

PUBLIC HEARING INFORMATION PACKAGE
Zoning Amendment Bylaw
(Rural Accessory Dwelling Units), 2022
Bylaw No. 3876

Public Hearing Notice & Bylaw No. 3876

1. Notice of Public Hearing for **August 17, 2022** at **6:00 p.m.**
2. Public Hearing Newspaper Ad – 1st Notification – Publication Date: August 4, 2022
3. Public Hearing Newspaper Ad – 2nd Notification – Publication Date: August 11, 2022
4. Bylaw No. 3876

Staff Reports

1. Planning Staff Report to Council dated July 20, 2022

Minutes

1. Excerpt from July 20, 2022 Regular Council and Public Hearing Minutes – First and Second Reading of Bylaw 3876, and Schedule Public Hearing

Public Comments

No Comments Received To Date



NOTICE OF PUBLIC HEARING

The Director of Planning and Building gives notice that a Public Hearing will be held at **6:00 p.m.** on **Wednesday, August 17, 2022** to allow Council to receive public input on Bylaw No. 3876 which proposes to amend "Zoning Bylaw 1997," No. 2950. As authorized by the *Local Government Act*, this hearing will be conducted by electronic means and members of the public will be provided an opportunity to be heard verbally or by submitting their comments in writing in advance of the hearing. This hearing will be conducted by video conference using the Cisco Webex platform, and though electronic, is open to the public and anyone wishing to participate may do so in person by attending Council Chambers, or by joining the meeting using a computer, smartphone or tablet. If you wish to participate electronically, please visit www.northcowichan.ca/virtualmeeting for instructions on how you can join this hearing and find the link to join. You may also view the hearing as it is streamed live by going to www.northcowichan.ca/Agendas, and click on the 'View Live Stream' link. A copy of the recording will be made available after the hearing on North Cowichan's website for on-demand viewing.

Zoning Amendment Bylaw (Rural Accessory Dwelling Units), 2022 No. 3876 proposes to amend section 51 (4) [Density in the Agricultural Zone (A1); section 52 (4) [Density in the Rural Zone (A2); section 53 (4) [Density in the Rural Restricted Zone (A3)] and section 55 (4) [Density in the Rural Residential Zone (A5)].

The purpose of the bylaw is to amend the densities within these zones to accommodate various forms of accessory dwelling units on parcels two hectares or greater.

Public Input

If you believe your interests in land will be affected by the proposed bylaw, you are encouraged to submit your comments in writing to Mayor and Council by **1:00 p.m.** on **Monday, August 15, 2022**, using any of the writing methods identified below. Comments may also be shared verbally during the Public Hearing, by following the instructions provided below.

1. In Writing in Advance of the Public Hearing:

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A copy of the bylaw and related documents, including public comments received in writing, will be available to inspect online at www.northcowichan.ca/PublicHearings until the close of the Public Hearing. The documents may also be inspected in the Planning Department at the Municipal Hall, Monday to Friday (excluding statutory holidays) between 8:00 a.m. and 4:00 p.m. from Tuesday, August 2, 2022 until the close of business on Wednesday, August 17, 2022.

Rob Conway, Director of Planning and Building

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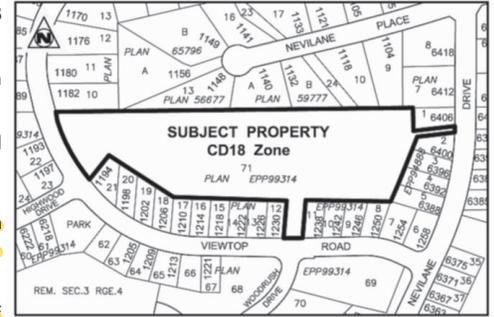
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"(7.1) Despite the definition of "townhouse" under section 12, a maximum of 15% of the total units in the form of a 'two-family dwelling'" is permitted on 1234 Viewtop Road (PID: 031-048-382).

The purpose of the proposed bylaw is to allow for two-family dwellings on the subject property outlined in bold on the adjacent map.

Zoning Amendment Bylaw (Rural Accessory Dwelling Units), 2022 No. 3876 proposes to amend section 51 (4) [Density in the Agricultural Zone (A1)]; section 52 (4) [Density in the Rural Zone (A2)]; section 53 (4) [Density in the Rural Restricted Zone (A3)]; and section 55 (4) [Density in the Rural Residential Zone (A5)].

The purpose of the bylaw is to amend the densities within these zones to accommodate various forms of accessory dwelling units on parcels two hectares or greater.



Public Input

If you believe your interests in land will be affected by the proposed bylaws, you are encouraged to submit your comments in writing to Mayor and Council by **1:00 p.m. on Monday, August 15, 2022**, using any of the writing methods identified below. Comments may also be shared verbally during the Public Hearing, by following the instructions provided below.

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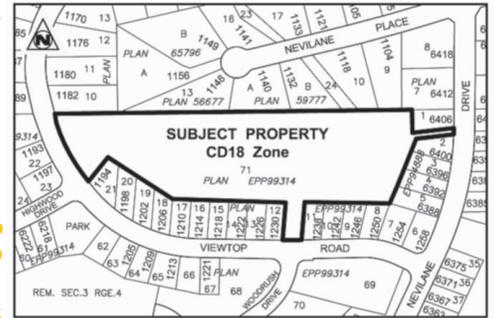
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The purpose of the bylaw is to amend the densities within these zones to accommodate various forms of accessory dwelling units on parcels two hectares or greater.



