



COUNCIL REPORT
Development Services
For the August 13, 2019 Council Meeting

DATE: August 8, 2019 File: TUP 19-01
TO: Paul Gipps, CAO
FROM: Hailey Rilkoﬀ, Planner I
RE: Application: Temporary Use Permit (TUP 19-01)
Address: 3591 Elliott Road
Legal: Lot 16 District Lot 486 ODYD Plan 27961
Owner: WIC Properties Inc., Inc.No. BC0773399
Applicant: West Kelowna Music School

RECOMMENDED MOTION:

THAT Council approve the issuance of a Temporary Use Permit (File: TUP 19-01) to permit a music school at 3591 Elliott Road for a period of three years subject to the conditions of the attached permit.

RATIONALE:

The recommended motion is based on the following:

- The proposed music school teaches acoustic instruments only and has installed wall-to-wall carpeting in each studio which serves to significantly reduce any noise impacts on neighbouring residents.
- The proposed TUP is less intensive than other uses permitted in the C2 zone, such as a restaurant or care facility major.
- The proposed Temporary Use Permit (TUP) would provide for a family and community oriented business to remain in the Westbank Centre neighbourhood.
- The subject property is well-suited for such a commercial business due to its large parking area and existing commercial building.

LEGISLATIVE REQUIREMENTS:

Council has the authority under Section 493 (2) (b) of the *Local Government Act* to issue a Temporary Use Permit (TUP) to allow a use that is not permitted in the applicable zoning regulations. A TUP may allow a use on a property for up to three years and specify conditions under which the use may be carried out. A TUP may be extended once for up to three years at the discretion of Council.

BACKGROUND:

Location and Surrounding Uses

The subject property, situated in Westbank Centre, is within the Neighbourhood Commercial Zone (C2) and has a future Land Use Designation (LUD) of Commercial. The surrounding land uses are predominantly residential and commercial and include:

- North – C2 Neighbourhood Commercial zoned parcel
- East – RC1 Westbank Centre Compact Residential zoned parcels
- South - C2 Neighbourhood Commercial zoned parcel
- West – R1L Large Parcel Single Detached Residential and R1 Single Detached Residential zoned parcels

The subject property has an existing multi-tenant commercial building. In 2016, tenant improvements were done in one of the units for a beverage manufacturing business. In the past, this commercial building has had a pharmacy and medical clinic previously occupying the units.

In May of 2019 the applicants applied for a Business Licence for the music school at 3591 Elliott Road. The Planning review identified that the current zoning of the property (C2) does not allow for a Commercial School (music school) use and the Business Licence referral was rejected in early June of 2019. This use is only permitted in the C1 and C4 zones. All other referrals from the Business Licence review came back as approved, and the applicants had a building inspection which resulted in no requirements for the proposed occupancy.

However, due to a delay in the Business Licensing process the applicants were not advised of the zoning issue until mid-July. A lease had already been secured by the applicants based on the results of the building inspection. Staff have expedited the processing of this TUP due to the previous delay through business licencing and due to the proposed music classes anticipated to start at the beginning of September with the new school year.

The Bylaw Department has made changes to the internal processing of business licences to address the issue which caused the delay in this application. Longer term solutions are also under consideration to improve the Business Licensing process.

Proposal

The application is a request for a Temporary Use Permit (TUP) to allow a music school (West Kelowna Music School) to operate on the subject property.

Applicant Rationale

The applicant has provided a proposal summary describing their intentions respecting the TUP, which outlines:

- The music school requires more studio space than their current location can accommodate;
- The approval of this use will allow their music students to stay in West Kelowna rather than have them leave the community for other music schools;
- The property is the only suitable option in West Kelowna because of its affordability, location, parking and configuration;
- Hours of operation are Monday through Saturday between the 9:00am and 9:00pm, September to June with reduced summer hours; and
- The family oriented business will discourage transient activity currently occurring due to the current low level of activity and animation of the site.

The applicant's proposal summary is attached for review (*Attachment 4*).

POLICY, LEGISLATION AND BYLAW REVIEW

Official Community Plan Bylaw No. 0100

The subject property is within the Boucherie/Westbank Centre Growth Management Designation (GMD) which is intended to create centres that are an attractive, walkable node of employment and community amenities. Objectives of the Westbank Centre GMD include increasing the mix and intensity of land uses and promoting economic development by encouraging a variety of economic activities.

