

ADMINISTRATIVE REPORT



TO: Board of Directors
FROM: J. Zaffino, Chief Administrative Officer
DATE: May 23, 2024
RE: Temporary Use Permit Application – Electoral Area “I” (I2023.032-TUP)

Administrative Recommendation:

THAT Temporary Use Permit No. I2023.032-TUP, to allow the residential use of a recreational vehicle and tourist accommodation at 137 Saddlehorn Drive, be denied.

Legal: Lot A, Section 10, Township 88, SDYD, Plan KAP72013, Except Plan EPP103243 Folio: I-06582.065

OCP: Small Holdings (SH) Zone: Small Holdings Four (SH4)

Proposed Development:

This application is seeking to permit the following uses on the subject property through the issuance of a one-year Temporary Use Permit (TUP):

- year-round tourist accommodation use of a two bedroom accessory dwelling; and,
- the residential use of a recreational vehicle (RV).

In support of this proposal, the applicants have stated:

We are seeking a TUP of 1 year so we may continue to support ourselves financially and tend to our family/friends/guests until there is a resolution around current issues regarding an existing encroachment as well as address inequitable access to the current easement/shared roadway that runs between the 137 and 141 properties. Once this legal process is completed, we will be listing our property for sale, and moving out of the Okanagan.

Site Context:

The subject property is approximately 3.3 ha in area and is situated on the south side of Saddlehorn Drive. It is understood that the parcel is comprised of a single detached dwelling, an accessory dwelling (i.e., the “cottage”) and associated structures (sauna and hot tub), a recreational vehicle (occupied by the applicants’ foster son), and various accessory structures (a chicken coop, horse stable, riding arena, round pen, and hay barn).

The surrounding pattern of development is generally characterised by similarly sized rural residential use.

Background:

The current boundaries of the subject property were created by a Plan of Subdivision deposited with the Land Titles Office in Kamloops on August 15, 2021, while available Regional District records

indicate that a building permit was issued for a single detached dwelling with an attached garage (1997).

While there were no historical records of a building permit being issued for the accessory dwelling, it is noted that a building permit application has been received as of May 13, 2024 with respect to the subject accessory dwelling.

Official Community Plan

Under the Electoral Area “I” Official Community Plan (OCP) Bylaw No. 2683, 2016, the subject property is currently designated Small Holdings (SH), and is the subject of a Watercourse Development Permit (WDP) and Environmentally Sensitive Development Permit (ESDP) Area designations.

Section 23.3.4 of Electoral Area “I” OCP Bylaw establishes the following criteria in evaluating a Temporary Use Permit application:

- The use must be clearly temporary or seasonal in nature;
- Compatibility of the proposal with adjacent uses;
- Compatibility with the RFI requirements of DRAO;
- Impact of the proposed use on the natural environment, including groundwater, wildlife, and all Environmentally Sensitive Development Permit and Watercourse Development Permit Areas;
- Intensity of the proposed use;
- Opportunity to conduct the proposed use on land elsewhere in the community; and
- The remedial measures to be carried out to mitigate any damage to the natural environment as result of the temporary use.

Zoning Bylaw

Under the Okanagan Valley Zoning Bylaw No. 2800, 2022, the property is currently zoned small Holdings Four (SH4).

The Zoning Bylaw further requires that “only recreational vehicles, to a maximum of one (1), belonging to the owner or occupier of a principal single detached dwelling on a parcel may be stored or parked on the same parcel. Stored recreational vehicles “shall not be connected to a sewage disposal system, water system or power source”.

The temporary occupation of an RV on a property must be in relation to a building permit issued for the construction of a new dwelling, or by a guest or visitor of the owner for a period not exceeding 90 days. The residential use of an RV is otherwise prohibited in all zones.

BC Building Code

The BC Building code does not apply to recreational vehicles and therefore the residential use of recreational vehicles is not subject to inspection or certification for health and safety.

