



To: Her Worship Mayor Cooper and Members of Council
From: Planning and Development Officer
Date: January 30, 2012
Subject: Zoning Bylaw Review

FOR INFORMATION

Summary

Development Services staff intends to start a review of the City's zoning bylaw in February 2012. The review process will result in a draft of a new zoning bylaw intended to be streamlined, modernized, user friendly, legally sound and consistent with the new Official Community Plan (OCP). Public consultation and stakeholder review are key steps in the review process. An ideal timeline would see a new zoning bylaw adopted in early 2013.

Background

District of Salmon Arm Zoning Bylaw No. 2303 (the current document) was adopted in 1995 under the legislative framework of the former *Municipal Act*. The current document has been amended more than 370 times since its adoption. Amendments have involved the rezoning of properties, housekeeping and text amendments, and the adoption of comprehensive development zones tailor made for specific properties. Each change has required Council's adoption of an amending bylaw.

The current document has served its purpose for 16 years. As stated in Section 16.3 of the new OCP "conducting a complete review of the zoning bylaw to ensure consistency with the Plan" is identified as a short-term priority for the City. This will be an opportunity to modernize and streamline the current document to better resemble today's realities of land use, subdivision and development trends, planning administration, and the public's desire for user friendly City documents.

What is a Zoning Bylaw?

The first zoning bylaw in Canada was enacted in 1925 by the former municipality of Point Grey, a predominantly residential neighborhood that was later amalgamated into the City of Vancouver. Today, most of the 160 municipalities and 27 regional districts in B.C. have zoning bylaws, as do most municipalities across Canada and the United States. Today in B.C., the enabling legislation of a zoning bylaw is the provincial *Local Government Act* (LGA).

At the basic level, zoning bylaws are used by local government to regulate land use and density, ensure the orderly subdivision and development of land, promote public safety and protect property values. Some of the more familiar regulations of the current document include:

- land uses permitted in a particular zone and in some instances the size and scale of certain uses (note that any use not listed in a zone is, by de facto, prohibited);
- maximum building height, unit / lot density, floor area and lot coverage of buildings;
- minimum building setbacks, site areas, lot areas and widths; and
- minimum off-street parking requirements for different land uses.

Some of the lesser known content includes:

- bonuses for unit / lot densities and building heights;
- control of house sizes by definition or maximum floor area ratio;
- protection of site lines at street intersections;
- special building setbacks to facilitate future street widening;
- maximum fence and retaining wall heights;
- screening and landscaping requirements;
- provisions and limitations for home occupations;
- floodplain regulations (e.g. building setbacks and minimum flood construction levels); and
- rules for special needs housing agreements and full time farm help.

Land use and density policies are set in the OCP and related zoning regulations must be consistent with those policies. According to the LGA, land use, density and flood plain regulations cannot be varied. Other zoning bylaw regulations such as building height, setback and parking regulations can be varied by Council via the development permit and development variance permit application processes.

Within the current document, the City is divided into 45 zones of which 32 are “established zones” and 13 are site-specific, comprehensive development (CD) zones. Some of the established zones still have a strong resemblance to older zones from the previous Zoning Bylaw No. 1180, adopted in 1976. The established zones are primarily intended for residential, commercial, industrial, institutional and agricultural uses. There are also some “mixed-use” zones in the current document which are hybrids of commercial, industrial and residential zones. To accommodate numerous development plans that did not suit any of the established zones, the CD zones were created throughout the last decade with each of those being consistent with the OCP.

With a new zoning bylaw, it is the application of new zones on individual properties, neighbourhoods and precincts that needs to be clearly explained during the public consultation process.

Objective 1: Consistency with OCP and Provincial Legislation

A zoning bylaw is a key implementation tool of an OCP which is why a comprehensive review of the current document is recommended as a short-term priority in the new OCP. Section 884 - LGA states that all bylaws adopted and works undertaken by a municipality must be consistent with its OCP. Other provincial legislation relevant to zoning bylaws includes the *Transportation Act* (the Ministry of Transportation and Infrastructure needs to review / approve a new zoning bylaw prior to its adoption); the *Fish Protection Act* and *Riparian Areas Regulation* (implication for building setbacks), the *Agricultural Land Commission Act* and others.