The subject property has a Commercial Land Use Designation (LUD which includes policies to permit small scale community services compatible with and in support of residential use and to direct commercial uses with a regional appeal to Boucherie/Westbank Centre.

The OCP commits to fostering economic growth while focusing on diversification, revitalization and redevelopment to create a complete community. The OCP encourages economic development that supports the unique character of the community and provides services to a broad range of user groups. The OCP supports zoning amendments or variances where they are consistent with the GMD and LUD and the proposed facilities are a desired use in the community.

Zoning Bylaw

The subject property is within the Neighbourhood Commercial Zone (C2) which accommodates a limited range of convenience services, typically required on a day to day basis by residents of local neighbourhoods. Commercial School, which includes music schools, is not a permitted use in the C2 Zone and is only permitted in the Urban Centre Commercial Zone (C1) or Service Commercial Zone (C4). Commercial School is defined as:

“premises used for commercial training, instruction, or certification in a specific trade, skill or service. Typical uses include secretarial, business, hairdressing, information technology, beauty, culture, and music schools.”

The C2 Zone does permit the similar use of Recreation Services, Indoor which includes uses for performing and cultural arts such as dance and yoga studios.

The Zoning Bylaw requires ten (10) parking spaces per classroom for Commercial School uses located within Institutional Zones, which does not fit with the studio style music school that is proposed with one-on-one student instruction. Within Commercial Zones, there is no specific parking requirement for Commercial Schools. Using the general parking provision for Commercial Zones, 3.0 spaces per 100m² (1076.4 ft²) are required. As the Music School space is approximately 2556 ft², seven (7) parking spaces are required.

TECHNICAL REVIEW

Parameters of Temporary Use Permits

Temporary Use Permits, if approved, allow for a specific use(s) on a specific property subject to compliance with all conditions outlined within the Permit. As such, where one or more of the applicable conditions have not been met or adhered to the use(s) specified within the Permit may not occur. Council may approve Temporary Use Permits for any time period, to a maximum of three years.

Advisory Planning Committee (APC)

Section 4.2 of Bylaw No. 0098 which establishes the APC states that the Development Services Department may refer matters, such as Temporary Use Permit applications to the commission for

review. The application has not been considered by the City's Advisory Planning Commission (APC) due to the availability of meeting schedules and the shortened timeline before the proposed start of classes in the beginning of September. Should Council wish this application to be considered by the APC, an alternate motion has been provided.

Parking

The proposal includes the provision of 15 dedicated parking spaces which is over double what is required by Zoning Bylaw No. 0154. The entire site has 40 parking spaces, which can easily accommodate the existing commercial business that occupies the site as well as additional tenants who may occupy the building in the future.

Building & Fire

The occupant load of the current unit is a maximum of 30 occupants at any one time.

Noise

The applicant installed wall-to-wall carpeting within the studio rooms to lessen the chances of noise issues. In addition, the site is laid out with the parking lot bordered by mature vegetation between the commercial building and the majority of neighbouring residential properties. The commercial building has air conditioning which should reduce the need to open windows which would allow sound from the music school to travel further. Should there be any issues with noise or compliance the City maintains a Good Neighbour Bylaw to address issues related to noise respecting residents' enjoyment of their homes and neighbourhoods.

Landscaping

There is existing landscaping and mature vegetation on the subject property which could contribute to dampening noise between the music school and neighbouring residential properties (Figure 1).



Figure 1 – Existing Landscaping Buffers on site

Business Licensing

The commercial operation of a music school will require a Business License, which has already been applied for. Should any operation of a business not be in compliance with applicable conditions and regulations (e.g Temporary Use Permit conditions, Business Licensing Bylaw, etc), the City's Business Licensing Bylaw No. 0087 empowers the City to daily fines where a licensee has failed to comply with the terms or conditions of the license.

PUBLIC NOTIFICATION

A Notice of Application sign has been posted on site as per the Development Applications Procedures Bylaw No. 0131. Additionally, a mail out was sent to all property owners (Attachment 6) and their tenants within 100 meters of the subject property (79 letters total) and an advertisement will be placed in the local newspaper on August 7th. At time of writing this report, no correspondence from the public has been received in reference to this proposal.

