



COUNCIL REPORT

To: Paul Gipps, CAO

Date: July 14, 2020

From: Hailey Rilkoﬀ, Planner II

File No: TUP 18-05.01

Subject: **TUP 18-05.01, Temporary Use Permit Renewal, 1375 Green Bay Road**

RECOMMENDATION

THAT Council renew the Temporary Use Permit (TUP 18-05.01) to allow use of a recreational vehicle at 1375 Green Bay Road (Lot B, DL 434 & 523, ODYD, Plan KAP76165) on manufactured home site #15A for a period not to exceed six (6) calendar months after the date the Provincial State of Emergency relating to COVID-19 is lifted, subject to the conditions outlined in the attached permit.

STRATEGIC AREA(S) OF FOCUS

Economic Growth and Prosperity – Quality, innovative urban development (Council's 2020-2022 Strategic Priorities)

BACKGROUND

This application proposes to extend a Temporary Use Permit (TUP 18-05) to allow the continued use of a Recreational Vehicle (RV) on the subject property (1375 Green Bay Rd – site 15A). Due to the current Provincial State of Emergency related to COVID-19, it is recommended to extend the TUP for up to six (6) months after the State of Emergency is lifted due to concerns that there may be increased challenges with relocating the recreational vehicle during the State of Emergency.

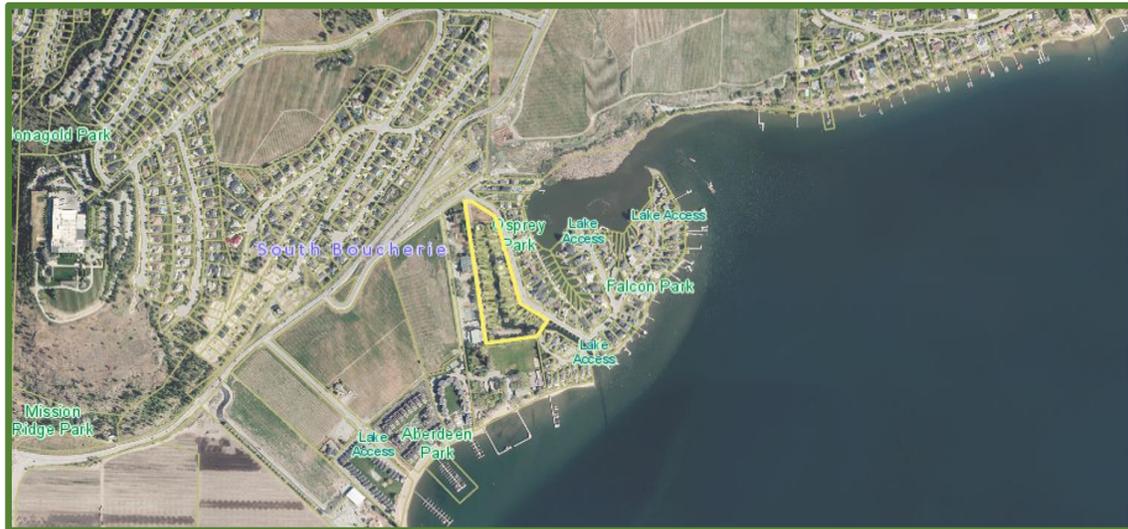
PROPERTY DETAILS			
Address		1375 Green Bay Road	
PID		026-034-867	
Folio		36412293.002	
Lot Size		6.25 Acres (25,297 m ²)	
Owner	Green Bay Landing Inc.	Agent	Ted Wenner
Current Zoning	RMP - Manufactured Home Park	Proposed Zoning	-
Current OCP	SFR - Single Family Residential	Proposed OCP	-

Current Use	Manufactured Home Park	Proposed Use	Recreational Vehicle
Development Permit Areas	Aquatic Ecosystem, Form and Character		
Hazards	n/a		
Agricultural Land Reserve	No		

ADJACENT ZONING & LAND USES

North	^	R1 – Single Detached Residential
East	>	R1 - Single Detached Residential; P1 – Parks (Osprey Park)
West	<	P2 - Institutional and Assembly (Green Bay Bible Camp)
South	v	P2 - Institutional and Assembly (Green Bay Bible Camp) RC4 - Compact Single Detached Residential Zone

NEIGHBOURHOOD MAP



PROPERTY MAP



History

Original Temporary Use Permit (TUP 18-05)

In October of 2018, the owner of Green Bay Mobile Home Park applied for a Temporary Use Permit to permit the use of Recreational Vehicles (RV's) on three of the mobile home pad sites for a period of three years. One of the mobile home pad sites (15A) had an existing Recreational Vehicle set up on it as a residence, while the other two sites (16B and 19B) had uninhabitable mobile homes.

