

Request for Decision



To: Regular Meeting
From: **Planning and Development**
Date: March 27, 2023
Subject: Zoning Bylaw Amendment Bylaw No. 2039-A28 first and second reading
Recommendation: **THAT Council give first and second reading to Zoning Bylaw Amendment Bylaw No. 2039-A28;
AND THAT Staff are authorized to secure a SRW/Covenant with respect to the portion of Morrissey Creek Road on the applicants' property for public access and future utilities**

Purpose

For Council to consider giving first and second readings to Zoning Bylaw Amendment Bylaw No.2039-A28. This amending bylaw for lands legally described as LOT 5 DISTRICT LOT 653 SIMILKAMEEN DIVISION YALE DISTRICT PLAN 3072, PID 010-900-233, located at 40 Morrissey Creek Road, would allow two single-family dwellings on this parcel; and to allow Staff to start the Statutory Right of Way (SRW)/Covenant legal process - agreement between the City and the applicant to secure public access and allowance for future utilities over a portion of Morrissey Creek Road.

Background

In July 2021, the applicants initiated discussions with staff regarding a subdivision for their property located at 40 Morrissey Creek Rd. The proposal was for a three-lot subdivision. Once staff began an in-depth review, it was determined that the parcel did not have sufficient highway access to provide necessary and reasonable access, which is a Land Title Act requirement for subdivision, because sections of Morrissey Creek Road leading to and including the applicants parcel are privately owned. These issues would need to be resolved prior to subdivision, and the timeline for this is unknown as it is dependent on external factors.

Given the complexity of the legislative requirements for subdivision, the applicants requested to meet with Staff to discuss options. On October 28, 2022, staff met with the applicants. The meeting's outcome was for the applicants to hire a planner to explore a zoning amendment that could allow a second house on the parcel without subdivision.

On December 9, 2022, Staff received a rezoning application to allow one additional dwelling on the parcel (see attachment 4: *Site Plan*). The application also stated that some of the land would be utilized for livestock and crops to benefit the family on the shared property.

As mentioned above, portions of Morrissey Creek Road are not registered as dedicated road on a plan of subdivision. Formal public use of a commonly travelled road can be secured through dedication or a Statutory Right of Way (SRW). The road dedication process has uncertainty and takes time, potentially a court order to establish formally, therefore the least onerous approach of a SRW was pursued. A SRW "provides certainty and transparency where the use of land is restricted." Local governments will typically acquire SRWs at the time of subdivision or as a

condition of a rezoning or the issuance of a land use permit.¹ SRWs are now typically combined with a *LTA s.219* Covenant as the former grants access and other rights to use the portion of land, while the latter restricts the owner from building on that road portion of their property (hence “SRW/Covenant”).

After the review, Staff communicated to the applicants the importance of securing the portion of Morrissey Creek Road on their property before additional development/density is added, and to eliminate any uncertainty as to public access. The least onerous SRW/Covenant approach was suggested. The applicants were reluctant to agree in fear of awarding the SRW/Covenant without Council’s rezoning approval. Staff scheduled a meeting with the applicants to talk about the SRW/Covenant conditions.

On March 10, 2023, Staff met with the applicants to discuss the SRW/Covenant. The applicants asked for certainty regarding rezoning approval from the City. In simple terms, the applicants asked to enter into the SRW/Covenant agreement after the rezoning application was approved and finalized. Unfortunately, this approach would provide no certainty to the City. On March 14, 2023, Staff determined that the SRW/Covenant can contain a clause that requires a discharge if the zoning is not approved. Therefore, the applicant’s concerns can be easily addressed without compromising the certainty for the City.

Technical Land Review

Zoning

The parcel that is the subject of this application is within the R-4 (Rural Residential) Zone and is 17.6 hectares (43.6 acres) in size. The minimum parcel size for subdivision, where there is no community water or sewer, is 1 hectare (2.5 acres). Along with the access issues discussed previously, there are multiple constraints for subdivision which include sensitive ecosystem/steep slope policies and guidelines. Because of these constraints and the unknown timeline for subdivision, the applicants are seeking a zoning amendment to allow an additional dwelling, rather than pursuing a subdivision currently. The existing zoning designation allows one two-family dwelling, so the proposed amendment would not increase density.

The proposed additional dwelling does not meet the criteria for an accessory dwelling as it exceeds the maximum size allowed (see attachment 3 *Applicable Land Use Bylaw Summary*). Being that there would not be an increase in allowable density, the relatively large size of this parcel, and the complexities for subdivision, allowing another single-family dwelling on this parcel is reasonable.

The table below shows the current types of dwellings permitted and the proposed bylaw text amendment change. The site-specific amendment only applies to this parcel, and no spatial (mapping) data is proposed for amendment.

