

Request for Decision



To: Regular Meeting
From: **Development, Engineering and Planning**
Date: July 15, 2019
Subject: Final Reading – Bylaw No. 2039-A4 Rezoning from R1 Residential (Single and Two Family) to R4 Rural Residential to accommodate agricultural uses on the 7600 Block of 8th Street (File: ZA1902)
Recommendation: **THAT Council give final reading to Bylaw No. 2039-A4**

Background

On June 24th, 2019, Council gave third reading to Bylaw No. 2039-A4 (attached) after a public hearing and public notification process. This proposal involves a rezoning from R1 to R4 to accommodate agriculture land uses and accessory buildings. No concerns or comments were received from the public respecting the proposal.

One of the conditions of approval was that a restrictive covenant be placed on the property to address environmental and urban interface issues. The draft covenant is attached, and the proponent has agreed to the terms.

As the property is located within 800 metres of Highway No. 3, the bylaw amendment was considered and approved by the Ministry of Transportation and Infrastructure.

In view of the above, it is appropriate for Council to give fourth and final reading to rezoning Bylaw No. 2039-A4.

A summary of the proposal and site information is attached for Council's reference.

Benefits or Impacts

Strategic Impact



Community Engagement

- The public was advised of the rezoning application in writing and through advertisements in the Gazette. A public hearing was held to hear any comments or concerns respecting the proposal. No comments were received.



Community Livability

- Retaining this site as agricultural will serve as a “green” buffer area between the urban areas to the south and Observation Mountain (and associated trail network). A covenant will ensure that groundwater and the wetland is protected and will mitigate any potential impacts of farming activities on the adjacent urban area.



Economic Growth

- The rezoning will preclude the potential for subdivision into regular single family lots in the future (about 3 acres would be considered to be developable). The use of land potentially for food production will assist the region in moving toward food security and agricultural sustainability.

Policy/Legislation

The Local Government Act, the Official Community Plan, the Zoning Bylaw and the BC Code of Practice for Agricultural Environmental Management.

Attachments

Bylaw No. 2039-A4

Draft Restrictive Covenant

Background and Proposal Information

Recommendation

THAT Council give final reading to Bylaw No. 2039-A4

Options

1. THAT Council accepts the report.
2. THAT Council does not accept the report.
3. THAT Council refers the matter back to staff for further information.

Bylaw No. 2039-A4

**A Bylaw to Amend the City of Grand Forks
Zoning Bylaw No. 2039, 2019.**

=====

The Corporation of the City of Grand Forks **ENACTS** as follows:

1. This bylaw may be cited for all purposes as “**Zoning Bylaw Amendment No. 2039-A4, 2019**”.
2. Zoning Bylaw No. 2039 is amended as follows:
 - a. The property described as “Lot B, Plan EPP24245, District Lot 381, Land District 54; PID: 028-956-036” and as shown attached hereto as Appendix “A” is hereby zoned R4 (Rural Residential).
 - b. Schedule “A” to Zoning Bylaw No. 2039, Land Use Zoning Map, is hereby amended accordingly.

Read a **FIRST** time this 10th day of June, 2019.

Read a **SECOND** time this 10th day of June, 2019.

Read a **THIRD** time this 24th day of June, 2019.

Approved by the Ministry of Transportation and Infrastructure

Pursuant to Section 52 of the Transportation Act this 26th day of June, 2019

[original signed by the Approving Officer, Ministry of Transportation and Infrastructure]

