

Request for Decision



To: Regular Meeting
From: **Development and Planning**
Date: April 17, 2023
Subject: Zoning Bylaw Amendment Bylaw No. 2039-A28 third reading
Recommendation: **THAT Council give third reading to Zoning Bylaw Amendment Bylaw No. 2039-A28.**

Purpose

For Council to consider giving third reading 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.

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.

Council gave the first two readings of the Zoning Amendment Bylaw No. 2039-A28 at the March 27, 2023, Regular Meeting to trigger the public engagement process.

Staff received 1 inquiry from the public from within the 30m radius of the property and 1 inquiry from a resident that lives on Morrissey Creek Road requesting more information.

Staff referrals to external agencies generated feedback from 2 agencies: Regional District of Kootenay Boundary (RDKB) and the Ministry of Forests (MOF) and [Ministry of] Water, Lands and Resource Stewardship (MOWLRS) who are currently working with Nature Trust BC, the Southern Interior Land Trust, and Penticton Indian Band. 2 comments of note arose from MOF and MOWLRS:

1. *“Due to the critical habitat of 16 different species at risk occurring on or immediately around the proposed site, observations of 3 species at risk directly adjacent to the site, the associated increased risk of invasive plant establishment or spread, risk of disease transmission, needed fencing impeding wildlife movements, and degradation of ecosystem health in general associated with this proposal, the habitat team cannot support the zoning amendment to allow for additional structures that would come with more land use and activity including livestock and crop production.”*
2. *“If our recommendation is not supported, we would strongly recommend [t]hat the proponent provide an environmental assessment conducted by a qualified professional or registered professional biologist, ideally between April and August to assess potential impacts and identify mitigation strategies prior to approval of the amendment.”*

The recommendation from point 2 will be addressed during the development permit (DP) process. The DP process will include reports by Qualified Professionals (QPs) as required “to certify that the land may be safely used as intended without impacting the natural environment, according to objectives in each Development Permit Area (DPA)”¹.

See attachment 5 *Feedback Received* for information regarding inquiries and comments.

A public hearing was held on May 8, 2023, to allow Council to hear additional feedback from the community.

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 OFFICIAL COMMUNITY PLAN Bylaw No. 2089, 2022 Schedule ‘A’; 2.4 GENERAL ENVIRONMENTAL DPA POLICIES; APPLICATION REQUIREMENTS s.2.4.3. page 20.

Zoning Bylaw 2039 section	Current Zoning Designation	Proposed bylaw text amendment
s.42.5 The following types of dwelling units are permitted: s.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. Section 2.4.2. of our OCP states the following: “*Require lands within an Environmental DPA remain free of development and in their natural condition except in accordance with conditions contained within a DP.*”

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 third reading. Giving third reading 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.

Tentative Timeline

Activity	Date
Pre-Application meeting	Oct 28 2022
Application received	Dec 9 2022
Staff review document initiated	Jan 19 2023
Application paid	Jan19 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 published (Canceled)	Apr 5 2023
Notice of public hearing mailed to adjacent property owners*	Apr 5 2023
Gazette ad published (Canceled)	Apr 12 2023
Gazette ad #1 published*	Apr 26 2023
Gazette ad #2 published*(**)	May 3 2023
Referral (External) comments back by*	May 3 2023
Written comments/feedback from public by	May 3 2023
Public hearing	May 8 2023
RFD 3 rd reading	May 8 2023
MOTI approval of bylaw	May 8 – May 18 2023
Registration SRW/Covenant	To Be Determined
RFD for adoption	May 29 2023
Implementation	Week 16 to 24

* Gazette ads; notice of public hearing mailed to adjacent property owners; referral (external) comments and written feedback from public deadlines changed because external agency asked for an extension submission deadline.

** As per Local Government Act: The notice must be published in at least two consecutive issues of a local newspaper, the last publication to appear not less than 3 and not more than 10 days before the public hearing.

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.

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. The bylaw would be sent to MOTI for approval.

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
- 5) Feedback received.

Recommendation

THAT Council give third reading to Zoning Bylaw Amendment Bylaw No. 2039-A28.

Options

1. THAT Council does not give third reading 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:	230508 ZA2208 RFD 40 Morrissey Creek Rd Zoning Bylaw Amendment Bylaw-2039A28 Third reading.docx
Attachments:	<ul style="list-style-type: none">- 1_ZA2208PropertyMaps_v2.pdf- 2_ZA2208SpotBylaw2039_A28ThirdReading.docx- 3_ZA2208ApplicableLandUseBylawsSummary.docx- 4_ZA220840 Morrissey Creek Rd - Site Plan.pdf- 5_ZA2208Feedback_Redacted.pdf
Final Approval Date:	May 2, 2023

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

Dolores Sheets

Daniel Drexler

No Signature - Task assigned to Duncan Redfearn was completed by assistant Daniel Drexler

Duncan Redfearn