Staff recommended to Council that the TUP only be approved for one year and only for pad 15A which was already occupied by an RV. The 1 year timeline was recommended in order for the existing resident of the RV to have time to find alternative accommodation. Council had significant concerns regarding the permanent use of an RV as a dwelling, specifically around moisture and ventilation issues as RV's are not typically designed for year round living, and are instead designed for seasonal recreational use. TUP 18-05 was approved by Council in June of 2019 with the following conditions:

- a. That no additional recreational vehicles or similar camping vehicles be permitted on the parcel;
- b. That no physical structures be constructed and attached to the subject recreational vehicles;
- c. The recreational vehicle shall remain mobile (i.e. with wheels and hitch present on the unit);
- d. Connection to the municipal sanitary sewer system must receive approval from the General Manager of Engineering;
- e. That the activities associated with the temporary use cease following expiration of the temporary use permit.



Temporary Use Permit Expiry

The City of West Kelowna advised the applicant, in a letter dated March 17, 2020, that TUP 18-05 would expire on June 17, 2020. On March 30, the applicant contacted the City and expressed concerns around the end of the temporary use permit due to COVID-19. The applicant was aware of the prohibition on new evictions during the Provincial State of Emergency and did not feel they could make the tenant living in the RV vacate the Mobile Home Park at that time.

Staff offered the applicant assurance that following the expiry of TUP 18-05, the City would not take any enforcement for at least two months after the Provincial State of Emergency was lifted. This would have allowed an extended period of time for the existing tenant to secure alternative housing. Staff felt this approach was sensitive to the

challenges surrounding moving during the pandemic and provided a transitional buffer from the date the State of Emergency would end.

Proposal

The applicant has since submitted a renewal application for the Temporary Use Permit to continue the use of a recreational vehicle on the subject property. The applicant has requested that the Temporary Use Permit be renewed and extended for two years.

Applicant's Rationale

The applicant has provided a letter (*Attachment 2*) which summarizes their rationale for the extended renewal period. The applicant states that the tenants who occupy the RV on site #15A maintain the site in a tidy appearance, are quiet and help the neighbours. The applicant feels that due to the Provincial State of Emergency due to COVID-19, that they are unable to evict the RV tenants. The applicant has also provided rationale that the demand for alternative housing will have increased due to the pandemic and that two years could be how long it takes for things to return to normal.



Figure 1 - View of Site #15A from Green bay Road

Policy & Bylaw Review

Official Community Plan Bylaw No. 0100

The subject property has a future land use designation of Single Family Residential, intended to provide traditional single family housing opportunities and encourage more land efficient compact housing forms for families.

3.3.1 Residential Policies

12. Mobile home parks are recognized as an affordable housing form, and any proposed zoning amendment of existing mobile home parks will be considered in accordance with the Manufactured Home Park Redevelopment Policy¹, and in light of surrounding development, Land Use Designation and optimizing infrastructure provision.

The City's OCP provides the guidelines to be considered for Temporary Use Permits². These include that the use must be clearly temporary or seasonal in nature; the use should not create an unacceptable level of negative impact on surrounding permanent uses; and an applicant must submit an outline detailing when and how the use in that location will be ended.

¹ See Attachment 6 – Council's Manufactured Home Park Redevelopment Policy

² OCP Section 4 – Development Implementation Policy 13.

Zoning Bylaw No. 0154

The Zoning Bylaw defines a **Recreational Vehicle** as:

“a vehicle intended as a temporary accommodation for travel, vacation, or recreational use and includes travel trailers, motor homes, slide-in campers, chassis-mounted campers and tent trailers. Recreational vehicle also includes personal watercraft, all terrain vehicles, snowmobiles, and boats.”

Section 3.3.5 restricts the occupancy of recreational vehicles on parcels in any Residential Zone to no more than 10 days in 1 period of 30 consecutive days.