In accordance with the City's Development Application Delegation Request Policy, Council may support an opportunity for both the applicant and members of the public to briefly address Council prior to Council considering the issuance of a TUP.

ALTERNATE MOTION #1 – Postpone Consideration of the TUP and Refer Application to APC

THAT Council postpone the consideration of a Temporary Use Permit (File: TUP 19-01) to permit a music school at 3591 Elliott Road and direct staff to refer the application to the Advisory Planning Commission for review.

ALTERNATE MOTION #2 – Deny Issuance of the TUP

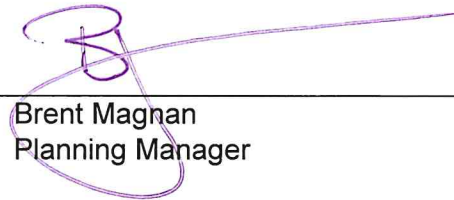
THAT Council deny the issuance of a Temporary Use Permit (File: TUP 19-01) to permit a music school at 3591 Elliott.

Should Council deny the proposal, the file will be closed. As per the City's Procedures Bylaw, the applicant could re-apply for a similar proposal 6 months after initial Council consideration.

Respectfully submitted,


Hailey Rilko
Planner I



Nancy Henderson
General Manager of Development Services


Brent Magnan
Planning Manager

Powerpoint: Yes No

Attachments:

1. Temporary Use Permit TUP 19-01
2. Context Map
3. Subject Property Map
4. Proposal Summary
5. Parking & Site Plan
6. Public Notification Map

Approved for Agenda	
 Paul Gipps, CAO	AUG 8, 2019 Date



**CITY OF WEST KELOWNA
TEMPORARY USE PERMIT
TUP 19-01**

TO: West Kelowna Music School
c/o WIC Properties Inc
3591 Elliott Road
West Kelowna, BC, V4T 1N9

1. This Permit is issued subject to compliance with all of the Bylaws of the District of West Kelowna applicable thereto, except as specifically varied or supplemented by this Permit.
2. This Permit applies to and only to those lands described below, and any and all buildings, structures and other developments thereon:

Lot 16 District Lot 486 ODYD Plan 27961 (3591 Elliott Rd)

3. This Temporary Use Permit (TUP 18-06) allows for the use of a commercial school at 3591 Elliott Road to allow for a music school, subject to the following conditions:
 - i. Maximum occupant load within the unit at any one time is 30 occupants.
5. The land described herein shall be developed strictly in accordance with the terms and conditions of this Permit and any plans and specifications attached to this Permit, which shall form a part hereof.
6. **This Permit is not a Building Permit.**

AUTHORIZING RESOLUTION NO. CXXX/XX PASSED BY THE MUNICIPAL COUNCIL ON AUGUST 13, 2019.

EXPIRY DATE: AUGUST 13, 2022

ISSUED ON:

Signed on

City Clerk



CONTEXT MAP: TUP 19-01



Subject Property
(3591 Elliott Rd)

Westbank Lion's Community Hall

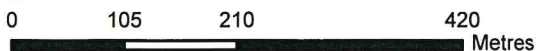
Johnson Bentley Aquatic Center

File: TUP 19-01

Legal Description: Lot 16, DL 486, ODYD, Plan 27961

 Subject Property

 City Boundary





SUBJECT PROPERTY: TUP 19-01



Subject Property (3591 Elliott Rd)

see Zoning Bylaw for site specific use

see Zoning Bylaw for site specific use

LEGEND

- Subject Property
- Zoning Boundary
- Parcels



File: TUP 19-01

Legal Description: Lot 16, DL 486, ODYD, Plan 27961



1:2,500

Date: 2019-07-19

Temporary Variance Application for 3591 Elliott Road

West Kelowna Music School (WKMS) primary vision over the past 6 years has been to nurture a love of music in a supportive and positive environment. We have provided excellence in music education for all ages since 2013. Our current student enrolment represents over 100 families and is growing. Our teachers are specialists offering programs for everyone in the community from preschooler to University prep to continuing education for adults.