¹ 1. JANUARY 30, 2020 | ADRIENNE ATHERTON Statutory Rights of Way: Best Practices

Zoning Bylaw 2039 section	Current Zoning Designation	Proposed bylaw text amendment
s.42.5 The following types of dwelling units are permitted: 42.8 The total of all the accessory buildings shall have a floor area not greater than 50% of the principal structure, with exception to farm buildings or structures.	(a) one single family detached dwelling, (b) one mobile home, or (c) one two-family dwelling; plus (d) within the Agricultural Land Reserve, one additional manufactured (mobile) home subject to regulations of the Agricultural Land Commission.	s.42.5 The following types of dwelling units are permitted: [(a) to (d) as existing] (e) site specific dwellings as permitted under Section 42.14 s.42.14 Site Specific A. In consideration of the types of dwellings permitted by 42.5 and accessory building floor area under 42.8, on the property located at 40 Morrissey Creek Rd with parcel identifier number of PID: 010-900-233 and legal description of LOT 5 DISTRICT LOT 653 SIMILKAMEEN DIVISION YALE DISTRICT PLAN 3072: (a) Only two single-family dwellings are permitted; and (b) The total of all the accessory buildings associated with each single-family dwelling shall have a floor area not greater than 50% for that respective principal structure, with exception to farm buildings or structures.

Official Community Plan

The land use designation for this parcel is Environmental. In general terms, the proposal is consistent with the R-4 Rural zoning because the density is low; the building footprint is marginal in relation to the parcel area; the proposed development will be on the most suitable location within the parcel; protection of natural assets was considered. The parcel overlaps with four Development Permit Areas (DPAs). For details, see attachment 3 - *Applicable Land Use Bylaws Summary*. The proposed dwelling is not within any of the DPAs; however, the proposed access is. Zoning must be resolved before a Development Permit (DP) application can be considered.

Item	Designation	OCP Land Use Introduction
Land Use Official Community Plan Bylaw No.2089, 2022	s.2.3 Environmental	The purpose of the Environmental designation is to ensure that natural systems are integrated into the fabric of life in Grand Forks and that development and human activities do not negatively interfere with these natural systems or put human life or property at risk.

Point of Decision

Council's point of decision currently is whether to give Zoning Bylaw No. 2039-A28 first and second readings. Giving first and second readings to this amending bylaw would work toward allowing two (2) single-family detached dwellings as a Site-Specific dwelling type for this R-4 (Rural Residential) zoned parcel and trigger the Public Hearing process; and to allow Staff to proceed with the SRW/Covenant legal process that will allow the City to secure the portion of Morrissey Creek Road on the applicants' property to formalize public access and to allow for future utilities.

Tentative Timeline

Activity	Date
Pre-Application meeting	Oct 28 2022
Application received	Dec 9 2022
Staff review document initiated	Jan 19 2023
Application paid	Jan 19 2023
Referral (Internal) sent to Staff	Jan 20 2023
Meeting with Applicant to Discuss SRW	Mar 10 2023
FYI Email to Council	Mar 21 2023
Referral (External) sent to agencies	Mar 22 2023
RFD (Request for Decision) for 1st & 2nd readings	Mar 27 2023
Notice of public hearing mailed to adjacent property owners	Mar 28 2023
Gazette ad #1 published	Apr 5 2023
Referral (External) comments back by	Apr 6 2023
Gazette ad #2 published	Apr 12 2023
Written comments/feedback from public by	Apr 13 2023
Public hearing	Apr 17 2023
RFD 3 rd reading	Apr 17 2023
MOTI approval of bylaw	Apr 17 – Apr 27 2023
Registration SRW/Covenant	To Be Determined
RFD for adoption	May 8 2023
Implementation	Week 16 to 24

Benefits or Impacts

General

Zoning amendment for this parcel will allow the applicant to build an additional detached single-family house on this parcel of land. It will also allow the City to formalize public access for the portion of Morrissey Creek Road on the applicants' property and secure it for future utilities.

Finances

Potential additional revenue for the City from taxation.

Strategic Impact

N/A

Risk Assessment

Compliance:

Local Government Act

Official Community Plan Bylaw

Zoning Bylaw

Transportation Act

Planning Procedures and Fees Bylaw

Risk Impact:

Low

Internal Control Process:

Staff are following City bylaws and the legislated requirements set out in the Local Government Act.

Next Steps / Communication

Staff would follow City bylaws and the legislated requirements set out in the Local Government Act.

Attachments

- 1) Property Maps
- 2) Zoning Bylaw Amendment Bylaw No. 2039-A28
- 3) Applicable Land Use Bylaw Summary
- 4) 40 Morrissey Creek Rd Site Plan

Recommendation

THAT Council give first and second reading to Zoning Bylaw Amendment Bylaw No. 2039-A28;

AND THAT Staff are authorized to secure a SRW/Covenant with respect to the portion of Morrissey Creek Road on the applicants' property for public access and future utilities

Options

1. THAT Council does not give first and second readings to Zoning Bylaw Amendment Bylaw No.2039-A28.
2. THAT Council does not carry the resolution as presented and advises Staff of changes required to move forward with the Zoning Bylaw Amendment process.

Report Approval Details

Document Title:	230327 ZA2208 RFD 40 Morrissey Creek Rd Zoning Bylaw Amendment Bylaw-2039A28 First and Second reading.docx
Attachments:	- 1_ZA2208PropertyMaps_r-dd.pdf - 2_ZA2208SpotBylaw2039_A28FirstAndSecondReading.docx - 3_ZA2208ApplicableLandUseBylawsSummary.docx - 4_ZA220840 Morrissey Creek Rd - Site Plan.pdf
Final Approval Date:	Mar 20, 2023

This report and all of its attachments were approved and signed as outlined below:

Dolores Sheets

Daniel Drexler

Duncan Redfearn