The RMP – Manufactured Home Park Zone does not permit Recreational Vehicles as a permitted use. Manufactured Home Park is the only permitted principal use in the RMP Zone, and manufactured home parks only permit either modular or mobile homes, not recreational vehicles. Permitted secondary uses include accessory uses, caretaker unit and minor care facility. *Attachment 4* provides excerpts from the RMP Zone and relevant definitions.

Recreational Vehicles are only a permitted use in the C5 – Campground, Cabin and Motel Commercial Zone and the C6 – Tourist and Resort Commercial Zone through the Tourist Campsite Space use which is defined as:

“a defined area within a campsite that provides accommodation for recreational vehicles and tents.”

Manufactured Home Park Tenancy Act (MHPTA)

Policy Guideline 9 from the Residential Tenancy Branch indicates that even if a landlord is not in compliance with local bylaws, a tenancy agreement is not invalidated³. The *Manufactured Home Park Tenancy Act (MHPTA)* applies to the tenancy between the tenant of the RV at site 15A and the owner of Green Bay Mobile Home Park. This means that the landlord’s responsibilities under the *MHPTA* still apply even though they are not in compliance with the Zoning Bylaw. A valid tenancy however in no way invalidates a City’s bylaws and regulations, therefore the use of the RV can still be prohibited.

As the use of an RV on this property is not permitted under the Zoning Bylaw, once the Temporary Use Permit (TUP 18-05) expires, the use of the RV would have to cease if ordered by the City. A Landlord’s Notice to end a tenancy under Section 40(1)(j) of the *MHPTA* must provide one month’s notice.

BC’s Provincial State of Emergency

The Province of BC declared a Provincial State of Emergency on March 18, 2020 to support the province wide response to the novel coronavirus (COVID-19) pandemic. The state of emergency has been renewed, for two week periods, multiple times by the Minister of Public Safety and Solicitor General. At the time of writing this report, the State of Emergency is currently in effect until July 7, 2020.

³ BC Residential Tenancy Branch, Tenancy Policy Guidelines <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/policy-guidelines>

At the time of the application, a Ministerial Order⁴ was in effect which prohibited new evictions and rent increases due to the COVID-19 Pandemic. This did not apply to evictions where the rental unit must be vacated to comply with an order of a municipal authority. This order would not apply to a notice to end a tenancy issued prior to March 18, 2020 or for a notice to end a tenancy in order to bring a property into compliance with the Zoning Bylaw.

On June 24th, 2020, as part of BC's Restart Plan, the Province repealed the original order and made the Residential Tenancy (COVID-19) Order No. 2⁵, which now only prohibits evictions due to unpaid rent under the *MHPTA*. Landlords can now issue a Notice to End Tenancy for any reason (other than unpaid or late payment of rent since the State of Emergency was declared).

Technical Review

Bylaw Enforcement Department

There have been no issues or bylaw complaints in regards to the recreational vehicle at Site 15A since TUP 18-05 was approved in 2019. There has been a complaint regarding the potential removal of a mobile home without a demolition permit at site #16B which has been forwarded to the City's Building Department. The mobile home at site #19B appears to have been removed without the required demolition permit.

Development Engineering Department

There is an insulated water connection and a sanitary connection underneath the RV. The field review of the service connections during a site visit did not result in any required upgrades or changes to the existing connections. The condition from TUP 18-05 requiring the sanitary connection to be inspected has been satisfied.



Figure 2 - Sanitary Service Connection

Planning Department

A site visit was conducted on June 5, 2020. The RV has been skirted and the wheels

⁴ Ministerial Order 89 (MO 89/2020) http://www.bclaws.ca/civix/document/id/mo/mo/2020_m089

⁵ Ministerial Order 195 (MO 195/2020) http://www.bclaws.ca/civix/document/id/mo/mo/2020_m195

removed which is currently in contravention of the existing TUP conditions. It was indicated by the applicant that the wheels were removed prior to TUP 18-05 being issued and they were removed in order to install the skirting to assist with heating the RV in the winter months. Site photos are included in *Attachment 3*.

If the Temporary Use Permit is renewed, it is recommended that the condition specifying that the wheels must be present on the RV is amended to instead simply restrict structures (other than skirting) to be attached to the RV. In addition, the condition to require the RV to remain mobile is recommended to be amended to ensure the RV remains roadworthy with appropriate insurance. This will ensure the RV can still be moved fairly quickly by removing the skirting and re-attaching the wheels if needed, and that it will be insured for transport/towing.