Over the years WKMS has offered annual community performances at local senior residences, community concerts, Westbank Museum Christmas fair, performances at the Westside Culture Days, Westbank Christmas Light-up and is scheduled to have our choir, Vox-Forte! perform at the West Kelowna Remembrance Day ceremonies this year. We are supporters and co-founders of Westside Music Festival, which brings Canadian Composers to West Kelowna each year for a non-competitive music festival open to all West Kelowna music students. As well, WKMS was nominated and a finalist in the Westside Board of Trade's Key Business Awards for Performing Arts in 2018.

We have had a successful 6 years at our current location, however our school requires more studio space to house our growing music co-operative. This new space will afford us the ability to offer a mentorship program for new teachers to ensure the longevity of music education in West Kelowna. Our desire is to keep West Kelowna music students in West Kelowna rather than have them leave the community for other music schools.

After an exhaustive two-year search, this property (3591 Elliott Road) is the only suitable option in West Kelowna because of its affordability, location, parking and configuration.

Our hours of operation have been Monday through Saturday between the hours of 9:00am and 9:00pm, September to June. Our summer hours of operation are much reduced.

We are aware and see daily evidence of transient activity at this location due to it being vacant for so long. We are confident that our family-oriented business will discourage this activity. (Please refer to attached statement from direct neighbour).

When we first came together to create our music co-op, we approached the city to get our business licence, which consisted of simply filling out a form and paying \$60. We assumed, naively, that same process would take us to the new location, however, when we found out we would require more than that we went forward with the City's process and held off signing our lease. Two people from the building inspection department came to our site and told us we were approved with a cap of 30 occupants at one time. The Fire Inspector gave us a few things to address and once those were completed he

gave us the occupancy limit sign to be posted at our door. At this time, we understood that we were “good to go”.

It was only at this point we signed a three-year lease for this Elliott Road property which we now have to honour whether we have a variance approval or not and whether we can teach there or not. Sub-letting this location would be impossible, as I am sure you are aware, given the restrictions of the current zoning.

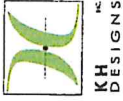
We feel there was a lack of communication in the process of acquiring this business licence. It was not fully explained at the beginning or at any point of the process. We are confused by the lack of information initially given by the City. Why would the City send out two inspectors to look at the location if the zoning wasn't correct to begin with? Shouldn't that have been the first hurdle? Why waste time with building and fire inspections if the most basic element of zoning was wrong according to the City itself?

Our lease at our current location expires August 31st of this year and we need to be settled at the Elliott Road property so that we can proceed with classes scheduled to begin September 1st.

We count on your support in our efforts to continue to provide music education in West Kelowna.

