



REFERRAL RESPONSE (REVISION MAY 3, 2022)

Date: May 3, 2022, (Originally Submitted December 17, 2021)
To: Krista Gilbert, Planning Technician
From: The Corporation of the City of Fernie
Subject: RDEK Bylaws 3102 and 3103 – Lizard Creek / C.H. Nelson Holdings Ltd.

Krista,

The City of Fernie is **NOT IN FAVOUR** of the proposed bylaw amendments: RDEK Bylaws 3102 and 3103 for the following reasons:

1. Non-compliance with the City of Fernie Official Community Plan (OCP), both specific to future expansion areas and general housing policies
2. Failure to address the non-compliance with the City of Fernie OCP
3. Opposition to the proposed Covenant to limit dwelling unit numbers
4. Lack of best practices regarding asset management
5. Future costs of infrastructure maintenance / replacement to be borne by the taxpayer
6. Engineering / feasibility concerns have not been addressed
7. Adequate environmental assessment and wildlife corridor/habitat analysis has not been completed
8. Many of the City's previous concerns have not been addressed or considered

We had originally submitted comment on the proposed amendment bylaws on December 17, 2021. We acknowledge that the RDEK requested more information regarding the subject application and did consider some of our concerns with this request, however, we remain concerned that many of our previous comments were not considered in this request for more information or were not addressed to the satisfaction of the City. Please see below our updated comments for your consideration.

We request that this referral response be included in full as part of any meeting agenda regarding the proposed bylaw amendments, as we understand that the expediated timeline of the application may not afford RDEK Staff the time needed to accurately summarize our response.

City of Fernie OCP:

In general, the City is questioning if its concerns regarding the City of Fernie Official Community Plan that were originally submitted with the referral response on December 17, 2021 were discussed by the RDEK board and why those concerns were not addressed by the developer. Even though the subject area is under RDEK legislative control, the area is currently identified as a future expansion area in the City of Fernie Official Community Plan.

Prior to adoption of the City of Fernie OCP, the City collaborated with RDEK Staff to ensure that the policies and maps regarding future expansion areas were amenable to both sides. This agreement between the RDEK and the City is being neglected by the applicant.

The City feels it is important that the RDEK Board strongly considers the policies and objectives instilled in the City of Fernie OCP, as well as their intent when making any decisions regarding the project. Our original comments reflecting our stance of being **NOT IN FAVOUR** of the proposed bylaw amendments are reiterated below:

- The subject properties (Galloway Lands) are in the “Fernie Alpine Resort Long-Term Fernie Boundary Expansion Study Area” (City of Fernie OCP – Schedule ‘H’). Section 9-F – Future Land Requirements speaks to lands planned to one day, potentially, become part of the City of Fernie. Relevant to the subject application, the Fernie OCP states:

The potential boundary extension areas have been identified for the following criteria, or a combination of the following criteria:

- 2. They have the long-term potential to accommodate future growth (commercial, light industrial and **residential mixed use**) subject to boundary extensions and the provision of publicly owned water or sewer services, provided that appropriate phasing policies are established, new development does not detract from compact development options within Fernie, **and that infrastructure capacity is available and financially sustainable.***
- 3. They provide opportunities to improve and coordinate local planning, **promote the efficient use of land**, provide greater transportation choices, **reduce public servicing costs and reduce sprawl into rural areas.***

*Longer-term potential boundary expansion areas include land with little or no existing development. Such areas have been identified as “reserve areas” to help accommodate Fernie’s potential long-term growth demands. Their close proximity to Fernie means that future growth in these areas will help achieve many of the same benefits as growth within Fernie. Namely, **if developed in a compact form and in an orderly manner that does not detract from development within Fernie, they will promote the efficient use of land, provide greater transportation choices, reduce public servicing costs and reduce sprawl into rural areas.***

Relevant policies in this section of the OCP that this application is not consistent with include:

9-F.1 Continue working with the RDEK to develop a coordinated approach for future boundary expansion, and the conditions under which it would occur, to ensure consistent planning, cost effective service delivery, and good governance for Fernie residents and residents on the municipality’s fringe.

