

SUMMARY AND REVIEW OF THE PUBLIC HEARING SUBMISSIONS FOR “LAND USE CONTRACT TERMINATION BYLAW (BLACKCOMB COMMERCIAL) NO. 2351, 2022”

A Public Hearing on “Land Use Contract Termination Bylaw (Blackcomb Commercial) No. 2351, 2022” (the proposed bylaw) was held on June 8, 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 80 written submissions and eight verbal representations made by the public as part of the Public Hearing process.

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

Public Submissions:

Submissions were made by property owners and property owner representatives within the subject lands. Submissions included the following topics:

- Adherence to the “like-for-like” principle;
- Permitted uses for Blackcomb Springs within the TA18 Zone;
- Density;
- Comparative analysis of the LUC and replacement zoning; and
- Notice, timing and process.

Staff Review:

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

Adherence to the “like-for-like” principle

Submissions expressed that the replacement zoning does not adhere to the “like-for-like” principle. The following concerns were identified:

- The replacement zoning does not reflect the full range of potential uses and densities under the LUC;
- “Residential” is not included as a permitted use within the TA18 Zone;
- Blackcomb Springs should be zoned RTA35 Zone; and
- Provincial legislation requiring a “like-for-like” zoning was not followed.

Related to “residential” not being included as a permitted use in Blackcomb Springs, concerns related to potential property tax increases, issues with securing finances for maintenance and redevelopment, and precluding a potential proposal to remove or alter the Phase 2 rental pool covenant on this property.

As detailed in the February 8, 2022 Information Report to Council ([22-011](#)), the “like-for-like” principle uses the entire regulatory framework as the baseline for preparation of replacement zoning regulations, since the principle was intended to preserve and mirror only the development rights that the owners of land use contract (LUC) lands actually used when they developed their sites. The development approval process, established by the LUC, resulted in the allocation of permitted uses and maximum available densities for floor

area and bed units under the LUC to individual properties, with property specific development controls implemented through development permits, development covenants and rental pool covenants. As a result the broader range of uses and controls permitted under the LUC were narrowed down or eliminated for individual properties as they were brought forward by the developer and approved by the municipality.

As detailed in the May 24, 2022 Administrative Report to Council ([22-075](#)), “residential” was not included as a permitted use in the TA18 Zone for Blackcomb Springs as the property has a Phase 2 rental pool covenant (BJ319339) which restricts owner use to 56 days in a year. Residential use is also not consistent with the Visitor Accommodation land use designation for this property within Schedule A of the Official Community Plan (OCP). In addition, the owners’ seasonal residential use of the property is not residential use under Zoning and Parking Bylaw No. 303, 2015 (the Zoning Bylaw) where “residential” means a fixed place of living, excluding any temporary accommodation, to which a person intends to return when absent.

Respecting residential use, the RMOW received similar comments in response to the letter to owners. In response to these comments and before Council considered the proposed bylaw for first and second readings, staff included provision for “seasonal residential use” as part of both the CC4 Zone and TA18 Zone. This allows for owner occupancy in accordance with the terms of any rental pool covenant registered on title, and for certainty does not include the occupancy of the unit for “residential” purposes as defined in the Zoning Bylaw.

Blackcomb Springs was not included within the RTA35 Zone as this zone includes residential as a permitted use. As discussed above and as detailed in the May 24, 2022 Administrative Report to Council ([22-075](#)), residential use is not compatible with municipal policies, zoning and Phase 2 covenant applying to this property.

Provincial legislation does not require a “like-for-like” zoning. This principle was developed by staff and adopted by Council to guide the creation of replacement zoning throughout the LUC termination process. For LUC terminations, staff have developed replacement zoning in accordance with the principle and highlighted to Council where there is significant deviation. Staff provided an update to Council on how the principle functions in the February 8, 2022 Information Report to Council ([22-011](#)). For the proposed bylaw, staff developed replacement zoning for the subject lands following the “like-for-like” principle.

Staff cannot comment on any potential property tax or financing implications of the proposed bylaw. Nothing in the proposed zoning precludes the Blackcomb Springs Strata from applying for a rezoning, OCP amendment or covenant modification in the future. Staff consider that changes of this nature are beyond the scope of the LUC termination project.

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

Permitted uses for Blackcomb Springs within the TA18 Zone

All submissions respecting Blackcomb Springs proposed that residential use should be included as a permitted use in the replacement zoning. The submissions and staff responses regarding residential use are discussed in detail above.

