



# REGIONAL DISTRICT OF CENTRAL KOOTENAY

## Board Report

**Date of Report:** June 27, 2019  
**Date & Type of Meeting:** July 18, 2019 Open Regular Board Meeting  
**Author:** Nelson Wight, Planning Manager  
**Subject:** LAND USE AMENDMENT Z1806F-KERR  
**File:** 09/4600/20/2018/Z1806F-03642.000-KERR-BA000021

### SECTION 1: EXECUTIVE SUMMARY

The purpose of this report is to consider adoption of land use amendments to the *Electoral Area 'F' Official Community Plan No. 2214, 2011* and *Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004*.

If successful, the proposed land use amendments would authorize amendments to the OCP designation and Zoning designation for lands located at 2556 Holmberg Road for the purposes of legitimizing several residential buildings on the subject property that pre-date current ownership

- **OCP Designation:** From Country Residential (CR) to High Density Residential (HR)
- **Zoning Designation:** From Country Residential (R2) to Multi-Family Residential - F (MFR-F)

Staff is recommending that these land use amendments be adopted now that MOTI has signed the bylaws, and recognizing that the owners have signed a compliance agreement to re-construct the non-compliant structure next to Kootenay lake into a boat house in accordance with all relevant RDCK bylaws.

### SECTION 2: BACKGROUND / ANALYSIS

GENERAL INFORMATION	
<b>Property Owner:</b> Working Projects Inc.	<b>Agent:</b> Cover Architecture
<b>Property Location:</b> 2556 Holmberg Road, North Shore	
<b>Legal Description:</b> District Lot 792 Kootenay Land District Except (1) Parcel A (Reference Plan 363901) and (2) Parcel B (See 1620671) (PID 016-375-343)	
<b>Property Size:</b> 1.4 acres	

#### Site Context

The land subject to the land use amendment proposal is located at 2556 Holmberg Road along the North Shore in Electoral Area 'F' of the Regional District of Central Kootenay (RDCK). The land under application is 1.4 acres in site area and is currently developed with a three bedroom house (constructed in the 1930s), five-plex (converted in the 1990s), and a single-family dwelling that has been under construction since the 1990's, and partially constructed on Crown foreshore (often referred to as a "boathouse"). The applicant has made concurrent application for an accretion for that portion of Crown foreshore in which the structure was built (refer to Figure 1). The proposed land use amendment will require that existing buildings are brought into compliance with B.C. Building Code, RDCK Floodplain Management requirements and current servicing standards.

**Development Proposal**

The three bedroom house that is compliant to land use regulations is currently under renovation and recent improvements have also been made to an accessory structure on the property. The applicants are wishing to proceed with improvements to the five-plex by bringing it into compliance with RDCK zoning and servicing requirements. The property requires a land use amendment before a Building Permit can be obtained to improve this structure as it is non-compliant with the density provisions of the Country Residential (R2) zone.

The owner has committed to altering the illegal structure that has been built partially on Crown foreshore to a boat house. They are also in the process of seeking approval for an accretion through the Province. This structure has been subject to Bylaw and Building Enforcement actions in the past that have resulted in a Notice on Title and Do Not Occupy orders. The recent commitment by the owner through a compliance agreement provides administration with sufficient comfort to recommend that the Board proceed with adoption of these land use amendments.

