



## DEVELOPMENT SERVICES COUNCIL REPORT

To: Mayor and Council

Date: December 12, 2023

From: Paul Gipps, CAO

File No: Z 23-09

Subject: **Z 23-09; Zoning Amendment Bylaw (First and Second Reading); 2355 Marshall Road**

Report Prepared By: Yvonne Mitchell, Planner III

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**RECOMMENDATION** to Consider and Resolve:

**THAT** Council give first and second reading to City of West Kelowna Zoning Amendment Bylaw No. 0265.22, 2023;

**AND THAT** Council direct staff to schedule a Public Hearing regarding the proposed zoning amendment.

### **STRATEGIC AREA(S) OF FOCUS**

**Pursue Economic Growth and Prosperity** – We will work with stakeholders throughout the region to advocate for and support efforts aimed at helping West Kelowna businesses prosper. With a focus on the future, we will advance opportunities to expand our economy, increase employment, and develop the community in ways that contribute towards prosperity for all.

### **BACKGROUND**

The subject property, 2355 Marshall Road, is in the West Kelowna Estates/Rose Valley Neighbourhood. The subject property is currently developed with a manufactured home park that was constructed in the 1960s and at the time, consisted of 43 manufactured home pads and one house. Today, the park consists of 27 manufactured home pads and one house. The house, and 17 of the remaining manufactured home pads, are owned by the applicant and rented to tenants. The remaining 10 manufactured home pads are occupied by tenants who own their manufactured homes. Additional information regarding ownership and purchase agreements are explained later in the report.

Under the Westside Official Community Plan Bylaw No. 1050 adopted by the Regional District in 2005, the subject property was designated Manufactured Home Park. With the adoption of Official Community Plan Bylaw No. 100 in 2011, the subject property was

designated as Business Park. In the most recent OCP Bylaw No. 0300 adopted this September, the property is also designated as Business Park.

<b>PROPERTY DETAILS</b>			
<b>Address</b>	2355 Marshall Road		
<b>PID</b>	002-878-640		
<b>Folio</b>	36413771.000		
<b>Lot Size</b>	6.517 acres (26373.4 sqm)		
<b>Owner</b>	Kerr Properties 002 Ltd.	<b>Agent</b>	Mike Salter
<b>Current Zoning</b>	Manufactured Home Park Zone (RMP)	<b>Proposed Zoning</b>	Light Industrial Zone (I1)
<b>Current OCP</b>	Business Park	<b>Proposed OCP</b>	N/A
<b>Current Use</b>	Manufactured Home Park	<b>Proposed Use</b>	Industrial/Commercial
<b>Development Permit Areas</b>	Aquatic Ecosystem, Hillside, and Sensitive Terrestrial Ecosystem		
<b>Hazards</b>	None		
<b>Agricultural Land Reserve</b>	No		

<b>ADJACENT ZONING &amp; LAND USES</b>		
<b>North</b>	^	Rural Residential Small Parcel Zone (RU2) and Agricultural Zone (A1)
<b>East</b>	>	Westbank First Nation
<b>West</b>	<	Light Industrial (I1)
<b>South</b>	v	Agricultural Zone (A1)

**NEIGHBOURHOOD MAP**



## PROPERTY MAP



### Legislative Requirements

Council has the authority under s.479 of the *Local Government Act* to amend the Zoning Bylaw.

### Proposal

This application is a zoning bylaw amendment from the Manufactured Home Park Zone (RMP) to the Light Industrial (I1) Zone. The applicant has indicated they plan to close the manufactured home park and develop the property with two light industrial buildings consisting of warehouse and office uses (Attachment 2).

### Applicant's Rationale

The applicant's rationale for the zoning bylaw amendment application is provided below:

- The City has done extensive research on creating the OCP, and this project falls within an area identified to address the OCP 2.11. – Industrial Objectives; and
- Development Permit Guidelines as well as meeting the intent of the OCP 2.11.2 – Industrial Policies will be followed.

