



Regional Board Report

TO: Regional Board

FROM: Todd Cashin
Director of Community Services

DATE: May 25, 2020

SUBJECT: Zoning Amendment Bylaw No. 871-262
Application 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 that does not meet the minimum parcel area allowed for this use and to vary a setback to approve the location of the building intended for this purpose.

Executive Summary:

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.

The subject property is zoned RU2 Rural 2 which allows a Cannabis Production Facility; however, the parcel does not meet the minimum lot size and required building setback for the Cannabis Production Facility use. The applicant intends to use an existing accessory building (garage) for this purpose.

The property is not located within an established fire protection area and a community water system is not available. Concerns have been identified by RDCO staff and various external agencies including life safety concerns with an existing use associated with the property, general non-compliance of an existing building, lack of servicing information, potential non-compliance with the *Water Sustainability Act* or Water Sustainability Regulation to support an existing use, and potential negative impacts to the adjacent properties.

At time of writing this report, three letters of opposition have been received from neighbouring property owners. Any correspondence received from the public will be provided to the Board as part of a future public hearing report.

RECOMMENDATION #1:

THAT Zoning Amendment Bylaw No. 871-262 be deferred 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, and Interior Health Authority are addressed to the satisfaction of each respective RDCO department or agency.

RECOMMENDATION #2:

THAT the Regional Board not consider any further zoning amendment applications from the owners of property located at 4345 Maxwell Road until the non-compliance issues associated with the existing accessory building (garage) are addressed to the satisfaction of the RDCO.

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:	Deferring the bylaw amendment meets is in keeping with the Regional Board Strategic Priorities 2019-2022 with respect to Sustainable Communities.
Policy:	Deferring the bylaw amendment complies with: <ul style="list-style-type: none"> Regional Growth Strategy Bylaw No. 1336 goals and policies. Brent Road/Trepanier Official Community Plan Bylaw No. 1303 policies.
Legal/Statutory Authority:	Deferring the bylaw amendment is in compliance with Local Government Act, Section 479.

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.

Statutory Provisions:

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.

Provinces and territories are responsible for determining how cannabis is distributed and sold within their jurisdictions. Provinces and territories also have the flexibility to set added restrictions including lowering possession limits, increasing the minimum age, restricting where cannabis may be used in public, and setting added requirements on personal cultivation.

Health Canada regulates possessing, storing and producing cannabis products for medical purposes through Health Canada registration certificates, which enable individuals to legally produce a limited amount of cannabis and does not allow these products to be shared or provided to anyone else. Health Canada provides recommended safety and security measures for indoor production, storage, health, and safe disposal of cannabis for those producing cannabis for medical purposes.

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.

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” both 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.

History:

The +/- 4.05 ha (10.0 acres) subject property consist of one single detached house and various accessory buildings including a barn/stable, detached one storey garage, detached five bay car garage, and horse pen. The applicant indicates current uses at the property include a hobby farm and personal production of cannabis for medical purposes.

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 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:

There is limited community services and infrastructure in place. 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 micro facility includes smoke detectors in each room, fire alarm, signage showing building exits on each floor, fire extinguishers in each room, well supplied water hydrant and hoses at building, and 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 a priority:

- We will initiate and support efforts to create a healthy built environment in which all people throughout the region enjoy a high quality of life with access to safe neighbourhoods including a diverse range of housing options.

Ensuring that concerns that have been identified by RDCO staff and various external agencies are addressed are critical to ensure the health and safety of community.

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 are 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.

Site Context:

The property is located in the Trepanier Area; outside of a Fire Protection Area. Servicing includes on-site sewerage disposal system and water is provided by a well. 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

Records for Building Permit No. 7145/15 indicate that:

- A building permit was issued in 2015 for an already constructed accessory building but has since expired.
- The structure is a 5-bay garage and approx. 1500 ft².
- The last inspection took place on August 14, 2015.
- At that time, the noted deficiencies were never rectified (building was unfinished).

RDCO Building Inspector conducted a site visit on May 8, 2020 and a subsequent site visit on May 14, 2020 with the Manager of Fire Services which identified various building and life safety infractions. As such, Inspections Services staff concluded that the building is non-compliant and from a building code perspective, will not be possible to pass final inspection at this time.

The following observations were noted from the May 14, 2020 site inspection which may not include all non-conforming items:

- Since August 2015, it appears that several changes to the structure have taken place.
- None of the retrofits for the current use of the building have been permitted and the structure is currently non-conforming.
- Exterior cladding not complete.
- Upper exterior deck is rotted which requires sheeting replaced and proper membrane installed.