Melodie Petersen, WKMS

Sandra Mitchell, WKMS



2525 Sutherland Road
 10000
 K.C. MO 64114
 816-234-7200
 KHDESIGNS@GMAIL.COM



Westside
 Medical
 Clinic

3591
 Elliot Rd.
 West Kelowna

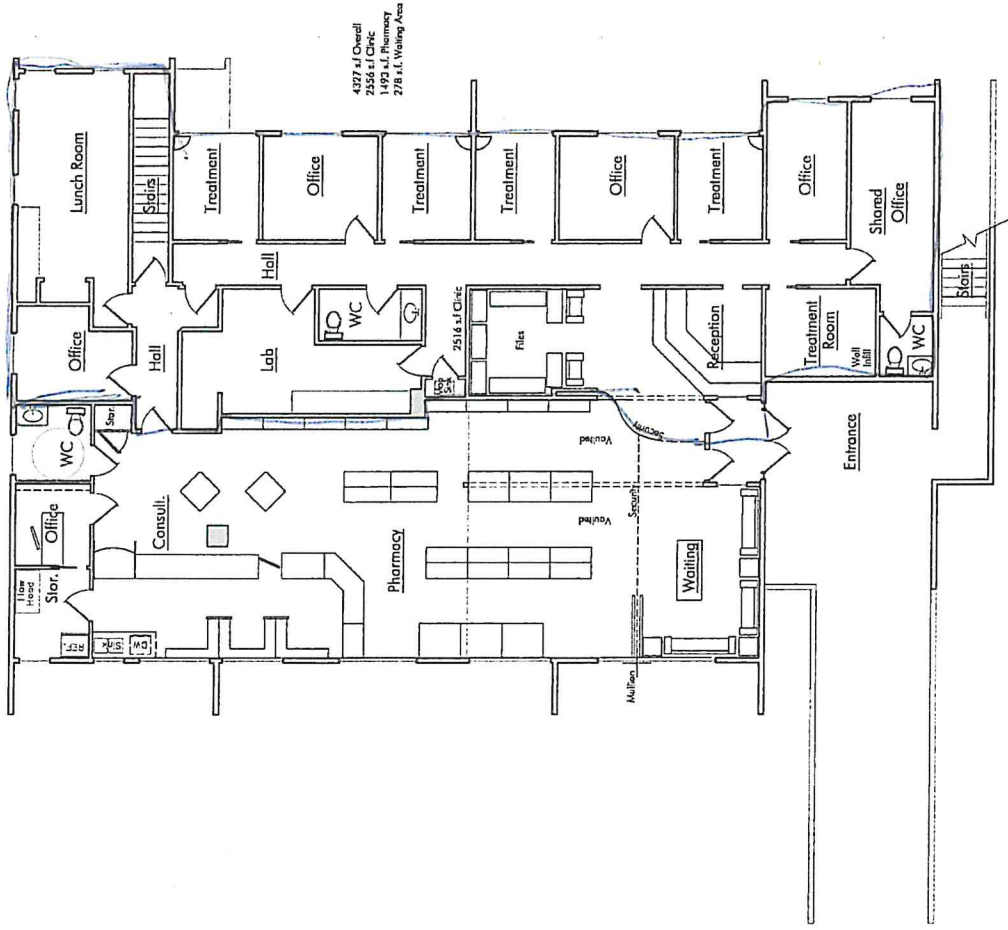
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 PROJECT: 03111
 FILE:
 ISSUE: DATE 03/25/2012

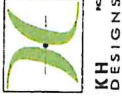
As-Built
 Upper
 Floor

A-2b

Notes:
 1. See drawings for details.
 2. All work to be done in accordance with the approved plans.
 3. All work to be done in accordance with the approved plans.
 4. All work to be done in accordance with the approved plans.
 5. All work to be done in accordance with the approved plans.

