

## **SUMMARY AND REVIEW OF PUBLIC HEARING SUBMISSIONS FOR “LAND USE CONTRACT TERMINATION BYLAW (HORSTMAN ESTATES) NO. 2323, 2022”**

A Public Hearing on “Land Use Contract Termination Bylaw (Horstman Estates) No. 2323, 2022” (the proposed bylaw) was held on April 19, 2022. The Public Hearing provided an opportunity for members of the public to make verbal representations and submit written comments to Council respecting matters contained in the proposed bylaw.

There were six written submissions and three verbal representations made by the public as part of the Public Hearing process. A total of six members of the public provided representations or submissions (numbers do not account for those who spoke more than once). All submissions were in relation to the proposed bylaw.

The following provides staff’s summary and review of the written submissions and verbal representations, along with staff’s associated recommendations. The summary of the content of the representations and submissions is not intended to transcribe or replicate all of the comments that were made during the Public Hearing process. The written and verbal comments will be collectively referred to as the “submissions” in this summary report.

### **Public Submissions:**

Submissions were made by property owners within Horstman Estates and comments consisted of the following topics:

- Inclusions of maximum gross floor area (GFA) in the proposed revised RS3 Zone;
- Applicability of Part 5, section 26 (GFA Exclusions) of Zoning and Parking Bylaw No. 303, 2015 (the Zoning Bylaw);
- Ability to rebuild in the event of a fire;
- Tourist accommodation as a permitted use in Horstman Estates;
- Rezoning Application File No.001172;
- Discharge of covenant no. GC125596; and
- Request for additional information.

### **Staff Review:**

Staff response to the comments made in the public submissions is provided below.

#### Inclusion of maximum GFA in the proposed revised RS3 Zone

Four members of the public provided comments regarding the inclusion of the maximum GFA in the proposed revised RS3 Zone (Residential Single Family Three). It was expressed that this change to the RS3 Zone is unnecessary as maximum GFAs are already prescribed in the development covenant registered on title.

There is a development covenant registered on the titles of all the Horstman Estates lots as charge no. GC125596. This covenant provides design criteria for the Horstman Estates subdivision and site specific restrictions for each strata lot including maximum GFAs. The covenant will remain on title and continue to regulate the development of Horstman Estates and is attached to [Administrative Report No. 22-046](#) as Appendix F.

Section 3 of the existing RS3 Zone states: "The maximum permitted floor space ratio (fsr) is 0.35." However, the covenant further restricts the maximum permitted density by establishing a maximum gross floor area limit for each lot in the entire Horstman subdivision, including both portions subject to existing RS3 zoning, as well as the portions currently subject to the LUC. For some properties the maximum GFA permitted by the covenant is less than that determined by applying an FSR of 0.35. To address the effect of the covenant and to provide clarity and transparency between the two documents, the maximum GFAs within covenant no. GC125596 are proposed to be added to the revised RS3 Zone. Regrettably, this change to the zone was added to the proposed zoning subsequent to the letter delivered to owners. However, this proposed change to the RS3 Zone does not ultimately change the maximum GFA permitted, as it is already specified by the covenant registered on title.

Staff recommend no changes to the proposed bylaw as a result of this submission.

#### Applicability of Part 5, section 26 (GFA Exclusions) of the Zoning Bylaw

Two members of the public requested confirmation that Part 5, section 26 of the Zoning Bylaw pertaining to GFA exclusions for in-ground basement floor areas would apply to the density provisions in the proposed revised RS3 Zone. One member of the public also suggested that the applicability of Part 5, section 26 should be specified within the RS3 Zone to provide assurance.

Part 5, section 1 of the Zoning Bylaw specifies that: "Except as otherwise specified in this Bylaw, the following regulations in this Part apply to all zones". As such, once the Blackcomb Land Use Contract (LUC) is terminated and the replacement zoning takes effect, Part 5, section 26 of the Zoning Bylaw will apply to all properties within Horstman Estates. The applicability of Part 5, section 26 is not specified in any other zone and it would be considered redundant to reference this section specifically in the RS3 Zone. Per the provisions under this section, all detached dwelling and duplex dwelling buildings in the municipality are eligible for the in-ground basement floor area exclusion.

