m

And Section 9.3 of Subdivision and Development Bylaw 2004-81, reducing the frontage upgrade requirement to those identified on Schedule "B".

General Conditions

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.
5. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.
6. This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.

7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.
8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the 23rd day of May, 2017

Issued this ____ day of _____, 2017

Dana Schmidt,
Corporate Officer



Council Report

penticton.ca

Date: May 23, 2017 File: PRJ 2016-101
To: Peter Weeber, Chief Administrative Officer
From: Blake Laven, Planning Manager
Subject: **Adoption of Zoning Amendment Bylaw No. 2017-07**

Staff Recommendation

THAT Council amend the conditions for approval of "Zoning Amendment Bylaw No. 2017-07", outlined in Council Resolution 25/2017, as follows:

- Amending Condition 2 (off site traffic calming) and Condition 3 (tree replacement) removing the requirement to bond for the works prior to zoning adoption; and
- Removing Condition 5 (geotechnical covenant) in its entirety

AND THAT Council rescind third reading and give third reading as amended to "Zoning Amendment Bylaw No. 2017-07" , changing the Zoning Bylaw number from 2011-23 to 2017-08;

AND THAT Council adopt "Zoning Amendment Bylaw No. 2017-07".

Background

On January 17, 2017 City Council gave first reading to "Zoning Amendment Bylaw 2017-07", a bylaw which put zoning in place for a 110 lot residential subdivision at 1830 Ridgedale Avenue, called the Ridge. A Public Hearing was held on February 7th, and third reading to the bylaw was subsequently given on February 28th, after some minor changes to the land use plan were made.

As part of that approval a number of conditions were outlined that the developer was responsible to complete prior to adoption of the bylaw. Staff can report that the majority of these conditions have now been met and are at this time recommending that Council adopt the bylaw so that the development of the lands may proceed.

In those instances where the conditions have not been fully met, staff are confident the intent will be met at a later stage in the development process. Follows is a list of the conditions that Council placed on final adoption of the bylaw and how the conditions have been met:

Condition 1: "Adoption of "Official Community Plan Amendment Bylaw 2017-06"

- Bylaw 2017-06 was the accompanying future land use amendment bylaw to the subject zoning bylaw and was adopted on February 7, 2016.

Condition 2: "All of the recommendations regarding traffic calming contained in the Traffic Impact Assessment prepared by Wall Consulting Group dated December 16, 2016 must be designed to the satisfaction of the City's Development Engineer and bonded for prior to final approval"

- Traffic calming along Lawrence Avenue and other areas identified in the report, have been included in the subdivision design plans. These plans have tentatively been approved by the City's Development Engineer and Public Works Department. The works are required to be completed prior to completion of the subdivision. Staff are confident that a bond is not required at this time and are requesting that Council amend this condition removing the requirement to bond for the works at this time.

Condition 3: "Tree Replacement Plan prepared to the satisfaction of the City's Park Supervisor, to replace the 247 trees that were removed prior to earth works commencing. Bonding for the works were also required as part of zoning approval."

- Tree replacement has been integrated into the parks plan and into the engineering plans for the road boulevards. Bonding for the trees will happen at the time of parks bonding. Staff are recommending that the bonding condition not be required at this time as the intent will be satisfied in another way (at the time the parks are bonded for at preliminary subdivision approval stage).

Condition 4: "Design for the parks and walkway to the satisfaction of the Parks Supervisor, with all works bonded for at the time of subdivision approval."

- The developer's consultants have submitted plans for the two parks and trail. The first park is a continuation of the Sendero Park and features minor landscaping upgrades and the installation of some benches. This park is intended to be more passive.

The larger park located in Phase II of the subdivision is intended as a neighbourhood park with several amenities, including a basketball half court, kids play structure and a fenced dog park. The park will be developed at the full cost of the developer. The city will take over the park at the time the subdivision plan is deposited, which will not happen until the City's Approving Officer confirms that the park is constructed to a standard that the City is happy to take over.

Condition 5: Registration of the geotechnical report prepared by Ecora Engineering dated August 17, 2016 as a covenant against the development lands.

- This condition will be fulfilled through the subdivision process. Staff are recommending that the bylaw be adopted without this requirement being fulfilled.

Analysis

Support amendments to bylaw adoption conditions

As the conditions of adoption have either been fulfilled or satisfied through other means, staff are recommending that Council now adopt the zoning amendment bylaw.

Once the bylaw is adopted, The City’s Approving Office can issue preliminary layout approval for the subdivision, which will allow for the development to proceed to the lot creation stage.

Deny amendments to bylaw adoption conditions

Council may feel that bonding for the off-site traffic works and tree replacement are warranted at this time and that the geotechnical covenant should be placed on the title of the property prior to zoning approval. If that is the case, Council does not have to amend the conditions or adopt the bylaw at this time. If that is the direction that Council takes, the developer will have to bond for the works and go through the process to have the covenant registered at the land title office. This process could take up to a month.

Alternatives

THAT Council not amend the conditions and “Zoning Amendment Bylaw 2017-07”.

Attachments

- Attachment A – Location Map
- Attachment B – Images of development
- Attachment C – Park design

Respectfully submitted,

Blake Laven, RPP, MCIP
Planning Manager

Director <i>AH</i>	CAO PW
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Attachment A
Subject Property Location Map



Attachment B
Images



Figure 1: Drone image of subject property looking south west, with Sendero canyon houses in foreground



Figure 2: Drone image of subject property looking west with Sendero Canyon park in the foreground



DATE	BY	APPROVED BY

DATE	BY	APPROVED BY

CITY OF PENTICTON
ENGINEERING DEPARTMENT

THE RIDGE - PHASE I
LOWER PARK PLAN

Bylaw No. 2017-07

A Bylaw to Amend Zoning Bylaw ~~2011-23~~ 2017-08

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw ~~2011-23~~ 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2017-07".

2. **Amendment:**

2.1 Zoning Bylaw ~~2011-23~~ 2017-08 is hereby amended as follows:

Change the zoning designations for Lot 1, District Lot 2710, Similkameen Division Yale District, Plan 21103, located at 1830 Ridgedale Avenue, in accordance with Schedule "A" attached hereto and forming part of this bylaw.

READ A FIRST time this	17	day of	January, 2017
A PUBLIC HEARING was held this	7	day of	February, 2017
READ A SECOND time AS AMENDED this	28	day of	February, 2017
READ A THIRD time this	28	day of	February, 2017
RESCIND THIRD and read THIRD as AMENDED		day of	, 2017
ADOPTED this		day of	, 2017

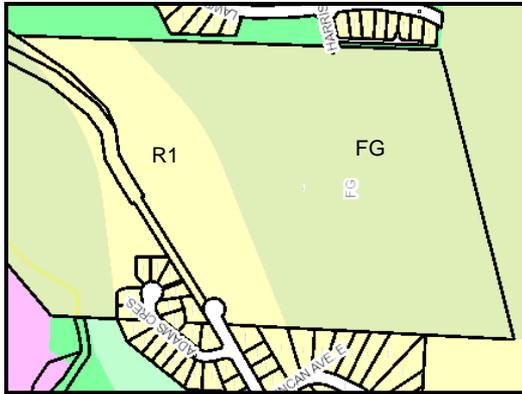
Notice of intention to proceed with this bylaw was published on the 27 day of January, 2017 and the 1 day of February, 2017 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