Public Input

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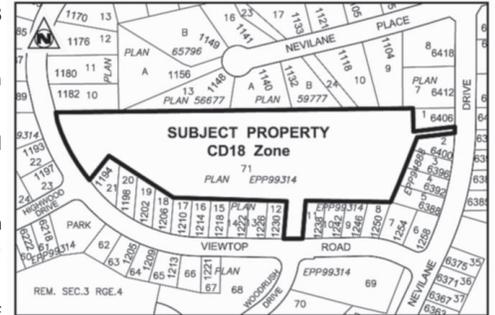
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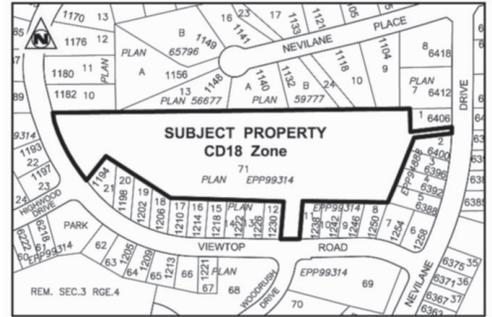
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The Corporation of the District of North Cowichan
Zoning Amendment Bylaw (Rural Accessory Dwelling Units)
Bylaw 3876

The Council of The Corporation of The District of North Cowichan enacts in open meeting assembled as follows:

Title

- 1 This Bylaw may be cited as "Zoning Amendment Bylaw No. 3876, 2022".

Amendment

- 2 Zoning Bylaw No. 2950, 1997 is amended by deleting Section 51 (4) [Density in the Agricultural Zone (A1)], and inserting the following in its place:

"Density

- (4) The maximum permitted density for the A1 zone is as follows:
 - (a) The number of residential buildings per lot shall not exceed one.
 - (i) Despite the foregoing, where land is two hectares (4.94 acres) or larger in area, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted, where the smaller residential building shall be accessory to the principal dwelling and contain a dwelling unit not exceeding 90m² of gross floor area.
 - (ii) Despite the gross floor area maximum of 90m² in part (i) above, in the case of replacing a previously-existing dwelling legally authorized by the Municipality prior to September 21, 2022 the smaller residential dwelling may not exceed either 90m² or the gross floor area of the previously-existing dwelling, whichever is the greater.
 - (b) No accessory dwelling (other than a suite integral to a principal dwelling) nor a two-family dwelling shall be located on a parcel unless the owner of such parcel has, prior to the issuance of a building permit by the Municipality, registered a covenant under Section 219 of the *Land Title Act*: prohibiting registration of a strata plan under the *Strata Property Act*.
 - (c) Despite section 51(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022, or where a building strata already exists.
 - (d) Despite section 51(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022.
 - (e) Despite section 51(4)(a) above, a maximum of two residential buildings with a total combined maximum density of two dwelling units is permitted on the

following properties:

- (i) 8662 8664 Trans-Canada Highway (PID 027-341-640)“

- 3 Zoning Bylaw No. 2950, 1997 is amended by deleting section 52 (4) [Density in the Rural Zone (A2)] and inserting the following in its place:

“Density

- (4) The maximum permitted density for the A2 zone is as follows:
 - (a) The number of residential buildings per lot shall not exceed one.
 - (i) Despite the foregoing, where land is two hectares (4.94 acres) or larger in area, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted, where the smaller residential building shall be accessory to the principal dwelling and contain a dwelling unit not exceeding 90m² of gross floor area.
 - (ii) Despite the gross floor area maximum of 90m² in part (i) above, in the case of replacing a previously-existing dwelling legally authorized by the Municipality prior to September 21, 2022 the smaller residential dwelling may not exceed either 90m² or the gross floor area of the previously-existing dwelling, whichever is the greater.
 - (b) No accessory dwelling (other than a suite integral to a principal dwelling) nor a two-family dwelling shall be located on a parcel unless the owner of such parcel has, prior to the issuance of a building permit by the Municipality, registered a covenant under Section 219 of the *Land Title Act*: prohibiting registration of a strata plan under the *Strata Property Act*.
 - (c) Despite section 52(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022, or where a building strata already exists.
 - (d) Despite section 52(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022.
 - (e) Despite section 52(4)(a) above, a maximum of two residential buildings with a total combined maximum of three dwelling units is permitted on 941 Arbutus Avenue (PID 000-232-556).
 - (f) Despite section 52(4)(a) above, a maximum of two residential buildings with a total combined maximum density of two dwelling units is permitted on the following properties:
 - (i) 3252 Gibbins Road (PID 006-360-378);
 - (ii) 3286 Gibbins Road (PID 004-555-562);
 - (iii) 3276 Gibbins Road (PID 002-343-789);
 - (iv) 3240 Gibbins Road (PID 002-742-501);
 - (v) Lot 1..., Plan 21749, Banks Road (PID 002-705-087);
 - (vi) B-3228 Gibbins Road (PID 001-252-267);
 - (vii) Lot 4..., Plan 8636, Cliffs Road (PID 005-586-429);
 - (viii) 3088 Cliffs Road (PID 005-586-445);
 - (ix) Lot 5..., Plan 8636, Cliffs Road (PID 005-586-437);
 - (x) Part of Lot 11..., Plan 2785, Banks Road (PID 006-360-742);

- (xi) Part of Lot 1..., Plan 9537 (PID 005-338-859);
- (xii) A-3228 Gibbins Road (PID 000-041-874);
- (xiii) repealed;
- (xiv) 3246 Gibbins Road (PID 028-738-080);
- (xv) Lot A..., Plan 10506 (PID 005-267-412);
- (xvi) 3186 Gibbins Road (PID 005-409-292).
- (xvii) 2772 Herd Road (PID: 002-831-732)"

4 Zoning Bylaw No. 2950, 1997 is amended by deleting section 53 (4) [Density in the Rural Restricted Zone (A3)] and inserting the following in its place:

“Density

- (4) The maximum permitted density for the A3 zone is as follows:
 - (a) The number of residential buildings per lot shall not exceed one.
 - (i) Despite the foregoing, where land is two hectares (4.94 acres) or larger in area, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted, where the smaller residential building shall be accessory to the principal dwelling and contain a dwelling unit not exceeding 90m² of gross floor area.
 - (ii) Despite the gross floor area maximum of 90m² in part (i) above, in the case of replacing a previously-existing dwelling legally authorized by the Municipality prior to September 21, 2022 the smaller residential dwelling may not exceed either 90m² or the gross floor area of the previously-existing dwelling, whichever is the greater.
 - (iii) Despite the foregoing, the placement of a Temporary Mobile Home may also be permitted, subject to the Temporary Mobile Home Permit Bylaw.
 - (b) No accessory dwelling (other than a suite integral to a principal dwelling) nor a two-family dwelling shall be located on a parcel unless the owner of such parcel has, prior to the issuance of a building permit by the Municipality, registered a covenant under Section 219 of the *Land Title Act*: prohibiting registration of a strata plan under the *Strata Property Act*.
 - (c) Despite section 53(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022, or where a building strata already exists.
 - (d) Despite section 53(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022 or where a Temporary Mobile Home is permitted under section 53(4)(a)(ii)
 - (e) Despite section 53(4)(a) above, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted on the following properties:
 - (i) 5404 Gore Langton Road (PID: 005-177-740)
 - (ii) 3368 Henry Road (PID: 006-660-819)
 - (iii) 3788 Winget Place (PID: 018-498-451)
 - (iv) 5353 Gore Langton Road (PID: 004-756-517)
 - (v) 3248 Gibbins Road (PID: 028-738-071)
 - (vi) 3325 Henry Road (PID: 023-516-305)

- (vii) 934 Khenipsen Road (PID: 027-581-578)
- (e) Despite section 53(4)(a) above, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted on 4011 Cambrai Road (PID: 016-212-169) provided that one of the residential buildings does not exceed 145 m² (1,560 sq. ft.) in gross floor area.”

5 Zoning Bylaw No. 2950, 1997 is amended by deleting section 55 (4) [Density in Rural Residential Zone (A5)] and inserting the following in its place:

“Density

- (4) The maximum permitted density for the A5 zone is as follows:
 - (a) The number of residential buildings per lot shall not exceed one.
 - (i) Despite the foregoing, where land is two hectares (4.94 acres) or larger in area, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted, where the smaller residential building shall be accessory to the principal dwelling and contain a dwelling unit not exceeding 90m² of gross floor area.
 - (ii) Despite the gross floor area maximum of 90m² in part (i) above, in the case of replacing a previously-existing dwelling legally authorized by the Municipality prior to September 21, 2022 the smaller residential dwelling may not exceed either 90m² or the gross floor area of the previously-existing dwelling, whichever is the greater.
 - (b) No accessory dwelling (other than a suite integral to a principal dwelling) nor a two-family dwelling shall be located on a parcel unless the owner of such parcel has, prior to the issuance of a building permit by the Municipality, registered a covenant under Section 219 of the *Land Title Act*: prohibiting registration of a strata plan under the *Strata Property Act*.
 - (c) Despite section 55(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022, or where a building strata already exists.
 - (d) Despite section 55(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022.
 - (e) Despite section 55(4)(a) above, the placement of a Temporary Mobile Home may also be permitted on lots 0.81 ha (two acres), or larger, subject to the Temporary Mobile Home Permit Bylaw.
 - (f) Despite section 55(4)(a) above, a maximum of two residential buildings is permitted on property located at 6360 Lakes Road, and 6722 Lakes Road if:
 - (i) the principal residential building is a single-family dwelling, and
 - (ii) the accessory dwelling unit, garden suite is no larger than 85 m² (915 sq. ft.) or 40% of the gross floor area of the principal residential building, whichever is less.”

READ a first time on July 20, 2022
READ a second time on July 20, 2022
CONSIDERED at a Public Hearing on
READ a third time on
APPROVED by Ministry of Transportation and Infrastructure on
ADOPTED on

CORPORATE OFFICER

PRESIDING MEMBER

STAFF REPORT

Date July 20, 2022

File: SPP00077

Subject Zoning Amendment Bylaw No. 3876, 2022 for first and second readings

PURPOSE

To introduce Zoning Amendment Bylaw No. 3876 which proposes to amend the permitted densities within the A-1, A-2, A-3 and A-5 zones to accommodate various forms of accessory dwelling units on parcels 2ha or greater.

BACKGROUND

At the June 7, 2022 Committee of the Whole meeting, Council directed staff to proceed with preparing a zoning amendment bylaw pursuant to the staff report outlining a proposal to amend the A-1, A-2, A-3 and A-5 zones. The amendment would provide greater flexibility for owners of larger (>2ha) lots in these zones to construct accessory dwelling units without materially increasing density in rural areas. It would also bring the zoning bylaw into closer alignment with recent changes in the Agricultural Land Commission (ALC) Regulations.

DISCUSSION

Proposed Amendments

The rationale for this bylaw amendment (Attachment 1) was set out in the previous staff report (Attachment 2) and sought to align the Municipality's Zoning Bylaw with recent changes to the ALC Regulation that liberalizes options for a secondary dwelling on Agricultural Land Reserve (ALR) designated parcels. In North Cowichan, the vast majority of ALR parcels with a residential use fall within the A-1 and A-2 zones and to a smaller extent, the A-3 and A-5 zones. The amendments are broadly as follows:

- 1) Amend the permitted density to allow up to two dwelling units in up to two buildings on all parcels 2ha or greater. This provides complete flexibility in the form or arrangement of dwellings while limiting the smaller dwelling on a lot to a maximum of 90m² floor area. This size restriction applies only to the dwelling unit, not the building; therefore, a larger ancillary building such as a barn could accommodate a self-contained suite as long as the suite itself was not greater than 90m². The entire barn structure would then be considered to be a "residential building". A mobile home would also be considered a "residential building" for the purposes of dwelling count.
- 2) Require registration of a section 219 covenant prohibiting stratification as a condition of implementing an accessory dwelling. This legal agreement between the Municipality and property owner ensures that the parcel's integrity and agricultural potential is not compromised by the registration of a building strata.
- 3) State that the covenant requirement is not to be applied retroactively where existing ancillary dwellings or stratas are lawfully in place at the time of this bylaw adoption and provide for replacement of lawfully existing ancillary dwellings in excess of 90m².

