

**SUMMARY AND REVIEW OF PUBLIC HEARING SUBMISSIONS FOR
“LAND USE CONTRACT TERMINATION BYLAW (BAYSHORES) NO. 2213, 2020”**

A Public Hearing on “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020” (the proposed bylaw) was held on June 23, 2020. 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 10 verbal representations made by the public as part of the Public Hearing process. There were a total of 14 members of the public that provided representations or submissions as two members of the public made both written submissions and verbal representations. All submissions were in relation to the property at 2561 Tricouni Place, which is known as The Seasons property (Strata Plan VAS695).

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:

The public submissions offered details on the ownership and use of The Seasons property. It was noted that 2561 Tricouni Place is a low density property with 13 units and a mix of ownership types consisting of wholly-owned and fractionally-owned units. Many submissions indicated that the current ownership (fractional ownership) and use of the building (nightly rentals and time share arrangements) have existed since the building’s construction in or about 1980. Many submissions also asserted that these uses are permitted under the existing Bayshores Land Use Contract (LUC). Based on the submissions, owners use their properties in different ways including residential use and tourist accommodation use. Some submissions emphasised that the ownership model and use allow for owners to access Whistler in an affordable way where they otherwise could not.

The general concern expressed in the submissions is that the proposed change from the LUC to zoning would no longer allow the owners to use the property in the way that some of them currently do. The owners would like to keep using their properties as they do currently, proposing that the new zoning should permit tourist accommodation use. It was also noted that the property was suitable for tourist accommodation use due to the building type, considerable distance from neighbours, adequate parking, low density nature and location. Additional benefits to the community through supporting local employment associated with the strata’s operations and increased tourism spending from tourist accommodation use were also noted.

Most of the submissions were made by fractional owners. The submissions were made by both long-term and more recent owners. One of the written submissions was submitted on behalf of all 79 registered owners of The Seasons; this submission was also presented as being further to the letter submitted to the Resort Municipality of Whistler’s (RMOW’s) Council by the strata’s lawyer, Mr. Murray Braaten, in December 2019.

Comments that were made included the following:

- Many submissions expressed positive emotional connections to The Seasons and described the role the property plays in owners' lives. Some individuals described their units as a family cabin, a holiday property or a second home. Several submissions described long-standing family use of the units and how The Seasons has enabled them to spend time with family and friends and access Whistler's recreation offerings. Some submissions noted the role The Seasons played in raising their children. The submissions also included comments that the property still enjoys ownership and participation of some of the original fractional owners and if the proposed zoning is not changed, many families will risk losing their Whistler experience.
- Many submissions mentioned the time share program and how owners are able to trade their units at The Seasons for properties elsewhere. The comments indicated there are variations in how often individual owners use this program. One submission noted this arrangement is available to both fractional and whole owners. Some of the submissions highlighted that money is not exchanged as part of this trading activity. The submissions included comments that The Seasons has been integrated into a time share trading program since the beginning, it is an important aspect of the property's ownership and it has been one of the reasons owners purchase units. The submissions also included comments that the time share arrangement has enabled owners to travel all over the world, it is an affordable way to visit other places and it is an important aspect of owners' lifestyles.
- Several submissions commented on the tourist accommodation use at The Seasons. The submissions included remarks that the tourist accommodation use has existed at the property since the beginning and one submission explained that the original strata-managed rental program has been discontinued and owners now rent their properties by private means. Similar to the time share arrangement, the comments indicated that there are variations in the extent to which owners use their units for tourist accommodation; some individuals indicated that they rent out their units from time to time, while others indicated they would like the option to use their units as tourist accommodation. The submissions also included comments that the nightly rental activity is legal and not precluded or prohibited by the LUC, and that the tourist accommodation use is good for Whistler as it allows people to visit and spend money in the community. Further, comments noted that the site's large size, low density, ample parking, considerable distance from neighbours, building type and geography contain the property's activities to its own site and the activities do not negatively impact neighbours. There was also a comment that the three bedroom layout is beneficial to visiting families.
- Several submissions commented on an affordability aspect of The Seasons. Some submissions highlighted how The Seasons has allowed their families to enjoy Whistler in an affordable and cost-effective way. The submissions included comments that linked the affordability of The Seasons to its fractional ownership structure and tourist accommodation use. The submissions also included comments that Whistler is out of reach for most people and increasingly unaffordable for the average middle class family, and how The Seasons enabled one owner to "break into" the Whistler market. As mentioned above, comments also noted that the time share arrangement has enabled owners to travel elsewhere in an affordable manner.
- Several of the submissions commented on how The Seasons is a unique property that is in a unique situation. The submissions included comments that the strata is unique and organized and the building is well-run and well-maintained with a long life ahead of it. The strata was also described as small, self-managed strata that is a small, local employer with a lot of vendor relationships. Regarding ownership structure, the submissions included comments that the

arrangement is unique and unusual; in one instance, the ownership structure was described as “what sold” the owner on the complex. The submissions also included comments on the uniqueness of the building in terms of its construction and location; the comments pointed to the building’s secluded location, described how Area 9 is a distinct and large area that is different from the rest of the Bayshores area, and noted that The Seasons is a quiet neighbourhood with an older, respectful community. Further, the submissions included comments that it seems The Seasons’ situation has been overlooked and there is hope that there will be an amendment to the proposed bylaw that takes into account The Season’s special status.