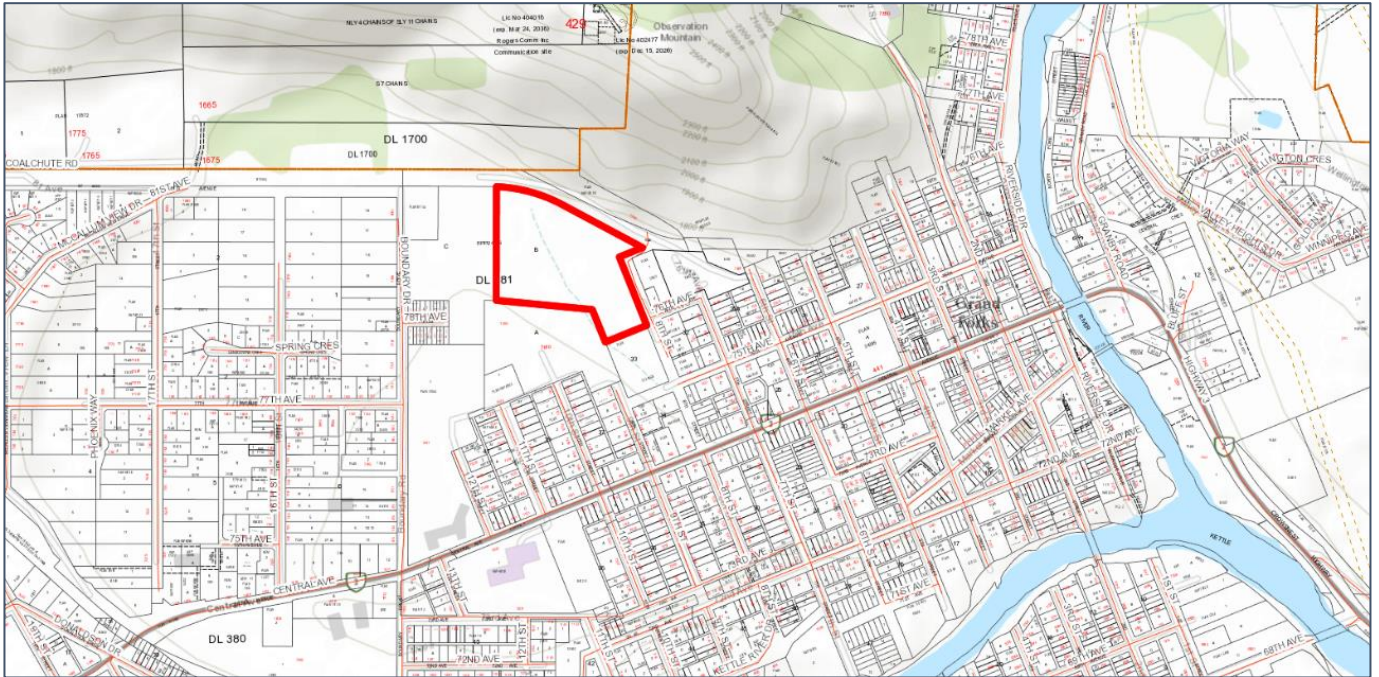
Approving Officer, Ministry of Transportation

FINALLY ADOPTED this 15th day of July, 2019.

Mayor Brian Taylor

Corporate Officer Daniel Drexler

Appendix “A” to Bylaw No. 2039-A4



DRAFT
RESTRICTIVE COVENANT

TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT

THIS COVENANT dated for reference the day of , 2019.

BETWEEN:

JOHN AND NORMA WHEELER
PO Box 2042
Grand Forks, BC
V0H 1H0

(hereinafter called the "**Covenantors**")

AND

CITY OF GRAND FORKS
PO Box 220
7217 4th Street, Grand Forks, BC
V0H 1H0

(hereinafter called the "**Covenantee**")

WHEREAS:

- A. Section 219 of the Land Title Act provides that a covenant in respect to the use of land or the use of a building to be erected on land, or that land is to be built on in accordance with or not to be built on except in accordance with a covenant that may be registered as a charge against the title to the land.
- B. The Covenantors are the registered owners of the "Land" in the City of Grand Forks more particularly described as:

Lot B, Plan EPP24245, District Lot 381, Land District 54; PID: 028956-036
- C. The Covenantee is the City of Grand Forks, a local government in the Province of British Columbia.

- D. An unnamed watercourse is situated upon and runs through a portion of the said lands as shown as a blue dashed line generally in Schedule "A" (hereinafter called the "watercourse").
- E. The lands are located upon an important aquifer upon which certain land activities could potentially negatively impact this aquifer.
- F. The lands are located adjacent to established urban areas including a high school and residential.
- G. The Covenantor has agreed to restrictions on the use of a portion of the said lands adjacent to the watercourse, upon the lands in general and adjacent to the established urban area.