To use the GFA exclusions outlined in Part 5, section 26 after the LUC is terminated and the replacement zoning is in effect, property owners within Horstman Estates would need to submit a covenant modification application for the Resort Municipality of Whistler's (RMOW's) consideration. Council has previously generally authorized approval of any such covenant modifications whereby the regulations of the current Zoning Bylaw are applied in place of a previous version of the Zoning Bylaw, which is referenced in the existing covenant.

Staff recommend no changes to the proposed bylaw as a result of this submission.

#### Ability to rebuild in the event of a fire

One member of the public noted a concern with rebuilding as existing should properties within Horstman Estates experience a fire and a total loss.

The density provisions in the proposed revised RS3 Zone have been developed to provide for the existing approved development and consistency with the covenant. Additionally, protections for any potential non-conforming structures are afforded under section 529 of the *Local Government Act*. Staff recommend that owners undertake their own assessments or seek advice as necessary as the RMOW is unable to provide any guarantees and assurances

with regard to the replacement zoning.

Staff recommend no changes to the proposed bylaw as a result of this submission.

#### Tourist accommodation as a permitted use in Horstman Estates

One member of the public expressed that tourist accommodation is an existing permitted use within Horstman Estates under both the Blackcomb LUC and the original RS3 Zone and requested that tourist accommodation is included as a permitted use for Horstman Estates. In particular, the submission made the argument that the original intention of the development was to permit both residential and tourist accommodation use. The submission further made the argument that an amendment to the RMOW's zoning to add a definition of residential to clarify distinctions between residential and tourist accommodation use (Bylaw No. 814, 1990) resulted in the municipality's zoning bylaw precluding the tourist accommodation use for the RS3 Zone, and was the basis for the municipality's position to also determine the use is not permitted for the portion of Horstman subject to the LUC. References were also made to a rezoning that was completed for the Snowridge Crescent Bareland Strata (VR2049) adopted by Bylaw No. 1725, 2005 in 2006. A copy of the report to Council for this rezoning (Report #05-140) is provided for Council reference in Appendix C.

A second member of the public, who identified themselves as the Chair of the Horstman strata, also addressed the issue of tourist accommodation, and indicated that there was support to add the use as a permitted use to the zone and the strata would take it upon itself to further address this use through strata bylaws.

Staff provides the following analysis and recommendation in response to these submissions.

Per the LUC and the existing covenant, Horstman Estates is comprised of single residential buildings. A single residential building is defined as:

*"a building consisting of one dwelling unit (other than a mobile home) which is occupied or intended to be occupied seasonally or permanently by one family or six or fewer unrelated persons living together as a single domestic unit provided that where permitted in the Zone a Single Residential Building may contain an Auxiliary Dwelling Unit having a floor area not exceeding the lesser of one-third of the aggregate floor area of the building or 80 square metres."*

Per the Zoning Bylaw "residential" means "a fixed place of living, excluding any temporary accommodation, to which a person intends to return when absent". This definition was added to the RMOW zoning bylaw by Bylaw No. 814, 1990 and was intended to further distinguish between residential and tourist accommodation uses within the community.

It has been the municipality's interpretation that both these definitions do not provide for tourist accommodation use and it is the basis for the municipality's position to not permit tourist accommodation or approve any business licence application for tourist accommodation within the Horstman Estates subdivision.

The submission is correct in that in 1999 the RMOW initiated rezonings for a number of properties in the Blackcomb Benchlands, Whistler Creek and adjacent to Whistler Village, to add tourist accommodation as a permitted use, for properties where owners had the

understanding that they were permitted this use when they bought their unit, however, the existing zoning referred only to residential use and the definition of this use which had been added to the zoning bylaw, did not permit this use. These rezonings were further to Council Policy G-20, Tourist Accommodation Rezoning Policy, which was adopted by Council May 31, 1999. A copy of this policy is included in Appendix D. The policy supported rezoning identified properties to new Residential Tourist Accommodation zones that permitted temporary accommodation (tourist accommodation) of the dwelling when not in use by the owner for residential purposes. All of the identified properties were multi-family residential developments. Each of these properties were ultimately rezoned through municipally initiated rezonings, with a prerequisite requirement for a 75 per cent vote of strata owners in favour of the rezoning.