Andrew Jakubeit, Mayor

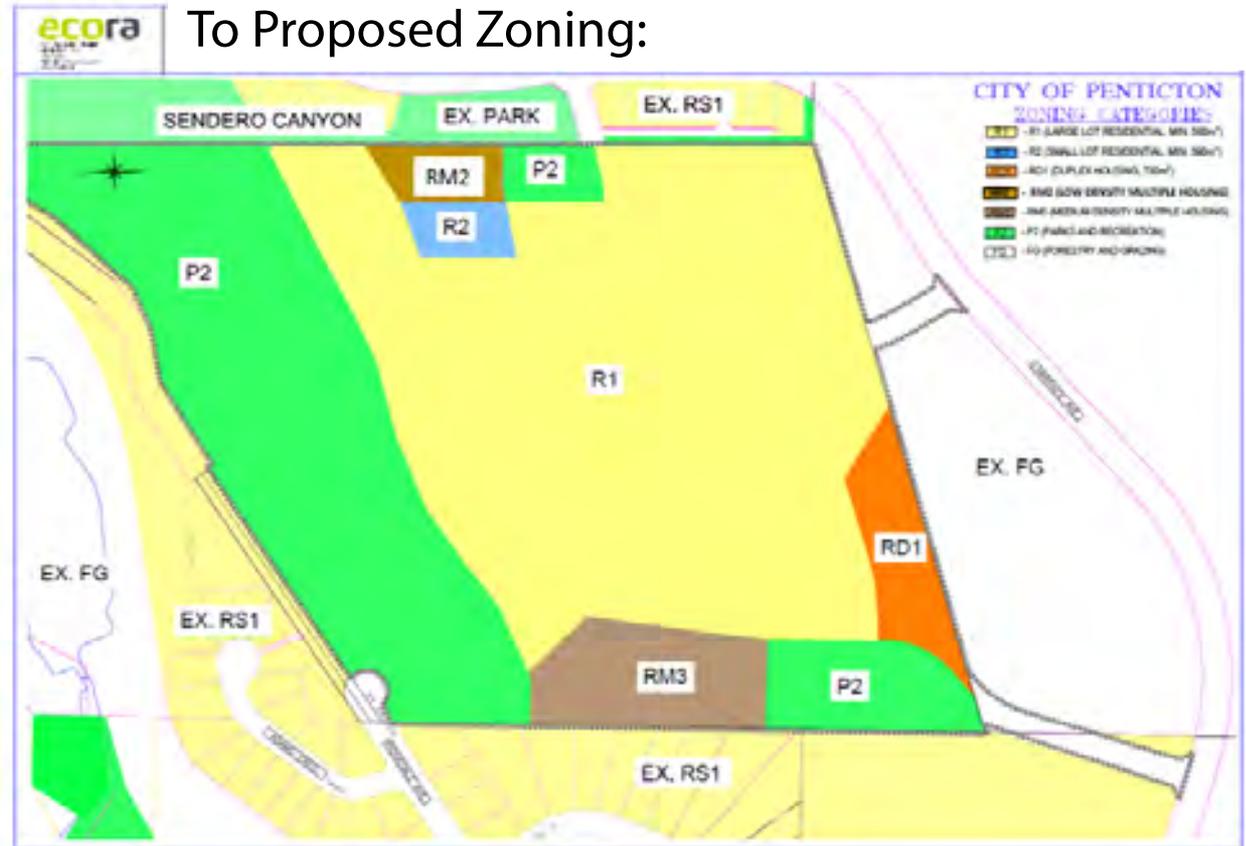
Dana Schmidt, Corporate Officer

1830 Ridgedale Avenue - Rezone

From
(Current Zoning)



To Proposed Zoning:



City of Penticton – Schedule 'A'

Zoning Amendment Bylaw No. 2017-07

Date: _____

Corporate Officer: _____

Council Report

penticton.ca

Date: May 23, 2017
To: Peter Weeber, Chief Administrative Officer
From: Randy Houle, Planner I
Address: 380 White Avenue East

File No: RZ PL2017-7903
DVP PL2017-7904
& DP PL2017-7905

**Subject: Zoning Amendment Bylaw No. 2017-37
Development Variance Permit PL2017-7904
Development Permit PL2017-7905**

Staff Recommendation

Zoning Amendment

THAT "Zoning Amendment Bylaw No. 2017-37" a bylaw to add Section 10.6.4.6: "In the case of that part of Lots 18-20 shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755, located at 380 White Avenue East, two duplexes with a combined Floor Area Ratio of 1.15 are permitted," be given first reading and forwarded to the June 6, 2017 Public Hearing;

AND THAT prior to adoption of "Zoning Amendment Bylaw No. 2017-37," a 4.0m x 4.0m corner cut on the North East portion of the property is registered with the Land Title Office;

AND THAT prior to adoption of "Zoning Amendment Bylaw No. 2017-37," a lot consolidation of Lots 18-20 shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755, is registered with the land title office.

Development Variance Permit

THAT delegations and submissions be heard for "Development Variance Permit PL2017-7904" for that part of Lots 18-20 shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755, located at 380 White Avenue East, a permit to waive the requirement to provide on-site parking for four duplex suites, to decrease the minimum front yard from 4.5m to 3.0m and to decrease the minimum rear yard from 6.0m to 3.0m;

AND THAT "DVP PL2017-7904" be considered only after adoption of "Zoning Amendment Bylaw No. 2017-37".

Development Permit

THAT Council, subject to adoption of "Zoning Amendment Bylaw No. 2017-37," approve "Development Permit PL2017-7905", for Lots 18-20 shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755, located at 380 White Avenue East, a permit that allows for the construction of two duplexes.

Strategic priority objective

N/A

Background

The subject property (Attachment 'A') is zoned RD2 (Duplex Housing: Lane) and designated by the City's Official Community Plan as MR (Medium Density Residential). Photos of the site are included as Attachment 'D'. The lot is approximately 642.82m² (6919.45ft²) and features a single detached dwelling and garage which will be demolished. The surrounding properties are primarily zoned RD2 (Duplex Housing: Lane) and RM2 (Low Density Multiple Housing). Surrounding properties are designated in the OCP as MR (Medium Density Residential). The subject property fronts both Papineau Street and White Avenue East.

Proposal

The applicant is proposing to construct two duplex buildings containing four 1350ft² units with one-bedroom basement suites in each. Since the proposed use is not permitted in the RD2 zone, a site-specific zoning amendment is required to allow for two duplexes in the RD2 (Duplex Housing: Lane) zone.

The proposed amendment will add: Section 10.6.4.6: "In the case of that part of Lots 18-20 shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755, located at 380 White Avenue East, two duplexes with a combined Floor Area Ratio of 1.15 are permitted."

Secondly, the applicant is requesting a Development Variance Permit to vary the following sections of Zoning Bylaw No. 2017-08:

- Section 8.3.3.1: To waive the requirement to provide on-site parking for four duplex suites.
- Section 10.6.2.6: To decrease the minimum front yard from 4.5m to 3.0m.
- Section 10.6.2.8.i: To decrease the minimum rear yard from 6.0m to 3.0m.

Lastly, the property is located within the General Multiple Family Development Permit area and requires approval for the form and character of the duplexes and to address landscaping requirements.

Financial implication

N/A

Technical Review

This application was forwarded to the City's Technical Planning Committee and reviewed by the Engineering and Public Works Departments. Through this process, it was determined that a 4.0m x 4.0m corner cut on the North East portion of the property will be taken by the City. As per City of Penticton Building Bylaw 94-95 section 7.1.5, storm water/drainage is to be maintained on site. The developer has been advised to contact the electrical department to confirm loads and service characteristics as connection costs could be substantial (approximately \$15,000). If the requests for the zoning amendment, variances and development permit are supported, BC Building Code and City bylaw provisions, such as height restrictions, will apply.

Development Statistics

The following table outlines the proposed development statistics on the plans submitted with the rezoning application:

Item	Requirement RD2 zone	Proposed
Maximum Lot Coverage:	40%	37.06%
Maximum Density:	0.95 FAR	1.15 FAR
Vehicle Parking:	1 per unit + 1 per duplex suite (8 required)	1 per unit (4 total) Variance required for suite parking
Required Setbacks		
Front yard (East, Papineau Street):	4.5m	3.0m (variance required)
Exterior yard (North, White Avenue):	3.0m	3.0m
Interior yard (South):	1.5m	1.5m
Rear yard (West):	6.0m	3.0m (variance required)
Maximum Building Height:	10.5m	8.33m
Other Information:	Subject property is located within the General Multiple Family Development Permit Area.	

Analysis

Zoning Amendment

Support "Zoning Amendment Bylaw No. 2017-37"

The site is situated in an area experiencing some densification. The OCP designation for this site is Medium Density Residential (MR), which supports duplex development. Staff consider that the zoning amendment to allow for two duplexes with suites represents best use of the land for the following reasons:

- The proposal is consistent with the OCP's view that infill residential development is an appropriate method of maximizing the use of land and increasing housing choices for Penticton residents.
- The OCP encourages densification in areas where existing services can accommodate higher densities, which is the case here.
- The proximity to downtown, schools and nearby services encourages more walking and active forms of transportation.
- The current proposal will convert a single family dwelling into eight units.

Staff considers that the design is suitable and consistent with the redevelopment trends in the area. The location of the site and characteristics of the surrounding neighbourhood make it appropriate for residential densification. Although the FAR of 1.15 is well above the 0.95 maximum, the lot coverage (37%) is less than the 40% maximum permitted. The height of the building (8.33m) is well under the 10.5m permitted. The calculation of Floor Area Ratio does not include basements. Since the lower suites are primarily above grade, they are considered to be the first storey and are included in the FAR calculation. The applicant could lower the duplex suites further into the ground which would exclude the floor area from the calculation but that

would decrease the amount of light and quality of life for individuals residing in the suite. Given the above, staff recommends that Council support "Zoning Amendment Bylaw No. 2017-37" and forward the application to the June 6, 2017 Public Hearing for comments from the public.

Deny/Refer Zoning Amendment

Council may consider that the proposed amendment is not suitable for this site or that the density is too high for the site. If this is the case, Council should deny the bylaw amendment. Alternatively, Council may wish to refer the matter back to staff to work with the applicant with any direction that Council considers appropriate.

Development Variance Permit

Support Variances

When considering a variance to a City bylaw, staff encourages Council to be mindful of any hardship on the property that makes following the bylaw difficult or impossible; whether approval of the variance would cause a negative impact on neighbouring properties and if the variance request is reasonable.

Section 8.3.3.1: To waive the requirement to provide on-site parking for four duplex suites.

- The proposed development is required to provide a total of eight parking spaces on-site (1 per dwelling unit + 1 per suite). The current proposal has four on-site parking spaces for the principal residences. Driveways have been re-arranged by the developer to create four on-street parking spaces along the property's street frontage. There is additional street parking along White Avenue and Papineau Street. For this reason, it is reasonable to support the variance.

Section 10.6.2.6: To decrease the minimum front yard from 4.5m to 3.0m.

- The proposed development will result in a 3.0m front yard along Papineau Street. The height of the building (8.3m) is less than the 10.5m permitted which will lessen its impact on Papineau Street. If the property was rezoned to RM2 (Low Density Multiple Housing), then the minimum front yard would be 3.0m, which this property would meet.