NOW THEREFORE in consideration of the sum of ONE (\$1.00) DOLLAR, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Covenantors COVENANT AND AGREE as follows:

1. In this Agreement:
 - (a) "Land" means 4.65 hectares or 11.5 acres located on the 7600 Block of 8th Street in the City of Grand Forks, BC, as shown outlined in a heavy red line attached as Schedule "A" hereto.
 - (b) "Uses" means those principal and accessory uses that are permitted to be undertaken on the Land in accordance with the provisions of the Zoning Bylaw of the Covenantee, as amended or replaced from time to time, that applies to the Land.
 - (c) "Works" includes all buildings and structures on, or to be erected, constructed, developed or sited on the Land including, but not limited to, a house and any other facilities that are designed to aid in undertaking the Uses on the Land, including but not limited to, agricultural activities.
2. Unless specifically defined in this Covenant, words and phrases herein shall have the same meaning as provided in the current Zoning Bylaw of the Covenantee that applies to the Land.
3. The Covenantors covenant and agree with the Covenantee that it shall only develop and use the Land in accordance with the provisions of the Zoning Bylaw of the Covenantee, as amended or replaced from time to time, that applies to the Land.

Good Neighbour

4. In recognition that the Land is located adjacent to urban residential to the east, west and south, the Covenantors shall undertake to:
 - (a) store materials in a manner that is tidy and orderly and where possible, prevents them from being openly visible from the residences in the vicinity;
and,
 - (b) refrain from pesticide use/spraying adjacent to residences.

Setback from Watercourse

5. Any use, buildings, structures or works shall be set back from the natural high water mark of the watercourse by at least 15 metres.

Environmental Management

6. In recognition that the Land is located upon an important, sensitive aquifer, the Covenantors shall undertake to conduct and operate the Uses and Works on the Land in accordance with *The Code of Practice for Agricultural Environmental Management under the BC Environmental Management Act*.
7. The Covenantors may request by way of written submission to the Covenantee, that provisions included in this covenant be altered or waived by the Covenantee. In this regard, the Covenantee may require that the Covenantors provide whatever information the Covenantee requests that in the opinion of the Covenantee, would assist the Covenantee in making a decision regarding the request by the Covenantors. Without limiting the generality of the foregoing, this information may include reports, plans and specifications prepared by a qualified professional(s). The Covenantee is under no obligation to approve any such request by the Covenantors. In no case shall the Covenantors undertake any activity which is contrary to the provisions of this Covenant unless first approved in writing by the Covenantee.

Covenantors' Responsibilities

8. It shall be the responsibility of the Covenantors to ensure that any person entering onto the Land with the permission or knowledge of the Covenantors does not contravene any provision of this Covenant and a breach of the Covenant by any such person shall be considered for all purposes as a breach of the covenant by the Covenantors.

Default and Remedies

9. In the event the Covenantors breach, or permit or allow any provision of this Covenant to be breached, the Covenantee shall at its option, in addition to any other remedies it may have, do either (a) or (b) as follows:
 - (a) give notice in writing to the Covenantors to:
 - (i) cease and desist breaching the Covenant or permitting or allowing any provision of this Covenant to be breached; or
 - (ii) perform any positive obligations of the Covenant,either immediately or within a time period specified in the notice; and
 - (b) give notice in writing directing the Covenantors to restore or remedy the breach in accordance with the terms and directions set out in the notice and to carry out any restoration measures specified in the notice either immediately or within a time period specified in the notice.
10. If the Covenantors fail to comply with the direction contained in a notice as per sections 8.(a) or 8.(b) herein, the Covenantee may without further notice enter upon the Land and carry out the required work, including the Works, at the expense of the Covenantors. The Covenantors shall pay on demand all costs incurred by the Covenantee for labour, materials, administration and overhead in carrying out work under this provision. Should the Covenantors fail pay such invoice forthwith, the Covenantee is at liberty to add all such costs to the Land as taxes in arrears.
11. Any waiver by the Covenantee of any term, condition, covenant, or other provision of this Covenant or any waiver by the Covenantee of any breach, violation, or non-performance of any term, condition, covenant, or other provision of this Covenant does not constitute and will not be construed as a waiver of any further or other term, condition, covenant, or other provision of this Covenant or any further or other breach, violation, or non performance of any term, condition, covenant, or other provision of this Covenant.

