



Regional Board Report

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: July 20, 2021

SUBJECT: Zoning Amendment Bylaw No. 871-262 (Z20/04)
D. Leask & S. Macdonald (owners) c/o D. Leask, 4345 Maxwell Road
Central Okanagan West Electoral Area

Voting Entitlement: *Custom Vote - Electoral Areas, Peachland, and West Kelowna – 1 Director, 1 Vote*

Purpose: To consider a site-specific amendment to Zoning Bylaw No. 871 to permit a cannabis production facility on Lot A, District Lot 3862, ODYD, Plan KAP52090.

Executive Summary:

The applicant is requesting a site-specific amendment to the zoning bylaw to permit a cannabis production facility in order to apply to Health Canada for a micro-cultivation and processing licence and wishes to utilize an existing accessory building for this use.

The subject property is not located within an established fire protection area and a community water system is not available. Under the zoning bylaw, a cannabis production facility is not currently permitted as the size of the subject property is too small to accommodate this use. Further, the accessory building proposed for this use does not meet the required setback.

The Regional Board considered the application on May 25, 2020, and deferred consideration of Zoning Amendment Bylaw No. 871-262 until specific concerns and requirements of RDCO staff and external agencies had been addressed. Since this time, the applicant has addressed the previously identified life safety concerns. Should the amendment bylaw be approved, the proposed facility would be subject to various authorizations and approvals from the Province and may be subject to approval and permitting requirements under Interior Health Authority.

The Province has advised that in regards to the proposed water source, there are water availability concerns in the area. At time of writing this report, four letters of support and six letters of opposition have been received. A summary of the concerns raised by neighbouring property owners indicate there are negative impacts associated with the current use and that the proposed facility will proliferate these issues, as well as the desire to preserve the existing rural residential character of the neighbourhood, life safety concerns as the property is located outside of a fire protection area, availability of water in the area, and environmental impacts.

RECOMMENDATION:

THAT the Regional Board, receives for information, the Report from the Director of Community Services dated July 20, 2021 with respect to Zoning Amendment Bylaw No. 871-262 for a site specific rezoning amendment on 4345 Maxwell Road to permit a Cannabis Production Facility;

AND THAT Zoning Amendment Bylaw No. 871-262 not be given first reading.

Respectfully Submitted:



Todd Cashin
Director of Community Services

Approved for Board's Consideration



Brian Reardon, CAO

Prepared by: Danika Dudzik, Senior Planner

Implications of Recommendation:

Strategic Plan:	Not granting first reading of the amendment bylaw achieves the Regional Board Strategic Priorities 2019-2022 with respect to "Sustainable Communities".
Policy:	Not granting first reading of the of the amendment bylaw complies with: <ul style="list-style-type: none">• Regional Growth Strategy Bylaw No. 1336, and• Brent Road/Trepanier Official Community Plan Bylaw No. 1303.
Legal/Statutory Authority:	Not granting first reading of the amendment bylaw is in compliance with <i>Local Government Act</i> , Section 479.

Background:

The subject property is approximately 4.05 ha (10 acres) in size and contains one single detached house and various accessory buildings including a barn/stable, two detached garages, and horse pen. The applicant indicates current uses at the property include a hobby farm and personal production of cannabis for medical purposes.

File History:

To date, Zoning Amendment Bylaw No. 871-262 has not been considered by the Regional Board. Concerns had previously been identified by RDCO staff including life safety concerns with an existing use associated with the property and general non-compliance of an existing building. Further concerns were identified by external agencies including the lack of servicing information

and potential non-compliance with the *Water Sustainability Act* or Water Sustainability Regulation to support an existing use.

The Regional Board considered the application on May 25, 2020, and deferred consideration of Zoning Amendment Bylaw No. 871-262 until such time that specific concerns and requirements of the RDCO Fire Service Manager, RDCO Building Inspector, Ministry of Forests, Lands, Natural Resource Operations and Rural Development District Okanagan Shuswap, as well as Interior Health Authority are addressed to the satisfaction of each respective RDCO department or agency.

