



Regional Board Report

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: May 31, 2021

SUBJECT: Zoning Amendment Bylaw No. 871-268 (Z21/03)
A. Patton, 5631 Rittich Road
Central Okanagan East Electoral Area

Voting Entitlement: *Custom Vote—Electoral Areas & Kelowna Area—1 Director, 1 Vote – Simple Majority*

Purpose: To consider a site-specific amendment to Zoning Bylaw No. 871 to permit a cannabis production facility on Lot 59, DL 1, ODYD, Plan 475.

Executive Summary:

The applicant is requesting a site-specific amendment to Zoning Bylaw No. 871 to permit a cannabis production facility in order to be eligible to apply to Health Canada for a standard cultivation licence to grow cannabis. The applicant wishes to utilize an existing accessory building for this use along with a proposed addition to accommodate the requirements for a licensed facility.

The subject property is approximately 10 acres, is located in the Agricultural Land Reserve (ALR) and zoned A1 Agricultural. Under the ALR Use Regulation all forms of cannabis production are a “farm use” in the ALR. Within the A1 zone a cannabis production facility is listed as a prohibited use unless it meets listed exemption criteria. One of the listed criteria permits a cannabis production facility if the growing requirements can be met in a structure that was either fully constructed or under construction, with required permits in place, prior to July 13, 2018. The existing accessory building would meet this exemption however, the proposed addition would not. Further, the zoning bylaw requires that where permitted, a cannabis production facility be located on a parcel having a minimum area of 8.0 ha (19.7 acres). When proposed facilities are unable to meet these regulations, a site-specific amendment application must be submitted for consideration by the Regional Board.

Any correspondence received from the public will be provided as part of a future public hearing report.

RECOMMENDATION:

THAT Zoning Amendment Bylaw No. 871-268 for A. & C. Patton located on Lot 59, DL 1, ODYD, Plan 475, be given first reading;

AND FURTHER THAT scheduling of a Public Hearing for application Z21/03 be withheld pending:

- Receipt of comments from the Agricultural Advisory Commission and Ministry of Environment and Climate Change Strategy; and
- The applicant's submission of a demolition permit application to remove the illegal dwelling unit within the existing accessory building (south barn).

Respectfully Submitted:



Todd Cashin
Director of Community Services

Approved for Board's Consideration



Brian Reardon, CAO

Prepared by: Danika Dudzik, Senior Planner

Strategic Plan:	Granting first reading of the amendment bylaw achieves the Regional Board Strategic Priorities 2019-2022 with respect to “Sustainable Communities” and “Economic Development”.
Policy:	Granting first reading of the amendment bylaw complies with: <ul style="list-style-type: none">• Regional Growth Strategy Bylaw No. 1336 goals and policies• Agricultural Plan objectives• Ellison Official Community Plan Bylaw No. 1124
Legal/Statutory Authority:	Granting first reading of the amendment bylaw is in compliance with <i>Local Government Act</i> , Section 479, <i>Agricultural Land Commission Act</i> & ALR Use Regulation

Background:

In response to the Federal government’s legalization of medical marihuana on April 1, 2014, the Regional District adopted text amendments to Zoning Bylaw No. 871 specifically intended to address medical marihuana production facilities. Subsequently, the Agricultural Land Commission (ALC) established that medical marihuana production is considered a farm use and cannot be prohibited on lands within the Agricultural Land Reserve (ALR). As such, RDCO treated “medical marihuana production facilities” similar to intensive agriculture operations such that the use is limited to the RU1, RU2 and A1 zones of the zoning bylaw.

Prior to legalization by the Government of Canada on October 17, 2018, and further to changes that were announced that impact local government control over cannabis production in the ALR, on October 11, 2018 the Regional District adopted a bylaw amendment to prohibit retail cannabis sales and regulate cannabis production on agricultural land. Further, all reference to “medical marihuana production facilities” were replaced with “cannabis production facility” and various definitions were amended or added to the zoning bylaw. Effective February 22, 2019, the *Agricultural Land Commission Act* (ALCA) and the Agricultural Land Reserve Use, Subdivision and Procedure Regulation (now the ALR General Regulation) were amended and the Agricultural Land Reserve Use Regulation (the ALR Use Regulation) was created. In the past, certain forms of cannabis production, but not others, had been “designated” as farm use by regulation. The ALR Use Regulation addresses cannabis production in Section 8, in a part of the ALR Use Regulation that is entitled “Farm Uses”, and no longer “designates” a subset of cannabis production as farm use. This regulatory change clarifies that all forms of cannabis production are a “farm use” in the ALR. However, there are rules regarding placement of fill in the ALR and removal of soil from the ALR, even when necessary for a farm use. At this time, Regional District of Central Okanagan bylaws have not been amended to reflect the ALC’s regulatory change.