Implications for Property Owners

Council should be aware of the implications of this generic zoning change which may place some properties into “legal non-conforming” status. Namely, providing for more than one dwelling unit on parcels larger than 2ha and including mobile homes (whether temporary or not) within the unit count may result in some parcels no longer conforming to the zoning limits. To limit this impact, provisions are built into the zoning amendment bylaw to recognize situations where a building strata already exists and to allow a lawfully-existing second dwelling in excess of 90m² to be reconstructed in full in the event of fire.

This non-conforming situation is otherwise accommodated within Part 14, Division 14 of the *Local Government Act*, whereby any structures or uses lawfully in existence at the time of a change in zoning are permitted to remain indefinitely unless a use is abandoned for six months or longer, or a structure is destroyed beyond 75% of its value. This is generally not a popular situation for landowners; however, the provisions seek to maintain a balance between providing a degree of protection for lawfully-established activities and allowing a zoning amendment to assume its intended effect over time by limiting the ability to expand or readily replace non-conforming uses and structures. All property owners should be aware that zoning changes are a risk associated with owning land in B.C.

The number of parcels potentially brought into non-conformity as a result of this change is unknown. The net effect may be moderated by other parcels moving from non-conforming to conforming status, in addition to the retrospective provisions for lawfully pre-existing situations as described above. The amendments are generally more permissive rather than less, although every situation is unique, and thus the impact of the amendment may be positive or negative for any given individual parcel. It is always open to owners to seek a zoning amendment to an individual parcel, as evidenced by the number of “spot zones” contained within the four affected zones. These “spot zones” essentially provide parcel-by-parcel exceptions to the uses and densities permitted within a zone to make a parcel fully zoning compliant, rather than the more limiting situation of having legal non-conforming status. This bylaw amendment would leave all such spot-zonings in place, although some may become moot.

The Municipality would not seek to identify non-conforming parcels as a result of this change or initiate any enforcement action on non-lawful uses absent a complaint or identified problem. Depending on their particular situation, parcel owners contemplating some change or development may find the need to seek a zoning amendment. As always, it is recommended that parcel owners speak to municipal planning staff regarding zoning and permitting at the earliest stage of project planning.

OPTIONS

1. **(Recommended Option)** THAT Council:
 - (1) Give first and second readings to Zoning Amendment Bylaw No. 3876, 2022; and,
 - (2) Schedule a Public Hearing for Zoning Amendment Bylaw No. 3876, 2022 in accordance with the *Local Government Act*.
 - A public hearing would be scheduled at the next opportunity.

3. THAT Council defer consideration of Zoning Amendment Bylaw No. 3876, 2022, until such time as the comprehensive review and update of the Zoning Bylaw is complete.
4. THAT Council reconsider the direction given by the Committee of the Whole on June 7, 2022, directing staff to prepare a zoning bylaw amendment bylaw regarding rural accessory dwellings and that the Committee of the Whole decision be rescinded.
 - Should Council not wish to proceed with these zoning changes, the current zoning provisions will remain in place, and a greater number of owners wishing to implement accessory dwellings in line with ALC Regulation may still need to submit zoning amendment applications.

IMPLICATIONS

The implications for property owners have been discussed above. As outlined in the previous staff report, this change is expected to reduce the number of zoning amendment applications that might otherwise be prompted as a result of the recent ALC Regulation change. In turn, this will reduce the application burden on planning staff, benefitting overall application processing times. No significant financial implications are identified for the Municipality.

RECOMMENDATION

THAT Council:

- (1) Give first and second readings to Zoning Amendment Bylaw No. 3876, 2022; and,
- (2) Schedule a Public Hearing for Zoning Amendment Bylaw No. 3876, 2022, in accordance with the *Local Government Act*.

Report prepared by:



Chris Osborne
Manager, Planning

Report reviewed by:



Rob Conway, MCIP, RPP
Director, Planning and Building

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

Attachments:

- (1) Bylaw 3876, 2022
- (2) Staff report to Council dated June 15, 2022



The Corporation of the District of North Cowichan

Zoning Amendment Bylaw (Rural Accessory Dwelling Units)

Bylaw 3876

The Council of The Corporation of The District of North Cowichan enacts in open meeting assembled as follows:

Title

- 1 This Bylaw may be cited as "Zoning Amendment Bylaw No. 3876, 2022".

Amendment

- 2 Zoning Bylaw No. 2950, 1997 is amended by deleting Section 51 (4) [Density in the Agricultural Zone (A1)], and inserting the following in its place:

"Density

- (4) The maximum permitted density for the A1 zone is as follows:
 - (a) The number of residential buildings per lot shall not exceed one.
 - (i) Despite the foregoing, where land is two hectares (4.94 acres) or larger in area, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted, where the smaller residential building shall be accessory to the principal dwelling and contain a dwelling unit not exceeding 90m² of gross floor area.
 - (ii) Despite the gross floor area maximum of 90m² in part (i) above, in the case of replacing a previously-existing dwelling legally authorized by the Municipality prior to September 21, 2022 the smaller residential dwelling may not exceed either 90m² or the gross floor area of the previously-existing dwelling, whichever is the greater.
 - (b) No accessory dwelling (other than a suite integral to a principal dwelling) nor a two-family dwelling shall be located on a parcel unless the owner of such parcel has, prior to the issuance of a building permit by the Municipality, registered a covenant under Section 219 of the *Land Title Act*: prohibiting registration of a strata plan under the *Strata Property Act*.
 - (c) Despite section 51(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022, or where a building strata already exists.
 - (d) Despite section 51(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022.
 - (e) Despite section 51(4)(a) above, a maximum of two residential buildings with a total combined maximum density of two dwelling units is permitted on the

following properties:

- (i) 8662 8664 Trans-Canada Highway (PID 027-341-640)“

- 3 Zoning Bylaw No. 2950, 1997 is amended by deleting section 52 (4) [Density in the Rural Zone (A2)] and inserting the following in its place:

“Density

- (4) The maximum permitted density for the A2 zone is as follows:
 - (a) The number of residential buildings per lot shall not exceed one.
 - (i) Despite the foregoing, where land is two hectares (4.94 acres) or larger in area, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted, where the smaller residential building shall be accessory to the principal dwelling and contain a dwelling unit not exceeding 90m² of gross floor area.
 - (ii) Despite the gross floor area maximum of 90m² in part (i) above, in the case of replacing a previously-existing dwelling legally authorized by the Municipality prior to September 21, 2022 the smaller residential dwelling may not exceed either 90m² or the gross floor area of the previously-existing dwelling, whichever is the greater.
 - (b) No accessory dwelling (other than a suite integral to a principal dwelling) nor a two-family dwelling shall be located on a parcel unless the owner of such parcel has, prior to the issuance of a building permit by the Municipality, registered a covenant under Section 219 of the *Land Title Act*: prohibiting registration of a strata plan under the *Strata Property Act*.
 - (c) Despite section 52(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022, or where a building strata already exists.
 - (d) Despite section 52(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022.
 - (e) Despite section 52(4)(a) above, a maximum of two residential buildings with a total combined maximum of three dwelling units is permitted on 941 Arbutus Avenue (PID 000-232-556).
 - (f) Despite section 52(4)(a) above, a maximum of two residential buildings with a total combined maximum density of two dwelling units is permitted on the following properties:
 - (i) 3252 Gibbins Road (PID 006-360-378);
 - (ii) 3286 Gibbins Road (PID 004-555-562);
 - (iii) 3276 Gibbins Road (PID 002-343-789);
 - (iv) 3240 Gibbins Road (PID 002-742-501);
 - (v) Lot 1..., Plan 21749, Banks Road (PID 002-705-087);
 - (vi) B-3228 Gibbins Road (PID 001-252-267);
 - (vii) Lot 4..., Plan 8636, Cliffs Road (PID 005-586-429);
 - (viii) 3088 Cliffs Road (PID 005-586-445);
 - (ix) Lot 5..., Plan 8636, Cliffs Road (PID 005-586-437);
 - (x) Part of Lot 11..., Plan 2785, Banks Road (PID 006-360-742);

- (xi) Part of Lot 1..., Plan 9537 (PID 005-338-859);
- (xii) A-3228 Gibbins Road (PID 000-041-874);
- (xiii) repealed;
- (xiv) 3246 Gibbins Road (PID 028-738-080);
- (xv) Lot A..., Plan 10506 (PID 005-267-412);
- (xvi) 3186 Gibbins Road (PID 005-409-292).
- (xvii) 2772 Herd Road (PID: 002-831-732)"

4 Zoning Bylaw No. 2950, 1997 is amended by deleting section 53 (4) [Density in the Rural Restricted Zone (A3)] and inserting the following in its place:

“Density

- (4) The maximum permitted density for the A3 zone is as follows:
 - (a) The number of residential buildings per lot shall not exceed one.
 - (i) Despite the foregoing, where land is two hectares (4.94 acres) or larger in area, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted, where the smaller residential building shall be accessory to the principal dwelling and contain a dwelling unit not exceeding 90m² of gross floor area.
 - (ii) Despite the gross floor area maximum of 90m² in part (i) above, in the case of replacing a previously-existing dwelling legally authorized by the Municipality prior to September 21, 2022 the smaller residential dwelling may not exceed either 90m² or the gross floor area of the previously-existing dwelling, whichever is the greater.
 - (iii) Despite the foregoing, the placement of a Temporary Mobile Home may also be permitted, subject to the Temporary Mobile Home Permit Bylaw.
 - (b) No accessory dwelling (other than a suite integral to a principal dwelling) nor a two-family dwelling shall be located on a parcel unless the owner of such parcel has, prior to the issuance of a building permit by the Municipality, registered a covenant under Section 219 of the *Land Title Act*: prohibiting registration of a strata plan under the *Strata Property Act*.
 - (c) Despite section 53(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022, or where a building strata already exists.
 - (d) Despite section 53(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022 or where a Temporary Mobile Home is permitted under section 53(4)(a)(ii)
 - (e) Despite section 53(4)(a) above, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted on the following properties:
 - (i) 5404 Gore Langton Road (PID: 005-177-740)
 - (ii) 3368 Henry Road (PID: 006-660-819)
 - (iii) 3788 Winget Place (PID: 018-498-451)
 - (iv) 5353 Gore Langton Road (PID: 004-756-517)
 - (v) 3248 Gibbins Road (PID: 028-738-071)
 - (vi) 3325 Henry Road (PID: 023-516-305)

- (vii) 934 Khenipsen Road (PID: 027-581-578)
- (e) Despite section 53(4)(a) above, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted on 4011 Cambrai Road (PID: 016-212-169) provided that one of the residential buildings does not exceed 145 m² (1,560 sq. ft.) in gross floor area."