It was advised that the applicant work with Regional District staff to address the life safety issues and non-compliance associated with the accessory building (garage) prior to moving forward with consideration of the application. Since this time, it is the understanding of Planning staff that the applicant has addressed the previously identified life safety concerns and Inspections Services staff advise the garage is conforming from a building code perspective.

On May 13, 2021, the Regional Board approved a one-year extension for Z20/04. At the time, the applicant advised he was actively working to address specific concerns of external agencies.

The Ministry of Forests, Lands, Natural Resource Operations and Rural Development confirmed that a water licence would be required to service the operation. Should the amendment bylaw be approved, the proposed facility would be subject to various authorizations and approvals from the Province. Further, the proposed facility may be subject to approval and permitting requirements under Interior Health Authority.

Proposal:

Zoning Bylaw No. 871 requires that where permitted, a cannabis production facility be located on a parcel having a minimum area of 8.0 ha (19.8 acres) and that all buildings used for this purpose are setback a minimum of 30.0 m (98.4 ft.) from all parcel lines, among others. When proposed facilities are unable to meet these regulations, a site specific amendment application must be submitted for consideration by the Regional Board.

The applicant is requesting a site-specific amendment to the zoning bylaw to be eligible to apply to Health Canada to become a licence holder under the *Cannabis Act* and its Regulations to permit micro-cultivation and processing. One of the application requirements is that the applicant comply with all provincial and local government bylaws. Under the zoning bylaw, a cannabis production facility is only permitted in the RU2 Rural 2 zone if it complies with Part 3 General Regulations, Section 3.31 - Cannabis Production Facility.

The property is zoned RU2 Rural 2 which allows a cannabis production facility; however, the parcel does not meet the following regulatory requirements for the use:

- minimum lot size of 8.0 ha (19.7 acres), and
- required building setback from the side parcel line of 30.0 m (98.4 ft.).

An existing accessory building (garage) is the site that contains the current personal production of cannabis operation. The applicant intends to use this building for future micro-cultivation and processing. The setback of this building to the side parcel is 3.01 m (9.88 ft.).

Servicing:

The subject property is not located within an established fire protection area and a community water system is not available.

Water

A private water source (well) provides the property with potable water. The building permit records for the single detached house indicate documentation was provided for the well which was to be used for domestic purposes.

Sewerage Disposal

The building permit records for the single detached house indicate RDCO is in receipt of on-site sewerage disposal system information which confirms that the house is adequately serviced.

Fire Protection Plan

The applicant's fire protection plan for the proposed facility includes smoke detectors in each room, a fire alarm, signage showing building exits on each floor, fire extinguishers in each room, a well-supplied water hydrant and hoses at building. All employees will be required to complete a fire safety awareness course.

Adequate servicing and approvals would be required in order to facilitate a cannabis production facility.

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 has been identified as priority however the proposal does not appear to align with efforts to create a healthy built environment.

Regional Growth Strategy Bylaw No. 1336:

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

Policies Include:

- Support the protection of the rural areas that offer a rural lifestyle choice. (Policy No. 3)
- Support the protection of water supply on crown land and/or rural areas for all water users. (Policy No. 5)
- Support urban and rural land uses that provide affordable, effective and efficient services and infrastructure that conserve land, water and energy resources. (Policy No. 7)

Our Water Resources outlines that water is an essential resource for people, the economy, and for the natural environment.

Policies Include:

- Consider water resources in land use planning decisions (Policy No. 1)

Our Health goal is to contribute to the improvement of community health, safety and social well-being.

Policies Include:

- Continue efforts to improve air quality (Policy No. 4)

Brent Road/Trepanier Official Community Plan Bylaw No. 1303:

Chapter 6, Policy No. 4: Encourage the reduction of conflict between land uses. Consider utilizing design guidelines, provision of zoning bylaw and other regulations to incorporate buffering requirements, setbacks, landscaping or other methods.

While economic activity is an important foundation for any community, a core principle of this OCP is to retain, protect and enhance the current rural character of Brent Road and Trepanier. As a result, the objectives and policies support the existing rural character of these areas with limited residential, commercial and industrial development.

Zoning Bylaw No. 871 Cannabis Regulation Amendments:

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. 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. At this time, Regional District of Central Okanagan bylaws have not been amended to reflect the ALC's regulatory change. Further, Planning Services staff have not been directed to complete a comprehensive review or update of cannabis regulations within the Regional District since the last amendment to Zoning Bylaw No. 871.

