

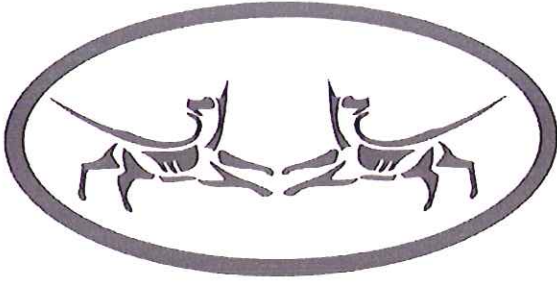
From: Referral Apps REG8 FLNR:EX [mailto:ReferralAppsREG8@gov.bc.ca]
Sent: June 24, 2016 12:54 PM
To: Lauri Feindell
Subject: RE: Bylaw Referral X2016.057-ZONE - bylaw 2743

Hi Lauri,

The Ecosystems Section of the Ministry of Forest Lands and Natural Resources has reviewed the above mentioned referral and will not be commenting.

Cathy Lacey
Admin Support
MOE/MFLNRO Penticton





Penticton Indian Band

Natural Resource Department
R.R. #2, Site 80, Comp.19
Penticton, B.C. CAN
V2A 6J7

Telephone: 250-492-0411 Fax: 250-493-2882

June-23-16

**WITHOUT PREJUDICE AND NOT TO
BE CONSTRUED AS CONSULTATION**

Regional District of Okanagan Similkameen
101 Martin Street
Penticton, BC V2A 5J9

Referral ID: 2016-06-20 ZON 1770

RTS #: 1770

Date: June-20-16

Reference #: BL2743 X2016.057-Zone

Summary: amendment to the Electoral Area A-Osoyoos Rural; C-Oliver Rural, D-OK Falls, Kaleden, Apex; E-Naramata; F-Westbench; H-Eastgate, Tulameen, Coalmont, Alison Lake, Missezula Lake.

ATTENTION: Christopher Garrish

We are in receipt of the above referral. The proposed activity is located within Okanagan Nation Territory and the PIB Area of Responsibility. All lands and resources within the vicinity of this referral are subject to our unextinguished Aboriginal Title and Rights.

The Supreme Court of Canada in the *Tsilhqot'in* case has confirmed that the province and Canada have been applying an incorrect and impoverished view of Aboriginal Title, and that Aboriginal Title includes the exclusive right of Indigenous People to manage the land and resources as well as the right to benefit economically from the land and resources. The Court therefore concluded that when the Crown allocates resources on Aboriginal title lands without the Indigenous peoples' consent, it commits a serious infringement of constitutionally protected rights that will be difficult to justify.

Penticton Indian Band has specific referral processing requirements for both government and proponents which are integral to the exercise of our Rights to manage our lands and resources and to ensuring that the Crown can meet its duty to consult and accommodate our Rights, including our Aboriginal Title and management Rights. There is a cost associated with PIB referral processing and engagement. In accordance with PIB policy, proponents are required to pay a processing fee for each referral. This fee is as follows:

	SubTotal	Tax	Total
Admin (12%)	\$ 52.50	\$ 0.00	\$ 52.50
G.I.S. Tracking and Review (GIS Project Technician)	\$ 110.00	\$ 0.00	\$ 110.00
R.T.S. Data Entry (Technical Services)	\$ 80.00	\$ 0.00	\$ 80.00
Referral Assessment (Band Administrator)	\$ 67.50	\$ 0.00	\$ 67.50
Referral Coordination (Referrals Coordinator)	\$ 190.00	\$ 0.00	\$ 190.00
Total	\$ 500.00	\$ 0.00	\$ 500.00

¹The area over which PIB asserts Aboriginal Rights and Title under Section 35 of the Constitution Act, 1982



INVOICE AMOUNT FOR PRELIMINARY OFFICE REVIEW \$500.00
Please make cheque payable to Penticton Indian Band. re: P.C.132 RTS #1770

This fee must be paid within 30 days. Proper consultation and consideration of potential impacts cannot occur without the appropriate resources therefore it is only with payment that proper consultation can begin and the proposed activity/development can be fully reviewed.

Upon receipt of the processing fee, we will commence our review. You may then expect to receive a letter from us notifying you of the results of our review of potential impacts of the project within 30 to 90 days.

If the proposed activity requires a more in-depth review, Penticton Indian Band will notify the proponent and all parties will negotiate a memorandum of agreement regarding a process for review of the proposed activity.