## **DISCUSSION**

### **Zoning and Policy Review**

#### Official Community Plan Bylaw No. 0300

The Land Use Designation of the subject property in the Official Community Plan is Business Park. The Business Park Land Use Designation permits a variety of commercial and light industrial uses at a low density and up to three storeys in height. The proposed zoning bylaw amendment is consistent with the Business Park Land Use Designation. Key objectives and policies within the Business Park Land Use Designation include:

#### 2.12.1 Business Park Objectives

1. To create opportunities for lower-impact industries to set up flexible commercial and industrial operations.

The proposed rezoning is to the Light Industrial Zone (I1). The light industrial zone would permit a variety of commercial and light industrial businesses.

#### 2.12.2 Business Park Policies

1. Maintain and enhance the Business Park as a hub for various employment uses and ancillary services, including but not limited to lower-impact industrial and related commercial uses such as manufacturing, distribution, technology, agricultural support services, aerospace, showrooms and storage.
10. All development should present an attractive frontage to the primary public street, especially frontages that face Highway 97.

The proposed rezoning would permit commercial and industrial uses. An Industrial & Business Park Development Permit would be required to ensure an attractive frontage as this site fronts Highway 97.

Other key sections of the OCP are highlighted below:

#### 1.5 Our West Kelowna Today and Tomorrow

West Kelowna's most recent Vacant and Underutilized Lands Inventory from 2017 found a total of 75.7 hectares of vacant or underutilized industrially zoned land that may provide for some of the expected additional demand. Assuming 50% (37.8 hectares) of the existing vacant or underutilized land is suitable for industrial development or intensification, the City would require an additional 21 hectares of industrial land by 2030, and 54 hectares by 2040. This highlights the need for additional industrial land in the future and support for utilization of existing industrial lands, both of which may benefit from updated industrial land studies.

The proposed rezoning would add additional industrial land to the City of West Kelowna.

#### 3.6.3 Attainable Housing

11. Where large-scale redevelopment requires a zoning amendment and has the potential for displacing residents within existing rental developments, the City may

require additional consideration of potential housing alternatives for the displaced residents, and/or in accordance with the City's Housing Strategy as developed.

The proposed rezoning involves the closure and redevelopment of a manufactured home park. A Council Policy - Manufactured Home Park Redevelopment Policy has been established for these types of applications. More information below.

#### *Development Permit Areas*

If the applicant wishes to develop the site with industrial/commercial development an Industrial & Business Park Development Permit will be required. In addition, the site is within the Hillside, Sensitive Terrestrial Ecosystem, and Aquatic Ecosystem Development Permit Areas. These development permits would also be required unless exemptions in the Official Community Plan can be met.

#### Zoning Bylaw No. 0265

The Manufactured Home Park Zone (RMP) does not permit industrial/commercial development. A rezoning to the Light Industrial Zone (I1) is therefore proposed to accommodate the proposed development.

#### Manufactured Home Park Tenancy Act and Residential Tenancy Act

##### *Manufactured Home Park Tenancy Act*

The *Manufactured Home Park Tenancy Act* applies to tenancies between tenants who own manufactured homes within a manufactured home park and landlords. As part of this application, this would apply to 10 of the 27 existing pads.

As per s.42 of the *Manufactured Home Park Tenancy Act*, "a landlord may end a tenancy agreement by giving notice to end the tenancy agreement if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park."

As per the *Act* notice and compensation requirements are as follows:

- 12 months' notice to end tenancy; and
- \$20,000 in compensation\*

As per Province of British Columbia Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use (Attachment 2), "permits and approvals required by law" can include a change in zoning required by a municipality to convert the rental unit to a nonresidential use.

\*A Tenant can apply to the Residential Tenancy Branch for additional compensation equal to the difference between the assessed value of the home and \$20,000 if:

- They are not able to obtain the necessary permits, licenses, approvals or certificates required by law to move the manufactured home or

- The tenant is not able to move the manufactured home to another manufactured home site within a reasonable distance of the current manufactured home site; and
- The tenant does not owe any tax in relation to the manufactured home.

A decision on whether a tenant will receive the additional compensation is made by the arbitrator.

A landlord must not claim reimbursement from the tenant for the costs of removing, storing, advertising or disposing of the manufactured home if the home cannot be moved in the above circumstances.