Section 10.6.2.8.i: To decrease the minimum rear yard from 6.0m to 3.0m.

- The proposed development will result in a 3.0m setback from the duplexes to the west. The duplexes along Beames Lane were built with a 3.0m rear yard as well. A 3.0m rear yard will still allow adequate room for a deck and grass amenity area. There are no bedrooms on the west side of the building with windows which will assist in reducing any privacy concerns. Trees and fencing will provide additional screening from the neighbouring duplexes.

Supporting the variances listed above would help to maximize the living space of the duplexes, with little impact on the surrounding neighbourhood. Staff considers that the variances requested are reasonable and recommend that Council, after hearing from any affected neighbours, support the application.

Deny/Refer Variances

Council may consider that the proposed variances will negatively affect the neighborhood or that the number of variances are too significant. If this is the case, Council should deny the variances.

Development Permit

Support Development Permit

The subject property is located within the General Multiple Family Development Permit Area. As a result, a Development Permit is required. Although this Development Permit can be staff-issued, it has been included in this report for Council's decision in order to streamline the approvals process. The Development Permit Area guidelines are intended to address the form and character of new multi-family buildings. The objective of these guidelines, according to the OCP, is to "ensure that the siting, form, character and landscaping of new development and exterior renovations and additions to existing buildings are compatible with the context of the surrounding neighbourhood and that site access, parking, storage and landscaping matters are satisfactorily resolved, and generally, development is of high aesthetic quality."

- In the current proposal, the building shape, roof line and architectural features such as window and door detailing are sufficiently varied and create visual interest.
- The entrances have a street orientation with entrance walkways and picture windows. This creates an aesthetically pleasing connection to the street.
- The landscape plan features a variety of different plants, flowers, trees and grass.
- Garbage and recycling bins will be screened within an enclosure.
- The developer has incorporated an old rock wall into the plans to add character to the development.

Staff consider that the plans submitted meet the intent of the DPA guidelines and generally conform to the zoning bylaw. As such, staff recommend that Council approve the Development Permit application.

Deny/Refer Development Permit

Council may consider that the proposal does not reflect the current built form of the neighbourhood, or that the development should soften the impact on neighbouring properties. If this is the case, Council should deny the permit.

Alternate Recommendations

1. THAT Council deny first reading of "Zoning Amendment Bylaw No. 2017-37" and deny support for DVP PL2017-7904 & DP PL2017-7905.
2. THAT Council give first reading to "Zoning Amendment Bylaw No. 2017-37" but deny support for DVP PL2017-7904 & DP PL2017-7905.
3. THAT Council give first reading to "Zoning Amendment Bylaw No. 2017-37" and support DVP PL2017-7904 & DP PL2017-7905 with conditions that Council feels are appropriate.

Attachments

Attachment A: Property Location Map

- Attachment B: Zoning Map
- Attachment C: OCP Map
- Attachment D: Photos of Subject Property
- Attachment E: Site Plan
- Attachment F: Elevations
- Attachment G: Landscape Plan
- Attachment H: Letter of Intent
- Attachment I: "Development Variance Permit PL2017-7904"
- Attachment J: "Development Permit PL2017-7905"
- Attachment K: "Zoning Amendment Bylaw No. 2017-37"

Respectfully submitted,

Randy Houle
Planner I

Approvals

DDS 	CAO PW
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Attachment 'A' -Property Location Map



Figure 1: Subject Property Location Map

Attachment 'B' – Zoning Map



Figure 2: Zoning Map

Attachment 'C' - OCP Map



Figure 3: OCP Map

Attachment 'D' – Photos of Subject Property



Figure 4: East View (from Papineau Street)



Figure 5: North View (from White Avenue East)

Attachment 'E' - Site Plan

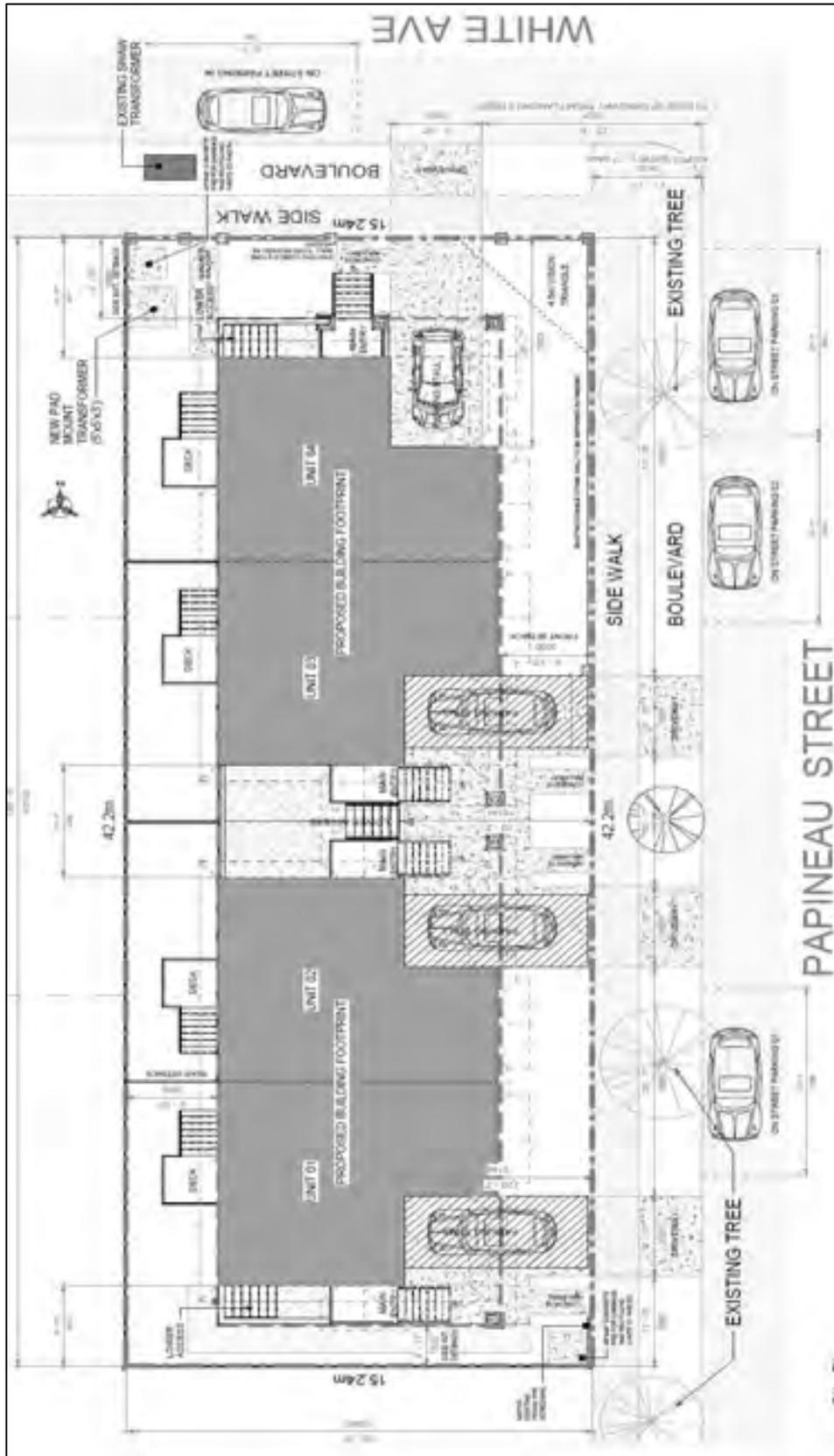


Figure 6: Site Plan

Attachment 'F' - Elevations



Figure 7: North Elevation (from White Avenue East)



Figure 8: East Elevation (from Papineau Street)



Figure 9: West Elevation (from Duplexes on Beames Lane)



Figure 10: South Elevation (facing 627 Papineau Street)

Attachment 'G' – Landscape Plan



Figure 11: Landscape Plan

Attachment 'H' - Letter of Intent

LETTER OF INTENT - 380 WHITE AVENUE EAST, PENTICTON

Trainor Marketing Ltd. (DBA Trainor Construction) proposes to build for sale two duplex buildings containing four units of approximately 1350 square feet, each with a one bedroom basement rental suite of approximately 535 square feet, fully fenced and professionally landscaped.

This project is similar to our build at 551/559 Ellis Street except that three of these units will front onto Papineau Street; the fourth onto White Avenue.

Trainor Construction is seeking a re-zoning from RD2 to RD2 (Site Specific) with the following variances:

- *Vary the minimum front yard from 4.5m to 3.0m.
- *Vary the minimum rear yard from 6.0m to 3.0m.
- *Waive the requirement to provide one on-site parking space for the four accessory suites.

Providing rental basement suites in a duplex project is very challenging but we believe it addresses a great need; providing affordable, new rental accommodations, helping densify the downtown core and offering mortgage-payment assistance to the owner.

Figure 12: Letter of Intent

Attachment 'I' - "Development Variance Permit PL2017-7904"



City of Penticton
111 Main St. | Penticton B.C. | V2A 3A9
www.penticton.ca | ask@penticton.ca

Development Variance Permit

Permit Number: DVP PL2017-7904

Name:
Address:

Conditions of Permit

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.
2. This permit applies to:
 - Legal: That part of lots 18-20 Shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755
 - Civic: 380 White Avenue East
 - PID: 006-428-827, 006-428-843, 006-428-878
3. This permit has been issued in accordance with Section 498 of the *Local Government Act*, to vary the following sections of Zoning Bylaw 2017-08 to allow for the construction of two duplexes as shown in the plans attached as Schedule 'A'.
 - Section 8.3.3.1: To waive the requirement to provide on-site parking for four duplex suites.
 - Section 10.6.2.6: To decrease the minimum front yard from 4.5m to 3.0m.
 - Section 10.6.2.8: To decrease the minimum rear yard from 6.0m to 3.0m.