Figure 3 - RV Skirted and Wheels Removed

It is recommended to renew the TUP for a period of up to six months after the Provincial State of Emergency is lifted. This would allow at least 1-2 months outside of the winter season for the RV to be relocated no matter when the state of emergency is lifted, understanding that moving in the winter could be challenging.

Advisory Planning Commission (APC)

The City's APC considered the application at their June 17th, 2020 meeting held via Zoom video conferencing. Discussion points included:

- Changing the conditions of the original TUP – i.e. Requiring the wheels to be present;
- Recognized challenges with setbacks & aquatic regulations for future development;
- Desire for a long-term plan for the property instead of temporary uses;
- Concern whether the RV use is truly temporary or more permanent;
- COVID-19 related challenges only arose in the spring; the permit was issued in June, 2019.

The APC passed the following resolution:

THAT the APC recommend not supporting (denying) the file TUP 18-05.01, Temporary Use Permit Renewal, 1375 Green Bay Road as presented.

Public Notification

Two Notice of Application Signs have been installed on the subject property in accordance with the City's Development Applications Procedures Bylaw No. 0260. Staff have received correspondence from three neighbouring residents opposed to the continued use of the RV and feel RV use should be located within a campground as opposed to a mobile home park.



Figure 4 - Notice of Application Signs

Legislative Requirements

Sec. 497(2) of the *Local Government Act* states a person to whom the temporary use permit has been issued may apply to have the permit renewed, subject to the restriction that the temporary use permit may be renewed only once. Sec. 497 of the *Local Government Act* also allows for the modification of conditions at time of renewal. Notification is not a requirement during the renewal of a Temporary Use Permit application. After the expiry of a temporary use permit that has been renewed, an owner or applicant could apply for a new temporary use permit which would require public notification.

DISCUSSION

Recreational Vehicle vs. Mobile Home

How recreational vehicles are being used in practice varies (strictly for recreational/seasonal use or as permanent dwellings, closer to a mobile home) and outside of regulatory definitions, determining exactly what the functional difference is between them and defining them (as a building, as a vehicle, or as both) can be difficult⁶. However, the construction standard for recreational vehicles (CAN/CSA Z240 RV Series), is a different standard than that of a mobile home (CAN/CSA Z240 MH Series). Based on the City's Zoning Bylaw, the fifth wheel trailer on the subject property is considered a recreational vehicle, not a mobile home, as the mobile home definition specifically references the CSA Z240 MH standard (*Attachment 4*).

The intention for an RV to be used as temporary accommodation in the City's Zoning Bylaw definition is in reference to the construction standard of the RV, not the user's

⁶ B. Russell (2006), *Understanding the Role of Recreational Vehicles and Park Model Trailers as an Alternative Housing Option and Barriers to their Use*, University of Manitoba

intentions or use of the RV. The City's definition of a recreational vehicle is consistent with the Canadian Recreational Vehicle Association's (CRVA) own definition of a recreational vehicle, which specifically includes fifth wheels in their definition and states that recreational vehicles shall not be used as a principal place of residence⁷.

Safety concerns were noted during Council's consideration of the original TUP, however the CSA Z240 standard does address electrical, gas, plumbing and appliance systems in addition to vehicular safety⁸. While evolving construction standards may address safety concerns and living standards, many land use regulations have remained restrictive in regards to the residential or long-term use of RV's outside of campgrounds.

Manufactured Home Park Tenancy Act (MHPTA)

The tenant of the RV is using it as their primary residence and has a valid tenancy with the applicant under the *MHPTA*. There have been numerous court rulings and interpretations under the *MHPTA* which have confirmed that the use of a recreational vehicle as a primary residence is applicable in the Act⁹. However, the City's Zoning Bylaw regulates the use and density of land and the siting, size, and dimensions of buildings and structures allowed in a specific area. A tenancy created under the *MHPTA* on the subject property does not invalidate the land use regulations within the City's Zoning Bylaw as the RMP zone does not permit permanent RV use.

The *Residential Tenancy Act (RTA)* and *MHPTA* both have requirements for how and when notices to end a tenancy must be served depending on the reasons for ending the tenancy. There is also a dispute resolution process under both Acts which may delay or prevent the ending of a tenancy. This could result in a property owner and landlord being in contravention of a land use bylaw while being unable to end a tenancy, or having to wait the required notice period before the property can be brought into compliance with City bylaws.