### *Residential Tenancy Act*

The *Residential Tenancy Act* applies to tenancies between tenants who rent a home and pad in a manufactured home park and landlords. As part of this application, this would apply to 17 of the 27 existing pads and the one house.

As per s.49(6) of the *Residential Tenancy Act* “a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following: ...(a) demolish the rental unit;...”

As per the *Act* notice and compensation requirements are as follows:

- 4 months’ notice to end tenancy; and
- 1 months’ rent compensation.

As per Province of British Columbia Residential Tenancy Policy Guideline 2B: Ending a Tenancy to Demolish, Renovate, or Convert a Rental Unit to a Permitted Use (Attachment 3), “permits and approvals required by law” can include a demolition permit issued by a municipal authority.

### Council’s Manufactured Home Park Redevelopment Policy

On April 22<sup>nd</sup>, 2008, a Manufactured Home Park Redevelopment Policy (MHPR Policy) was approved by West Kelowna Council. The policy states it “is meant to provide tenants with the opportunity for greater notification and assistance from applicant(s) than is currently required under the *Manufactured Home Park Tenancy Act*.” The MHPR Policy is attached as Attachment 4.

As the MHPR Policy only refers to the *Manufactured Home Park Tenancy Act* it appears it is intended to apply to tenants who own manufactured homes, not tenants who rent both their home and the pad. For tenants who rent both their home and the pad the *Residential Tenancy Act* is the applicable legislation.

Since the MHPR Policy was approved in 2008, it has not been reviewed or updated, and changes have since been made to the *Manufactured Home Park Tenancy Act* and *Residential Tenancy Act*.

Key changes are highlighted below:

- Effective June 6, 2018 - *Manufactured Home Park Tenancy Act* amended as follows:
  - To increase compensation provided from the amount that is equivalent to 12 months' rent payable under the tenancy agreement to \$20,000.
  - To introduce the ability for tenants to apply to the Tenancy Branch for additional compensation if their manufactured home cannot be moved. Landlords must not claim reimbursement from the tenant for the costs of removing, storing, advertising, or disposing of the manufactured home if the home cannot be moved in the prescribed circumstances.
- Effective May 17, 2018 - *Residential Tenancy Act* amended as follows:
  - Increase the notice to end tenancy period for demolition, renovation or repair, or conversion from 2 months to 4 months.

The applicant has chosen to follow the Council MHPR Policy. In accordance with the MHPR Policy, the applicant has been communicating the plans for redevelopment to residents and has provided a Relocation Assistance Program (See Attachment 5).

Although the MHPR Policy only appears to be applicable to tenants who own homes, the applicant has also been communicating the plans with tenants who rent their homes and pads and is proposing to provide them with greater assistance than is currently required under the *Residential Tenancy Act* as per below.

## **I. Communication of Plans for Redevelopment**

To date the applicant has followed the communication requirements found in I. "Communication of Plans for Redevelopment" of the Policy. The notification provided to date by the applicant is summarized below:

- **August 17, 2023:** Notice of plans for redevelopment sent to park residents by registered mail, hand delivered, and posted on park notice board.
- **September 18, 2023:** Zoning Bylaw Amendment Application (File #: Z 23-09) submitted to City of West Kelowna.
- **September 25, 2023:** Relocation Assistance Programs and Communication Plans sent to park residents by registered mail and hand delivered.
- **October 13, 2023:** Notice sent to park residents by registered mail and hand delivered advising of Advisory Planning Commission and Agricultural Advisory Committee meeting dates.
- **November 29, 2023:** Notice sent to park residents by registered mail and hand delivered advising of December 12<sup>th</sup> Council meeting.

Future notification will include notice at least 10 days prior to the zoning bylaw amendment application being presented to Council, for third reading, adoption, and public hearing if held.

Notice to vacate will be provided when demolition permits are issued for tenants who do not own their manufactured home, and when the rezoning is adopted for tenants who do own their manufactured home.

## **II. Relocation Assistance Program**

The applicant has also provided a Relocation Assistance Program. This program is summarized below.