General Conditions

4. In accordance with Section 501 of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.
5. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.
6. This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.
7. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.

8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the 6 day of June, 2017

Issued this ____ day of _____, 2017

Dana Schmidt,
Corporate Officer

Attachment 'J' - "Development Permit PL2017-7905"



City of Penticton
111 Main St | Penticton B.C. | V2A 3A9
www.penticton.ca | info@penticton.ca

Development Permit

Permit Number: DP PL2017-7905

Name:

Address:

Conditions of Permit

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.
2. This permit applies to:
 - Legal: That part of lots 18-20 Shown on Plan B4556; Block 30 District Lot 202 Similkameen Division Yale District Plan 755
 - Civic: 380 White Avenue East
 - PID: 006-428-827, 006-428-843, 006-428-878
3. This permit has been issued in accordance with Section 489 of the *Local Government Act*, to permit the construction of two duplexes, as shown in the plans attached in Schedule A.
4. In accordance with Section 502 of the *Local Government Act* a deposit or irrevocable letter of credit, in the amount of \$8303 must be deposited prior to, or in conjunction with, an application for a building permit for the development authorized by this permit. The City may apply all or part of the above-noted security in accordance with Section 502(2.1) of the *Local Government Act*, to undertake works or other activities required to:
 - a. correct an unsafe condition that has resulted from a contravention of this permit,
 - b. satisfy the landscaping requirements of this permit as shown in Schedule A or otherwise required by this permit, or
 - c. repair damage to the natural environment that has resulted from a contravention of this permit.
5. The holder of this permit shall be eligible for a refund of the security described under Condition 5 only if:
 - a. the permit has lapsed as described under Condition 8, or
 - b. a completion certificate has been issued by the Building Inspection Department and the Director of Development Services is satisfied that the conditions of this permit have been met.
6. Upon completion of the development authorized by this permit, an application for release of securities must be submitted to the Planning Department. Staff may carry out inspections of the development to ensure the conditions of this permit have been met. Inspection fees may be withheld from the security as follows:



1 st Inspection	No fee
2 nd Inspection	\$50
3 rd Inspection	\$100
4 th Inspection or additional inspections	\$200



General Conditions

7. In accordance with Section 501(2) of the *Local Government Act*, the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.
8. In accordance with Section 504 of the *Local Government Act*, if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.
9. This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.
10. This permit does not constitute any other municipal, provincial or federal approval. The holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.
11. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the 6 day of June, 2017

Issued this _____ day of _____, 2017

 Dana Schmidt,
 Corporate Officer

Site Specific Zoning Amendment to Permit Two Duplexes With a Combined Floor Area Ratio of 1.15 at 380 White Ave E



City of Penticton – Schedule 'A'

Zoning Amendment Bylaw No. 2017-37

Date: _____

Corporate Officer: _____

Council Report

penticton.ca

Date: May 23, 2017 File No: RZ PL 2017-7899 & DVP PL7900
To: Peter Weeber, Chief Administrative Officer
From: Audrey Tanguay, Senior Planner
Address: 1498 Leir Street

**Subject: Zoning Amendment Bylaw No. 2017-38 & OCP Amendment Bylaw No. 2017-39
Development Variance Permit PL2017-7900**

Staff Recommendation

Zoning Amendment Bylaw

THAT "Zoning Amendment Bylaw No. 2017-38", a bylaw to amend Zoning Bylaw No. 2017-08 to rezone Lot 3, District Lot 250, Similkameen Division Yale District, Plan 8818 located at 1498 Leir Street, from R1 (Large Lot Residential) to C1 (Commercial Transition) be introduced, read a first time and be forwarded to the June 6, 2017 Public Hearing;

Development Variance Permit

THAT delegations and submissions for "Development Variance Permit PL2017-7900" for Lot 3, District Lot 250, Similkameen Division Yale District, Plan 8818 located at 1498 Leir Street, a permit to reduce the required parking from 11 stalls to 4 stalls and, to reduce the minimum distance from the driveway to the flanking street curb from 10 metres to 7 metres, be heard at the June 6, 2017 Public Hearing;

OCP

AND THAT "Official Community Plan Amendment Bylaw No. 2017-39" being a bylaw to include Lot 3, District Lot 250, Similkameen Division Yale District, Plan 8818 located at 1498 Leir Street, in the General Tourist Commercial Development Permit Area Schedule "H" of Official Community Plan Bylaw No 2002-20 be introduced, read a first time and forwarded to the June 6, 2017 Public Hearing;

AND THAT Council consider "DVP PL2017-7900" following the adoption of "Zoning Amendment Bylaw No. 2017-38".

Strategic priority objective

This application meets the strategic pillars of creating a sustainable city and a livable city, through increasing small scale commercial activities where existing services already exist and in areas close to transit, institutional use and employment centers.

Background

The subject property (Attachment 'A') is designated as LR (Low Density Residential) according to OCP Bylaw 2002-20 and is zoned R1 (Large Lot Residential) under Zoning Bylaw 2017-08. The 607 m² (0.15 acre) property is currently vacant. A single detached dwelling was recently removed from the site. The property is located at the corner of Carmi Avenue and Leir Street. The surrounding properties are primarily zoned R1 (Large Lot Residential), I (Institutional) and C1 (Commercial Transition). In the past five years, two properties on Carmi Avenue have been rezoned from R1 (Large Lot Residential) to C1 (Commercial Transition) to accommodate medical buildings. Surrounding properties are designated by the OCP as LR (Low Density Residential) and A (Administration/Institutional).

The applicant intends to build a new two storey 304m² medical building. The development is intended for two doctors and 2-3 support staff. The vehicular access to this building is from the lane directly perpendicular to Carmi Avenue.

Proposal

The applicant is requesting an amendment to the zoning of the property from R1 (Large Lot Residential) to C1 (Commercial Transition), as identified in Zoning Bylaw 2017-08.

Additionally, the applicant is seeking a Development Variance Permit to vary the following sections of Zoning Bylaw 2017-08:

- **Section 6.5.** To reduce the parking requirement for a medical building from 10 stalls to 4 stalls
- **Section 6.1.4** To waive the requirement to covenant with the City by agreement for off-site parking

Last, the applicant is also seeking to vary the following section of Subdivision and Development Bylaw 2004-81: **Schedule "G" 12.0 Driveways/Crossovers Section 12.7 Driveways to corner lots must be located a minimum 10m where the flanking street is classified a collector.**

Project Specifications

The following table outlines the proposed development statistics as indicated on the submitted plans:

Item	Requirement C1 Zone	Provided on Plans
Maximum Lot Coverage:	40%	26%
Vehicle Parking:	1 per 30m ² Total: 10 stalls	Total: 4 stalls (Variance required)
Bicycle Parking	Class 1: 3 Class 2: 3	8stalls 3 stalls

Required Setbacks		
Principal Building		
Front yard	3.0m	5.5m
Rear yard	6.0m	11.5m
Interior Side yard	1.5m	1.5m
Exterior side yard	4.5m	4.5m
Maximum Building Height:	10.5m	7.5(2 storey)

Development Engineering Review

This application was forwarded to the City’s Technical Planning Committee and reviewed by the Engineering and Public Works Departments. No frontage upgrades will be required as part of this application and servicing requirements have been identified and will be included as part of the building permit application.

Financial implication

N/A

Analysis

Support Zoning amendment

The LR (Low Density Residential) OCP designation allows for small scale neighbourhood commercial uses such as convenience stores and small scale institutional uses and provides a number of guidelines for consideration of rezoning applications. The guidelines and staff’s comments are as follows:

- Maximum commercial lot area of 2000m²: The subject property is 607m² and is considerably under the maximum size permitted for a commercial property in the LR (Low Density Residential) designation of the OCP.
- Commercial use is located on a collector road and on an intersection: The property is located at the intersection of Carmi Avenue and Leir Street. Carmi Avenue is an urban collector road therefore the intent of this guideline is met.
- Provides screening along a property line that abuts residentially zoned areas: The site plan submitted in support of the rezoning application specifies landscaping adjacent to the residential property on Leir Street. Staff feel that the installation of screen fencing and landscaping will help diminish any undesirable externalities from the commercial use of the property. Staff is also proposing to include this property into a development permit area which will then secure suitable landscaping and screening for the site.
- The size, scale and scope of the proposed use are compatible with the character of the area: In the past five years, two properties to the East on Carmi Avenue have been converted to medical buildings. In 2012, Council approved the conversion of a single detached dwelling into a commercial

building (medical clinic) and in 2013, Council also endorsed the construction of a new medical building at the corner of Balfour Street and Carmi Avenue. The proposed building has been set to maintain the street line with the existing residential building to the north. Vehicular access is proposed off the lane to reduce any impacts a drive aisle from Leir Street would be creating in this neighborhood. The character of the neighborhood will not change considerably as the hospital and other medical buildings are directly across the street.