COVID-19 Challenges

While it was understood by staff the Ministerial Order restricting evictions would still allow for notice to be given to end a tenancy if the Temporary Use Permit were to expire, this may not be sensitive to the current climate. As such, the City previously confirmed that no enforcement of the TUP expiry would occur until at least two months after the state of emergency is lifted. Moving the current renewal application forward to Council, a similar approach has been taken in order to provide a reasonable timeframe that is sensitive to the challenges that can arise with finding housing and moving in addition to potential new challenges due to COVID-19.

Temporary Use Permits for Residential Uses

⁷ Canadian Recreational Vehicle Association, What is a Recreational Vehicle <https://crva.ca/resources/faqs/>

⁸ B. Russell (2006), Understanding the Role of Recreational Vehicles and Park Model Trailers as an Alternative Housing Option and Barriers to their Use, University of Manitoba

⁹ Residential Tenancy Policy Guideline 9. Tenancy Agreements and Licences to Occupy

In general, the issuance of temporary use permits for residential uses is problematic. It is challenging for residential uses to meet the OCP guidelines for TUP's to be clearly temporary or seasonal, as the temporary use is for a permanent dwelling. Once approved, the form of residential use permitted for the temporary period will understandably become a home. Enforcement after the expiry of a TUP for a residential use can be difficult for the City to action, and it is likely that a TUP extension would be applied for.

This also creates challenges for landlords who may be renting residences or manufactured home sites who create tenancies under the *RTA* or *MHPTA* which are not permitted permanent uses under the Zoning Bylaw, such as in the case of the RV on the subject property.

COUNCIL REPORT / RESOLUTION HISTORY

Date	Report Topic / Resolution	Resolution No.
June 11, 2019	<p>THAT Council approve a temporary use permit (TUP 18-05) to allow a recreational vehicle on manufactured home site #15A at 1375 Green Bay Road for a period of one year subject to the conditions outlies in the attached permit (Attachment 1); and</p> <p>THAT Council deny the request to utilize the additional two manufactured home sites (#16B and #19B) for recreational vehicles.</p>	C227/19

CONCLUSION

It is recommended that Council approve the renewal of the Temporary Use Permit (TUP 18-05) to allow for the continued use of a recreational vehicle, subject to the conditions of the attached permit (TUP 18-05.01). It is recommended that the TUP be extended for a period of up to six months after the Provincial State of Emergency is lifted to ensure that the tenant would have at least 1-2 months outside of the winter season to relocate the RV. Amendments to the conditions of the TUP to permit the wheels to remain removed in order to maintain the skirting is also recommended.

Alternate Motion 1:

THAT Council not renew the Temporary Use Permit (TUP 18-05.01) to allow use of a recreational vehicle at 1375 Green Bay Road.

If Council chooses to not renew the TUP, the use of a recreation vehicle on the subject property would cease to be permitted. Staff would request the applicant provide

confirmation of the date the tenancy would be ended once the appropriate notice has been served.

Alternate Motion 2:

THAT Council renew the Temporary Use Permit (TUP 18-05.01) to allow use of a recreational vehicle at 1375 Green Bay Road (Lot B, DL 434 & 523, ODYD, Plan KAP76165) on manufactured home site #15A for a period of up to one (1) year, subject to the conditions outlined in the attached permit.

Alternate Motion 3:

THAT Council renew the Temporary Use Permit (TUP 18-05.01) to allow use of a recreational vehicle at 1375 Green Bay Road (Lot B, DL 434 & 523, ODYD, Plan KAP76165) on manufactured home site #15A for a period of up to two (2) years, subject to the conditions outlined in the attached permit.

REVIEWED BY

Brent Magnan, Planning Manager

Mark Koch, Director of Development Services

Shelley Schnitzler, Legislative Services Manager

APPROVED FOR THE AGENDA BY

Paul Gipps, CAO

PowerPoint: Yes No

Attachments:

Attachment 1 – Draft Permit (TUP 18-05.01)

Attachment 2 – Applicant’s Rationale Letter

Attachment 3 – Site Photos

Attachment 4 – Zoning Bylaw Excerpts

Attachment 5 – Council Report TUP 18-05, June 11, 2019

Attachment 6 – Manufactured Home Park Redevelopment Policy