

TO: Board of Directors

FROM: B. Newell, Chief Administrative Officer

DATE: January 21, 2021

RE: Early Termination of Land Use Contract No. LU-2-F – Electoral Area “F”

Administrative Recommendation:

THAT Bylaw No. 2461.10, 2021, Electoral Area “F” Zoning Amendment Bylaw be read a first and second time and proceed to public hearing;

AND THAT the holding of a public hearing be scheduled for the Regional District Board meeting of February 18, 2021;

AND THAT staff give notice of the public hearing in accordance with the requirements of the *Local Government Act*.

Purpose: To replace Land Use Contract No. LU-2-F with the West Bench Small Holdings Zone (SH6)

Owners: Not applicable (various) Agent: Not applicable Folio: F2017.138-ZONE

Civic: Not applicable (various) Legal: Not applicable (various)

Zone: Not applicable (Land Use Contract) Proposed Zoning: West Bench Small Holdings (SH6)

Purpose:

Administration is proposing that the Regional District Board resolve to initiate an amendment bylaw in order to terminate Land Use Contract (LUC) No. LU-2-F (being Bylaw No. 281 and all amendments thereto) from the properties outlined in Attachment No. 1.

Specifically, it is being proposed to apply the West Bench Small Holdings Zone (SH6) to these properties under the Electoral Area “F” Zoning Bylaw No. 2461, 2008.

Site Context:

The subject area is approximately 36.14 hectares in area and is situated on the West Bench along Forsyth Drive, approximately 4.0 kilometres from the City of Penticton, and is surrounded by Penticton Indian Band land. There are 61 affected properties with 54 completely within, and seven (7) that are partially within the Land Use Contract area.

The surrounding pattern of development is generally characterised by 0.2 - 0.4 hectare lots with single detached dwellings zoned SH6 to the South and West, with a higher density RS2 subdivision to the South East. The lands to the North, and East are undeveloped, forested, and are predominantly Penticton Indian Band lands.

Statutory Requirements:

In 2014, the provincial government amended the *Local Government Act* in order that all remaining land use contracts will automatically be terminated, and shall be deemed to be discharged from the title of the applicable parcel by June 30, 2024.

Section (547) of the Act allows the Regional District to terminate, by bylaw, a Land Use Contract prior to 2024 provided it does so by June 30, 2022, and in accordance with the standard procedures for amending a land use bylaw (i.e. public hearing).

Importantly, the provisions of any new zoning applied to a property as a result of an “Early Termination” of an LUC will not come into effect for one (1) year and a day following adoption of the amending bylaw.

Background:

The Regional District Board, at its meeting of March 24, 1977, adopted Bylaw No. 281, which introduced LUC No. LU-2-F and permitted, amongst other things, the development of the subject property into 51 new parcels reflecting a rural residential character permitting agricultural and single detached dwellings and principal uses.

In 1990, the Board adopted an amendment to the Land Use Contract that increased the number of permitted parcels from 51 to 55, followed by another amendment approved in 2003 to further increase the number of permitted parcels from 55 to 57.

Under the Electoral Area “F” OCP Bylaw No. 2460, 2008, the subject properties are designated as Small Holdings (SH), and are also the subject of an Important Ecosystem Area (IEA) designation.

Referrals:

Approval from the Ministry of Transportation and Infrastructure (MoTI) is not required as the proposal is not situated within 800 metres of a controlled area (i.e. Highway 97).

Public Process:

On December 16, an Electronic Public Information Meeting (PIM) was held with affected property owners, and was attended by one (1) member of the public as well as the Electoral Area “F” Director.

At its meeting of November 23, 2020, the Electoral Area “F” APC resolved to recommend to the RDOS Board that the proposed discharge and termination of part of LUC No. LU-2-F be approved.

All comments received to date on these amendment bylaw are included as a separate item on the Board Agenda.

Analysis:

Administration considers that the principal challenge associated with the termination of a Land Use Contract is going to be the transition of a parcel into the zoning bylaw, given its use under the provisions of the LUC may be completely incongruous with available zonings.

In resolving this, two options are seen to be available and these include:

1. recreating the provisions of the LUC in the form of a new zone; or
2. applying an existing zone, which *may* result in the use of the land becoming lawfully non-conforming use under section 533 of the *Local Government Act*.