- *The proposed use will not have a negative impact including noise, unacceptable traffic generation or invasion of privacy on the adjacent residential uses:* Staff do not feel that any negative externalities will impact any neighbouring residences, given that the proposed use of the property is a medical building. Doctor's offices usually have daytime hours Monday to Friday.

Staff consider that the application is suitable and the location of the site and characteristics of the surrounding neighbourhood make it appropriate for small scale commercial use. The plans submitted in support of the rezoning application show that the proposed development meets the guidelines for small scale commercial uses in the LR (Low Density Residential) designation as outlined in the OCP. As such, staff recommend that Council support the application to rezone the property and refer the application to the June 6, 2017 Public Hearing. A development variance permit, however, will be necessary to accommodate the construction of the medical building. Details regarding the variances are spoken to below.

Deny/Refer

Council may feel that the proposed amendments are not suitable for this site. If this is the case, Council should deny the bylaw amendments. If the OCP and zoning amendment do not go forward, the property will be restricted to residential use. Alternatively, Council may wish to refer the matter back to staff to work with the applicant with direction that Council feels is appropriate.

Support Variance

When considering a variance to a City bylaw, staff encourages Council to consider whether approval of the variance would cause an undesirable impact on neighbouring properties and if the variance request is reasonable. The proposed variances are as follows:

Section 6.5 Parking Requirements Table 6.5 to reduce the number of required parking stalls from 10 to 4 stalls and Section 6.1.4 to waive the requirement for a covenant with the City for off-site parking

As with other new development throughout the City, it is often challenging to build within the zoning requirements. This development variance application will take full advantage of the development potential of the site in a manner which is sensitive to surrounding land uses, while providing 4 parking stalls for patients of the clinic. There is no room on the property to install additional parking for the staff. The proposed development is located directly across from a large paid public parking area where visitors or staff from the clinic would be able to park. Normally, the City requires a covenant for off-site parking on private property. In this case, confirmation from Interior Health of the availability of the paid parking for the clientele and staff has been received and is included in this report as Attachment "E". Staff feels that this is adequate and in general meet the intent of the Zoning Bylaw.

The City has implemented the "Resident Parking Only" program in this area to improve the availability of parking for residences surrounding the hospital. The proposed medical building will not be granted residential parking passes therefore it is expected that the doctors practicing at this office will park off site (hospital parking lot) or use public transportation. The OCP has guidelines that support the reduced parking standard to accommodate OCP changes, providing that the development is within 400m of a transit stop. There is a bus stop located 200m away from the site. The site's close proximity to the hospital also supports alternative transportation measures. Staff does not consider that the variance will have a negative impact on any interests of acknowledged importance, including neighbouring properties

Schedule "G", Section 400 part 12.7 of Subdivision & Development Bylaw where driveways must be located a minimum 10m to the face of curb where the flanking street is classified collector

Subdivision and Development Bylaw 2004-81 requires that any driveway located on a corner lot be located a minimum of 7metres or 10 metres from the face of the curb to the adjoining street, based on the classification of the side street. In this case Carmi Ave is classified as a collector hence in accordance with the bylaw the minimum distance is 10 metres. The developer is looking to decrease the requirement from 10m to 7m.

This requirement was developed to provide appropriate distance for vehicles turning corners to observe and react to vehicles using the driveways. It is the opinion of Staff that, in this instance, there is limited justification to increase the minimum distance from 7.0 metres. While there is increased traffic on Carmi Ave, due to the road being a collector, the impact of this is offset through a combination of the existing traffic calming and the reduced speed limit present during school hours.

Staff considers that, in supporting the variance, this may not set precedent for future development in this area and other areas of the City. Considering the above, it is recommended that Council supports DVP PL7900 and direct staff to issue the permit.

Development Permit Area Amendment

Support

The property is not located in a development permit area under OCP Bylaw 2002-20. Staff recommends that the property be included in the General Tourist Commercial Development Permit Area as this is a new development. The objective of the development permit area is to produce streetscape defined by attractive buildings and landscaping as well as establishing building forms, site planning principles and landscape standards appropriate for the area. By including the proposed development into a development permit area; staff considers that it will secure the building design for the property as well retaining securities for landscaping and screening. A landscape design plan prepared by a landscape professional will need to be submitted along with the design for the signage for the new proposed medical building. This is a staff issuable Development Permit and will not require Council approval.

Deny

Council may feel that a development permit is not suitable for this site therefore denying the insertion of the lot under the General Tourist Commercial Development Permit Area of OCP Bylaw 2002-20.

Alternate Recommendations

1. THAT Council give first reading to "Zoning Amendment Bylaw No. 2017-38" but deny support to "Development Variance Permit PL2017-7900"

Attachments

- Attachment A: Subject Property Location Map
- Attachment B: OCP Map
- Attachment C: Zoning Map
- Attachment D: Images of Subject Property
- Attachment E: Letter from Interior Health
- Attachment F: Letter of Intent
- Attachment G: Building Rendering
- Attachment H: Site Plan
- Attachment I: DVP
- Attachment J: Zoning Amendment Bylaw No.2017-38 & OCP Amendment Bylaw No. 2017-39

Respectfully submitted,

Audrey Tanguay, MCIP
Senior Planner

Approvals

Director 	CAO PW
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Attachment A - Subject Property



Figure 1: Location Map

Attachment B - OCP Maps



Figure 2: Current OCP Map

Attachment C - Zoning Maps



Figure 3: Current Zoning Map

Attachment D - Images of the Subject Property



Figure 4: View from Leir Street



Figure 5: View from Lane



Figure 6: View from Carmi Avenue

Attachment E – Letter from Interior Health



May 1, 2017

City of Penticton
171 Main Street
Penticton, BC
V2A 5A9

To Whom It May Concern

This letter is sent as confirmation that Dr. Ali Moshaver holds an active Interior Health physician parking pass for Penticton Regional Hospital. With the addition of the hospital parkade underway, there will be ample parking availability for overflow vehicles belonging to patients visiting Dr. Moshaver's clinic onsite at the Interior Health paid parking facility.

Regards,

Rozanne Haddad, Parking Coordinator
Interior Health Corporate Protection, Parking and Fleet Services
250.491.6450
IHParking@interiorhealth.ca

Interior Health Protection, Parking and Fleet Services
104-2355 Acland Rd,
Kelowna, BC V1X 7X9
1-855-491-6498

Attachment F –Letter of Rationale

Dr. A. Moshaver Inc.*
Otolaryngology-Head and Neck Surgery
Endoscopic Sinus Surgery

** denotes professional incorporation*

April 12, 2017

Parking Strategy

1498 Leir Street

Dear City of Penticton Mayor and Council,

This letter is to acknowledge that we understand there will be limited off-street parking available at our property at 1498 Leir Street, and to outline the strategies we will utilize to manage this situation. We also understand that on-street parking in this area is limited to local residents with permits.

First of all, the Physicians working in this building have hospital privileges, and will use their dedicated parking spots at the hospital. Staff will also be accommodated off site, either at the hospital parkade, or in the large public parking lot across Carmi Avenue.

The four parking spots which will be developed on the property will be retained for patient use, and will include one 3.7m wide accessible stall. Patients will also be able to make use of the large public parking lot directly south across Carmi Avenue. Traffic calming bulges have recently been added at Leir Street and Carmi Avenue, and a well-marked crosswalk developed at this intersection. The Penticton Regional Hospital is across the street, and there will be crossover use with that facility, which includes a large parkade.

In addition to these opportunities for parking cars, the location has been chosen for its proximity to the Hospital, and this part of town is well served by alternative transportation, including wide sidewalks and several bus routes. There is a 15 minute drop off area in front of the building along Carmi Street, as well as a designated bike route. We have provided bike parking both inside and outside the building, including 5 additional bike parking stalls outside. The location is central within the City, and it is expected that staff and patients will have a wide range of transportation options at their disposal.

