

COMMENT SUBMISSION – Blueberry Hill Estates Strata Plan VAS2097

ATTENTION: RMOW Planning Department and Philip Gibbins (Planner)

RE: Blueberry Land Use Contract (LUC) Termination - **File No. LUC00006**

Comments from Strata Plan VAS2097 Blueberry Estates, 3102-3188 St Moritz Cres.

I write to you on behalf of the Owners, Strata Plan VAS2097, Blueberry Hill Estates.

- Given the short timeline provided for comments and your response to the Council President's email of November 9, we have not been able to retain the services of a professional consultant to review your proposal.
- In light of your November 16 email replying to mine of the same date and the RMOW's refusal to give the assurance requested, professional advice is required to compare what the strata corporation has now against what is being proposed.
- We oppose any change which would prevent us from rebuilding what we have now in the event of a loss, such as from wildfires.
- At present we have identified one change which should be made. Section 2(b) of the proposed RTA31 Zoning only recognizes a "townhouse" as a permitted use. The existing Blueberry Hill Estates complex is a mix of side by side duplex style buildings (odd numbered St. Moritz addresses) and quad style buildings (even numbered addresses). As "townhouse" means a residential building containing three or more units, the permitted use should also include duplexes. Accordingly please change section 2(b) to read "townhouse and duplex dwellings".

Rand Whittleton
Authorized Agent for Blueberry Hill Estates

Rand Whittleton

Community Manager - Whistler

Tribe Management Inc.

400 - 11950 80th Ave., Delta, BC V4C 1Y2

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As of August 1, 2021 Gateway Property Management has formally rebranded to Tribe Management to reflect our merger with Tribe earlier this year. We will continue to manage your community under our new name. Please reach out to me with any questions.

From: [REDACTED]
Subject: 3595 Falcon Crescent LUC termination File LUC00006
Date: Friday, November 26, 2021 9:42:09 AM

From: michael kirsh [REDACTED]
Sent: Thursday, November 18, 2021 5:50 PM
To: Planning <planning@whistler.ca>
Cc: Kirsh The [REDACTED] Marta Home Macdonald <[REDACTED]>
Subject: Re 3595 Falcon Crescent LUC termination File LUC00006

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We are in receipt of your letter dated October 18th 2021

My wife and I are the owners of Falcon Crescent 3595 Holdings Ltd. The owners of the subject property.
We are legally doing nightly rentals on this property and have been doing so for over 4 years. We have a business license as well.

We plan to continue with these nightly rentals as they are legal even though they may become legal non conforming when you change the zoning.

The bylaws clearly state that we can continue this legal non conforming use subject to the conditions below.
Ie as long as we dont stop the nightly rentals for over 6 consecutive months or the house burns down and needs to be rebuilt.

I am attaching the bylaws below.
My legal advice informs me that i dont need to do anything while you are going through this process and my current non conforming use is protected.

I have attached the By laws are attached clearly confirming the above;

What follows below confirms that the Muni CANNOT change the non conforming use UNLESS the rentals stop for 6 consecutive months or more

Or

The building is destroyed by more than 75%
Then it cannot be reconstructed as a non conforming use

Excerpts;

Termination by 2024

All land use contracts will be terminated as of June 30, 2024. Local governments are required to have zoning bylaws in place by June 30, 2022 that will apply to the land once the land use contracts are terminated.

If land, a building or other structure is being lawfully used under the land use contract and the use would not apply under the new bylaw, the use may continue as a non-conforming use.

Certain conditions may apply so contact your local government for details.

- [Local Government Act, section 547 - Termination of all land use contracts in 2024](#)
- [Local Government Act, section 533 - Non-conforming uses in relation to terminated land use contracts](#)

A clip from the local government act section 523 re non conforming uses

(c)

different locations within a zone.

Division 14 — Non-conforming Use and Other Continuations

Non-conforming uses: authority to continue use

528 (1)

Subject to this section, if, at the time a land use regulation bylaw is adopted,

(a)

land, or a building or other structure, to which that bylaw applies is lawfully used, and

(b)

the use does not conform to the bylaw,

the use may be continued as a non-conforming use.

(2)

If a non-conforming use authorized under subsection (1) is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the land use regulation bylaw.

(3)

The use of land, a building or other structure, for seasonal uses or for agricultural purposes, is not discontinued as a result of normal seasonal or agricultural practices, including

(a)

seasonal, market or production cycles,

(b)

the control of disease or pests, or

(c)

the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.