Specific Performance

12. The Covenantors agree that because of the public interest in ensuring that all of the matters described in this covenant are complied with, the public interest strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British

Columbia at the instance of the Covenantee, in the event of an actual or threatened breach of this Agreement.

General Provisions

13. If any section of this Covenant, or any part of a section, is found to be illegal or unenforceable, that part or section, as the case may be, will be severed from this Covenant, and the remainder of this Covenant will not be affected and will be enforceable to the fullest extent permitted by law.
14. The terms, conditions and other provisions of this Covenant will extend to, be binding upon, and enure to the benefit of the parties to this Covenant and their respective successors and assigns.
15. In addition to this Covenant being a contract, this Covenant runs with the Parent Parcel and will be registered as a charge against the title to the Land under Section 219 of the Land Title Act.
16. Nothing contained or implied in this Covenant shall impair, limit, prejudice, or affect the Covenantee's rights and powers in the exercise of its functions pursuant to any public or private statutes or any other enactment including the Covenantee's bylaws, orders, policies, and regulations and all such powers and rights may be fully and effectively exercised in relation to the Land as if this Covenant had not been executed and delivered by the Covenantors.
17. The Covenantors will do or cause to be done all things and execute or cause to be executed all documents and give such further and other assurances which may be reasonably necessary to give proper effect to the intent of this Covenant.
18. This Covenant will not be modified or discharged except in accordance with the provisions of Section 219 of the Land Title Act.
19. The Covenant shall be construed in accordance with the laws of British Columbia.
20. THIS AGREEMENT and everything herein contained shall be binding upon the Covenantors and its successors and assigns and shall enure to the benefit of the Covenantee.

Indemnity

21. The Covenantors covenant and agree to release, save harmless and indemnify the Covenantee, its elected and appointed officials, officers, invitees, licensees, employees, servants and agents from and against all liability, actions, causes of

action, expenses, damages, costs (including legal costs on a solicitor/client basis), claims, debts, losses (including injurious affection) or demands whatsoever by the Covenantors or any other person which have arisen or may arise out of, or are in any way due directly or indirectly to the granting or existence of this Covenant including but not limited to:

- (a) any breach of any covenant or agreement on the part of the Covenantors contained in this Covenant or any steps taken by the Covenantee to enforce this Agreement; and
- (b) any injury to persons, including bodily injury and death or damage to or a loss of property on or about the Land.

IN WITNESS HEREOF the parties hereto acknowledge that this Covenant has been duly executed and delivered by the parties executing Form C (pages 1 and 2) attached hereto.

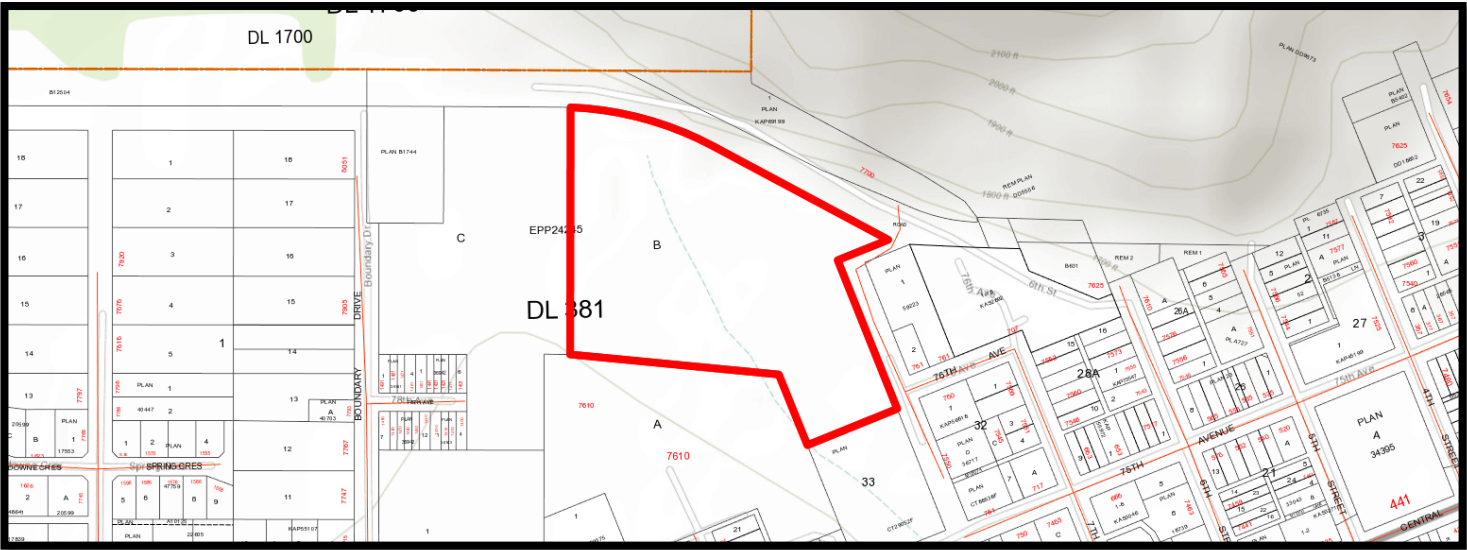
IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first written.

