



COUNCIL REPORT
Development Services
For the February 25, 2020 Council Meeting

DATE: February 18, 2020

TO: Paul Gipps, CAO

FROM: Carla Eaton, Planner III

RE: Covenant Amendment for Proposed Subdivision (Glen Eagles Phase 3 & 4);
3625 Gates Road, 3636 and 3640 McIver Road
Legal: Lot 6, Plan KAP1436, DL 3484, ODYD, Except Plan EPP16807,
EPP55566 & EPP86242;
Lot 1, Plan KAP37488, DL 3484, ODYD; and
Lot A, Plan KAP32880, DL 3484, ODYD, Except Plan 37488,
EPP16807 & EPP55566
Owner: Glen Eagles Holdings Ltd.
Agent: New Town Services / Keith Funk

RECOMMENDED MOTION:

THAT Council authorize the discharge of Covenant CA3050232 from two of the subject properties at 3625 Gates Road and 3640 McIver Road; and

THAT Council requires as a condition of the discharge of Covenant CA3050232 that the owner registers a proposed new Covenant over the three subject properties at 3625 Gates Road, 3636 and 3640 McIver Road that will still require the construction of McIver Road, as per the conditions outlined further in this report.

RATIONALE:

The recommended motion is based on the following:

- The previous rezoning process required the construction of Gates Road and McIver Road as a condition of any development, where Gates Road has been constructed with Phases 1 and 2.
- The proposal will ensure that construction of McIver Road will still be completed as a condition of development but allows the developer to phase their cost of developing the road.
- The proposed covenant still meets the original covenant intent as outlined as a zoning condition for Z 09-20.
- Although the new covenant will potentially defer connection or construction of McIver Road, the new agreement will include an additional parcel (Lot 1) which will help the developer offset their costs through the proportional development over three (3) lots rather two (2) lots.
- The proposed phasing plan follows the natural topography and allows for an efficient infrastructure design despite the delayed road network connection.

LEGISLATIVE REQUIREMENTS

Council has the authority under the *Land Title Act* to enter into Section 219 Covenants.

BACKGROUND

As a condition of adoption of the Official Community Plan (OCP) and Zoning Amendment Application (File: Z 09-20) that permitted the residential development of the Glen Eagles site, the applicant was required to construct both Gates Road and extend McIver Road as a condition of any development on the site (*development area shown in Figure 1 below*). The preliminary design drawings and cost estimates, as well as development conditions were outlined in a Section 219 Covenant - CA3050232 (*Attachment 1*). Gates Road was constructed with the development of Phases 1 and 2, which included subject properties that lay immediately adjacent to Gates Road. However, McIver Road was not constructed as development had not yet extended onto the subject property that lay immediately adjacent to McIver Road (*see context and subject property maps – Attachment 2 and 3*).