(4)

A building or other structure that is lawfully under construction at the time of the adoption of a land use regulation bylaw is deemed, for the purpose of this section,

(a)
to be a building or other structure existing at that time, and

(b)
to be then in use for its intended purpose as determined from the building permit authorizing its construction.

(5)
If subsection (1) authorizes a non-conforming use of part of a building or other structure to continue, the whole of that building or other structure may be used for that non-conforming use.

Non-conforming structures: restrictions on maintenance, extension and alteration

529 (1)

If the use and density of buildings and other structures conform to a land use regulation bylaw but

(a)
the siting, size or dimensions of a building or other structure constructed before the bylaw was adopted does not conform with the bylaw, or

(b)
the siting, size, dimensions or number of off-street parking or loading spaces constructed or provided before the bylaw was adopted does not conform with the bylaw,
the building or other structure or spaces may be maintained, extended or altered to the extent authorized by subsection (2).

(2)
A building or other structure or spaces to which subsection (1) applies may be maintained, extended or altered only to the extent that

(a)
the repair, extension or alteration would, when completed, involve no further contravention of the bylaw than that existing at the time the repair, extension or alteration was started, and

(b)
in the case of protected heritage property, the repair, extension or alteration is permitted or authorized in accordance with the provisions governing the heritage protection of the property.

Restrictions on increasing non-conforming use of land

530

In relation to land, section 528 [non-conforming uses] does not authorize the non-conforming use of land to be continued on a scale or to an extent or degree greater than that at the time of the adoption of the land use regulation bylaw.

Restrictions on alteration or addition to building or other structure

531 (1)

Subject to this section, a structural alteration or addition must not be made in or to a building or other structure while a non-conforming use is continued in all or any part of it.

(2)
Subsection (1) does not prohibit a structural alteration or addition that is required by an enactment or is permitted by a board of variance under section 542 (1) [authority for variance or exemption to relieve hardship].

(3)
Subsection (1) does not apply to alterations or additions in or to a protected heritage property if the alteration or addition is authorized by a heritage alteration permit under section 617.

Restrictions on repair or reconstruction of non-conforming structures

532 (1)

If a building or other structure, the use of which does not conform to the provisions of a land use regulation bylaw, is damaged or destroyed to the extent of 75% or more of its value above its foundations, as determined by the building inspector, the structure must not be repaired or reconstructed except for a conforming use in accordance with the bylaw.

(2)

If the use of a building or other structure that is on land identified in a phased development agreement under Division 12 [Phased Development Agreements] complies with a zoning bylaw provision specified under section 516 (2) [zoning rules for land subject to the agreement] for the phased development agreement, subsection (1) of this section does not apply to the building or other structure while the phased development agreement is in effect, unless

(a)

the provision has been repealed or amended, and

(b)

either

(i)

the developer has agreed in writing under section 516 (5) that the changes to the zoning bylaw apply, or

(ii)

the changes to the zoning bylaw apply under section 516 (6) without the written agreement of the developer.

(3)

Subsection (1) does not apply to repair or reconstruction of a protected heritage property if the repair or reconstruction is authorized by a heritage alteration permit under section 617.

Non-conforming uses in relation to terminated land use contracts

533 (1)

In this section:

"contract termination date" means, in relation to a land use contract, the date of termination under section 547 [termination of all remaining land use contracts] or 548 [early termination of land use contract], as applicable;

"end of land use contract authority" means, in relation to a land use contract, the later of the following:

(a)

the contract termination date;

(b)

if an order under section 543 [board of variance exemption to relieve hardship from early termination] is made in respect of the land, the expiry of the period of time specified in the order.

(2)

Subject to this section, if, at the end of land use contract authority,

(a)

land, or a building or other structure, is lawfully used, and

(b)

the use does not conform to a land use regulation bylaw that

(i)

is in force at the end of land use contract authority, and

(ii)

would not apply to the land, building or other structure but for the end of the land use contract authority,

the use may be continued as a non-conforming use.

(3)

If the non-conforming use authorized under subsection (2) is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the land use regulation bylaw.

(4)

The following provisions apply in relation to a use described in subsection (2):

(a)

section 528 (3) to (5) [non-conforming uses in relation to new land use regulation rules];

(b)

section 529 [non-conforming structures];

(c)

section 530 [restrictions on increasing non-conforming use of land];

(d)

section 531 [restrictions on alteration or addition];

(e)

section 532 [restrictions on repair or reconstruction].