4377 J.J. Overall
 2556 J.J. Clinic
 1993 J.J. Pharmacy
 278 J.J. Waiting Area





5225 Eastview Road
 FRASER
 BC V7Y 1K1
 (604) 779-8700
 PROSER@KHCAN.COM



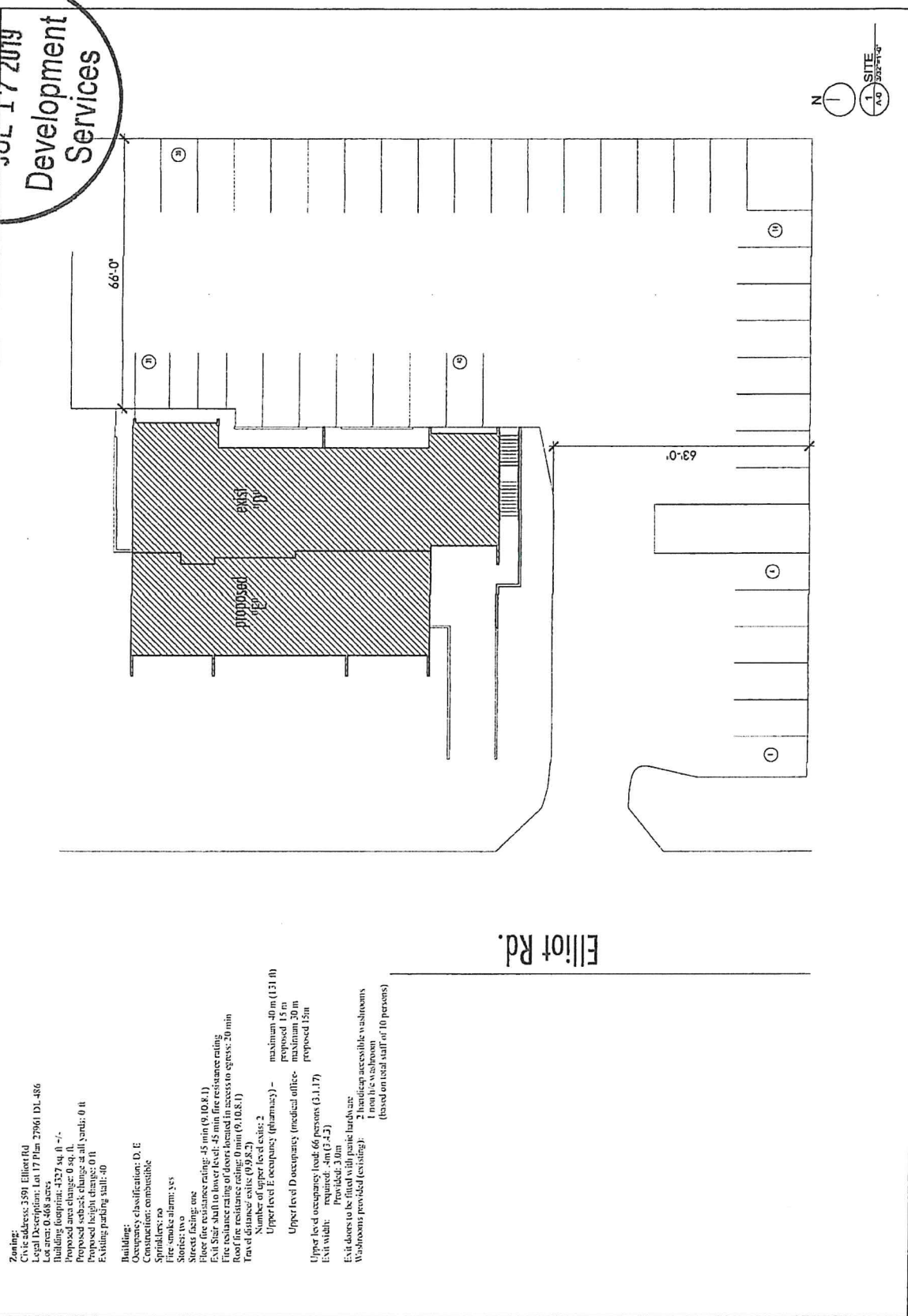
Westside
 Medical
 Clinic

3551
 Elliot Rd.
 West Kelowna

DRAWN BY: KTH
 PROJECT: 031-11
 FILE:
 ISSUE: DATE 1/11/2012

Site
 Plan

A-0



Elliot Rd.

Zoning:
 Civic address: 3591 Elliot Rd
 Legal Description: Lot 17 Plan 27961 DL 486
 Lot area: 0.468 acres
 Building footprint: 4327 sq. ft +/-
 Proposed area change: 0 sq. ft.
 Proposed setback change: as all yards: 0 ft
 Proposed height change: 0 ft
 Existing parking stalls: 40

Building:
 Occupancy classification: D, E
 Construction: combustible
 Sprinklers: no
 Fire smoke alarm: yes
 Stairs: two

Street lighting: one
 Fire alarm: one (0.10.8.1)
 Fire alarm: one (0.10.8.1)
 Fire alarm: one (0.10.8.1)
 Fire resistance rating of doors located in access to egress: 20 min
 Travel distance/ exits (0.9.8.2)

Number of upper level exits: 2
 Upper level E occupancy (pharmacy) - maximum 40 m (131 ft) proposed 15 m
 Upper level D occupancy (medical office) - maximum 20 m proposed 15 m
 Exit width: required: 4m (13.1ft) provided: 3.0m
 Exit doors to be fitted with panic hardware
 2 handicap accessible washrooms
 1 non-hc washroom
 (based on total staff of 10 persons)