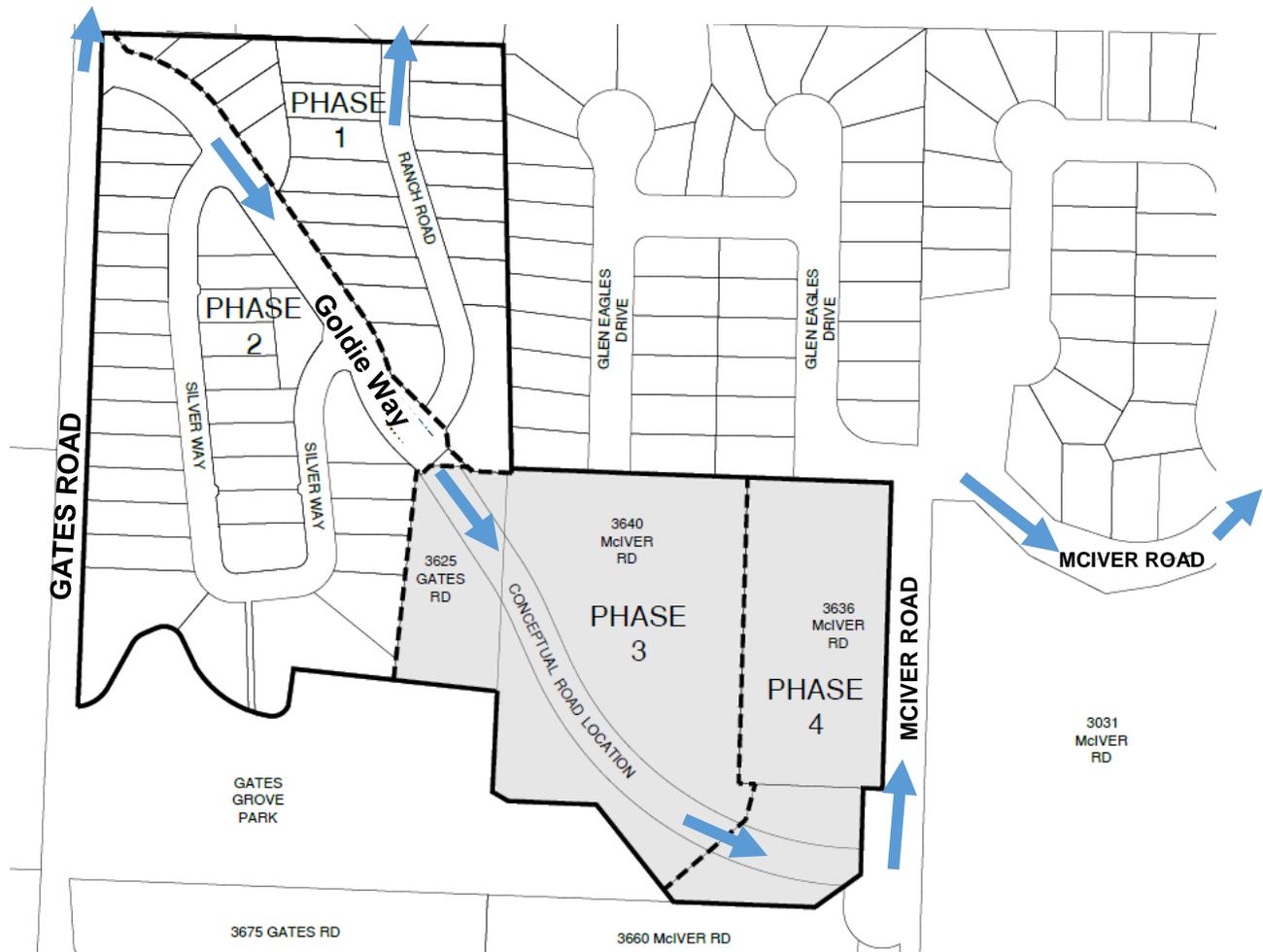


Figure 1: Glen Eagles Development Area – Phase 3 and 4 Remaining

As the applicant is preparing to proceed with Phases 3 and 4 that include the lands immediately adjacent to McIver Road, they have expressed concern with the financial viability of the project based on the upfront cost of constructing the road. As such, the applicant has requested that Council consider allowing the applicant to defer the construction of McIver Road with discharge of the existing covenant and registration of a new covenant. The proposed new covenant would include the remaining covenant lands (Phase 3) as well as a third new adjacent property (Phase 4) along McIver Road. The new covenant terms would require that the applicant provide security for the construction of the road in phased amounts proportional to the area being developed. However, once development extends into the final Phase 4 area which a portion of will first require

a rezoning and official community plan amendment, Mclver Road would be required to be constructed as a condition of subdivision (*see preliminary design drawings and cost estimate – Attachment 4 and 5*). The approximate construction value is estimated at \$718,793.63.