The zoning bylaw review will better ensure consistency with the new OCP and provincial legislation.

Objective 2: Modernization

The other objective of the review is to create an updated and streamlined zoning bylaw even though much of the content of the current document continues to work well and may not be in need of change. Some of the main components that could be fine tuned for a new document include:

- 1) Number of Zones - can the number of zones (45) in the current document be reduced in a new zoning bylaw? This could be easier said than done, and much will depend on how restrictive / limiting or open / flexible the new zones should be.
- 2) Permitted Uses - there are at least 100 permitted uses listed within the 45 zones of the current document. Some uses overlap with others, some are outdated, and approximately 20% are not defined (see 3) below). There should be an opportunity to consolidate and reduce the number of permitted uses.
- 3) Definitions - there are over 130 terms with definitions in the current document. Many definitions have other defined terms nested within them, so in some instances one needs to read numerous definitions to understand the original term. While it is important to clarify the explicit meanings of some uses and technical terms in a zoning bylaw, definitions are not always necessary as standard dictionary definitions are often suitable. It remains to be seen if there could be an overload of definitions. This would be examined during the review process.
- 4) Density - continuing with the traditional measurement for density (number of dwelling units or lots per hectare) seems to be appropriate. Basing the calculation on gross parcel area instead of net parcel area is something that should be considered.
- 5) Density Bonusing - allows developers to exceed the number of units / lots normally permitted in a zone in exchange for the developer providing amenities. The term “amenities” is undefined in the LGA and has been broadly interpreted in municipal zoning bylaws. Typical amenities found in a few multi-family development projects in the City include below-grade parking structures and rental units. One condominium proposal approved but yet to be constructed allows for a bonus of 6 units. In exchange, the developer is obliged to ensure there are rental units, wheelchair accessible units and below-grade parking. In another example involving a rural, single family subdivision, smaller lots and therefore higher densities were allowed within a CD zone in exchange for the developer dedicating land for trails adjacent to creeks.

In strong market conditions, density bonusing can be an effective means for the City to obtain site and community amenities. Equally, the amenities being provided by the developer should be appropriate and in demand by housing consumers and the community. With that in mind, some observations and recent development trends in Salmon Arm are noted:

- a) Since 2005, there has been a decreasing market demand for townhouse and condominium developments relative to the demand for single family housing.
- b) The above trend could reverse in the future with an aging population, a demand for smaller units and affordable housing, and more assisted living housing.
- c) For various reasons, the development of rental apartments is not a preferred choice by most multi-family developers in Salmon Arm (most want to build and sell right away).

- d) Below-grade parking structures in the City are rare due to high costs; also much of the land available for high density development is not suitable for underground parking.

These trends and observations need to be weighed along with the need for amenities and with OCP policies encouraging higher densities. The possibility of keeping, deleting or updating the density bonus provisions would be examined during the review process.

- 6) Affordable and Special Needs Housing - the current document has some provisions for affordable housing. The one notable provision is the secondary suite zone supported by the OCP under certain criteria (see 8) below). Another is a density bonus involving an affordable housing agreement; however this has never been executed due to some of the reasons mentioned above in 5). Special needs housing agreements are routinely considered by Council for second dwellings intended for a relative of a rural property owner, when the relative is in need of medical attention, and subject to the second dwelling being a modular home on a temporary foundation.
- 7) Assisted Living Housing - there is presently no established zone for assisted living housing use in the current document. Each assisting living housing site has a unique CD zone, and at varying scales their forms resemble condominium development. The assisted living housing use could potentially fit within the medium and high density residential zones.
- 8) Secondary Suites - the review process would be an opportunity to consider allowing secondary suites as a permitted accessory use in some of the residential zones (e.g. in the R-1 Single Family Residential Zone). Quite a few municipalities have taken this route in their zoning bylaws as means to promote and streamline affordable housing options. The City's agricultural zones currently allow secondary suite as an outright permitted use.