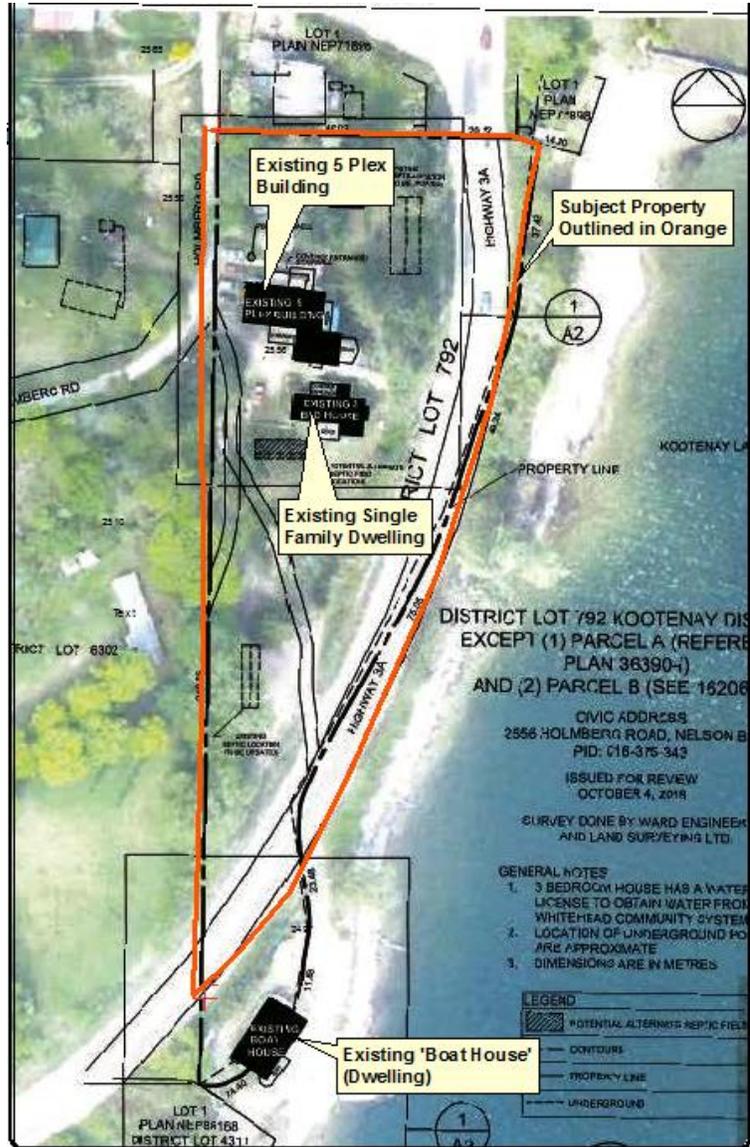


Figure 1: Site plan showing existing development

Land uses on adjoining properties are as follows:

Orientation	Zoning	Land Use
North	Country Residential (R2)	Residential
East	Country Residential (R2)	Residential

<b>South</b>	Open Space (OS)	Kootenay Lake
<b>West</b>	Country Residential (R2)	Residential

**Public Hearing**

A Public Hearing on this land use amendment application was held on January 31, 2019. Concerns with regard to the illegal structure next to the lake include the visual impact to adjacent properties, on-going compliance considerations with servicing and building code requirements and its construction partially on Crown foreshore. The land use amendments have been given Third Reading and have obtained Provincial Approval under Section 52 of the Transportation Act.

**Community Considerations**

The parking concerns with regard to the five-plex have been addressed by the applicant and the neighbor most impacted by overflow and visitor parking along Holmberg Road. The right of way is narrow in this location and there have been issues in the past with cars parking and blocking the ingress and egress of adjacent properties.

Concerns with regard to septic disposal and drainage will need to be addressed at the time of any Building Permits associated with the three bedroom house and five-plex. An engineers report has been provided by the applicants as to bringing these two structures into compliance with current servicing standards.

Concerns with regard to the illegal structure next to the lake include the visual impact to adjacent properties, on-going compliance considerations with servicing and building code requirements and its construction partially on Crown foreshore.

Habitat Branch has indicated that this portion of the property has potential habitat values and the Ktunaxa Nation has indicated that the site has significant archaeological values associated with it that would require an archaeological overview assessment prior to approvals.