The detailed covenant conditions, which include consideration for proportional security and phasing (*see phasing plan – Attachment 6*), are as follows:

- The new covenant would be registered over:
 - 3640 Mclver Road - Lot A, Plan KAP32880, DL 3484, ODYD, Except Plan 37488, EPP16807 & EPP55566;
 - 3625 Gates Road - Lot 6, Plan KAP1436, DL 3484, ODYD, Except Plan EPP16807, EPP55566 & EPP86242;
 - 3636 Mclver Road - Lot 1, Plan KAP37488, DL 3484, ODYD;
- The three (3) subject properties shall not be subdivided, or building constructed with the exception of one dwelling per legal parcel, until such time as the Mclver Road works have been constructed, or security provided for the works;
- Mclver Road to be constructed in general accordance with the attached preliminary design drawing and cost estimate;
- Subdivision of a portion of the lands may be permitted only in Phase 3 where security has been provided for the road works based on the proportional area being subdivided and in accordance with the attached phasing plan and cost estimate; and
- Where any development or subdivision in Phase 4 will require the full construction of Mclver Road if not already constructed; and
- Security for the road works would be released upon completion of the works.

Discussion

The proposed new covenant would delay the road network connection initially contemplated and as presented to the public in the original rezoning application and there is some risk that the connection to Mclver Road and the improvements to Mclver Road may not ever be completed if the development does not proceed beyond initial development in Phase 3. However, that risk currently exists as well if the development does not proceed in Phase 3.

In an effort to mitigate the risk associated with allowing development to proceed while understanding the applicant’s current financial situation, the proposed new covenant conditions have been crafted to ensure that at least a proportional share of the road costs will be secured with each phase of new development. The new covenant also ties development of a new additional lot (Lot 1) to the requirement to construct Mclver Road which will allow the applicant to potentially distribute the cost of the road over more lots, and creates an incentive to complete the road work so that they are permitted to develop the additional lot. The intent of the new covenant is to secure funds towards the construction of Mclver Road and to ultimately require its construction which will ensure that the intent of the original covenant is respected.

COUNCIL REPORT/RESOLUTION HISTORY

Date	Report Topic/Resolution	Resolution No.
Mar 26, 2013	<p>THAT Council adopt Official Community Plan Amendment Bylaw No. 0100.06, 2010 (File: Z 09-20); and</p> <p>THAT Council adopt Zoning Amendment Bylaw No. 0871.231, 2010 (File: Z 09-20).</p> <p>NOTE: Prior to adoption, the following conditions identified at 3rd Reading were completed:</p>	C112/13

	<ol style="list-style-type: none"> 1. Deposit with the District of West Kelowna \$86,250.00 into the <i>Mclver and Ranch Parks Reserve Fund</i>; 2. Dedication of parkland, which will also satisfy the 5% requirement at time of subdivision, in accordance with the attached bylaw; 3. Registration of a section 219 restrictive no build/no disturb covenant over all slopes greater than 30%; 4. Registration of a Section 219 covenant securing pedestrian connections in general conformance with the attached Roadway and Pedestrian Network Plan; 5. Registration of a Section 219 Road Reserve in general accordance with the attached plan; 6. Registration of a Section 219 Right to Farm Covenant; and 7. Registration of a covenant to restrict further subdivision of the property until such time as the highway and other service upgrades on or along Gates Road and Mclver Road are complete or otherwise secured through a works and servicing agreement. 	
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ALTERNATE MOTIONS:

(1) **THAT** Council not authorize the discharge of the covenant (CA3050232).

Should Council not authorize the covenant discharge, the applicant will be required to construct Mclver Road with the next phase of proposed development to meet the covenant requirements.

REVIEWED AND APPROVED BY:

Brent Magnan, Planning Manager
 Mark Koch, Director of Development Services
 Tracey Batten, Deputy CAO/Corporate Officer
 Paul Gipps, CAO

Powerpoint: Yes No

Attachments:

1. CA3050232 Covenant Requiring Construction of Gates Road and Mclver Road
2. Context Map
3. Subject Property Map
4. Preliminary Design Drawing for Mclver Road
5. Cost Estimate for Mclver Road
6. Glen Eagles Phasing Plan – Phase 3 and 4