5 Zoning Bylaw No. 2950, 1997 is amended by deleting section 55 (4) [Density in Rural Residential Zone (A5)] and inserting the following in its place:

"Density

- (4) The maximum permitted density for the A5 zone is as follows:
 - (a) The number of residential buildings per lot shall not exceed one.
 - (i) Despite the foregoing, where land is two hectares (4.94 acres) or larger in area, a total combined maximum of two dwelling units within a maximum of two residential buildings is permitted, where the smaller residential building shall be accessory to the principal dwelling and contain a dwelling unit not exceeding 90m² of gross floor area.
 - (ii) Despite the gross floor area maximum of 90m² in part (i) above, in the case of replacing a previously-existing dwelling legally authorized by the Municipality prior to September 21, 2022 the smaller residential dwelling may not exceed either 90m² or the gross floor area of the previously-existing dwelling, whichever is the greater.
 - (b) No accessory dwelling (other than a suite integral to a principal dwelling) nor a two-family dwelling shall be located on a parcel unless the owner of such parcel has, prior to the issuance of a building permit by the Municipality, registered a covenant under Section 219 of the *Land Title Act*: prohibiting registration of a strata plan under the *Strata Property Act*.
 - (c) Despite section 55(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022, or where a building strata already exists.
 - (d) Despite section 55(4)(b) above, a covenant is not required where the accessory dwelling or two-family dwelling were legally authorized by the Municipality prior to September 21, 2022.
 - (e) Despite section 55(4)(a) above, the placement of a Temporary Mobile Home may also be permitted on lots 0.81 ha (two acres), or larger, subject to the Temporary Mobile Home Permit Bylaw.
 - (f) Despite section 55(4)(a) above, a maximum of two residential buildings is permitted on property located at 6360 Lakes Road, and 6722 Lakes Road if:
 - (i) the principal residential building is a single-family dwelling, and
 - (ii) the accessory dwelling unit, garden suite is no larger than 85 m² (915 sq. ft.) or 40% of the gross floor area of the principal residential building, whichever is less."

READ a second time on
CONSIDERED at a Public Hearing on
READ a third time on
APPROVED by Ministry of Transportation and Infrastructure on
COVENANT registered on
ADOPTED on

CORPORATE OFFICER

PRESIDING MEMBER

Report

Date June 7, 2022
Subject Appendix 2.docx

File: SPP00077

PURPOSE

To provide the Committee of the Whole with details of a proposed zoning bylaw amendment pertaining to accessory dwelling units in rural areas in response to recent Agricultural Land Commission Regulation (“the Regulations”) changes.

BACKGROUND

On December 31, 2021, new Agricultural Land Commission (ALC) Regulations came into force pertaining to residential buildings on Agricultural Land Reserve (ALR) lots. These regulations adopt a more permissive approach, whereby up to three dwelling units contained within two separate buildings will be permitted. This change leaves the Municipality’s zoning bylaw at odds with the Regulations. While the Regulations set out development rights vis-à-vis the ALR, municipal zoning may still prohibit or restrict some of these rights. It is, however, open to the Municipality to consider amending its zoning bylaw to align more closely with the Regulations.

As a result of the change, the Municipality is experiencing a relatively high number of rezoning enquiries from ALR land owners who no longer need ALC approval but remain limited by the Municipality’s zoning bylaw. The Municipality can process and determine these on a case-by-case basis or amend its zoning bylaw to allow accessory dwelling units to an extent similar to the new Regulations. Staff recommend the latter approach, as described below, and seek Council’s endorsement prior to preparing the associated zoning amendment bylaw.

DISCUSSION

ALC Regulation

Since the ALC Regulations changed on December 31, 2021, there is no longer a need for ALC approval for secondary dwellings on ALR parcels of any size, with the exception of certain residential size limits on parcels less than 40ha (principal dwelling maximum 500m², secondary dwelling maximum 90m²). The Regulation also stipulates that this change is exclusive of secondary suites (i.e. a secondary suite is permitted with the principal dwelling in addition to a secondary dwelling).

Municipality of North Cowichan Zoning Bylaw

The current zoning bylaw largely supports the former ALC approach towards secondary residences (“accessory dwelling units”) on ALR land; stipulating that secondary residences will only be permitted on lots larger than 2ha, where the ALC agrees, and the dwelling(s) is/are for a “bona fide” farm labour occupancy. The approach is mirrored on non-ALR rural land parcels, where the only differences are the absence of reference to ALC approval and a limit of two units per lot. The zones affected are the A1, A2, A3 and A5 zones.

Proposed Amendments to Zoning Bylaw 2950

Once the Regulations came into force, the zoning references to ALC approval for additional dwelling units became moot. The only test to determine whether the accessory dwelling unit is permitted on a >2ha ALR lot within the A1 and A2 zones would be whether the occupancy would be for “bona fide farm labour.” This concept is undefined in the zoning bylaw and is a difficult test both to determine and to enforce. The problem is compounded by no specified limit to the number of secondary residences permitted on an ALR parcel, if/when deemed to be for “bona fide farm labour.”

It is also notable that the ALC Regulations do not distinguish between “regular” constructed dwellings subject to the BC Building Code and mobile homes subject to Canadian Standards Association approval. In this sense, the zoning bylaw is currently more permissive in that it sees Temporary Mobile Homes (TMHs) as being *in addition to* the prescribed dwelling maximum. The proposed amendments would instead include TMHs within the dwelling count; i.e. the second residential building may be in the form of a TMH, and the “temporary” element would no longer apply. Where two residential units already exist, any further dwelling units, including a TMH, would not be allowed. This would reflect the ALC Regulation change and simplify interpretation. Administratively, TMH applications require considerable staff time. Thus, a reduction in the number of TMH applications as a result of treating mobile homes on such parcels as any other type of second dwelling would result in net efficiency for both the Municipality and applicants.