Sewerage System Regulation

The disposal of “domestic sewage”, defined as including “human excreta and waterborne waste from the preparation and consumption of food and drink, dishwashing, bathing, showering, and general household cleaning and laundry” is regulated by the Sewerage System Regulation pursuant to the Public Health Act. Under this regulation, all domestic sewage must be disposed into a sewerage

system designed and installed by an “authorized person” (e.g. a professional engineer or a registered onsite wastewater practitioner).

Building & Bylaw Enforcement

The property has been the subject of a Stop Work Notice / Do Not Occupy for the conversion of an accessory building to a dwelling unit (i.e., the subject accessory dwelling proposed for tourist accommodation use).

The Regional District has received written complaints regarding the use of an accessory dwelling for short-term rental accommodation, residential use of a recreational vehicle, and a dog at large.

BC Assessment has classified the property as “Residential” (Class 01).

Public Process:

Adjacent property owners will have received notification of this application with written comments being accepted up until one (1) week prior to the Board’s regular meeting at which the application is to be considered. All comments received are included as a separate item on the Board’s Agenda.

Analysis:

In considering this proposal, Administration notes that the Zoning Bylaw’s prohibition on the long-term residential use of RVs is in recognition that RVs are generally unsuitable and unhealthy for long term occupancy.

Dwelling units permitted by a local government should uphold the public interest by maintaining standards for the health and safety of occupants (e.g. adequate ventilation, heating, etc.) as well as for the protection of the environment from hazardous conditions (e.g. proper sewage disposal).

For this reason, dwelling units are regulated by the BC Building Code to address health and safety considerations associated with building construction. Interior Health has provided guidance regarding “healthy housing”, which it considers to be “attainable, stable, high quality, in a location meeting residents’ needs and supporting health and well-being.”

As it relates to the proposed residential use of an RV, Administration supports the comments submitted by Interior Health in relation to this application, which indicate that RVs do not meet quality standards for longer-term residential use and may be susceptible to potential health hazards.

For these reasons, RVs are limited to short-term, tourist accommodation uses in the zoning bylaw.

In this instance, the applicant is seen to have an alternative option to provide adequate full-time housing to their foster son in the principal dwelling unit or accessory dwelling proposed for tourist accommodation use (subject to being issued a building permit to formalize the accessory dwelling).

Further, it should be noted that although the applicant submits that the proposed RV use is intended to be limited to use as daytime habitable space, this would be challenging to enforce as the Zoning Bylaw does not regulate hours of use.

The second component of the applicant’s request relates to a proposed tourist accommodation use of the accessory dwelling on the property. This use is considered to be a “tourist accommodation” (e.g., temporary accommodation for the travelling public) and not a “vacation rental” as a “vacation rental” use is premised on a dwelling unit being occupied as the “permanent domicile of a person or persons;

or the occasional or seasonal occupancy or ... by an owner who has a permanent domicile elsewhere ...”, and this is not the case in this instance. Instead, the tourist accommodation is being proposed to occur throughout the calendar year and is seen to be the principal use of the dwelling unit.

While the OCP Bylaw includes policies which speak to TUP requests for vacation rental purposes, there are no policies which speak to supporting TUPs for tourist accommodation uses in this area. The OCP only speaks to supporting tourist accommodation services in the Apex Village Centre and Twin Lakes Village Centre areas. OCP support for commercial uses on Rural Holdings lands is limited to home occupation and home industry uses.

In this regard, there does not seem to be policy support for this proposal and Administration is challenged to find rationale to support the tourist accommodation use.

Alternative

Conversely, the request is generally seen to be consistent with the TUP assessment criteria contained in the OCP Bylaw in that:

- it is temporary in nature (i.e., one year to continue the uses prior to the sale of the property); and
- is not seen to be intensive or incompatible with the adjacent rural residential uses;
- is not seen to directly impact the ESDP Areas which apply to a majority of the property.

Administration recognizes that there have been concerns raised in written submissions with respect to the use of a private access easement to facilitate the tourist accommodation use (see Attachment No. 5). It is the Regional District’s understanding, however, that the subject property has a legal access point to Saddlehorn Drive at the north end of the property.