Presently, in the urban area, a property owner needs to apply to rezone a property to R-8 and receive Council's approval to allow a secondary suite. Since 1994, 62 of 64 applications to rezone to R-8 have been approved by Council. When constructed, a building permit is required and the new suite needs to meet BC Building Code requirements. It also needs to meet the definition of secondary suite in the Zoning Bylaw and the parking requirements.

- 9) Coach Houses - staff periodically receives enquiries from property owners interested in building secondary suite structures that are not an integral part of the principal dwelling. A common term for this type of suite is a "coach house". Interestingly, the first Zoning Bylaw adopted in Canada (the 1925 Point Grey Bylaw) allowed coach house as an accessory use in its residential zone. The review process would be an opportunity for Council to consider coach house as an accessory use in some residential zoning. The new OCP mentions a policy to "research opportunities to promote coach houses in appropriate areas of the city".

In 2008, planning staff prepared a research report for Council on the idea of allowing coach houses. The report mentions coach house construction could be feasible on some low density residential designated lots meeting a number of physical criteria (e.g. minimum lot size 800 m², minimum lot width of 20 m, sufficient space for parking, access to rear yards, etc.). Staff will investigate whether specific neighborhoods could be considered for coach house zoning and how coach house use could be incorporated within new residential zones. The process will involve public and neighbourhood consultation.

- 10) Temporary Buildings - while the current document has provisions for a variety of temporary buildings, some of these buildings remain in place indefinitely and, therefore, have a permanent effect as their owners continue to renew their temporary building permit upon expiration. There is no incentive to remove these temporary buildings.
- 11) Parking - overall, the parking requirements of the current document seem to work well. Some of the stall / use ratios need to be fine tuned, some may be excessive (e.g. retail) and others are insufficient (e.g. assisted living housing). Other regulations need consideration, such as: requirements for hard-surfacing and storm water drainage (runoff control requirements - see Green Regulations below); handicap stall requirements (BC Building Code regulates this); motorized scooter and bicycle parking.
- 12) Storm Water Management and “Green” Regulations - a local government can prescribe storm water runoff control requirements in a zoning bylaw for the construction of a paved or roof area, and stipulate maximum areas of impermeable surfaces (Section 907 - LGA). Controlling surface areas on private land would be a challenge to monitor and enforce, and such a regulation would only be applicable to new developments. The benefit would be less cumulative discharge of runoff into the City’s storm sewer system. A local government can also require screening or landscaping measures to preserve, protect, restore and enhance the natural environment.
- 13) Flood Plain Regulations - the regulations in the current document stipulate setbacks and minimum flood construction levels for buildings within the flood plains of Shuswap Lake, the Salmon River and Canoe Creek. They do not specifically refer to any other watercourse. Subdivision and development applications within flood plains are further addressed via the “Potential Hazardous Areas Development Permit Areas” polices and guidelines of the new OCP.
- 14) Provincial Riparian Areas Regulation - local government in B.C. is tasked to administer the RAR. In the City, RAR is administered via the “Environmentally Sensitive Riparian Areas Development Permit Area” policies and guidelines of the new OCP. The zoning bylaw review process will determine if RAR building setback regulations should be included in the new zoning bylaw, or if the development permit method is sufficient. A general regulation for RAR applicable to all land and with reference to the requirement for a development permit may be sufficient.
- 15) Agricultural Zones - permitted land uses, setbacks, buffering and other regulations in the zoning bylaw should be consistent with the *Agricultural Land Commission Act*. The Ministry of Agriculture has a “Guide for Bylaw Development in Farming Areas” that can be referred to during the review.
- 16) Fences and Retaining Walls - it may be possible to update and clarify the maximum height regulations for these structures. Diagrams would assist.