At the time, owners in the Snowridge Crescent development did not favour a rezoning and choose not to participate in the process. As indicated above, the property was subsequently rezoned in 2006 through an owner-initiated rezoning that was supported by the municipality.

With respect to Horstman Estates, this property was also not included in the blanket rezoning process advanced by Policy G-20. At the time, there was not agreement within Horstman Estates regarding tourist accommodation use, and the RMOW had received requests to enforce against this use from neighbouring property owners within the Horstman strata. As there was disagreement as to the status of this use within the strata, a rezoning was never advanced for Horstman Estates to address the tourist accommodation use. Given the municipality's interpretation of the LUC and RS3 zoning, the municipality's position has continued to be that the use is not permitted.

Given this history and the following policy considerations, staff recommends that Council support a rezoning process to add tourist accommodation as a permitted use for all properties in the Horstman Estates, subject to an application from the strata owners of strata VAS2482:

- The lands are designated Resort Lands;
- The lands are in close proximity to the Blackcomb Base and the ski slopes of Blackcomb Mountain; and
- The zoning would contribute to the diverse supply of visitor accommodations within the resort community with a unique high end product offering in a visitor oriented location.

The recommended rezoning process would demonstrate and ensure that there is support for the tourist accommodation use by a majority of the owners within the Horstman Estates subdivision.

With respect to the proposed bylaw that is currently before Council, staff recommend no changes as a result of this submission.

#### Consideration of rezoning application File No.001172

One member of the public noted that a rezoning application was submitted to remove a property from the Blackcomb LUC and noted concerns that this application will be negatively affected by the proposed bylaw.

A rezoning application was received on December 21, 2020 with regard to 4918 Horstman Lane. The application is to discharge the Blackcomb LUC from and apply the RS3 Zone to the property.

Staff note that should Council adopt the proposed bylaw, the termination of the LUC and effect of the zone will take place one year from the date of adoption.

Should the applicant choose to follow through with their application, the RMOW will process the application as per the requirements of the *Local Government Act* and the Land Use Procedures and Fees Bylaw No. 2019, 2012.

Staff recommend no changes to the proposed bylaw as a result of this submission.

#### Discharge of covenant no. GC125596

One member of the public stated that the covenant was intended to automatically discharge on December 31, 2009 (referencing section 9 of the covenant), and that the covenant should be discharged.

Covenant no. GC125596 was registered on the titles of all Horstman Estates lots. Section 9 of this covenant states:

*This covenant shall not be released, discharged or amended without the written consent of Blackcomb Skiing Enterprises Ltd. and W.L.C. Developments Ltd. provided such consent shall not be necessary or required after the earlier of the lands charged by the Land Use Contract being fully developed as contemplated by the Land Use Contract or December 31, 2009.*

Staff note that this covenant is still registered in favour of the RMOW and any discharge or modification is subject to RMOW approval. This clause of the covenant referenced above related only to Blackcomb Skiing Enterprises Ltd. and W.L.C. Developments Ltd. the original parties to the development. This clause does not result in the automatic discharge of the covenant. Following the LUC termination process, covenant no. GC125596 will remain on title and continue to regulate the development of Horstman Estates.

Staff recommend no changes to the proposed bylaw as a result of this submission.

#### Request for additional information

One written submission requested additional information and the deferral of decision-making regarding the proposed bylaw.

The notice and timing given to owners is consistent with other LUC termination files and meets the requirements for notice set out in the *LGA*. Information regarding the LUC termination process and documents related to LUC00004 were made available on the RMOW webpage and staff were responsive to inquiries.

Staff recommend no changes to the proposed bylaw as a result of this submission.

#### **Staff Recommendation:**

Staff do not recommend any changes to the proposed bylaw based on the Public Hearing comments. Staff recommend that the proposed bylaw be given third reading and adoption without further revision.