*Figure 2: Unauthorized structure next to Kootenay Lake*

### **Project Update – Compliance Agreement Signed, Staff Recommending Adoption**

**[Note: for the following section, please refer to Schedule A – Elevations, which shows conceptual elevations of the proposed boat house, with associated dates to deconstruct portions of the existing structure.]**

Since this matter was last considered by the Board, Bylaw Enforcement, Building, and Planning Staff have met with the applicants to work out a path to compliance. As a result of that agreement, Staff are satisfied that the land use bylaws can be adopted. Adoption is desired now in order that the proponent can begin work legalizing the five-plex and single-family-dwelling on the subject property. The compliance agreement provides specific dates for the owner to demolish portions of the unauthorized structure next to the lake (see Figure 2 above), with the ultimate goal to convert it to an actual boat house.

When these land use amending bylaws were last considered by the Board at their February meeting, they adopted resolution 142/19, as follows:

- 142/19            That issuance of a Building Permit be withheld for that portion of the property located at 2556 Holmberg Road under application Z1806F south of Highway 3A until such a time that the following conditions can be met:
- a. a Highway Access Permit for each residential access;
  - b. an archaeological overview assessment;
  - c. an environmental impact assessment and mitigation plan;
  - d. surveyed accretion of that portion of land in which the boat house structure is located or removal of the boat house;
  - e. and issuance of a Floodplain Exemption from the required setback of Kootenay Lake;

At that time, the proponent was resistant to demolishing the structure while they sought approvals through all authorities having jurisdiction to allow the structure to remain in its current form, which is a single-family dwelling. The owners recognize that converting it to a boat house within the period specified in the compliance agreement is the only way that Staff could recommend that the Board consider adoption of the bylaws now.

Recognizing that the owners are committing through a compliance agreement to alter this structure to be a boat house\*, and therefore comply with RDCK's Building Bylaw, Floodplain Management Bylaw, and Zoning Bylaw, the Board may consider rescinding motion 142/19. Doing so would permit the Building Official to issue a permit for a boat house only, should those other approvals listed not be required. And if they are required, the Building Official would ensure such approvals are sought prior to issuance.

Alternatively, the Board could let the motion stand. Either way, Staff would ensure compliance with other Provincial approvals that may be necessary prior to issuance of approvals under RDCK bylaws.

\*Boat House means a non-serviced, uninsulated building intended for the use of and designed for the storing of a watercraft, and not exceeding one storey in height, nor any other restrictions specified in the zoning bylaw relevant to its location (height, setback, etc.), and complies with all other relevant regulation

**SECTION 3: DETAILED ANALYSIS**

**a. Financial Considerations – Cost and Resource Allocations:**

<b>Included in Financial Plan:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<b>Financial Plan Amendment:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
<b>Debt Bylaw Required:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	<b>Public/Gov't Approvals req'd:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

The applicable fee for a Land Use Bylaw Amendment application was received in accordance with the *Regional District of Central Kootenay Planning Procedures and Fees Bylaw No. 2457, 2015*.

**b. Legislative Considerations (Applicable Policies and/or Bylaws):**

A Public Hearing was held to allow for public comment on the proposed bylaw amendments in accordance with Section 464 of the *Local Government Act* on January 31, 2019. The proposal is located on a Controlled Access Highway and requires Provincial approval prior to Adoption which was granted March 25, 2019.

**c. Environmental Considerations:**

The subject property is already developed. The land use amendments will not result in additional density provisions beyond the dwelling units that have already been established on the property. Significant refuse has been removed from the property which is of benefit to the environment and adjacent land owners. That portion of the property between Highway 3A and the lake has high habitat values, but has been significantly impacted by prior fill activities and armouring of that fill. Possible future alterations of that area may require Provincial approvals under various legislation.

**d. Social Considerations:**

Potential impacts to the use and enjoyment of land for neighbouring property must be considered. Notification of the proposal was distributed by mail to adjacent property owners within 200 metres of the subject property. Legalizing existing housing units on this site will help meet housing demand needs in this area. Removal or alteration of the illegal structure on the foreshore will help address concerns of aesthetics that were raised by the surrounding residents.

**e. Economic Considerations:**

There is the potential for the creation of long term rental housing associated with the existing five-plex and potentially in the three bedroom house currently under renovation.