Local governments may regulate or prohibit certain kinds of cannabis production, though may not prohibit all forms of cannabis production in the ALR.

History:

The subject property is approximately 4.05 ha (10 acres) and currently developed with one single detached house, pool, and two accessory buildings (barns). The parcel is zoned A1 Agricultural intended to accommodate agricultural operations and related activities.

The current property owners purchased the parcel in 2017 along with purchasing turkey quota from a turkey grower. Subsequently, the owners became processors and obtained a mobile poultry processing facility, however due to various setbacks they did not continue on with poultry production.

Agricultural uses currently occurring on the property include a small organic table grape vineyard and the owners are currently preparing a portion of the existing horse pasture in order to plant several acres of garlic.

Proposal:

The applicant is requesting a site-specific amendment to Zoning Bylaw No. 871 to permit a cannabis production facility in order to be eligible to apply to Health Canada for a standard cultivation licence to grow cannabis. The applicant proposes to utilize an existing 717.74 m² (7,726 sq. ft.) accessory building (north barn) along with an addition of 762.16 m² (8,204 sq. ft.) for the cannabis production facility.

Under the zoning bylaw, in the A1 Agricultural zone a cannabis production facility is listed as a prohibited use under Part 3 General Regulations, Section 3.13.5. unless the following growing requirements are achieved:

- in an open field;
- in a structure that has a soil base;
- in a structure that was either fully constructed or under construction, with required permits in place, prior to July 13, 2018; or
- in an existing operation licensed by the Federal Government.

Construction for the existing accessory building commenced prior to July 13, 2018. As such, the existing accessory building would meet Section 3.13.5 however, the proposed addition would not.

Further, should a cannabis production facility be permitted it would have to comply with provisions listed in Section 3.31 including being located on a parcel having a minimum area of 8.0 ha (19.8 acres), among others. When proposed facilities are unable to meet these regulations, a site-specific amendment application may be submitted for consideration by the Regional Board.

The north barn was permitted under Building Permit No. 7702/18. The permit is currently still open as the applicant intended to meet the exemption criteria as it related to an existing building for the proposed change of use. Since this time, the applicant determined that additional space was required to accommodate Health Canada's requirements for a licensed facility.

Plans for a vegetative buffer have been submitted for visual screening and aesthetic purposes.

As part of their future expansion of agricultural activity on the property, the owners indicate they plan to:

- Grow organic garlic on 3 acres of cultivated land commencing Fall 2021;
- Add to their small organic table grape vineyard; and
- Have approximately 200 laying hens this summer and market local organic eggs.

Servicing:Water

Existing development on the subject property is serviced by Glenmore Ellison Improvement District (GEID). The applicant plans to utilize the GEID water system for the cannabis production facility. An existing well may be used to support other agricultural operations on the property.

Sewerage Disposal

The existing single detached house is currently serviced by an on-site sewerage disposal system. The applicant intends to use a separate on-site sewerage disposal system for the cannabis production facility. Through the building permit process, RDCO will require receipt of on-site sewerage disposal system information which confirms that the facility may be adequately serviced.

Regional Board Strategic Priorities 2019-2022:

RDCO's strategic priorities, developed by the Regional Board, speak to important goals, services and needs on which the Board wishes to focus the organization's attention and resources. Sustainable Communities and Economic Development have been identified as priorities. The proposal would be required to follow best practices for protecting the environment and public health including the mitigation of items such as noise and odor. The proposed cannabis production facility would expand on agricultural operations with processing facilities occurring throughout the community.

Regional Growth Strategy Bylaw No. 1336:

Although the proposal does not support regional food systems, it aligns with various policies of Our Land and Our Economy. In addition to the current proposal, the applicant intends to expand agricultural activity on the property to support food systems and the goal of Our Food.

Our Land goal is to manage the land base effectively to protect natural resources and limit urban sprawl.

Policies Include:

- Support the protection of ALR lands and land uses which are supportive and/or complimentary to agricultural uses. (Policy No. 8)

Our Economy goal is to develop and enhance a positive business environment in the region to achieve a dynamic, resilient and sustainable economy.

Policies include:

- Support efforts in building a strong regional economy. (Policy No. 3)

Agricultural Plan:

The Regional District's Agricultural Plan (approved June 2005) encourages farm planning and practices that have minimal risk of incurring adverse environmental impacts within the region.