In this instance, Administration believes this question can best be resolved by applying the existing West Bench Small Holdings (SH6) Zone to the lands under LUC No. LU-2-F, as this zone generally mirrors the regulations contained with the existing LUC.

In the subject area, seven (7) parcels are currently split-zoned LU-2-F and SH6, with adjacent properties to the south and west currently zoned SH6. Applying the SH6 zone will enable regulatory consistency on the split-zoned parcels and throughout the neighbourhood.


The SH6 zone reflects the LUC closely and should not create any legal non-conformities as the regulations are equal to, or less restrictive than the LUC.

For reference purposes, a summary comparison of LU-2-F versus the SH6 Zone is included as Attachment No. 2.

Alternative:

- .1 THAT Bylaw No. 2461.10, 2021, Electoral Area "F" Zoning Amendment Bylaw be read a first and second time and proceed to public hearing;
AND THAT the holding of a public hearing be delegated to Director Gettens, or delegate;
AND THAT staff schedule the date, time and place of the public hearing with Director Gettens, or delegate;
AND THAT staff give notice of the public hearing in accordance with the requirements of the *Local Government Act*.
- .2 THAT first reading of the Electoral Area "F" Zoning Amendment Bylaw No. 2461.10, 2021, be deferred.
- .3 THAT first reading of the Electoral Area "F" Zoning Amendment Bylaw No. 2461.10, 2021, be denied.

Respectfully submitted:


C. Labrecque, Planner II

Endorsed by:


C. Garrish, Planning Manager

Attachments: No. 1 – Summary comparison of LU-2-F & the SH6 Zone
No. 2 – Aerial Photo (Google Earth)

Attachment No. 2 – Summary comparison of LU-2-F & the SH6 Zone

| Land Use Contract No. LU-2-F | SH6 Zone |
|--|--|
| Permitted Uses: <u>Principal uses:</u> a) agriculture; b) single family dwelling; <u>Secondary uses:</u> c) home occupation; d) public utilities; e) accessory buildings and structures. | Permitted Uses: <u>Principal uses:</u> a) single detached dwelling; <u>Secondary uses:</u> b) agriculture; c) bed and breakfast operation; d) home occupation; e) accessory buildings and structures. |
| Minimum Parcel Size: 4,040 m ² ; and 2,020 m ² (Lots 20, 33, 49, 37) | Minimum Parcel Size: 0.25 ha when connected to a community sewer & water system; 0.5 ha, when connected to community sewer system and serviced by well; or 1.0 ha, when serviced by well and approved septic system. |
| Minimum Parcel Width: Not applicable | Minimum Parcel Width: Not less than 25% of the parcel depth |
| Maximum Number of Dwellings per Parcel: one (1) dwelling per parcel | Maximum Number of Dwellings per Parcel: one (1) dwelling per parcel |
| Minimum Setbacks: Buildings and structures: i) Front parcel line: 9.14 m ii) Rear parcel line: 9.14 m iii) Interior side parcel line: 4.57 m iv) Exterior side parcel line: 4.57 m Accessory buildings and structures: i) Front parcel line: 9.14 m ii) Rear parcel line: 9.14 m iii) Interior side parcel line: 4.57 m Exterior side parcel line: 4.57 m | Minimum Setbacks: Buildings and structures: i) Front parcel line: 7.5 m ii) Rear parcel line: 7.5 m iii) Interior side parcel line: 4.5 m iv) Exterior side parcel line: 4.5 m Accessory buildings and structures: i) Front parcel line: 9.0 m ii) Rear parcel line: 3.0 m iii) Interior side parcel line: 1.5 m iv) Exterior side parcel line: 4.5 m |
| Maximum Height: No building or structure shall exceed a height of 7.62 metres. | Maximum Height: 10.0 metres (principal buildings) 4.5 metres (accessory buildings) |
| Maximum Parcel Coverage: Not applicable | Maximum Parcel Coverage: 30% |
| Minimum Floor Area: 74.32 m ² | Minimum Building Width: Principal Dwelling Unit: 5.0 metres, as originally designed and constructed. |

Attachment No. 2 – Aerial Photo (Google Earth)