- Stairs to exterior deck require hand/guard rails.
- Upper deck requires guard rails.
- Inadequate roof ventilation possible.
- Interior walls, partitions and floors have been built without permits and the construction is unclear as walls and ceilings are covered. It is not clear whether these floors are structurally sound to support the proposed occupancy classification.
- Stairs to second floor do need meet code.
- Cantilevered landing at top of stairs is not constructed properly.
- Safe egress is an issue.
- Hole in floor from second floor to loft which is open for an individual to fall through.
- Hidden doors in loft offer open to below unprotected openings.
- Zero fire resistance ratings between rooms/floors and separated by poly.
- High temperature ballasts hanging on OSB.
- Multiple electrical code infractions. A BC safety authority inspection is suggested for comprehensive list.

Fire Services staff advises that the subject property is located outside of a Fire Protection Area. As a result of a site inspection dated May 14, 2020, from a life safety perspective; outside of the fire code, a number of concerns associated with the existing accessory building were identified which pose a large life safety risk. As such, Fire Services staff conclude that the building is non-compliant for the intended use and does not support the application.

The following observations were noted from the May 14, 2020 site inspection:

- The accessory building was constructed as a garage and is currently occupied with various grow rooms.
- The grow rooms are accessed through an outside man door, in to a small corridor, in to grow rooms. This corridor contains the electrical that powers several ballasts that produce high heat. The ballasts are mounted on a wall in close proximity of each other. In the case of an emergency egress, there is only one way out which is through this corridor. The corridor will likely contain the cause and origin for the emergency egress and would not allow for a rescue in the case of a fire which poses a large life safety risk which could extend into the surrounding forested area.
- Throughout the building are extension cords that run through walls containing no fire resistance or stop. Several wires are spliced with exposed marettes.
- With a large live load of plants and grow equipment it is not certain whether the second floor will hold the weight as this use was not contemplated at time garage construction (intended purpose of Building Permit No. 7144/15).
- Grow lights are mounted directly to a small sheet of drywall approximately 2 ft. by 1 ft. which is mounted to vapor barrier. This does not meet a code or standard and is a visible fire hazard.

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 advises that there are several concerns with the application regarding the lack of information pertaining to the private water source (well), historical/existing uses, and proposed cannabis production facility.

There does not appear to be any water licence or registered well associated with the use of the existing accessory building which may not be in compliance with the *Water Sustainability Act* or Water Sustainability Regulation. As such, it is possible that groundwater withdrawals are being done illicitly and need to be stopped immediately. Should there be historical right to water, evidence must be provided.

Information is required on the well depth, screening, lithology encountered, etc. in order to ascertain what water source the well is withdrawing from.

It is not clear from the information provided whether the transition to micro-cultivation and processing will require an increase or decrease in the quantity of water that is withdrawn. If an increase is expected, a water licence must be obtained prior to doing so, regardless of historical right. Any increase in water use is prohibited without authorization as per the *Water Sustainability Act*.

Interior Health Authority staff advises should the bylaw amendment 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 bylaw amendment 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.

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 Development Applications Procedures Bylaw No. 944, a Notice of Application Sign has been posted. Further to the sign posted on the subject property, at time of writing this report, three letters of opposition had been received from adjacent properties. The prevalent concern among the correspondence is that there are negative impacts associated with the current use (production of cannabis) on the subject property and that the proposed cannabis production facility will proliferate these issues.

Comments received identify that the existing building used for cannabis production does discharge/emit odorous on a regular basis and there is constant traffic associated with the operation.

There is concern that the proposed commercial operation will cause additional traffic volume and increase in crime, that the property is located outside of fire protection area and may increase the chance of a forest fire, could negatively impact property values, and could set a precedent for future applications similar in nature.

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

Conclusion:

Based on the comments received from affected agencies, RDCO Fire Services and Inspections Services staff, Planning staff concurs with comments and concerns that have been received. Further, it appears that the current use has a number of health or safety hazards which does not comply with the regulations (Part 3 General Regulations, Section 3.31) regarding Cannabis Production Facilities. Other issues include general non-compliance of the existing building, lack of fire protection and risk of wildfire, environmental impacts, unknown servicing information, potential non-compliance with the Water Sustainability Act or Water Sustainability Regulation to support the existing use, and potential negative impacts to the adjacent properties. At this time, Planning staff do not support the application be given first reading.

Alternative Recommendation:

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

AND THAT scheduling of a Public Hearing be withheld 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, and Interior Health Authority are addressed to the satisfaction of each respective RDCO department or agency.
- Receipt of confirmation from the owner for the dedication of a Statutory Right of Way for a public recreational trail as part of the Jack Creek Greenway (southeast corner of the subject property).

- Receipt of comments from Ministry of Environment;
- The owner completes an updated Wildfire Risk Assessment Report taking the proposed use into account; and
- Confirmation is received that the site is eligible to be licensed by the Federal Government.

Considerations not applicable to this report:

- *Financial*
- *Organizational*
- *General*

Attachment(s):

- Zoning Amendment Bylaw No. 871-262
- Subject Property & Orthophoto Maps
- Site Plan, dated December 19, 2019
- Zoning Bylaw No. 871, Section 3.31