9-F.3 Consider the provision of additional municipal services, such as fire protection, beyond the municipal boundaries and areas where they are currently provided following the completion of a cost/benefit analysis and examination of how the potential service delivery could impact service provision to Fernie residents.

- As delineated on the City of Fernie OCP Schedule 'E' – Transportation Network, there is a proposed urban collector road, of which the actual alignment is to be determined, in the vicinity of the subject lands. In fact, the proposed road, which would connect the City of Fernie to Fernie Alpine resort has already been dedicated to the southern-most boundary of the Cedars lands, adjacent to the "Galloway" property, as a part of the Cedars development. Development of the subject lands may preclude or complicate future construction of the proposed urban collector road connecting the City of Fernie to Fernie Alpine Resort.
- Taking into context that the subject properties are in the long-term City of Fernie Boundary Expansion Area, the proposed development is inconsistent with City of Fernie OCP policies and the City of Fernie / West Fernie Affordable Housing Strategy regarding the diversification of housing, development of higher density residential and limiting infrastructure costs:

1-A - Housing

1-A.1 Encourage a spectrum of residential dwelling types, locations, and densities in order to accommodate various socio-economic groups, age groups, and lifestyles in Fernie.

1-A.5 Encourage and support more diverse housing stock in each neighbourhood to meet priority needs for seniors, low-income families, young families, and people with disabilities.

1-A.7 Work towards increasing the overall density of housing in the existing urban area as a means to optimize the City's investments in infrastructure and as a means to reduce service delivery costs.

1-A.2 – Housing Diversity

1-A.2.4 Encourage and support development of affordable multi-family housing options.

General Comments:

- The City is also **NOT IN FAVOUR** of the proposed covenant to limit the amount of dwelling units to 75, and not allow anything over a single-family dwelling unit to be built. The City feels that this covenant limits development, however, not in a way that is conducive to sustainable land management and planning. In the opinion of the City, this covenant handcuffs the RDEK and developers from any potential high-density residential developments, affordable and attainable developments, or mixed use that creates truly complete and livable neighbourhoods etc. in the future. City Staff believe that this covenant largely works to the benefit of the current developer and their business model, as it would only serve the purpose of ensuring future property owners that no multi-family housing of any nature be developed in the area, thereby making the development more marketable to a specific desired demographic.

This covenant conflicts with the related OCP policies listed above, as it promotes exclusively single-family estate development. City Staff believe that it is possible to have environmentally sustainable multi-family affordable and attainable development with proper planning, and this covenant would eliminate that possibility.

Staff notes that the updated information provided by the applicant notes that the covenant be amended to release the limitation on number of dwelling units should the area be annexed into the City of Fernie. We anticipate the following potential issues with this proposal:

- Any future annexation may be hindered by the covenant and how it can be removed / modified, as residents may simply resist / refuse annexation to keep the covenant intact; or
- Once the lots are developed as single-family, and if they are annexed into the City, the covenant, or removing the covenant will be largely irrelevant, as redevelopment of the lots in compliance with the land-use principles set out in the City's OCP will likely not occur.

In summary, we feel that the covenant will attract purchasers that are not interested in developing lots beyond what they are currently being marketed for (The covenant acts as an "insurance policy" to the property owner to ensure that multi-family development will not occur). Once the lots are developed, the City feels that multi-family, affordable and attainable options, or increased dwelling units developed in a sustainable manner will simply be off the table from the developer / property owner's end, regardless of a covenant registered on-title. The City sees little benefit of such a covenant to the RDEK, or the City.

Future Financial Implications to the City of Fernie:

- Rural RDEK Area A residents and property owners will directly benefit at no cost to them from a high quality of life from services delivered by the City of Fernie and paid for by City of Fernie residents and property owners.
- This proposed development directly puts service and expenditure pressure on the City of Fernie with no financial contribution by property owners. This development will further exacerbate the already inequitable tax load on City of Fernie residents and property owners to maintain levels of service that owners of this proposed development and other rural RDEK Area A residents enjoy for no or minimal cost.
- Developments outside of the City of Fernie jurisdiction do not financially contribute to development cost charges to ensure that the community impacts from current and future

growth costs are not transferred or subsidized to taxpayers. This proposed development will transfer costs to the City of Fernie.