Sincerely,



Dr. Ali Moshaver

20-88 Duncan Ave. W.
Penticton, BC V2A 7J7

Phone: 778-476-5960
Fax: 778-476-5961

Attachment G – Building Rendering



Figure 7: Street level view

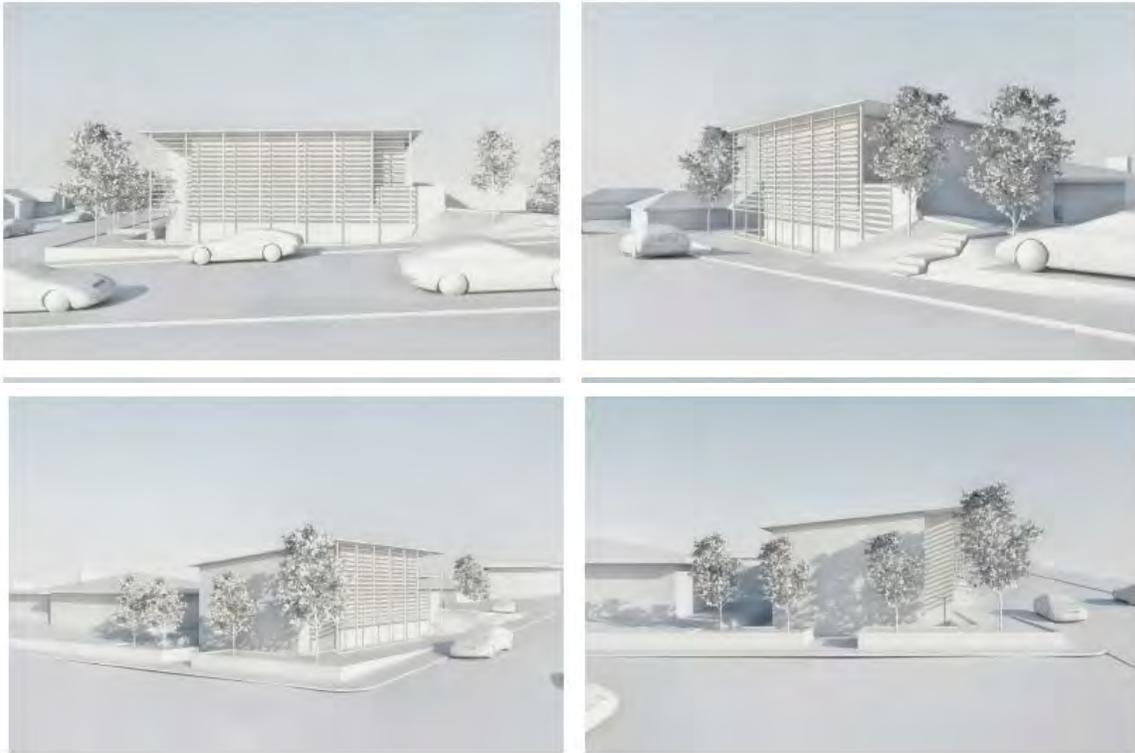


Figure 8: Street level view

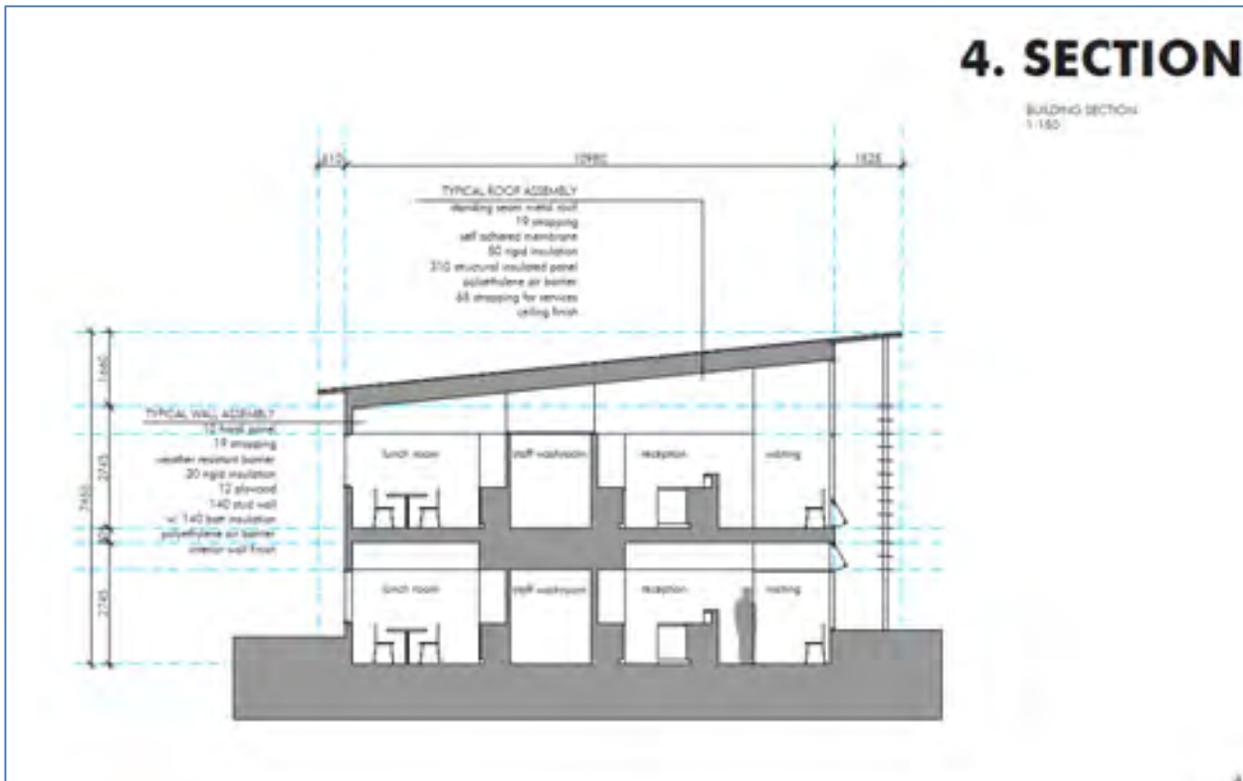


Figure 9: Building Section

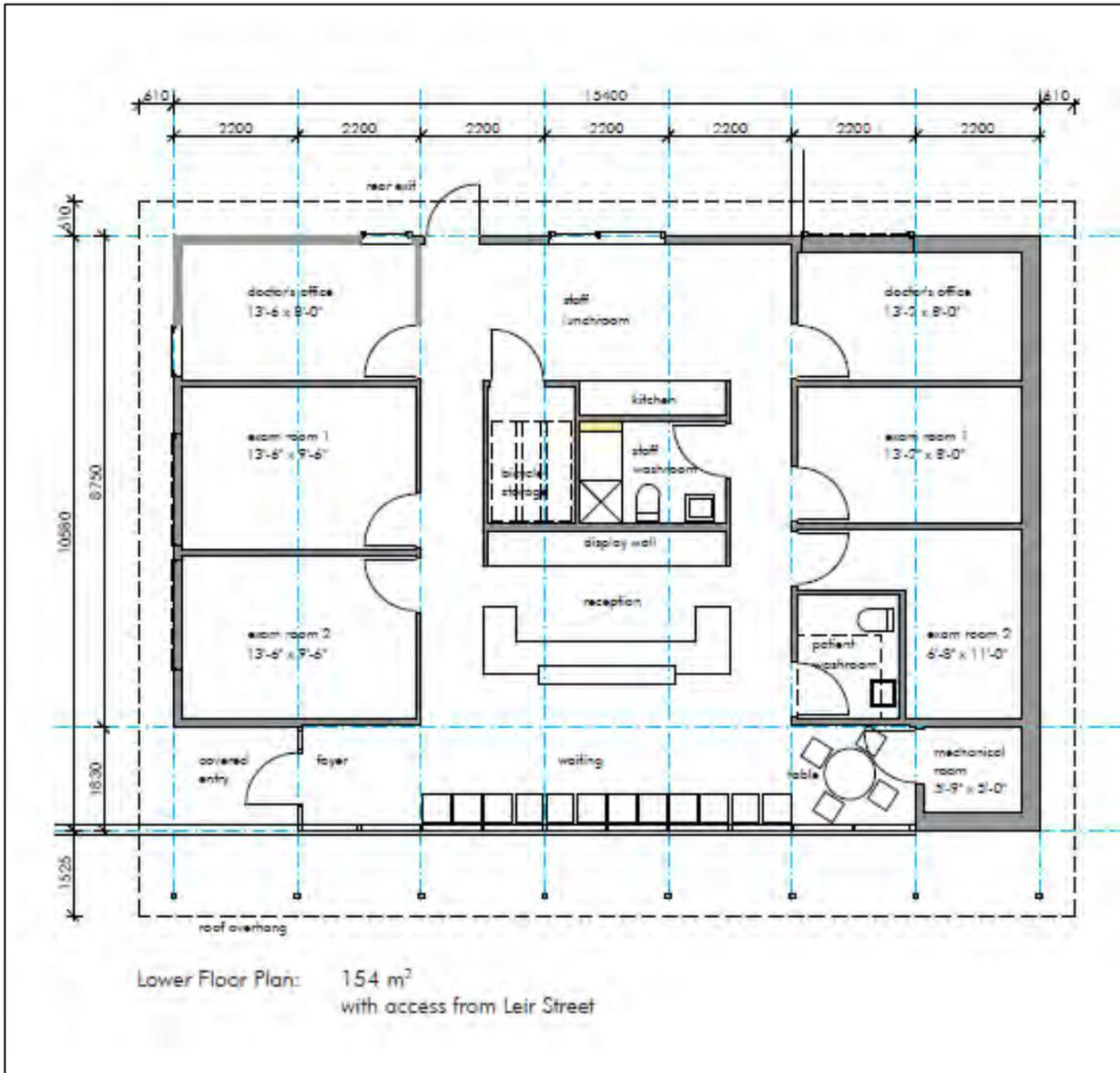


Figure 10: Lower Floor Plan

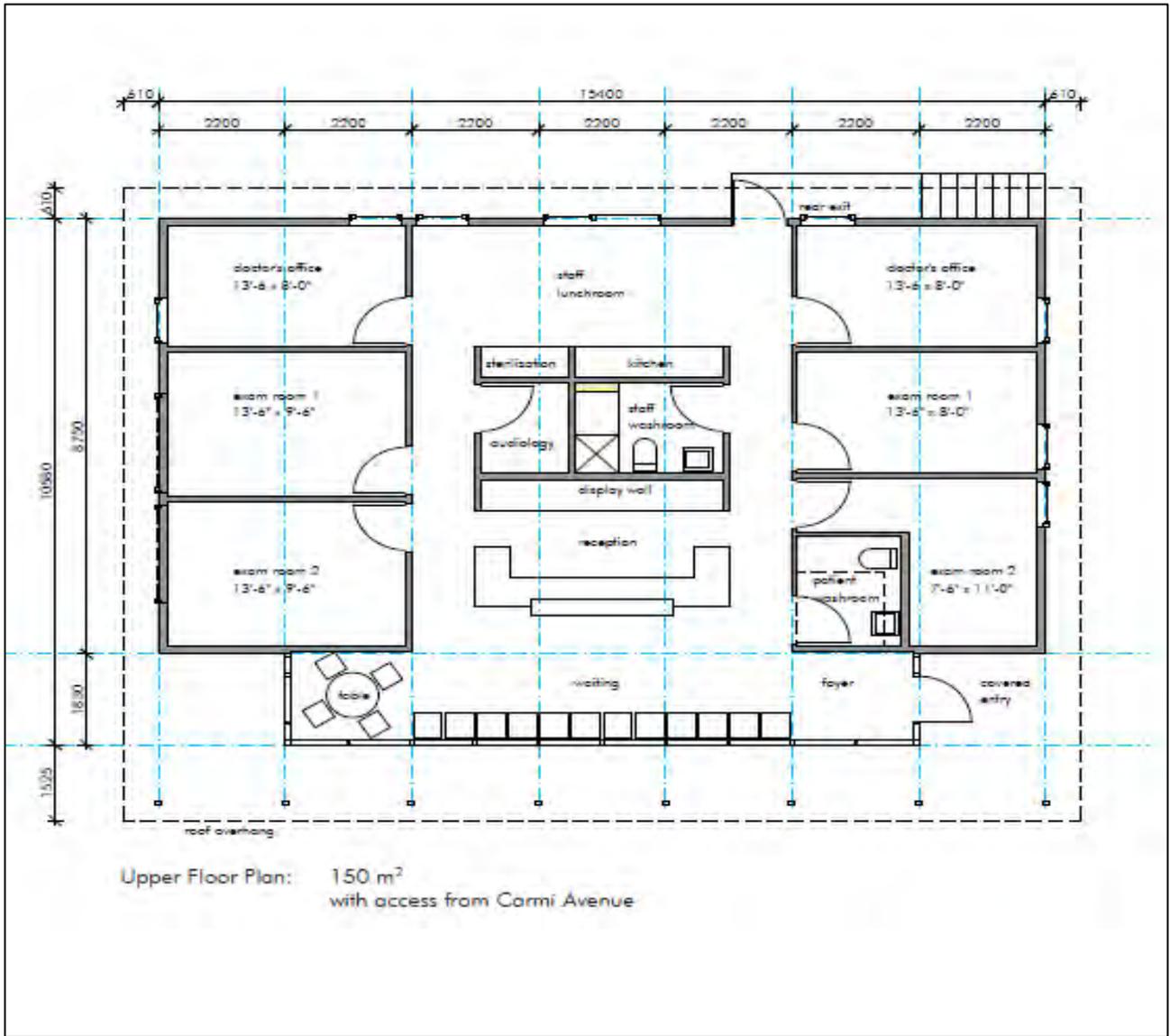


Figure 11: Upper Floor Plan

Attachment H: Site Plan

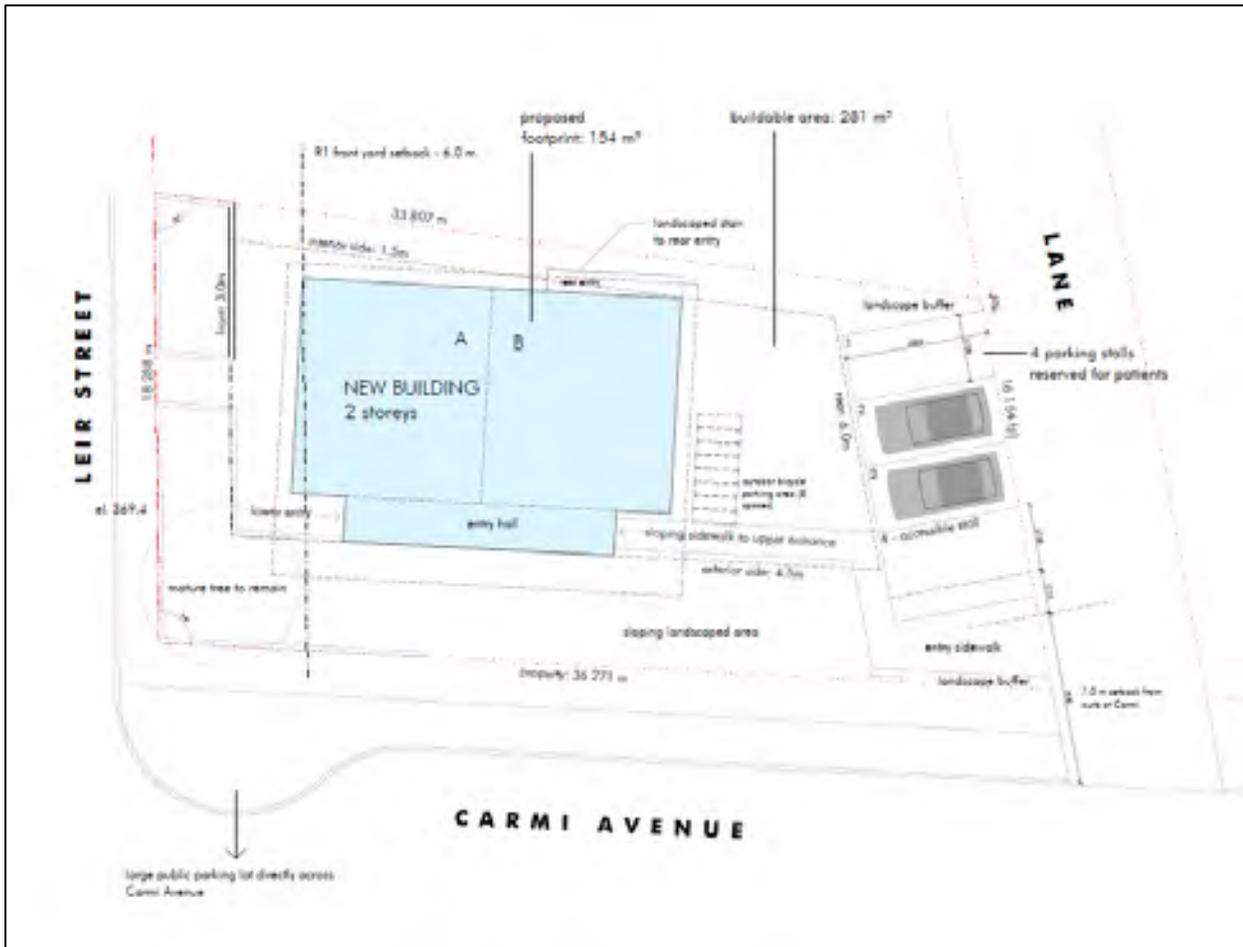


Figure 12: Site Plan

Attachment I: DVP



City of Penticton
171 Main St. | Penticton B.C. | V2A 5A9
www.penticton.ca | info@penticton.ca

Development Variance Permit

Permit Number: DVP PL2017-7900

Conditions of Permit

1. This permit is issued subject to compliance with all of the bylaws of the City, except as specifically varied or supplemented by this Permit.
2. This permit applies to:

Legal: Lot 3, District Lot 250, Similkameen Division Val=District, Plan 8818
Civic: 1498 Leir Street,
PID: 009-784-845
3. This permit has been issued in accordance with Section 498 of the *Local Government Act* to vary the following sections of Zoning bylaw 2017-08:
 - **Section 6.5.** To reduce the parking requirement for a medical building from 10 stalls to 4 stalls
 - **Section 6.1.4** To waive the requirement to covenant with the City by agreement for off-site parking

And to vary the following section of Subdivision and Development Bylaw 2004-81:

 - **Schedule "G" 12.0 Driveways/Crossovers Section 12.7 Driveways to corner lots must be located a minimum 10m where the flanking street is classified a collector.**

General Conditions

4. In accordance with Section 501 of the *Local Government Act* the lands subject to this permit shall be developed in general accordance with this permit and the plans attached as Schedule A.