- Some of the submissions commented on how the RMOW has been aware of the arrangement at The Seasons for many years. The submissions included comments that the current tax roll shows all the owners, the owners receive annual property assessments and tax bills, and the owners have paid taxes and other charges to the RMOW over the years. The submissions also included comments that: the current use has been in place for 40 years and has never been a problem for the RMOW in the past; the RMOW knew or ought to have known of the trading; and the activity has never been done in secret.
- Some of the submissions commented on how owners were led to believe that the ownership structure and use at The Seasons are allowed. The submissions included comments that owners were led to believe at the time of purchase that the tourist accommodation use and ownership structure were allowed based on the LUC, the way other owners use the property, and legal advice. The submissions also included comments that there was a belief that the use was in accordance with municipal bylaws and that owners continue to believe that the ownership model and use are permitted under the current LUC.
- The common request among the submissions was that owners be allowed to keep using their units in the same way as they have historically done, and that the zoning allow the property’s historic and current use and ownership structure to continue. Several submissions advocated against the proposed bylaw to replace the LUC as it currently stands and many comments requested the grandfathering of existing uses. There were also specific requests to zone the property for tourist accommodation. The submissions included comments that owners have a high level of concern that the proposed zoning will mean they will not be able to occupy, access or enjoy their properties in the ways they currently do and they will lose the ability to rent their units on a weekly basis or trade time. The submissions also included a comment about the possibility of legal action (but hoped it would not be necessary) and a concern that the proposed bylaw would limit the sale of the properties in the future. Further, the submissions requested that Mayor and Council reconsider the proposed zoning and consider the following in the zoning process: the property’s current use, the property’s 40 year historic use in terms of the decades-long reality and de facto right of use, the reasons people bought units at The Seasons, The Seasons’ unique situation, and the fair treatment of the owners.

Staff Review:

Staff analysis determined that the submissions communicate two key issues as follows: ownership structure and tourist accommodation use. Staff’s review of the submissions in relation to these two issues is provided below.

Ownership Structure

The submissions provided details on the ownership structure at 2561 Tricouni Place. Of particular relevance, the property contains 13 units, has mixed ownership types (including wholly-owned and

fractionally-owned units), and there are 79 owners in total. The strata submission noted that strata lots 1 through 6 are owned in 1/12th fractions by 72 discrete owners and strata lots 7 through 13 are wholly-owned. The strata submission also provided the following details on the fractionally-owned units:

In order to facilitate the shared use of the fractionally-owned units, a corporation called the Seasons Resorts Ltd. was founded and sub-leases established for strata lots 1 through 6. The sub-leases established a 50 week cycle, securing for each 1/12th fractional owner periodic use of their specific strata lot, 1 week of every 12, four successive cycles, interjected by a 2 week closure once per 50 week cycle for required maintenance. The master and sub-leases are registered with the BC Land Titles Office for each of the 6 fractionally-owned strata lots and the 12 owners of each strata lot are all registered on title.

The submissions raised concerns that the fractional ownership structure in place for some of the units would not be permitted under the proposed zoning.

Staff reviewed the submissions and have confirmed that a title search shows that the fractional ownership component applies to six of the 13 strata lots within The Seasons property (Strata Plan VAS695), and no other properties in the Bayshores LUC area.

If the proposed bylaw is ultimately adopted by Council, it will terminate the Bayshores LUC from the subject lands and zone the subject lands RM70 Zone (Residential Multiple Seventy) (RM70 Zone) under "Zoning and Parking Bylaw No. 303, 2015" (the Zoning Bylaw). Title to a strata unit can be held in fractional interests and the Zoning Bylaw does not control how title to a property is held. It is the use of the strata unit which is relevant. Therefore, the proposed bylaw to terminate the LUC and zone The Seasons property will not affect the fractional ownership of the strata units.

Tourist Accommodation Use

The submissions noted that some units within The Seasons property are currently being used for tourist accommodation uses, such as time shares and nightly rentals. The submissions also indicated that owners believe these uses are permitted by the Bayshores LUC.

The strata submission provided further details on the tourist accommodation uses. In particular, this submission noted that the property "...was marketed and sold as being fully integrated in the Interval International timesharing program, which allows both Fractional and Whole owners of the Seasons to trade the use of their allotted weeks for use in a property owned by another owner elsewhere." It was also noted by the strata that:

...a short-term rental program was established and operated by our local property manager on behalf of the owners. Through much of the 80s and 90s this nightly rental program ran on behalf of the fractional and whole owners of all 13 strata lots, renting time in units that owners did not require for their own use. Such rental activity was not precluded or prohibited at the time under the terms of the Land Use Contract or the Municipality. In recent years, we have discontinued the Strata-managed rental program in favour of owners renting their individual wholly-owned property or fractionally-owned designated property-week(s) by other private means.

Staff reviewed the submissions and have confirmed that tourist accommodation use is not permitted by the Bayshores LUC. The Bayshores LUC restricts the use of the lands to "single, duplex and multiple residential dwellings" as defined by Zoning Bylaw No. 9, 1975. There is no reference to tourist accommodation use in the Bayshores LUC. As a result, the residential use of The Seasons property under the Bayshores LUC has been maintained in the proposed RM70 zoning by permitting "townhouse" dwellings on the property.

Staff Recommendation:

Staff do not recommend any changes to “Land Use Contract Termination Bylaw (Bayshores) No. 2213, 2020” based on the Public Hearing comments. Staff recommend that the proposed bylaw be given third reading without further revision.