THE COMMON SEAL OF THE CORPORATION
OF THE CITY OF GRAND FORKS was
Hereunto affixed in the presence of its
authorized signatory(ies):

)
)
)
)
_____)
authorized signatory)
)
)
)
_____)
authorized signatory)

John and Norma Wheeler)
by its authorized signatories)
)
)
_____)
authorized signatory)
)
_____)
authorized signatory)

Schedule "A"



Background and Proposal Information

Overview

The City received a zoning bylaw amendment application to rezone 4.65 hectares (11.5 acres) from R1 (Residential – Single & Two Family) to R4 (Rural Residential) to accommodate agricultural buildings and activities and to more accurately reflect the current land use. The applicant wishes to eventually build a barn/shop on the property (which is not allowed under the current R1 zoning).

The site is located at the most northerly extent of 8th Street and has been used as a cultivated hay field for many years. See detailed applicant and site information below.

Environmental Considerations

Wetland/Drainage Area

Most of the site is classified in the Grand Forks Sensitive Ecosystem Inventory (“SEI”) as a “cultivated field, not sensitive”. However, a wetland area (drainage ditch and associated riparian area) traverses the property from north to south and is part of the City’s natural drainage infrastructure.

In keeping with the City’s desire to protect and/or acquire the major components of our interconnected natural drainage and wetland areas, it is proposed that a conservation covenant under Section 219 of the Local Government Act be registered on the property to ensure that the wetland area is protected and formally incorporated into the City’s protected area network.

Groundwater Protection

The Grand Forks aquifer is considered to be one of the most important aquifers in British Columbia and is the primary source of drinking water for the region. Certain agricultural practices such as fertilizer and pesticide use have the potential to compromise the quality of the groundwater through run-off and seepage (i.e., as is evidenced by water tests in various wells in the City).

While the owners of this property have a record of sound farming practice, and intend to engage in environmentally friendly agricultural activities, it is prudent that groundwater protection measures be specified in a covenant so that future owners/operators are aware of the requirements.

Urban Interface

This property is located adjacent to established residential areas and the high school. To minimize any land use conflicts between farming and residential, provisions for a minimal buffer area and limits on the keeping of farm animals will be addressed in the covenant.

Planning Rationale

Given the environmental and servicing constraints on this site, it is unlikely that single family residential development will occur under the existing R1 zoning in the medium term.

A rezoning to R4 will legitimize the agricultural activities that have been present on the site for many years and will allow the new owners of the site to eventually construct agricultural building(s) to enhance the agricultural use of the site.

