



# Regional Board Report

**TO:** Regional Board

**FROM:** Todd Cashin  
Director of Community Services

**DATE:** September 30, 2019

**SUBJECT:** Development Variance Permit (VP-19-08)  
Sunset Two Properties Ltd. Inc. No. BC1131387 c/o Tony Viani (Acorn Homes)  
Sunset Ranch development adjacent to Strata Lots 77 and 78 on Pine Valley Dr  
Central Okanagan East Electoral Area

**Voting Entitlement:** *Custom Vote – Electoral Areas, Kelowna Fringe Area – 1 Director, 1 Vote*

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**Purpose:** To consider issuance of a Development Variance Permit to allow an increase of the maximum height of one constructed retaining wall.

## Executive Summary:

Sunset Ranch neighbourhood is located in a comprehensive development zone with the purpose of designing and developing a residential golf course community. Under Zoning Bylaw No. 871, the CD-1(A) Neighbourhood Residential zone permits single detached and duplex housing. Being a hillside development, the use of retaining walls is required for the most efficient use of the land.

In February 2019, the applicant requested a Development Variance Permit for five retaining walls constructed on the subject property. At that time, it was identified that a sixth wall existed on Pine Valley Drive that exceeds the maximum allowable height of 2.5 metres under Zoning Bylaw No. 871. As such, a Development Variance Permit is required.

Engineering Services has identified that the retaining wall located on Pine Valley Drive has been constructed over Regional District maintained watermains and the Statutory Rights-of-Ways in which they are located. This must be addressed to ensure the integrity of the water system.

## RECOMMENDATION:

**THAT** Development Variance Permit Application VP-19-08, located on Pine Valley Drive and on Common Property Strata Plan KAS3573 for Sunset Two Properties Ltd., to vary Part 3, Subsection 3.10.5 of Zoning Bylaw No. 871 be approved based on the drawings prepared by Tetra Tech dated July 31, 2019 to bring the existing retaining wall into conformity by:

- Allowing an increase of the maximum retaining wall height from 2.5 m (8.2 ft.) to 4.9 m (16.07 ft.).

Respectfully Submitted:



Todd Cashin  
Director of Community Services

Approved for Board's Consideration



Brian Reardon, CAO

*Prepared by: Brittany Lange, Planner*

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### Implications of Recommendation:

Policy:	The application was submitted and processed in accordance with the requirements of RDCO Development Applications Procedures Bylaw No. 944.
Legal/Statutory Authority:	In accord with Section 498 of the <i>Local Government Act</i> , on application by an owner of land, a local government may, by resolution, issue a development variance permit that varies, in respect of the land covered in the permit, the provisions of a bylaw. A development variance permit must not vary the use or density of land from that specified in the bylaw and a local government may not delegate the issuance of a permit.

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### Background:

The Sunset Ranch Concept Development Plan (CDP) was prepared in conformance with policies in the Ellison Official Community Plan Bylaw No. 1124. Preparation of the CDP focused on key site conditions including development on hillsides and adjacent to watercourses, integrating green space, and minimizing site disturbance. The Sunset Ranch Neighbourhood Plan builds on the key site conditions to create a comprehensively planned residential community with a maximum of 450 residential lots.

Sunset Ranch was approved for zoning amendment applications in 1993, 2001, and 2006 (Files: Z93/58, Z01/20 & Z06/20) to create the CD-1 zone and subsequently clarify and simplify the existing CD zone. The Regional Board also approved a Development Permit for the overall site (DP-01-011), and Development Variance Permits to reduce minimum road frontage, site servicing, setback requirements (VP-01-003, VP-01-004 & VP-02-003), and recently to increase the maximum retaining wall height for five retaining walls (VP-19-01).

This application was precipitated due to identification of over height retaining walls during site preparation in 2018 for 'Phase 3'. The retaining wall on Pine Valley Drive was constructed without building permit approval during a previous subdivision stage in 2014, and does not conform with Part 3 – Section 3.10.5 and Appendix A-1 – Section 1.1 d) of Zoning Bylaw No. 871. The applicant has since submitted documentation ensuring the retaining wall has been designed, inspected, and certified by a Professional Engineer.

### Site Context:

The subject lands are located within the Ellison Official Community Plan Bylaw No. 1124 area and affected by a site-specific Concept Development Plan and Development Permit conditions.

### Retaining Wall Height Variance History

In February 2019, the Regional Board approved a Development Variance Permit to allow an increase in the maximum height of five constructed retaining walls in the Sunset Ranch Development area (File: VP-19-01).