### *Tenants Who Own Their Manufactured Home*

Owners at 2355 Marshall Road Manufactured Home Park have been provided with three relocation options:

#### **Option #1**

**SIGN ON AND SELL YOUR MANUFACTURED HOME TO US** (*Offer expires within 60 days of the date this program was received by the tenant through registered mail*)

- We pay you for your manufactured home equal to your 2023 BC Assessment plus 10%. 75% paid upon sale and remaining 25% paid upon move out. <https://www.bccassessment.ca/>
- Maximum 120 days to move out and vacate the property after selling your home to us.
- \$1000 relocation assistance payment paid upon the sale to qualifying owner occupants only.
- We pay for the demolition and disposal of your manufactured home. ~\$20,000 value for hazardous material abatement, demolition, and clean up.

**Important Note:** The applicant has indicated the 60 day expiry period for Option #1 begins at the date of this Council Meeting (December 12, 2023).

#### **Option #2**

##### **RELOCATE YOUR MANUFACTURED HOME**

- You relocate your manufactured home.
- We pay you the amount prescribed by law on the effective date of notice \$20,000.00 CAD
- Owner removes the manufactured home and all structures at their cost. Note, the manufactured home must meet certain qualifications to be relocated. See section 4.2 with website links for more information.
- \$1000 relocation assistance payment paid on the effective date of notice.

#### **Option #3**

##### **DON'T SELECT OPTION #1 OR OPTION #2 ABOVE AND THE LANDLORD PROVIDES 12 MONTH NOTICE TO VACATE PER SECTION 42 OF THE MOBILE HOME PARK TENANCY ACT**

- Landlord follows the statutory requirements set out in the Manufactured Home Park Act / Regulation and issues a 12 month notice to vacate upon re-zoning approval. See Appendix "E" for sample notice.

### *Tenants Who Rent a Manufactured Home*

Tenants at 2355 Marshall Road Manufactured Home Park shall receive:

- 4 months' notice to end tenancy;
- 1 months' rent compensation; and
- \$1,000 additional compensation.

The applicant states their Relocation Assistance Program and Communication Plan comply with the requirements in the MHPR Policy. Please see the applicant's relocation



assistance package (Attachment 5) for more information provided as per II. "Relocation Assistance Program" of the Policy.

In accordance with s.II.5. the MHPR Policy, the applicant has also provided a status report on the implementation of the program, indicating preferred options for the tenants. (Attachment 6). As per the status report, 3 out of 10 owners have not selected one of the above relocation options. The owners who have selected an option have chosen Option 1.

### **III. Timing**

As per s.III of the MHPR Policy the relocation assistance plan was provided to the City with the zoning bylaw amendment application (September 18<sup>th</sup>, 2023). The plan was then provided to the tenants the next week (September 25<sup>th</sup>, 2023).

### **IV. Evaluation of Securing of the Plan**

As per s.IV of the policy, the municipality may request adequate assurance, either by way of a financial or legal undertaking that the relocation assistance plan will be implemented. The applicant has been undertaking the relocation assistance plan to date (see Attachment 6), as such staff are not recommending a financial or legal undertaking at this time.

### **Referral Comments**

The application was referred to various external agencies and internal departments. The referral comments received did not include any objections to the application.

#### Advisory Planning Commission (APC)

The APC considered the application on October 25, 2023, and made the following motion:

It was moved and seconded

THAT the Advisory Planning Commission recommend support for file Z 23-09, Zoning Bylaw Amendment, 2355 Marshall Road.

CARRIED; Member N. Richard opposed.

Discussion amongst the APC members included that the OCP has designated this property as Business Park for commercial and industrial development. However, the APC shows empathy with residents of the manufactured home park as they are a vulnerable demographic which can be highly impacted by displacement. The APC appreciated the public attendance at this meeting and encouraged those present to submit their comments to City Council.

#### Agricultural Advisory Committee (AAC)

The AAC considered the application on November 1, 2023, and made the following motion:

It was moved and seconded

THAT the Agricultural Advisory Committee recommend support for file Z 23-09, Zoning Bylaw Amendment, 2355 Marshall Road.

CARRIED UNANIMOUSLY

Discussion amongst the AAC members included that this application is not expected to impact agriculture.