(5)

For the purposes of subsection (4), a reference in a provision referred to in that subsection to the adoption of a bylaw is to be read as a reference to the applicable end of contract authority. Change in ownership, tenants or occupants in relation to use

534

For the purposes of this Division, a change of owners, tenants or occupants of any land, or of a building or other structure, does not, by reason only of the change, affect the use of the land or building or other structure.

Non-conforming use and subdivision in relation to expropriation of land

535 (1)

If the use of land or the siting of existing buildings and other structures on the land ceases, as a result of expropriation of land, to conform to a land use regulation bylaw, the remainder of the property is deemed to conform.

(2)

Subsection (1) does not apply if compensation was paid to the owner or occupant of the land in an amount that is directly attributable to the loss, if any, suffered by the owner or occupant as a result of the non-conformity.

(3)

If, as a result of an expropriation,

(a)

a parcel of land could have been subdivided into 2 or more parcels under the applicable zoning bylaw in effect when the land expropriated was vested in the expropriating authority, and

(b)

the parcel, as a result of the expropriation, can no longer be subdivided into the same number of parcels,

the parcel is, to the extent authorized under subsection (4), deemed to conform to the applicable zoning bylaw for the purposes of the subdivision as though the expropriation had not occurred.

(4)

The deemed conformance under subsection (3) applies only to the extent that none of the parcels that would be created by the subdivision would be less than 90% of the area that would otherwise be permitted by the applicable zoning bylaw.

(5)

Subsection (3) does not apply if the owner of the parcel being subdivided has received

compensation that is directly attributable to the reduction in the market value of the land that results from the inability to subdivide the parcel in the manner that would have been permitted under the applicable zoning bylaw.

Division 14.1 — Non-conforming Form of Tenure

Non-conforming form of tenure: authority to continue tenure

535.1 (1)

If, at the time a zoning bylaw that limits the form of tenure to residential rental tenure is adopted, a housing unit to which the bylaw applies has a form of tenure other than residential rental tenure, the other form of tenure continues as a non-conforming form of tenure.

(2)

If, at the time a zoning bylaw that limits the form of tenure to residential rental tenure is adopted, a local government has issued a building permit or a development permit in relation to a building that will contain housing units to which the bylaw would otherwise apply, and the housing units have or may have a form of tenure other than residential rental tenure, the other form of tenure continues as a non-conforming form of tenure.

Non-conforming form of tenure: repair, extension and alteration

535.2 (1)

Subject to subsection (2), if a non-conforming form of tenure is authorized, under section 535.1, to continue in relation to a housing unit in a building and the building is maintained, extended or altered, the non-conforming form of tenure continues if the repair, extension or alteration would, when completed, involve no further contravention of the bylaw than that existing at the time the repair, extension or alteration was started.

(2)

If the repair, extension or alteration includes the construction of additional housing units, the additional housing units are subject to the zoning bylaw in relation to residential rental tenure.

Change in ownership, tenants or occupants in relation to form of tenure

535.3

For the purposes of this Division and subject to section 535.4, a change of owners, tenants or occupants of a housing unit does not, by reason only of the change, affect the authority to continue a non-conforming form of tenure of the housing unit.

Sincerely,
Dr Michael Kirsh
Marta Triginer



From: [REDACTED]
To: [Planning](#); [REDACTED]
Subject: File No. LUC00006 - 3217 Blueberry Drive aka The Ironwoods
Date: Tuesday, November 9, 2021 3:25:31 PM

CAUTION: This email originated from outside of the RMOW. Do not click links or open attachments unless you verify that the sender is legitimate and know the content is safe.

Dearest Planning Department,

We are new owners of a condo at 3217 Blueberry Drive aka The Ironwoods.

My only concern with the upcoming proposed Zoning change would be the allowable use of our new investment property. Currently it is in Phase 1 where we can rent on a nightly basis.

Having read through the document, it does not seem to appear that anything will change but I would like confirmation that there will not be any egregious changes to our use of the property.

I understand that this might be only a "housecleaning" item so my concerns may be unfounded. If you could provide me with any "material" changes that would occur and if I can be confident that we will be able to operate "as is" then you would have my full endorsement.

Best,

John M. Franko BCLS | Vice President | [bennett LAND SURVEYING LTD.](#)

T: 604.980.4868 ext 212 | C: 604.230.1880 | www.bennettsurveys.com

From: [REDACTED]
To: [Planning](#)
Subject: Fwd: Blueberry Land Use Contract Termination
Date: Monday, November 8, 2021 6:43:29 AM

CAUTION: This email originated from outside of the RMOW. Do not click links or open attachments unless you verify that the sender is legitimate and know the content is safe.