Some submissions proposed that commercial development is not appropriate at Blackcomb Springs due to:

- Location;
- The residential nature of the area;

- The building not being suitable to be a hotel;
- Commercial development having been only intended for the Village;
- The building being a residential strata; and
- Commercial development limiting finance options and creating possible property tax implications.

Some submissions proposed a variety of permitted uses for Blackcomb Springs. Permitted uses proposed in various submissions included the following:

- Auxiliary buildings and auxiliary uses;
- Bakery and coffee shop;
- Indoor and outdoor recreation;
- Meeting/conference rooms;
- Park and playground;
- Employee housing;
- Residential use;
- Restaurant;
- Retail ancillary to the predominate use;
- Sporting goods repair, rental and sales;
- The full range of uses within Zone 1 of the LUC; and
- Tourist accommodation.

When Blackcomb Springs was developed, the approval process set out in the LUC narrowed the use of the land as bed units were allocated and drawn down. These uses were then secured through development and rental pool covenants which continue to exist on title. Existing uses include tourist accommodation dwelling units allowing for limited owner use, a ski tuning shop and a convenience retail store.

Staff evaluated the existing development and uses, all applicable development controls and submissions when creating the TA18 Zone. Replacement zoning must also comply with the OCP land use designation and should be consistent with other development restrictions such as restrictive covenants to avoid inconsistencies in the regulations. As a result of this process, the TA18 Zone provides for the existing development, and some small scale commercial uses, by allowing for: auxiliary buildings and auxiliary uses; convenience retail; restaurant; sporting goods repair and rental; and tourist accommodation. Seasonal residential use is also permitted, as discussed above. Staff consider this range of uses to be appropriate for this location.

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

Density

One submission requested that three percent additional gross floor area applied to the total existing floor area (including auxiliary, commercial and accommodation floor areas) should be permitted to allow for errors in the RMOW's calculation of gross floor area and to allow for flexibility to make minor adjustments to the buildings for operational purposes without requiring rezoning. The submitter suggested that the three percent additional gross floor area on auxiliary floor area only is insufficient and lacks justification.

As the proposed CC4 Zone and TA18 Zone both include provisions that account for any potential errors in calculating the gross floor area of the buildings, no additional gross floor area is required for this purpose. Also, staff consider that the additional gross floor area already provided in the proposed zones (three percent of auxiliary gross floor area and 100 square metres of commercial gross floor area) is sufficient to allow incremental development for each

property to support the overall vitality and efficient operations over time for these properties. Staff consider the request to permit an additional gross floor area equal to 3 percent of the total existing gross floor area to be a significant departure from the “like-for-like” principle, with potential considerations most appropriately evaluated through a future rezoning process.

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

Comparative analysis of the LUC and replacement zoning

One submission requested that a comparative analysis should be provided to allow for owners to compare the LUC to the proposed zoning.

The intention of the LUC replacement zoning is to provide for existing development which has been approved pursuant to the LUC provisions and associated approval processes, including applicable development permits, restrictive covenants and building permits. To enable Council and owners to confirm that the “like-for-like” principle is being followed with regard to the proposed bylaw, staff provided supporting documents consisting of RMOW LUC bylaws, LUC title documents, covenants and Blackcomb Development Permits/Plans. These documents were attached to [Administrative Report No. 22-075](#) and were made available to owners on an RMOW webpage before Council's consideration of first and second readings; owners were informed of this webpage in the April 14, 2022 letter to owners. These documents were also included in the Public Hearing package as part of [Administrative Report No. 22-075](#). The municipality is not in a position to evaluate the interests of individual property owners.

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

Notice, timing and process

Submissions suggested that the timing and notice given for the LUC termination process was insufficient to provide members of the public adequate time to comment on the proposed bylaw and that the proposed TA18 Zone was only provided to some building representatives to distribute.

The notice and timing given to owners and members of the public is consistent with that given for other LUC termination files and meets the requirements for notice set out in the *Local Government Act* (LGA).

The letter to owners before first and second readings is not required under the LGA, but was undertaken to provide owners an opportunity to review the draft zoning prior to the bylaw being brought before Council. In addition, staff conducted meetings with property owner representatives to describe the LUC termination process, the principles applied, and the details of the proposed replacement zoning.

Before Council considered the proposed bylaw for first and second readings, Blackcomb Springs was removed from the CC4 Zone based on initial owner comments and staff created a new TA18 Zone for the property. To allow for additional input during the initial comment period, property representatives for Blackcomb Springs agreed to distribute the new TA18 Zone to owners.

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

Staff Recommendation:

Staff do not recommend any changes to the proposed bylaw based on the Public Hearing

submissions. Staff recommend that the proposed bylaw be given third reading and adoption without further revision.