Ellison Official Community Plan Bylaw No. 1124:

Under the ALR Use Regulation all forms of cannabis production are a "farm use" in the ALR. As such, the proposal supports various objectives under Section 14 – Agriculture and Rural Lands including:

- Support agriculture as an economic industry. Agriculture is recognized as an important basis for the economic stability and development in the Ellison area.
- Support the preservation of the agricultural land base.
- Support the development, improvement, and expansion of agricultural activities.

Although not required by the OCP, the applicant intends to construct a vegetative buffer for the purpose of dust mitigation, odour control, and visual screening/aesthetics.

Cannabis Act & Regulations:

The *Cannabis Act* came into force on October 17, 2018 which creates a strict legal framework for controlling the production, distribution, sale and possession of cannabis across Canada. Under this framework a person is required to obtain a licence issued by Health Canada to conduct various activities with cannabis.

A federal licence is required to cultivate, process and sell cannabis for medical or non-medical purposes. The *Cannabis Act* establishes that an application for a licence must be filed with the Minister of Health. Health Canada licence classes and subclasses differentiate between “standard” and “micro” for cultivation and processing. Each of these classes and subclasses have their own requirements for location, physical security, personal security clearance, good production practices, reporting and record keeping, and cannabis tracking system.

Agricultural Land Commission Act & Agricultural Land Reserve Regulations:

Section 8 of the Agricultural Land Reserve (ALR) Use Regulation provides:

(1) The use of agricultural land for producing cannabis lawfully may not be prohibited as described in section 4 if the cannabis is produced

- (a) outdoors in a field, or
- (b) inside a structure that, subject to subsection (2), has a base consisting entirely of soil.

(2) The use of agricultural land for producing cannabis lawfully may not be prohibited as described in section 4 if the cannabis is produced inside a structure that meets both of the following conditions:

- (a) the structure was, before July 13, 2018,
 - (i) constructed for the purpose of growing crops inside it, including but not limited to producing cannabis lawfully, or
 - (ii) under construction for the purpose referred to in subparagraph (i), if that construction
 - (A) was being conducted in accordance with all applicable authorizations and enactments, and
 - (B) continues without interruption from the date it began until the date the structure is completed, other than work stoppages considered reasonable in the building industry;
- (b) the structure has not been altered since July 13, 2018 to increase the size of its base or to change the material used as its base.

Site Context:

This property is located in the community of Ellison and within the Ellison Fire Protection Area. In accordance with the Ellison Official Community Plan Bylaw No. 1124 the subject property is not affected by Development Permit Areas.

Additional Information:

Owners:	Andre and Carol Patton
Applicant:	Andre Patton
Address:	5631 Rittich Road
Legal Description:	Lot 59, DL 1, ODYD, Plan 475
Lot Size:	+/- 4.05 ha (10 acre)
Zoning:	A1 Agricultural
OCP Designation:	Agriculture
Proposed Sewage Disposal:	Septic system
Proposed Water Supply:	Glenmore-Ellison Improvement District
Existing Use:	Agricultural / Rural Residential
Surrounding Uses:	North: Agricultural / Rural Residential South: Agricultural / Rural Residential East: Rural Residential West: Rittich Road / Agricultural / Rural Residential
ALR:	Within the ALR
Fire Protection:	Ellison Fire Protection Area

RDCO TECHNICAL COMMENTS:

Inspections Services staff advises that building permits associated with the existing accessory buildings (north barn and south barn) currently remain open.

North Barn

- Building Permit No. 7702/18 was issued on June 21, 2018 to construct a 717.74 m² (7,726 sq. ft.) farm building.
- Subsequent to the Footing Inspection it was the understanding of Inspections Services staff that the applicant was considering a change of occupancy (use).
- The applicant was aware of the previous ALC regulation that permitted producing cannabis in a structure within the ALR if construction had commenced by July 13, 2018.
- While the applicant was revising plans to expand the building footprint, completion of the farm building was on-hold and extensions to the permit were granted.
- The applicant had intended to submit a change of occupancy (use) for the accessory building.
- Despite previously starting construction which met Section 3.13.5.3 of the zoning bylaw, RDCO staff advised that the size of the property did not meet the minimum parcel area of 8.0 ha (19.7 ha) required to allow a cannabis production facility as outlined in section 3.31.2 of the zoning bylaw. It was further identified by staff that expanding the footprint of the accessory building would not meet Section 3.13.5.3.
- As such, the owner had submitted the site-specific amendment application.
- Should the Regional Board approve the amendment bylaw, Inspections Services staff will work with the applicant to submit a change of occupancy (use), further building permit applications, and any additional requirements such as engineered plans to ensure the proposed building will be compliant with the BC Building Code. Further, technical requirements will have to be addressed through the building permit process such as approval from the respective agency for on-site sewerage disposal system for the cannabis production facility.