### Additional Information:

<b>Owner:</b>	Sunset Two Properties Ltd. Inc. No. BC1131387
<b>Agent:</b>	Tony Viani (Acorn Homes)
<b>Legal Description:</b>	Common Property Strata Plan KAS3573 adjacent to Strata Lots 77 and 78
<b>Address:</b>	Sunset Ranch development adjacent to Pine Valley Drive
<b>Zoning:</b>	CD-1(A) – Neighbourhood Residential
<b>OCP Designation:</b>	Residential
<b>Sewage Disposal:</b>	Ellison Sewer
<b>Water Purveyor:</b>	Sunset Ranch Community Water
<b>Surrounding Uses:</b>	<b>North:</b> Agriculture <b>South:</b> Residential <b>East:</b> Agriculture <b>West:</b> Residential
<b>A.L.R.:</b>	Not within the A.L.R.
<b>Fire Protection:</b>	Ellison Fire Protection

### RDCO TECHNICAL COMMENTS:

**Planning Services** staff note that Development Variance Permits provide options/solutions to address building/location issues provided there are no negative impacts (visual, health, and safety) to neighbouring residents.

Furthermore, Planning staff advises that Appendix A-6 of the Ellison OCP, Objective 1.1 is to support rural subdivision and road building on hillsides in a manner that minimizes damage to property (both the property under application and neighbouring property) from erosion, soil instability, rock fall, or other identified hazards.

Other items for consideration:

- The applicant is responsible for complying with the conditions outlined in the covenants and Statutory Right of Ways registered on title.
- A plan of site remediation including, but not limited to, revegetation and erosion control, prepared by the appropriate professional should be prepared for the site to further address slope stability.
- Conditions of Development Permit DP-01-11 apply. Development Permit approval will be required prior to any future phases of Sunset Ranch. This is to be a new Development Permit subsequent to DP-01-11. It is advised that the applicant meet with Planning staff prior to submitting a formal application for any subsequent phases.

**Inspection Services** staff advises that as per Building Bylaw No. 835, any retaining wall that exceeds 1.5 metres (4.92 ft.) in height requires a building permit and be designed and inspected by a certified Professional Engineer. Inspections staff received the required documentation and issued a permit for the retaining wall in September 2019 (Permit No. 7961/19). Furthermore, Inspections staff recommends the issues with respect to the watermain and the Statutory Rights-of-Ways be resolved.

**Environmental Services** staff advises that RDCO watermain in the immediate vicinity of the proposed variance are located on common property (roadway) or in Statutory Right-of-Ways. As per the statutory agreement, no construction is permitted over the watermain to ensure the long-term maintenance/repair/replacement can be completed unencumbered.

#### **AGENCY REFERRAL COMMENTS:**

**Ministry of Transportation and Infrastructure** staff noted that the retaining wall occurs within private lands and does not occur near or within public highway Right-of-Ways. The retaining wall is subject to RDCO bylaws and engineering requirements and therefore, the Ministry has no further comment on the proposal.

**Fortis B.C.** staff advise that there are FortisBC Inc. (Electric) ("FBC(E)") primary distribution facilities along Pine Valley Drive and within the boundaries of the subject property, however, they do not appear to be impacted by this proposal.

**Unaffected Agencies** include City of Kelowna, Black Mountain Irrigation District, B.C. Hydro, Interior Health Authority, Telus, and Shaw.

**Unaffected RDCO Departments** include Parks Services and Fire Services.

#### **External Implications:**

In accord with Development Applications Procedures Bylaw No. 944, a Notice of Application sign was posted on the property and written notices were mailed to all registered property owners of land situated within 100 metres of the subject property. A total of 299 notices were mailed. Further to the notification process, at time of writing this report, there has been no opposition or support letters received for this application.

In consideration of the Development Variance Application, the Regional Board may approve the Development Variance Permit, not approve the Development Variance Permit or defer a decision pending more information or clarification. Should the Board choose not to support the staff position, the following alternate recommendation is provided.

#### **Alternative Recommendation:**

**THAT** Development Variance Permit Application VP-19-08 **be deferred** until such time that the identified concerns on the subject property have been addressed by the owner/applicant to the satisfaction of the Director of Engineering.

#### ***Considerations not applicable to this report:***

- *Strategic Plan*
- *General*
- *Organizational*
- *Financial*

#### **Attachment(s):**

- Subject property map
- July 31, 2019 TetraTech Retaining Wall Profile
- Images of Pine Valley Drive Retaining Wall