Cannabis Act & Regulations:

The *Cannabis Act* came into effect 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.

A federal licence is not required when you are an individual who under the *Cannabis Act* produces cannabis products in Canada for your own medical purposes or you are an individual who produces cannabis products in Canada, and who under the *Cannabis Act* are a designated person who is authorized to produce cannabis products in Canada for the medical purposes of another individual. Health Canada does not require local government approval prior to the issuance of a registration certificate.

Environmental Management Act & Regulations:

Cannabis operations must responsibly manage their waste and not cause pollution, as required by the BC *Environmental Management Act*. Cannabis producers and processors are required to follow B.C. and federal regulatory requirements. Should the amendment bylaw be approved, the proposed cannabis production facility may be subject to numerous authorizations and approvals under the Ministry of Environment and Climate Change Strategy. As it relates to sewerage disposal the Municipal Sewage Regulation would apply. The proposal may be subject to requirements under Code of Practice for Agricultural Environmental Management, Organic Matter Recycling Regulation, Hazardous Waste Regulation, etc.

Site Context:

The property is located in the Trepanier Area; outside of a fire protection area. Jack Creek bisects the subject property. In accordance with the Brent Road and Trepanier Community Plan Bylaw No. 1303, the property is affected by a number of Development Permit Areas (including Aquatic Ecosystem, Hillside, Wildfire, and Sensitive Terrestrial Ecosystem).

Two covenants are registered on title for the protection of the natural environment, its ecosystems and biological diversity, and protection of development from hazardous conditions including a no build/no disturb covenant within 15 m of the natural boundary of Jack Creek and a wildfire covenant associated with a 1994 Wildland Interface Assessment Report. The wildfire covenant (KH42109) was registered on title of the parcel at time of subdivision. The covenant identifies the need to minimize potential for wildfire on the rural residential lot outlining fuel modification procedures, recommended building materials and landscaping.

Additional Information:

Owner(s):	D. Leask & S. Macdonald
Applicant:	D. Leask
Legal Description:	Lot A, District Lot 3862, ODYD, Plan KAP52090
Address:	4345 Maxwell Road
Lot Size:	+/- 4.05 ha (10.0 acres)
Zoning:	RU2 Rural 2
OCP Designation:	Rural Residential
Sewage Disposal:	Septic System
Water Supply:	Onsite water service (well)
Existing Use:	Rural Residential
Surrounding Uses:	North: Rural Residential South: Rural Residential East: Crown land West: Maxwell Road / Rural Residential
A.L.R.:	Not within the A.L.R.
Fire Protection:	Not within a fire protection area

RDCO TECHNICAL COMMENTS:

Inspection Services staff advises the property contains a single detached house and various accessory buildings. Associated building permits which have been issued and closed include:

- Building Permit No. 4079/95 for a single detached house and accessory building (garage) +/- 532.17 ft² (49.44 m²)
- Building Permit No. 7145/15 for an as-built accessory building (barn/stable) +/- 1296 ft² (120.40 m²)
- Building Permit No. 7241/15 for an interior renovation to the existing single detached house
- Building Permit No. 7145/15 for an as-built accessory building (5-bay garage)
- Building Permit No. 8121/20 for the demolition of non-conforming interior renovations within the as-built accessory building (5-bay garage)

The applicant has addressed the previously identified life safety issues and non-compliance associated with the garage such as the installation of hand/guard rails. The interior stairs, partition wall and additional floor have been removed. The garage is conforming from a building code perspective. Technical Safety BC has advised that all safety infractions have been dealt with by a licensed electrician and that the structure is up to code.

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, a water licence from the Ministry of Forests, Lands, Natural Resource Operations and Rural Development to service the operation, among others.

Fire Services staff advises that the subject property is located outside of a Fire Protection Area. The applicant has addressed the previously identified life safety issues that were identified from the May 14, 2020 site inspection.