Non-Conforming Uses and Land Values

The non-conforming use effect of a new zoning bylaw will need to be explained as the draft document proceeds through the public process. Generally, if a use on a property is permitted under a zone in the current document, and if that same permitted use was not included in a new zone applicable to the same property, then that particular use would be considered “non-conforming” under Section 911- LGA. The non-conforming status has important implications for the continuance of a use on a property, as well as property redevelopment, financing and insurance.

Similarly, the effect of Section 914 - LGA in relation to private property needs to be explained. This section states that “compensation is not payable to any person for any reduction in the value of that person’s interest in land...” as a result of the adoption of a zoning bylaw (or an OCP). Amending permitted uses and densities in a zone can have positive, negative or zero effects on land values.

Legal Review

Zoning bylaws can be complex legal documents that must be consistent with Provincial legislation; therefore legal review is strongly advised. It is anticipated that a legal review would involve a scan of the current document with the main tasks of highlighting problem areas and providing remedies for the new document. Then a legal review of the final draft would be obtained near the end of the process. Ten thousand dollars has been budgeted in 2012 for a legal review.

Public and Stakeholder Consultation

Similar to an OCP, it is the property owners, residents and business owners who collectively represent the broadest community group affected by a new zoning bylaw. Specific stakeholders that could have an interest in a zoning bylaw review include (there could be more):

- Shuswap Construction Industry Professionals (SCIP);
- Economic Development Society;
- Chamber of Commerce;
- Individuals in the land industry (e.g. developers, realtors, lawyers and appraisers) with knowledge in zoning matters;
- Social housing groups;
- Committee for a Strong and Sustainable Shuswap;
- Downtown Salmon Arm;
- First Nations;
- Agricultural Advisory Committee;
- Numerous Provincial government agencies, including the Ministry of Transportation and Infrastructure (MOTI needs to approve a zoning bylaw prior to its adoption); and
- Columbia Shuswap Regional District.

Review Process

A multi-staged process will involve public and stakeholder consultation. Starting off with a technical review, City staff will consult with individuals known to have knowledge and expertise in zoning bylaw matters. If there is an interest, these people will be welcome to take part in the review. At various stages, the public and stakeholder groups will be afforded opportunities to provide input.

Stage 1 -Technical:

The first stage would involve a technical review of the current document by City staff, interested stakeholders and the City’s legal consultant. Examined would be the current document’s format, regulations, zones and definitions, and how they could potentially be modernized in a manner consistent with the OCP and provincial legislation.

Potential Timeline: End of Spring 2012

Stage 2 - Issues:

At this stage, potential issues with modernizing zoning bylaw regulations would be identified. Some of the potential “neighbourhood issues” staff foresee include ideas to: reduce the minimum lot sizes for some residential zones (e.g. eliminating the R-7 and R-9 zones which presently prescribed large lots); introduce assisted living housing, coach houses and secondary suites as permitted uses in some residential zones; revise density bonus provisions; and any proposed significant restrictions that are not presently in place. Public and stakeholder input would be documented for Council and considered for the new zoning bylaw.

Potential Timeline: End of Summer 2012

Stage 3 - Application Test:

At this stage, proposed new zones would be drafted and then applied to properties, neighbourhoods and areas with proposed drafts of new zoning maps. The public would have opportunities to review the proposed new zones that would be applicable to their property and other land of interest. Public and stakeholder input would be documented for Council and considered for the new zoning bylaw.

Potential Timeline: End of Fall 2012

Stage 4 - Draft:

The draft document and maps would be completed and referred to the City’s legal consultant and stakeholders for final review and comment before the formal introduction of a new zoning bylaw for Council’s consideration.

Potential Timeline: End of Winter 2013

Stage 5 - Bylaw Adoption

Council’s consideration of the new zoning bylaw, public hearing, review by the Ministry of Transportation and Infrastructure for approval, and then bylaw adoption.

Potential Timeline: Early Spring 2013

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