- The proposed inclusion of this proposed development into the City of Fernie Rural Fire Protection Service Area agreement adds risk and costs to the City of Fernie with no added community benefit.
- The current proposed servicing configuration for fire suppression is not in line with City of Fernie standards and opens the City of Fernie to new risk, particularly with the reliance on private strata maintenance, inspection, and overall management of the proposed water infrastructure to support fire suppression and the climate concerns with relying on an open detention pond to be maintained at an elevation necessary to support fire flow during times of extreme drought.
- Related to the above notes on the OCP and limiting infrastructure costs, Staff feels it is important to consider Asset Management; that is, once the infrastructure is installed by the developer, and the City (or RDEK) becomes responsible for the maintenance and eventual replacement of that infrastructure, what will it cost the Municipality (City or RDEK)? The Provincial Government hosts a website on [Community Lifecycle Infrastructure Costing](#). On this website they state that:

New development and land use planning decisions require careful consideration as they affect the scale, scope, and type of infrastructure needs. The full financial impact of these decisions will influence long-term community sustainability and resilience.

Staff feels it is important to investigate the costs associated with infrastructure maintenance and replacement against the anticipated revenues (and potential benefits) that the RDEK / City may encounter as a result of the development.

In this case, Staff anticipates that the revenues / potential benefits of the development will not justify long-term costs of infrastructure maintenance and replacement:

- In their update to the RDEK, the developer notes that no water distribution or sewer collection systems are proposed for the development, and only public roads would be an ongoing maintenance cost and hints that because of this, the costs to the RDEK / (future) City of Fernie are negligible. City Staff feels that this requires further investigation, as without a proper costing analysis, the statement by the developer is unfounded, as it does not detail the **full financial impact** of infrastructure needs as noted by the Province. This may lead to the RDEK making a decision without being fully educated on future costs to the taxpayer.
 - Further, the developer fails to note that there will be a cost associated with the installation of fire hydrants and water lines, as recommended for fire suppression in the BA Blackwell report. This must also be considered with roads as a public infrastructure need to be assessed and considered by the RDEK in their decision-making process.
- An analysis through the “CLIC” tool, that can be found at the above link, should be used to inform the RDEK on the above-noted concerns, and assist the RDEK board in making a decision on the subject zoning proposal. As noted above, this type of assessment is recommended by the Province, and if it is not undertaken as part of this rezoning application, then the RDEK board will be basing their decision on incomplete information.

City of Fernie Staff notes that the applicant claims that there will be a blend of publicly owned and private infrastructure, and that the private infrastructure (Strata) will be paid for and maintained by the property owners. Staff is concerned with the longevity of the strata ownership,

and that there is no guarantee that the private infrastructure will not one day fall under public control. Often, private (Strata) infrastructure is not built to or maintained at the same standard as public infrastructure, so this compounds the concern if that infrastructure one day becomes public.

Responses from Related City of Fernie Departments

Operations and Engineering

- The City of Fernie Operations and Engineering Department noted the following:

The kind of development proposed in Bylaws 3102 & 3103 is not sustainable considering that density is an important goal of the City. Large lots with much infrastructure will continue the practice of habitat destruction for the benefit of the very few at a time where communities need to infill rather than spread out. These large lots are along a mountainside requiring expensive infrastructure that is difficult to maintain. The City is concerned that such nearby developments may become a part of our municipality over the long term and perpetuate the problems we already have here.

TRAFFIC IMPACT ASSESSMENT

The traffic impact assessment assumes an “extremely minimal increase to the background traffic, especially during the winter season.” The COF experiences that the peak season during the highest period of snow results in an excessive number of people wanting to find parking and access the ski hill. At the City of Fernie (COF), we have also noted an increase in secondary suites and day-trippers seeking places to park for the destination and overnight needs. At the same time, the additional demand puts further pressure on the local businesses. This subdivision will likely experience these situations, especially during the winter due to the roadway and the summer as the area grows to a full-time resort town. Essentially, this Galloway Roadway will provide an additional opportunity for parking and disruption to communities with insufficient infrastructure to accommodate a demand exceeding the visitor vehicle demand because this is already happening. As a result, we do not agree with Bunt’s initial assumption about a resort community.