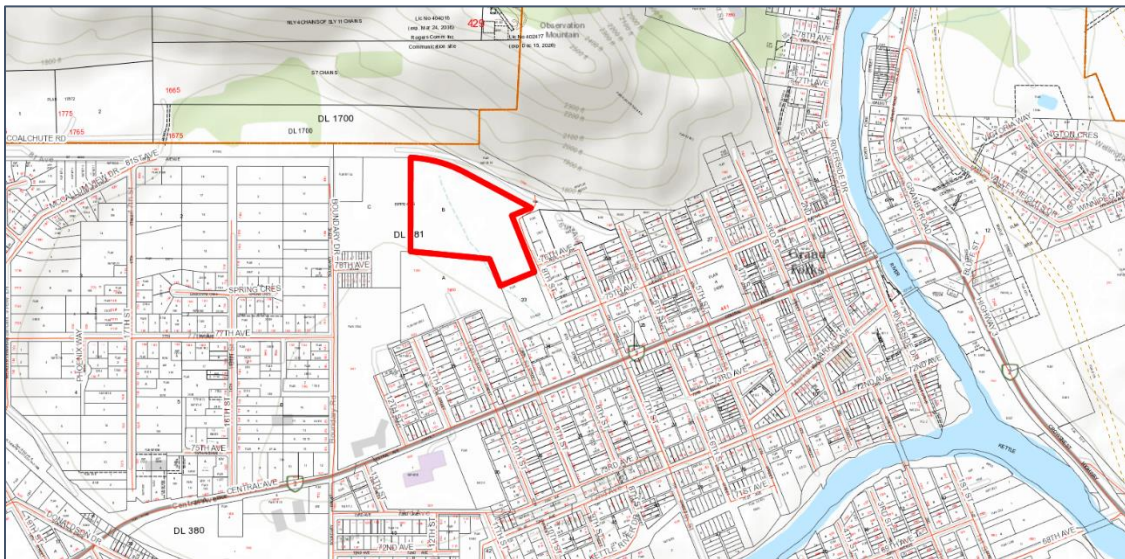
Prior to final reading of the zoning bylaw amendment, a conservation covenant will be finalized to protect the existing drainage course on the property, which will contribute to the City's goal of creating a protected area network of drainage/wetlands throughout the City. The covenant will also address groundwater protection and pesticide/fertilizer use and spraying near the urban interface.

Applicant and Site Information

Civic Address: 7600 Block of 8th Street.

Legal Description: Lot B, Plan EPP24245, District Lot 381, Land District 54; PID: 028-956-036.

Applicant/Owner: John and Norma Wheeler, PO Box 2042, Grand Forks, BC V0H 1H0.



Proposal: To rezone the subject property (4.65 hectares or 11.5 acres) from R1 (Residential – Single & Two Family) to R4 (Rural Residential) to accommodate agricultural activities and to more accurately reflect the current land use. The applicant

wishes to eventually build a barn/shop on the property (which is not allowed under the current R1 zoning).

Existing Land Use: Wetland, cultivated field. A drainage area/wetland traverses the property.

Adjacent Land Uses: North – established trails and natural area, City-owned public works building and Observation Mountain zoned R4; South – house/outbuildings/small farm zoned R1; East – residential zoned R1 and R3A (Clifton Estates); West – vacant wetlands/hay fields/natural areas zoned R1.

Access: Directly off of 8th Street (note: this access road is also used by Public Works to get to a storage building and snow storage immediately north east of this site).

Current Zoning: R1 (Residential – Single and Two-Family) Zone.

Proposed Zoning: R4 (Rural Residential) Zone.

OCP Land Use Designation: Environmental Resource Area (ER).

Development Permit Area: Most of the lot is within the Environmentally Sensitive Development Permit Area ("DPA") and a portion of the site may also be in the flood plain. However, as no development is proposed at this time, a development permit is not required.

Other Policies: Although the site is located in the Environmentally Sensitive "DPA", most of it is classified in the Sensitive Ecosystem Inventory ("SEI") as a "cultivated field, not sensitive". A wetland area (drainage ditch and associated riparian area) traverses the property from north to south and is part of the City's natural drainage infrastructure.

Servicing: There are no water or sewer services and no development is proposed at this time.



Report Approval Details

Document Title:	2019-07-15 ZA1902 Final Reading Bylaw 2039-A4 Wheeler.docx
Attachments:	
Final Approval Date:	Jul 4, 2019

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

Dolores Sheets - Jul 4, 2019 - 4:56 PM

**No Signature - Task assigned to Diane Heinrich was completed by
assistant Daniel Drexler**

Diane Heinrich - Jul 4, 2019 - 6:22 PM