While it is understood that the legal access point to the subject property has not been developed or used for vehicular traffic due to topographical constraints, conflicts regarding use of private easements are seen to be a civil matter which should be resolved between the involved named parties on the easement.

It is also noted that a request has been made to the Minister of Housing for Electoral Area “I” to opt-in to the “principal residence requirement”. The proposed tourist accommodation use would generally be in keeping with the intent of the “principal residence requirement”; however, Administration highlights that no decision has been made on the request as of yet, nor have any policy or regulatory changes been made to implement this proposed requirement.

Summary

In summary, while the proposal is generally seen to be in keeping with the TUP criteria under Section 23.3.4 of the OCP Bylaw, Administration has concerns with respect to the health and safety of the proposed residential use of the RV and does not find there to be policy support for the proposed tourist accommodation use. As such, Administration does not support the application.

Should the Board choose to issue the TUP, Administration notes that the draft permit includes conditions requiring the RV to be connected to on-site sewer and water services. Additionally, the ability to carry out the tourist accommodation use of the accessory dwelling is contingent on the issuance of a building permit.

Alternatives:

-
1. THAT the Board of Directors approve Temporary Use Permit No. I2023.032-TUP; or
 2. THAT the Board of Directors defer consideration of Temporary Use Permit No. I2023.032-TUP for the following reasons:
 - i) *TBD*

Respectfully submitted:



Shannon Duong, Planner II

- Attachments: No. 1 – Agency Referral List
No. 2 – Applicant’s Site Plan
No. 3 – Applicant’s Accessory Dwelling Floor Plans
No. 4 – Site Photo
No. 5 – Access Easement Plan KAP58977