A foundational assumption should be that the background traffic will be significant and that by providing further roadways as parking opportunities, there will be a significant additional traffic impact that will carry additional demand on the HWY 3 intersection. The extra traffic will also interfere with snow ploughing as trucks try to navigate through areas where interruption due to parked cars increases costs and pinch points along the roadway, reducing safety for walkers and residents leaving their driveways without a clear vision due to snowbanks.

The approach to the intersection on HWY 3 is all downhill, where the slippery conditions and increased momentum already challenge the braking ability of vehicles during the exit approach. This development will add additional pressure with the increased traffic that queues uphill for longer lengths due to the long waiting period to access the HWY and greater demand feeding the queue.

The TIA also states that “However, given the tighter geometry of Highline Drive, it is not anticipated that vehicles will be travelling at 60 km/hr along this section of Highline

Drive.” This biased analysis suggests that road users will be driving at lower speeds which is likely not a characteristic of many visitors. At the same time, sighting distance will be essential, especially on a slippery surface with significant grades.

The COF finds this TIA assumption circumspect “The data indicates that there have been two (2) casualties at this intersection in the past five (5) years. As this report recommends improvements to the FSH Road / Highway 3 intersection, it is expected that the improvement will address the potential safety concerns at this intersection.” This data does not reflect the significant impact of COVID on the traffic accessing the ski hill skewing the results during 2019 & 2020. We find this important fact surprisingly absent from the report.

This traffic impact assessment does not address COVID impacts in the data nor reflect the conditions of a resort community, minimizing a key factor such as escalating growth and increasing conflicts (i.e., the requisite background or shadow demand created as a resort community increases with an additional focus to attract visitors and economy). This is a concern of single-family residential development in a resort community where this other impact is not adequately considered.

COMMUNITY WILDFIRE PROTECTION PLAN (CWPP)

The CWPP consideration suggests that the 2014 RDEK OCP forms a sufficient basis to rate the low to moderate wildfire potential of this area. The COF disagrees with this assumption, considering the current regularity of wildfires being since arguably post-2017 at an unprecedented level causing wildfires in BC to be an unprecedented annual event in the context of the climate crises.

The ability to respond to wildfire is becoming top of mind in many communities, including the Elk Valley. The Elk Valley OCP includes statements regarding interface fire hazards & public safety. While the Galloway Lands are designated as low and moderate hazards within the OCP, the RDEK Board sought further information regarding how fire protection could be provided to the property and what could be done to reduce any potential for wildfire further.

The COF contends that the interface fire potential is substantially higher than the purported low to a moderate assumption based on the more recent events across the province.

WILDLIFE CORRIDORS

The review of wildlife corridors was insufficient, as stated by the Cascade Environmental Resource Group. They said, “Due to the season, an in-depth onsite review was not possible, although a site visit was conducted to obtain an overview of the property.” Attention was only paid to species mentioned by individuals “who spoke” at the RDEK Planning Committee meeting, where mention was made about Grizzlies, fish species, and cumulative habitat loss. Big Horn sheep were also identified from previous reports as species of value.

There was no mention of other endangered species within this, including the Western Screech Owl and other species native to the Fernie area. We would expect a wildlife report to identify all endangered species within the Elk Valley and then consider the impact of this development on those species. We find the information by Cascade insufficient in scope to address the effects of this development on wildlife corridors.

GROUNDWATER SUPPLY AND SEPTIC FIELDS

The proposed water supply is within fractured bedrock, as stated in the Western Water report "A mapped aquifer does not underlie the bulk of the subject site, but it is very likely Aquifer 534, or a similar fractured bedrock aquifer is present covered with unconsolidated deposits but has not yet been mapped as such due to a lack of reported wells in the area." Such formations suggest a water table very much dependent on regular precipitation and snowmelt, both of which may be in decline due to climate change; as noted by Western Water, "The main changes expected are warmer, drier summers, and somewhat wetter winters with more precipitation falling as rain (as opposed to snow, resulting in decreased snowpack), particularly in lower elevations."