Parks Services staff advises that park dedication requirement does not apply under *Local Government Act* Section 510. However, Parks Services has public recreational trail interests on the subject property and is requesting dedication of a Statutory Right of Way (SRW) for a public recreational trail as part of the Jack Creek Greenway. The proposed 400 m² area of interest is located at the southeast corner of the subject property. The RDCO has an existing SRW (Plan EPP6053) on Lot B, Plan 52090, DL 3062, ODYD, which located directly south of the subject property.

The OCP supports securing suitable lands for park and recreational opportunities through various methods including a SRW for public access. The OCP Map #7 - Future Park Connectivity identifies a future trail corridor connection between Coldham Regional Park, Jack Creek Greenway and adjacent Crown lands beyond.

Unaffected RDCO Departments include Bylaw Enforcement and Environmental Services.

AGENCY REFERRAL COMMENTS:

Ministry of Forests, Lands, Natural Resource Operations and Rural Development, District Okanagan Shuswap staff advise that subsequent to previous comments provided, the applicant has submitted additional information directly to the Ministry and it appears there is no historical right to groundwater associated with the subject property. As such, any withdrawals from the well for the purpose of supplying a cannabis production facility would require prior authorization by the Province in the form of a water licence under the *Water Sustainability Act*. Should the amendment bylaw be approved, the applicant will have to submit an application for a water licence and there is no guarantee that the application would be approved as there are water availability concerns in the area.

Interior Health Authority staff advises should the amendment bylaw be adopted by the Regional Board, the water supply system that services the facility may be subject to the approval and permitting requirements of the *BC Drinking Water Protection Act and Regulation* if it provides domestic water to employees. Further, 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 Sewage 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.

Local government bylaws are developed in consideration of best practices for protecting the environment and public health and the current proposal does not meet the specific regulations for cannabis production facilities in the RDCO's Zoning Bylaw No. 871.

Ministry of Transportation and Infrastructure staff advises should the amendment bylaw be adopted by the Regional Board, the owner must contact Ministry staff to confirm and/or apply for a commercial access permit should they wish to proceed with the commercial operation of a cannabis production facility. Otherwise, Ministry of Transportation and Infrastructure has no objections.

BC Hydro has overhead works in this area which may be affected by the development and may require the preparation of a right of way to be executed by the land owner.

Telus staff advised should services be required; the owner must contact the Developer Relationship Management team directly. Otherwise, Telus has no objections.

Unaffected Agencies include District of Peachland.

External Implications:

In accordance with the Development Applications Procedures Bylaw No. 944, a Notice of Application Sign has been posted. At time of writing this report, four letters of support and six letters of opposition have been received from neighbouring properties.

Letters of support concluded no concerns with the proposal if the operation followed Health Canada's regulations as well as any other applicable regulations and if conducted in a responsible manner.

Numerous concerns were raised by those in opposition indicating that there are negative impacts associated with the current use (production of cannabis) on the subject property and that the proposed facility will proliferate these issues, as well as the desire to preserve the existing character of the rural residential neighbourhood in accordance with the Official Community Plan, life safety concerns as the property is located outside of a fire protection area, availability of water in the area, potential environmental impacts, and lack of information available.

Existing Use:

- discharges/emits noxious odorous on a regular basis
- constant traffic
- noise associated with a generator

Proposed Use:

- additional traffic volume
- close proximity to residences
- life safety concerns regarding the lack of fire protection available, Crown land interface, existing access, and that there are no alternate evacuation routes available
- servicing the proposed facility will impact availability of water to service existing rural residential development
- environmental impacts are unknown (Jack Creek, impact on ground water, etc.)
- increase in crime
- negative impact on property values
- could set a precedent for future applications similar in nature

Alternative Recommendation:

THAT Zoning Amendment Bylaw No. 871-262 be given first reading;

AND THAT Zoning Amendment Bylaw No. 871-262 (Z20/04) be scheduled for a Public Hearing.

Considerations not applicable to this report:

- Legal/Statutory Authority
- Financial Considerations
- Organizational Issues

Attachment(s):

- Bylaw Amendment No. 871-262
- Subject Property & Orthophoto Maps
- Site Plan, dated December 19, 2019
- Zoning Bylaw No. 871, Section 3.31
- Letters of Support and Opposition
- May 25, 2020 Planning Staff Report