> Hello Planning Personnel,

> My wife and I live at 3172 St. Moritz Crescent and we would greatly appreciate more information to supplement the package that your department sent. By the way, we received it October 29th and yet it was dated October 18.

>

> Our understanding is that our property, 3172 St. Moritz Crescent, is currently zoned for nightly rentals. Will that still be the case after June 30, 2024? It would be very helpful for us if you summarized the changes that would come into affect by the municipality's Land Use Contract termination process. We are confident that many other property owners in this area would appreciate more information.

>

> The package is very confusing and the lack of explanation is challenging. It is impossible for us to decipher it with confidence. We are struggling to understand the package's content and the implications of the important information that you have sent. Please send us a summary of the potential changes and impact that this may have for property owners in the affected areas.

>

> Thank you for your understanding and attention to our concerns,

> Craig and Linda Smith

From: [REDACTED]
To: [REDACTED]
Subject: Luc / blueberry
Date: Friday, November 26, 2021 9:57:39 AM

On Wed, Oct 20, 2021 at 4:41 PM Naomi Kronitz [REDACTED] > wrote:

We understand present zoning allows for nightly rental? Will the proposed zoning allow for nightly rentals?

How are the details otherwise different in the proposed zoning in terms of fsr etc , from the LUC to the new zoning?

Thx

From:

To:

Subject:

Date:

LUC00006 Strata Plan VAS2097 Blueberry Estates, 3102-3188 St Moritz Cres.

Tuesday, November 9, 2021 10:58:07 AM

CAUTION: This email originated from outside of the RMOW. Do not click links or open attachments unless you verify that the sender is legitimate and know the content is safe.

I refer to the zoning information circulated with your letter of October 18, 2021. You have invited questions concerning the proposed zoning. Pages 11, 15 (Key Plan Area A), 16 and 17 appear to be applicable to Blueberry Estates.

To understand the effect of the zoning we need to confirm what our present building heights are; what our density and site coverage is; that the lower quad units are considered to be 3 storeys; and that our present setbacks conform to the setback requirements. Further we need to confirm that the definition of "townhouse" includes our duplex and quad configurations.

As you have proposed the zoning do you have the information and confirmations that we require to assess the proposed zoning which will affect our strata?

If we are non-compliant with the proposed zoning can we assume we are grandfathered including if we had to rebuild in the future? Please confirm RMOW's position.

Stein Gudmundseth

President, Blueberry Estates Strata Plan VAS2097

From: [REDACTED]
To: [REDACTED]
Subject: LUC00006
Date: Friday, November 26, 2021 9:52:20 AM

From: Craig Rowland [REDACTED] >
Sent: Thursday, October 21, 2021 3:03 AM
To: Planning <planning@whistler.ca>
Cc: Chris Rowland [REDACTED] >
Subject: Fwd: Whistler

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Hello. We received the attached letter. My company owns 3514 Falcon Crescent. I am trying to relate the proposed new zoning regulations applicable to this property to the existing land use contract provisions. Would you please provide a copy of the existing land use contract and highlight the provisions applicable to my lot. I attach the land use contract information that I have. From it I cannot determine existing regulations applicable to the lot. I understand this amendment is intended to be a "no change" scenario and that it is solely meant to take the provisions of the existing land use contracts and replace them with a zoning bylaw format. Please confirm this understanding is correct.

Craig Rowland
[REDACTED]

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From: [REDACTED]
To: [REDACTED]
Subject: Reference File LUC00006
Date: Friday, November 26, 2021 10:03:51 AM

-----Original Message-----

From: Diane Loik <[REDACTED]>
Sent: Wednesday, November 17, 2021 10:21 AM
To: Planning <planning@whistler.ca>
Subject: Reference File LUC00006

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We are Diane Loik & David Ames and we are the Owners at Blueberry Hill Estates Unit 3118 St. Moritz Crescent . We received the Land Use Contract Termination document in the mail and have a few questions:

- what was the purpose of the Land Use Contract when it was initially established?

-what is the difference between the Old LUC and the Municipality's LUC?

-RTA31 Zone is the zone assigned to BHE; It seems that the only mention with regards to our complex is the intent to provide medium density residential and tourist accommodation....what does this mean? Will other changes be implemented or considered? How does the tourism accommodation relate to those that are currently renting their units and how does this effect those Owners such as us that do not rent their units.

Will there be any change to the to the Bylaws that currently exist on the property; will Municipal bylaws apply in conjunction with the Strata bylaws? What responsibility does the Municipality have with how BHE common property is used and how does the Municipality plan to address issues of compliance?

Sent from my iPad