The need for adequate spacing between the wells and the septic fields is clear where the report states, "where the topography is favourable. We recommend siting wells as far apart as feasible." This suggests that the ground filtration of the septic filtration is less than what may normally be expected with a soil aquifer. Proper maintenance of such septic fields will be essential in avoiding contamination of the wells due to the high permeability, and minimal treatment fractured bedrock affords septage. There is no mention of the inter-property location of wells and septic fields to confirm that spacing is maximized on each lot and between them.

The COF finds that the expected increases in drought conditions that may lower the water table in the fractured bedrock in conjunction with the limited treatment a fractured bedrock aquifer provides increases with the potential for contamination of the water supply by the septic fields despite the recommended maximum separation. Adding septic fields that could impact the aquifer provides drinking water from a shallow fractured bedrock aquifer is of great concern, while the superficial unconsolidated deposits that overlay the bedrock provide little filtration polishing as septic field discharges break through the soil mantles

It was also noted that the water table is only 6 feet below the surface in places, further exacerbating this concern, while wastewater may contain pharmaceuticals and other chemicals of concern that may be more water-soluble and transportable amongst water supply wells.

It is surprising to be approved for onsite wastewater treatment via septic fields while a city-level wastewater treatment system is in proximity. Individual homeowners have proven to be remiss in many instances in the maintenance of septic tanks and drainage fields and remediation in the future will drive significant costs.

ADDITIONAL NOTES

- Each additional residence combined with background traffic that can relate to other suites within these large homes and the extra parking space along a roadside will increase demand both at that ski hill and in the COF, putting further demand on an already aging infrastructure for support services.
- This development is to the north of the Ski Resort and a “stone’s throw” from the COF jurisdictional boundary. Over time there will be a need to amalgamate both communities, and to proceed with development without this important step in mind continues to add pressure onto the infrastructure already overtaxed by visitor demand due to the resort nature of both communities. The time is now to ensure that asset management principles are followed in contemplating all new development to avoid the long-term impacts on local taxpayers who are insufficiently compensated for such developmental infrastructure needs.
- The Fernie Valley Pathway is proposed to be along HWY 3 and up the Fernie Ski Hill Road bringing active transportation users into a zone of more conflicts in their efforts to avoid the use of petroleum-powered vehicles in the interest of addressing the climate crisis. The additional traffic will undermine these efforts while discouraging the active transportation incentives due to safety concerns.

Fire and Emergency Services

- The City of Fernie Fire and Emergency Services Department noted that the following concerns appear to be addressed in the BA Blackwell report that is attached to the updated application, however, concerns still remain:

Two real concerns that need to be addressed only in regard to fire and life safety:

1. **Original Concern:** Servicing 75 properties with no water supply for fire suppression. This would mean Fire and Emergency Services would need to shuttle water to emergency scene from hydrant (Boomerang way) on ski hill:

Updated Comment: BA Blackwell Recommendation that hydrants serviced by gravity-fed storm detention ponds, as per the existing fire suppression system at Fernie Alpine Resort seems to work in theory, however, without proper engineering design, there is no way of telling if this system is feasible. Staff recommend that the RDEK ensure that before endorsing a fire suppression system for the proposed development, that such a system is a realistic and sustainable option (For example, what size / type of fire event will the proposed system support, and is this acceptable to the City / RDEK?) Also, as noted above, this proposed configuration is not in-line with City of Fernie standards and opens a risk to the City and its emergency services staff.

2. **Original Concern:** Road access/egress to and from this development
 - a. The main access they suggest is from the ski resort property (7.8 km from fire hall) which is approx. 12 minute driving code 3.
 - b. The applicant suggests emergency egress route be single lane gravel road to Highway 3. Fire and Emergency Services would recommend this be double lane

paved and be secondary egress for ski resort also. Is there assurance that this road would be maintained in winter months? Is there possibility for us to utilize this road to access development?

Updated Comment: As detailed in the BA Blackwell recommendations, a viable secondary emergency vehicle access (SEVA) should be constructed by the developer. COF Staff is concerned and interested as to the process of approval for this SEVA, ensuring that if the City provides fire and emergency response, that the SEVA be constructed under the approval of the City's Engineer and Fire and Emergency Services Department and continual maintenance be ensured should it proceed.

Sincerely,

Corporation of the City of Fernie
May 3, 2022 (Original Comments Submitted December 17, 2022)



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