**f. Communication Considerations:**

A Public Hearing was held as per Schedule 'D' of the Regional District of Central Kootenay Planning Procedures and Fees Bylaw No. 2457, 2015 on January 31, 2019. Minutes of the hearing were provided at the February 21, 2019 Open Board Meeting.

**g. Staffing/Departmental Work Plan Considerations:**

Upon receipt of an application accompanied by the required fees and attachments, Planning Department staff follows the 'Land Use Amendment Procedure' identified in Schedule 'D' of the Regional District of Central Kootenay Planning Procedures and Fees Bylaw No. 2457, 2015.

**h. Board Strategic Plan/Priorities Considerations:**

This application falls under the operational role of Planning Services.

**SECTION 4: OPTIONS & PROS / CONS**

**SUMMARY**

**OPTION ONE:**

1. THAT the Board rescind motion 142/19, being:
  - That issuance of a Building Permit be withheld for that portion of the property located at 2556 Holmberg Road under application Z1806F south of Highway 3A until such a time that the following conditions can be met:
    - a. a Highway Access Permit for each residential access;
    - b. an archaeological overview assessment;
    - c. an environmental impact assessment and mitigation plan;
    - d. surveyed accretion of that portion of land in which the boat house structure is located or removal of the boat house;
    - e. and issuance of a Floodplain Exemption from the required setback of Kootenay Lake;
2. AND THAT *Regional District of Central Kootenay Amendment Bylaw No. 2653, 2018* being a bylaw to amend the *Electoral Area 'F' Official Community Plan No. 2214, 2011* is hereby ADOPTED; AND FURTHER that the Chair and Corporate Officer be authorized to sign the same.
3. AND FURTHER THAT *Regional District of Central Kootenay Amendment Bylaw No. 2654, 2018* being a bylaw to amend the *Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004* is hereby ADOPTED; AND FURTHER that the Chair and Corporate Officer be authorized to sign the same.

**OPTION TWO:**

1. THAT no further action be taken with respect to the *Regional District of Central Kootenay Amendment Bylaw No. 2653, 2018* being a bylaw to amend the *Electoral Area 'F' Official Community Plan No. 2214, 2011*.
2. THAT no further action be taken with respect to the *Regional District of Central Kootenay Amendment Bylaw No. 2654, 2018* being a bylaw to amend the *Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004*.

**SECTION 5: RECOMMENDATION(S)**

1. THAT the Board rescind motion 142/19, being:  
That issuance of a Building Permit be withheld for that portion of the property located at 2556 Holmberg Road under application Z1806F south of Highway 3A until such a time that the following conditions can be met:
  - a. a Highway Access Permit for each residential access;
  - b. an archaeological overview assessment;
  - c. an environmental impact assessment and mitigation plan;
  - d. surveyed accretion of that portion of land in which the boat house structure is located or removal of the boat house;
  - e. and issuance of a Floodplain Exemption from the required setback of Kootenay Lake;
2. AND THAT *Regional District of Central Kootenay Amendment Bylaw No. 2653, 2018* being a bylaw to amend the *Electoral Area 'F' Official Community Plan No. 2214, 2011* is hereby ADOPTED; AND FURTHER that the Chair and Corporate Officer be authorized to sign the same.
3. AND FURTHER THAT *Regional District of Central Kootenay Amendment Bylaw No. 2654, 2018* being a bylaw to amend the *Regional District of Central Kootenay Zoning Bylaw No. 1675, 2004* is hereby ADOPTED; AND FURTHER that the Chair and Corporate Officer be authorized to sign the same.

Respectfully submitted,

Nelson Wight  
Planning Manager

**CONCURRENCE**

**Initials:**

General Manager of Development Services  
Chief Administrative Officer

**ATTACHMENTS:**

Attachment A – Amendment Bylaw No. 2653  
Attachment B – Amendment Bylaw No. 2654  
Schedule A - Elevations