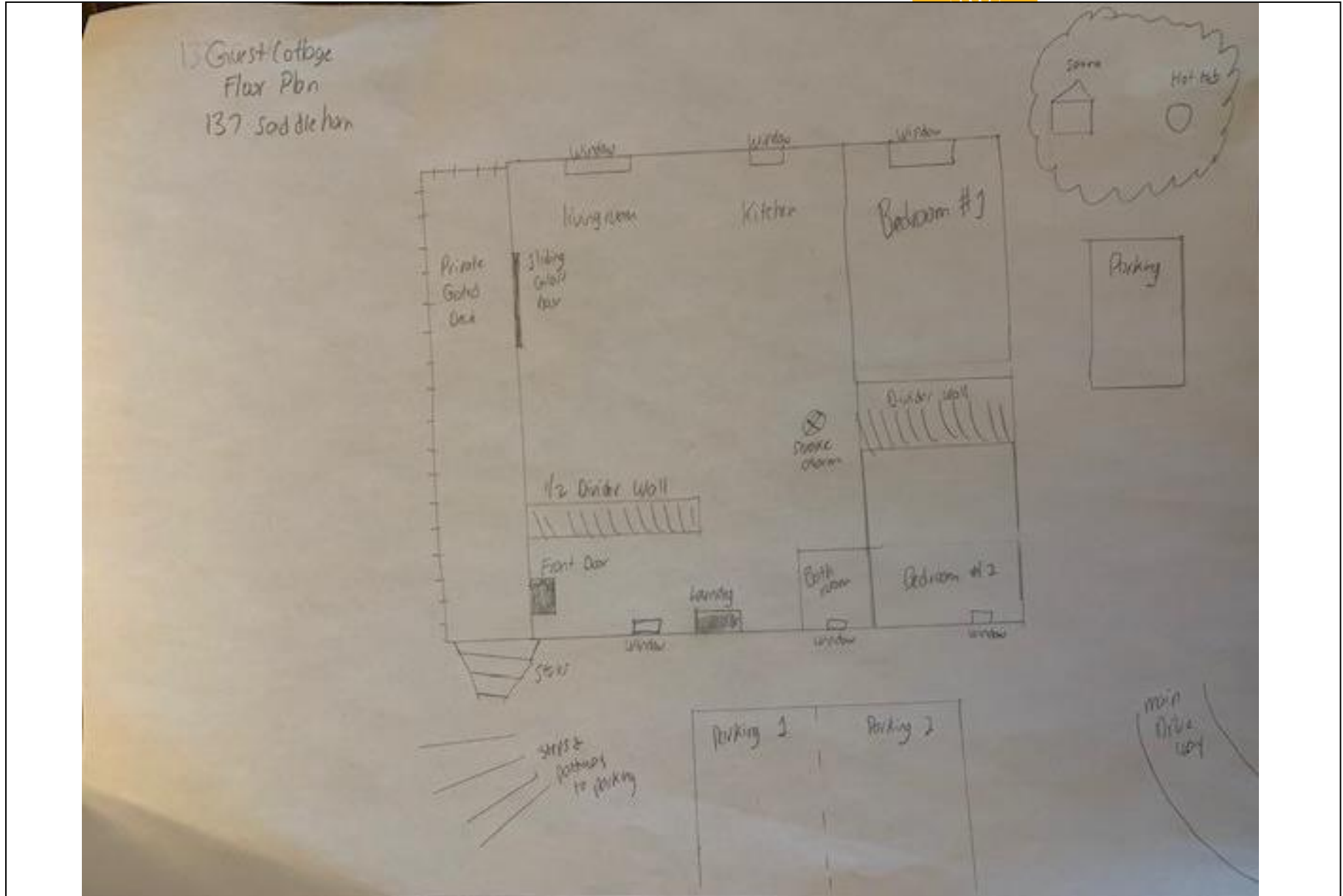
Attachment No. 1 – Agency Referral List

Referrals have been sent to the following agencies as highlighted with a , regarding Temporary Use Permit No. I2023.032-TUP:

<input type="checkbox"/>	Agricultural Land Commission (ALC)	<input checked="" type="checkbox"/>	Fortis
<input checked="" type="checkbox"/>	Interior Health Authority (IHA)	<input type="checkbox"/>	City of Penticton
<input type="checkbox"/>	Ministry of Agriculture	<input type="checkbox"/>	District of Summerland
<input type="checkbox"/>	Ministry of Energy, Mines & Petroleum Resources	<input type="checkbox"/>	Town of Oliver
<input type="checkbox"/>	Ministry of Municipal Affairs & Housing	<input type="checkbox"/>	Town of Osoyoos
<input type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Ecosystem Section)	<input type="checkbox"/>	Town of Princeton
<input type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch)	<input type="checkbox"/>	Village of Keremeos
<input type="checkbox"/>	Ministry of Jobs, Trade & Technology	<input type="checkbox"/>	Okanagan Nation Alliance (ONA)
<input type="checkbox"/>	Ministry of Transportation and Infrastructure	<input type="checkbox"/>	Penticton Indian Band (PIB)
<input type="checkbox"/>	Integrated Land Management Bureau	<input type="checkbox"/>	Osoyoos Indian Band (OIB)
<input type="checkbox"/>	BC Parks	<input type="checkbox"/>	Upper Similkameen Indian Band (USIB)
<input type="checkbox"/>	School District #53 (Areas A, B, C, D & G)	<input type="checkbox"/>	Lower Similkameen Indian Band (LSIB)
<input type="checkbox"/>	School District #58 (Area H)	<input type="checkbox"/>	Environment Canada
<input checked="" type="checkbox"/>	School District #67 (Areas D, E, F, I)	<input type="checkbox"/>	Fisheries and Oceans Canada
<input type="checkbox"/>	Central Okanagan Regional District	<input type="checkbox"/>	Canadian Wildlife Services
<input type="checkbox"/>	Kootenay Boundary Regional District	<input type="checkbox"/>	OK Falls Irrigation District
<input type="checkbox"/>	Thompson Nicola Regional District	<input type="checkbox"/>	Kaleden Irrigation District
<input type="checkbox"/>	Fraser Valley Regional District	<input type="checkbox"/>	X Irrigation District / improvement Districts / etc.
<input checked="" type="checkbox"/>	Kaleden Volunteer Fire Department	<input type="checkbox"/>	

Attachment No. 2 – Applicant's Site Plan





Attachment No. 4 – Site Photo



Attachment No. 5 – Access Easement Plan KAP58977