TUP 19-01 GIS Mail Notification Map



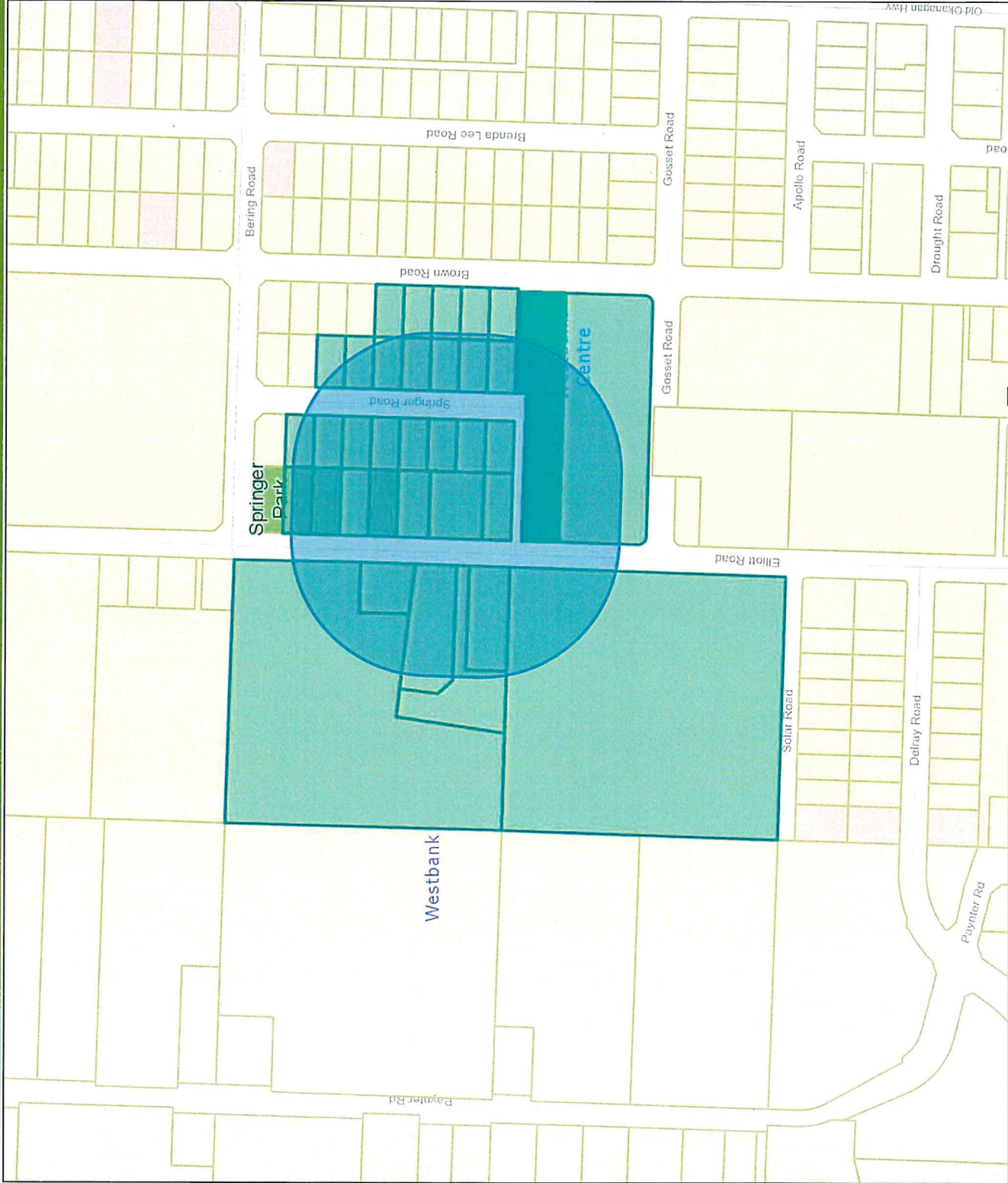
Legend

Landmarks	Cemetery	City Hall	Community Centre	Dam	Fire Hall	Museum
Basemap Layers	WK Admin Boundary	Regional Admin Boundary	Highway	River / Stream	Intermittent Stream	Parcels
Waterbody	Waterbody	Lake Access	Regional Park	Municipal Park	Westbank First Nation	Lease
Ownership	Land Strata	Building Strata	Common Property	Crown Land	Park	Road Right-Of-Way
Other	Walkway	Common Access				



Scale 1 : 4,000

Notes



This map has been produced by the City of West Kelowna's Geographic Information System. The data provided is derived from a variety of sources with varying levels of accuracy. The City of West Kelowna makes no warranty or representation, expressed or implied, with the regard to the correctness, accuracy and/or reliability of the information contained herein.



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 Map Projection: NAD_1983_UTM_Zone_11N
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