South Barn

- Building Permits No. 9003/90 and No. 9068/90 were issued to construct a barn and subsequent addition in 1990.
- In July of 2020 Building Permit No. 8107/20 was issued to construct an addition to the south barn 161.6 m² (1,739 sq. ft.).
- As the project proceeded a Stop Work Order was issued by Inspections Services on September 4, 2020 for additional work to the barn not covered under the active building permit.
- September 14, 2020 plans and engineering in support of the additional work were approved by Inspection Services and the Stop Work Order was rescinded.
- Inspections Services staff identified items to be brought in to compliance with the BC Building Code including an illegal dwelling unit to be decommissioned.
- To date, the Building Permit has not been closed as some of the items identified previously have not been addressed.

Fire Services staff advises should growing of cannabis occur in a structure not built for the intended purpose there are concerns of a fire risk. Therefore, it is recommended that the building be renovated to an appropriate standard.

Unaffected RDCO Departments include Parks Services and Engineering Services.

AGENCY REFERRAL COMMENTS:

Ministry of Agriculture, Food and Fisheries staff advises as it relates to the current ALR Use Regulation, it is unclear if the existing building was constructed for the purpose of growing crops. However, there are no objections to the proposed amendment bylaw.

The following comments are included for consideration:

- It is recommended that the building be renovated to a standard that will prevent odour from being emitted in order to minimize the risk for farm practice complaints.
- Minimum lot size requirements for specific commodities in the ALR should not be required. Rather, concerns about specific commodities should be addressed through adequate setbacks and maximum lot coverage.
- For the associated future expansion of agriculture relating to producing table eggs, the application should contact the BC Egg Marketing Board to register with their Small Lot Program as well as obtain information about selling ungraded eggs.

Agricultural Land Commission staff advises there are no objections to the proposed amendment bylaw. Under Section 8 of the ALR Use Regulation the use of agricultural land for producing cannabis is a farm use that may not be prohibited by a local government if produced in certain forms (i.e. grown outdoors, inside a structure with a base consisting entirely of soil, or a structure used for the growing of crops that was constructed or under construction on July 13, 2018).

As the proposal involves the use of an existing structure as well as an addition to that structure, the local government has discretion whether to permit the addition.

ALC staff further advise that Section 35(a)(i) of the ALR Use Regulation allows for fill placement of up to 1000 m² when constructing or maintaining a structure necessary for farm use. Should the proposal require an area larger than 1000 m² for fill placement/removal, the submission of a

Notice of Intent (NOI) to the ALC would be required.

Interior Health Authority staff advises domestic sewage includes washroom, food preparation, dishwashing and showering waste. This falls under the *BC Sewerage System Regulation* administered by Interior Health. Waste water generated by cannabis production is considered industrial waste; not domestic sewage. Industrial waste falls under the *Municipal Sewerage Regulation* under the *Environmental Management Act* and is administered by the Ministry of Environment. The proposed use may be subject to approval by the Ministry of Environment.

As it relates to the proposed location, the operation is expected to follow best practices for protecting the environment and public health including the mitigation of items such as noise and odour.

In terms of healthy food systems, the use of ALR for cannabis production does not support food security, contributes to the loss of land for food production, and does not contribute to the local food supply.

Glenmore-Ellison Improvement District (GEID) staff advises that in order for the proposed Cannabis Production Facility to utilize the GEID water system it must proceed in compliance with GEID bylaw, regulations, and policy. GEID will have requirements that must be met prior to providing a Water Service Certificate.

Ministry of Transportation and Infrastructure advises that should the bylaw amendment be adopted by the Regional Board, the owner must submit a Provincial Public Highway Permit Application for the property access as it is more than a single family residential use.

Unaffected Agencies include Ministry of Forests, Lands, Natural Resource Operations and Rural Development, District Okanagan Shuswap.

External Implications:

In accordance with the Development Applications Procedures Bylaw No. 944, a Notice of Application Sign has been posted. Any correspondence received from the public will be provided to the Board as part of a future public hearing report.

Alternative Recommendation:

THAT Zoning Bylaw No. 871-268 is not given first reading.

Considerations not applicable to this report:

- Legal/Statutory Authority
- Financial Considerations
- Organizational Issues

Attachment(s):

- Bylaw No. 871-268
- Subject Property & Orthophoto Maps
- Site Plan
- Proposed Cannabis Production Facility - Plans
- Survey Certificate – July 11, 2018
- Zoning Bylaw No. 871, Section 3.13
- Zoning Bylaw No. 871, Section 3.31
- ALC Information Bulletin 04 – Cannabis Production in the ALR