The recommended approach is therefore to amend the A1, A2, A3, and A5 zones to:

- 1) Reflect the new ALC Regulation in part by permitting up to two dwelling units contained in no more than two residential buildings, on all lots 2ha or greater;
- 2) Create a new definition of “accessory dwelling unit, secondary dwelling” which provides for a detached dwelling not subject to the limitations within the “coach house” and “garden suite” definitions but which remains subordinate to a principal dwelling and limited in size.
- 3) Remove the requirement for an accessory dwelling unit to be for “bona fide farm labour” occupancy;
- 4) Remove the provision for a TMH in addition to the dwelling count (instead, manufactured homes can be used temporarily or permanently within the dwelling count); and,
- 5) Safeguard the integrity of rural parcels by requiring registration of a “no strata” s.219 covenant prior to building permit approval for any detached accessory dwelling units.

These amendments would respond to the ALC Regulation change without substantially changing the permitted uses and densities on rural parcels.

Official Community Plan Policy

While the approach is well aligned with the emerging Official Community Plan (OCP) direction, the current adopted OCP still provides the legal policy framework for the Municipality. *Local Government Act* s.478 prohibits the Municipality from adopting any bylaws that are inconsistent with the current OCP.

The proposed changes do not materially alter the density of uses on parcels that are currently permitted since the zoning bylaw already allows for additional dwellings for “bona fide farm labour”,

subject to ALC approval. Land owners have historically seen ALC approval as harder to achieve than Municipal zoning approval. The ALC Regulation change is equivalent to an axiomatic ALC approval in virtually all cases for an additional dwelling unit and without imposing a “farm labour” occupancy test.

The proposed zoning changes would not increase the currently-permitted density in any meaningful way. It would continue to provide for two dwelling units on rural parcels but provide more flexibility as to the form of those dwellings, including the removal of the problematic “bona fide farm labour” proviso, which applies to ALR parcels. However, given OCP policy 2.1.5.1, which voices a general presumption against a net increase in rural density, the 2ha threshold currently articulated within the A1 and A2 zones should be maintained. This may be revisited in the future as part of the general zoning bylaw update if/when a new OCP is adopted.

Council Policy

On December 4, 2019, Council passed the following policy:

THAT Council direct staff to review all future site specific applications for second dwellings, including second residences and detached suites, in the context of existing OCP Policy; and

That all future site specific applications for second dwellings, outside the Urban Containment Boundary, be reviewed with respect to the following criteria:

- a. *That size of the proposed second dwelling be restricted by covenant to 92m² (990.28 ft²) or less;*
- b. *That subdivision be restricted by covenant to prevent subdivision including strata subdivision;*
- c. *That the size of the parcel be a minimum of:*
 - i. *1ha (2.5 acres) where no Municipal sewer or water exists;*
 - ii. *0.4ha (1 acre) where no Municipal sewer exists;*
 - iii. *0.2 ha (0.5 acres) where Municipal water and sewer exist; and*
- d. *That siting of second dwellings on agricultural lands be established and restricted by covenant to preserve agricultural land.*

The changes proposed would respond well to parts a. and b. of the above Council policy. The size limitation would be set by zoning, which is a more robust mechanism than through individual covenants, whereas registration of “no strata” covenants as a condition of creating an additional dwelling would safeguard the integrity of rural parcels. These covenants would be executed and registered prior to the Municipality granting occupancy on a building permit.

Part c. of the policy speaks to parcels 1ha or less. The proposed zoning amendments would pertain to parcels 2ha or more. Any parcels below this size (i.e. those captured within part c.) would still require a site-specific zoning amendment application. During this process, the conditions and size limits would continue to be applied as per the policy. It is anticipated that further amendments to allow accessory dwellings on parcels less than 2 ha will be proposed as part of the comprehensive zoning bylaw review and update.

The proposed change would, however, limit the application of part d. of the policy only to those sites requiring a rezoning application (i.e. less than 2ha in size). The ability to control the specific siting of a

second dwelling on a parcel of 2ha or greater would essentially be relinquished, except for within the general parcel setbacks prescribed in the individual zones.

Summary

The proposed zoning bylaw amendment is designed to achieve two things:

- 1) Provide more flexibility in the form of rural accessory dwellings without increasing rural density.
- 2) Pre-empt the submission of a number of minor zoning amendment applications resulting from the recent change to the ALR Regulation.

Regarding 1) above, the current A1, A2, A3, and A5 zones allow for two dwelling units on a parcel in the form of either a duplex or a single family dwelling plus integral suite. The A1 and A2 zones (which account for most of the ALR parcels within the Municipality) also allow additional dwellings where ALC approval is given.

As a result of the proposed change, a parcel owner could opt to construct a small detached secondary dwelling (or carriage house/garden suite) or a manufactured (mobile or modular) home instead of an integral suite or attached second dwelling. Previously this situation, desired by a number of parcel owners, required ALC approval. Now such dwellings are effectively “pre-approved” by the ALC, this zoning amendment provides flexibility for rural housing solutions without increasing the net density in rural areas, contrary to the OCP. Adding in a requirement for registration of a “no strata” covenant would ensure that constructing a detached accessory dwelling unit is not merely a precursor to effecting a strata subdivision and that the entire lot remains a single real-estate entity.

Regarding 2) above, given the ALC’s change, the Planning and Building Department has experienced a significant number of similar queries from landowners interested in a detached (as opposed to attached) second dwelling or manufactured home who no longer need to seek ALC approval. In the vast majority of cases, these are expected to be uncontentious and aligned with the policy direction of the current and proposed OCPs, particularly when subject to the additional safeguard of a “no strata” covenant requirement. A single generic municipally-initiated zoning amendment to the four rural/residential zones (A1, A2, A3, A5) would enable owners of lots 2ha or larger to proceed, avoiding the need for numerous rezoning applications to be submitted by individual landowners and processed by staff.