5. In accordance with Section 504 of the *Local Government Act* if the holder of this permit does not commence the development authorized by this permit within 2 years of the date of this permit, this permit shall lapse.
6. This permit is not a building permit. In order to proceed with this development, the holder of this permit must hold a valid building permit issued by the Building Inspection Department.
7. This permit does not constitute any other municipal, provincial or federal approval. The

holder of this permit is responsible to obtain any additional municipal, federal, or provincial approvals prior to commencing the development authorized by this permit.

8. This permit does not include off-site infrastructure costs that may be required at the building permit stage, such as Development Cost Charges (DCC's), road improvements and electrical servicing. There may be substantial infrastructure and servicing costs payable at a later date. For more information on servicing and infrastructure requirements please contact the Development Engineering Department at (250) 490-2501. For more information on electrical servicing costs, please contact the Electric Utility at (250) 490-2535.

Authorized by City Council, the

issued this ____ day of _____, 2017

Dana Schmidt,
Corporate Officer

MADE BY

Bylaw No. 2017-38

A Bylaw to Amend Zoning Bylaw 2017-08

WHEREAS the Council of the City of Penticton has adopted a Zoning Bylaw pursuant the *Local Government Act*;

AND WHEREAS the Council of the City of Penticton wishes to amend Zoning Bylaw 2017-08;

NOW THEREFORE BE IT RESOLVED that the Municipal Council of the City of Penticton, in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. **Title:**

This bylaw may be cited for all purposes as "Zoning Amendment Bylaw No. 2017-38".