Interior Health

Interior Health has no concerns with rezoning application but have concern with the loss of affordable housing and ensuring equitable support for affected residents. Comments are provided in full as Attachment 7.

**Expected Conditions**

Conditions are expected to be as follows:

1. Signing of the zoning amendment bylaw after 3rd reading by the Ministry of Transportation and Infrastructure.
2. Registration of an environmental no disturb covenant on the existing natural area located in the northeast corner of the property.
3. Land dedication and construction of a turnaround along Marshall Road.
4. Marshall Road to be upgraded to meet Urban Local – 18.0m ROW standard.
5. Watermain along Stevens Road to be upgraded to 300mm diameter, complete with additional hydrants to provide commercial/industrial spacing.
6. Watermain along Marshall Road to be upgraded, complete with additional hydrants to provide commercial/industrial spacing.
7. Potential additional requirements following review of existing lift station capacity.

The above is currently being reviewed by the applicant and staff and will be confirmed at a subsequent Council meeting for this application.

**Public Notification**

In accordance with the *Local Government Act* and the Development Applications Procedures Bylaw No. 0260, notice of first reading was sent to all property owners and their tenants within 100 m of the subject property, was posted in the newspaper, and on the City's website. A Notice of Application sign was also installed on the property in accordance with the Development Application Procedures Bylaw No. 0260.

Per the Development Applications Procedures Bylaw No. 0260, a public hearing is not required for zoning bylaw amendment applications consistent with the Official Community Plan. Notwithstanding this, Council may at their discretion choose to hold a public hearing, or if 8 or more written submissions are received, a public hearing is required. If a public hearing is scheduled for this application further notice will be required.

## CONCLUSION

It is recommended that Council give first and second reading to the proposed zoning bylaw amendment. The amendment is consistent with the Business Park land use designation in the Official Community Plan which identifies the subject property as suited for a variety of industrial and commercial uses, at a low density, and up to 3 stories in height. The property is also adjacent to existing Light Industrial zoned lands within the West Kelowna Business Park. The applicant is required to provide notice and compensation to tenants within the manufactured home park under either the *Manufactured Home Park Tenancy Act* or the *Residential Tenancy Act* as applicable. In addition, the applicant has chosen to follow the Manufactured Home Park Redevelopment Council Policy.

It is also recommended that Council schedule the proposed zoning amendment for a public hearing. This is required if 8 or more written submissions have been received or is available at Council's discretion. This option is being recommended by staff given the displacement of existing manufactured home park residents.

### **Alternate Recommendation** to Consider and Resolve:

1. **THAT** Council give first and second reading to City of West Kelowna Zoning Amendment Bylaw No.0265.22, 2023 (File: Z 23-09);

**AND THAT** Council direct staff to schedule the proposed zoning amendment for third reading.

2. **THAT** Council postpone first and second reading of Zoning Amendment Bylaw No.0265.22, 2023 (File Z 23-09).

Should Council postpone consideration of the proposed amendment bylaw, further direction to staff on how to proceed is requested.

3. **THAT** Council deny Zoning Amendment Bylaw No. 0265.22, 2023 (File Z 23-09);

**AND THAT** Council direct staff to close the file.

Should Council deny the proposed amendment bylaw, the applicant may not apply for a similar application for a period of six (6) months in accordance with Development Applications Procedures Bylaw No. 0260, 2018.

## REVIEWED BY

Chris Oliver, Planning Manager

Brent Magnan, Director of Development Approvals

Corinne Boback, Legislative Services Manager/Corporate Officer

Trevor Seibel, Deputy CAO

**APPROVED FOR THE AGENDA BY**

Paul Gipps, CAO

Powerpoint: Yes  No

Attachments:

1. Zoning Amendment Bylaw No. 0265.22, 2023
2. Preliminary Development Plans
3. BC Residential Tenancy Policy Guideline 2B
4. Council's Manufactured Home Park Redevelopment Policy
5. Applicant's Relocation Assistance Program and Communication Plan
6. Applicant's Status Report
7. Interior Health Referral Comments
8. Submissions up to 4:30 p.m., December 7, 2023