Proposals on rural lots less than 2ha, or where a detached accessory dwelling or manufactured home is desired in addition to an integral suite or duplex (i.e. resulting in three or more dwelling units on a parcel) would still require rezoning, approval of which remains at Council’s sole discretion.

OPTIONS

1) (Recommended Option)

THAT the Committee of the Whole direct staff to prepare a zoning bylaw amendment bylaw regarding rural accessory dwellings for Council consideration, as described in the Planning Manager’s report dated June 7, 2022

- A zoning amendment bylaw giving effect to the changes described in this report will be brought forward to Council at a subsequent meeting for consideration of first and second readings.
- 2) THAT the Committee of the Whole direct staff to prepare a zoning bylaw amendment bylaw regarding rural accessory dwellings for Council consideration, as described in the Planning Manager's report dated June 7, 2022, but subject to the following:
- a) *[features to be identified by the Committee]*.
- Should the Committee of the Whole choose Option 2, the Municipality is limited to considering only those zoning changes that are consistent with the current OCP.
- 3) THAT the Committee of the Whole direct staff to provide further information to Council prior to preparation of a zoning bylaw amendment as follows:
- a) *[further information to be identified by the Committee]*
- 4) THAT the Committee of the Whole direct staff not to proceed with a zoning bylaw amendment as described in the Planning Manager's report dated June 7, 2022 at this time.
- This issue would not be brought forward as a standalone item but instead, be revisited as part of a future comprehensive zoning bylaw review or at such other time as directed by Council.

IMPLICATIONS

The zoning amendment is designed to pre-empt minor rezoning applications prompted by the change in ALC Regulation, which is unlikely to generate significant opposition. Typically these types of applications for rural secondary residences (including TMH) have been approved by Council when considered on a case-by-case basis. This zoning amendment can be prepared by planning staff without impacting the timelines of significant projects within the current work plan, such as the OCP and affordable housing policy.

The proposed amendment would result in fewer rezoning applications being received in both the short- and long-term. While the Municipality will not generate the associated fee revenue, staff time in processing these applications along with administrative costs greatly exceeds the application fee. This amendment would result in a net efficiency for the Municipality at a time when significant development application pressure exists. For this reason, staff proposes to bring forward this zoning amendment in advance of the more comprehensive zoning bylaw revision programmed to follow adoption of a new OCP.

Owners of rural lots wishing to add accessory dwellings in line with the zoning bylaw as amended will be able to proceed directly to Building Permit stage (or Development Permit, as the case may be), avoiding the time, cost and uncertainty of a rezoning process that would previously have been required. This does come at the expense of municipal control in that once something is allowed within the zoning bylaw, Council no longer has the discretion to refuse individual instances which, for whatever reason, it may find objectionable. Outside of direct implications for the Municipality, the change may have an impact on the perceived and actual value of rural properties, although this is speculative and largely unquantifiable.

RECOMMENDATION

THAT Council direct staff to prepare a zoning bylaw amendment bylaw regarding rural accessory dwellings for Council consideration, as described in the Planning Manager’s report dated June 7, 2022

Report prepared by:



Chris Osborne, MRTPI, MCIP, RPP
Manager, Planning

Report reviewed by:



Rob Conway MCIP, RPP
Director, Planning and Building

Approved to be forwarded to Council:



Ted Swabey
Chief Administrative Officer

COUNCIL RECOMMENDATIONS

7.3 Zoning Amendment Bylaw No. 3875 (1234 Viewtop Road) for first and second readings

IT WAS MOVED AND SECONDED:

THAT Council:

- (1) Give first and second readings to "Zoning Amendment Bylaw No. 3875, 2022" to permit a maximum of 15% of the total dwelling units to be in the form of a two-family dwelling at 1234 Viewtop Road; and,
- (2) Schedule a Public Hearing for "Zoning Amendment Bylaw No. 3875, 2022" in accordance with the *Local Government Act*.

CARRIED

7.4 Zoning Amendment Bylaw No. 3873 (to Harmonize existing Development Permit Guidelines with Development Permit Areas as proposed in the 2022 Official Community Plan)

IT WAS MOVED AND SECONDED:

THAT Council give first, second and third readings to "Zoning Amendment Bylaw No. 3873".

CARRIED

7.5 Zoning Amendment Bylaw No. 3876, 2022 for first and second readings

IT WAS MOVED AND SECONDED:

THAT Council:

- (1) Give first and second readings to Zoning Amendment Bylaw No. 3876, 2022; and,
- (2) Schedule a Public Hearing for Zoning Amendment Bylaw No. 3876, 2022, in accordance with the *Local Government Act*.

CARRIED

IT WAS MOVED AND SECONDED:

THAT the meeting be extended to 8:00 p.m.

CARRIED

8. REPORTS

8.1 Purchase of Land (Lot A River Road) from Artisan Gardens Strata

IT WAS MOVED AND SECONDED:

THAT Council:

- (1) Approve the purchase of Lot A River Road for \$9,000 from the Artisan Gardens Strata Corporation; and,
- (2) Authorize the Mayor and Corporate Officer to sign the Property Purchase Agreement, substantively as set out in the Property Purchase and Sale Agreement attached to the Information Management Officer's July 20, 2022 staff report.

CARRIED

8.2 Updated Estimate for the Parkside Academy Childcare Facility

IT WAS MOVED AND SECONDED:

THAT Council support and authorize staff to submit an application to the Ministry of Education and Childcare - Childcare BC New Spaces Fund, as outlined in the Director, Operations July 20, 2022 report in partnership with the Parkside Academy Childcare Society for the Morton Way facility, for an estimated cost of \$18,000,000.

CARRIED

PUBLIC COMMENTS

(NO COMMENTS RECEIVED TO DATE)