2. **Amendment:**

2.1 Zoning Bylaw 2017-08 is hereby amended as follows:

Rezone Lot 3, District Lot 250, Similkameen Division Yale District, Plan 8818 located at 1498 Leir Street, from R1 (Large Lot Residential) to C1 (Commercial Transition).

2.2 Schedule 'A' attached hereto forms part of this bylaw.

READ A FIRST time this	day of	, 2017
A PUBLIC HEARING was held this	day of	, 2017
READ A SECOND time this	day of	, 2017
READ A THIRD time this	day of	, 2017
RECEIVED the approval of the Ministry of Transportation on the	day of	, 2017
ADOPTED this	day of	, 2017

Notice of intention to proceed with this bylaw was published on the __ day of ____, 2017 and the __ day of ____, 2017 in the Penticton Western newspaper, pursuant to Section 94 of the *Community Charter*.

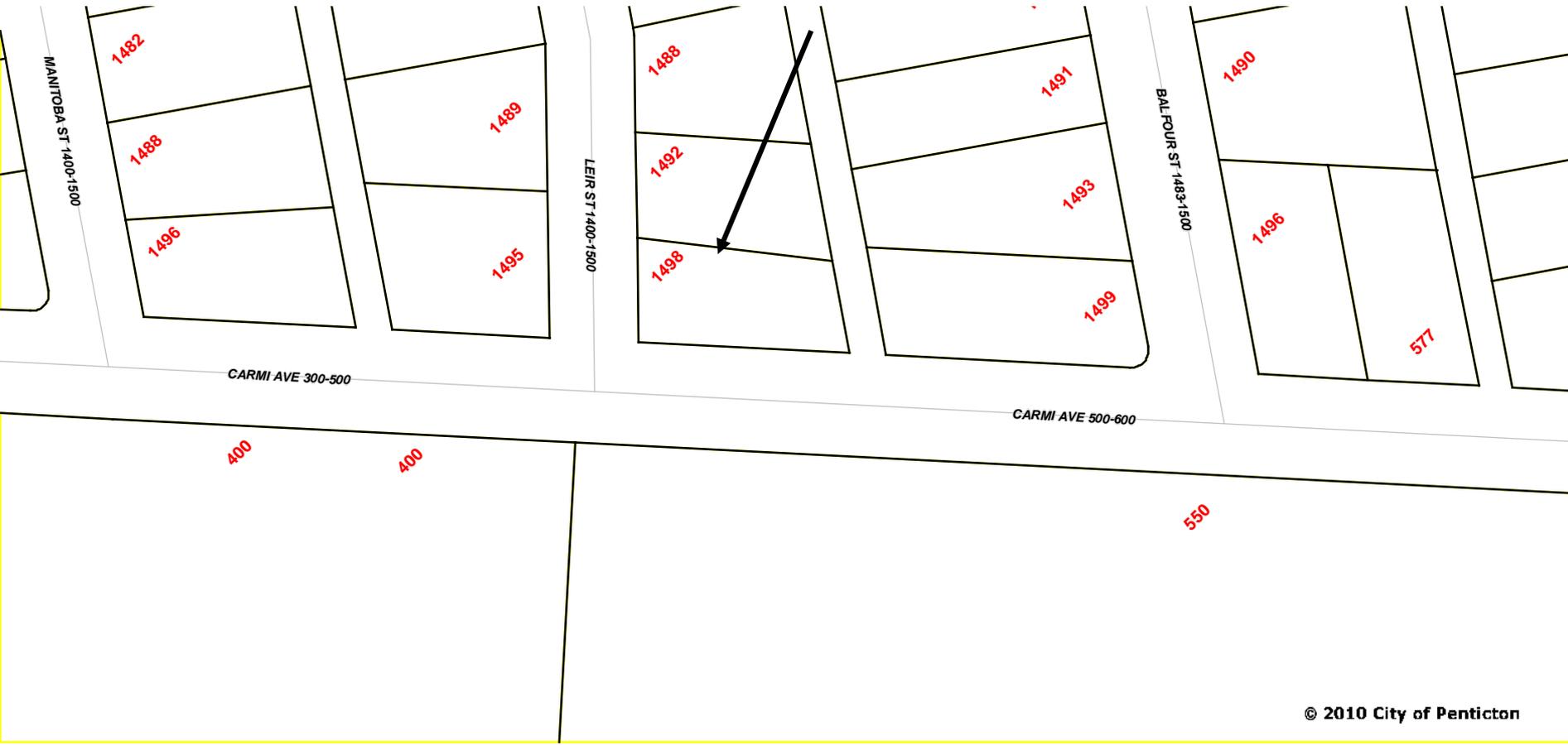
<p>Approved pursuant to section 52(3)(a) of the <i>Transportation Act</i> this ____ day of _____, 2017</p> <p>_____ for Minister of Transportation & Infrastructure</p>
--

Andrew Jakubeit, Mayor

Dana Schmidt, Corporate Officer

Rezone 1498 Leir Street

From R1 (Large Lot Residential) To C1 (Commercial Transition)



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City of Penticton – Schedule 'A'

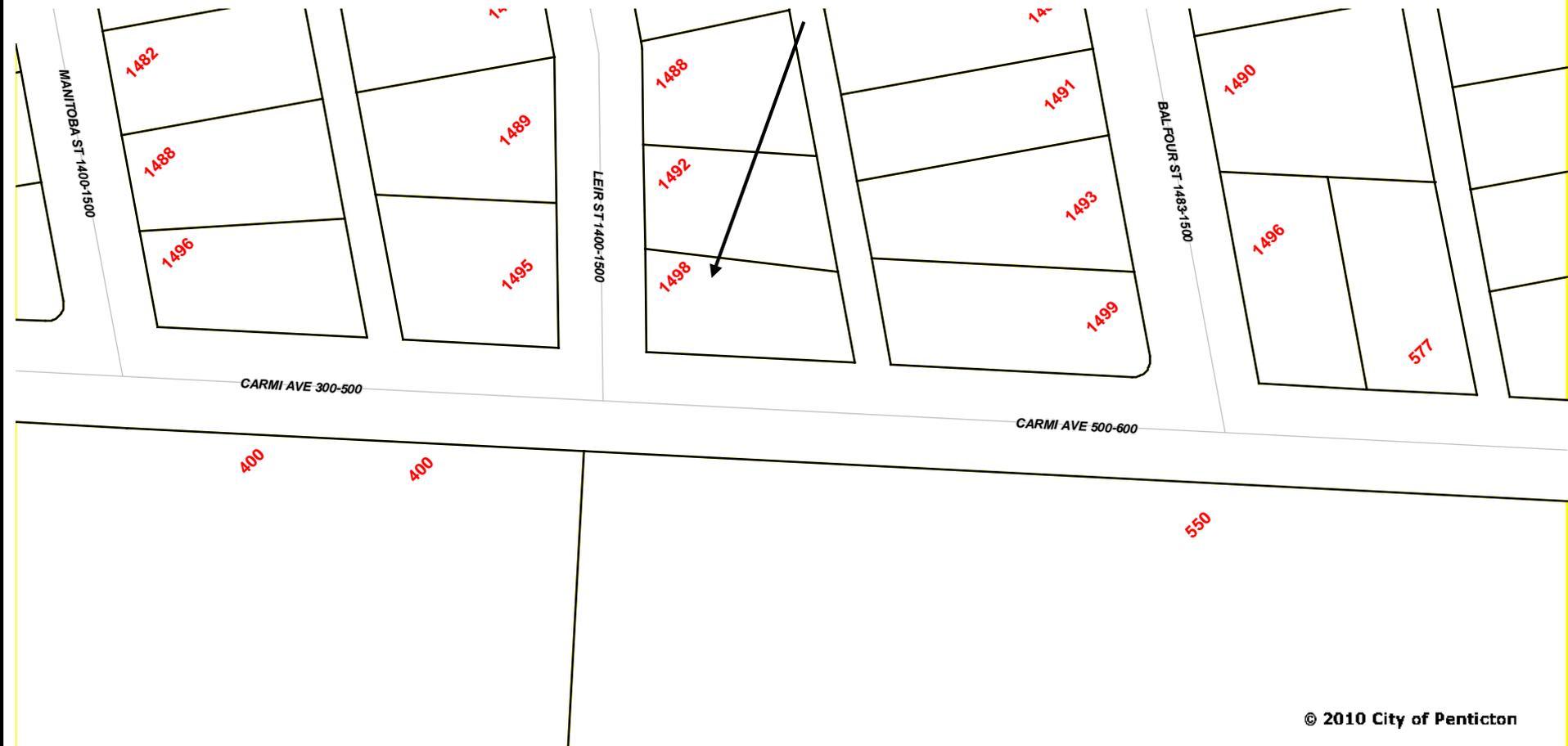
Zoning Amendment Bylaw No. 2017-38

Date: _____

Corporate Officer: _____

Amend Schedule 'H' Development Permit Area Map to designate 1498 Leir Street as General/Tourist Commercial

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City of Penticton – Schedule 'A'

Official Community Plan Amendment Bylaw No. 2017-39

Date: _____

Corporate Officer: _____