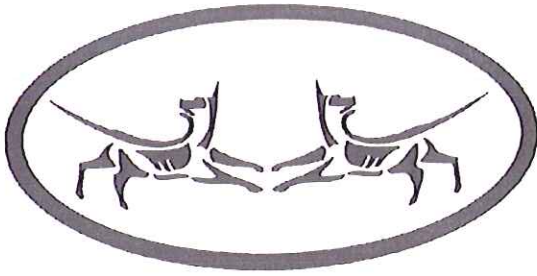
Please note that our participation in the referral and consultation process does not define or amend PIB's Aboriginal Rights and Title, or limit any priorities afforded to Aboriginal Rights and Title, nor does it limit the positions that we may take in future negotiations or court actions.

If you require further information or clarification, please do not hesitate to contact me.

lmlmt,

Lavonda Nelson
Data Management Clerk

¹The area over which PIB asserts Aboriginal Rights and Title under Section 35 of the Constitution Act, 1982



Penticton Indian Band

Natural resource Department
R.R. #2, Site 80, Comp.19
Penticton, B.C. CAN
V2A 6J7

Telephone: 250-492-0411 Fax: 250-493-2882

WITHOUT PREJUDICE AND NOT TO
BE CONSTRUED AS CONSULTATION

June-23-16

Regional District of Okanagan Similkameen
101 Martin Street
Penticton, BC V2A 5J9

Referral ID: 2016-06-20 ZON 1770

RTS #: 1770

Date: June-20-16

Reference #: BL2743 X2016.057-Zone

Summary: amendment to the Electoral Area A-Osoyoos Rural; C-Oliver Rural, D-OK Falls, Kaleden, Apex; E-Naramata; F-Westbench; H-Eastgate, Tulameen, Coalmont, Alison Lake, Missezula Lake.

Attention: Christopher Garrish

RE: Request for a 60 (sixty) day extension

Thank you for the above application that was received on June-23-16. This letter is to inform you that due to current levels of internal capacity, we are unable to review your referral in your proposed timeline. With additional time, Penticton Indian Band will be able to ensure that an informed review process will occur. We are setting the new timeline to be 60 days from the existing timeline.

Most recently, the Supreme Court of Canada in the Tsilquot'in case confirmed that the province has been applying an incorrect and restrictive test to the determination of Aboriginal Title, and that Aboriginal Title includes the exclusive right of a First Nation to decide how that land is used and the right to benefit economical from those uses.

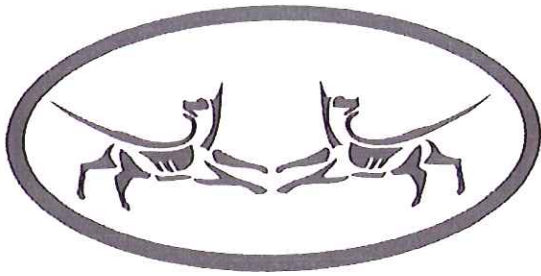
Please note that not receiving a response regarding a referral from Penticton Indian Band in the pre-application, current or post-application stage does not imply our support for the project.

I appreciate your co-operation.

Limlɛmt,

Lavonda Nelson
Data Management Clerk





Penticton Indian Band

Natural resource Department
R.R. #2, Site 80, Comp.19
Penticton, B.C. CAN
V2A 6J7

Telephone: 250-492-0411 Fax: 250-493-2882

**WITHOUT PREJUDICE AND NOT TO
BE CONSTRUED AS CONSULTATION**

July-28-16

Regional District of Okanagan Similkameen
101 Martin Street
Penticton, BC V2A 5J9

Referral ID: 2016-06-20 ZON 1770

RTS #: 1770

Date: June-20-16

Reference #: BL2743 X2016.057-Zone

Summary: amendment to the Electoral Area A-Osoyoos Rural; C-Oliver Rural, D-OK Falls, Kaleden, Apex; E-Naramata; F-Westbench; H-Eastgate, Tulameen, Coalmont, Alison Lake, Missezula Lake.

Attention: Christopher Garrish

Re: RTS Invoice #500

We write regarding your failure to pay invoice #500 to conduct a review to obtain additional information in the area of the above referral. To date, no payment has been received and we have therefore been unable to conduct a review of this referral; we must therefore put you on notice that we do not consent, agree or otherwise approve of the activity / development referred to by you in your letter to us dated June-20-16.

Please make cheque payable to Penticton Indian Band. re: P.C. 132 RTS #1770

The Okanagan Nation holds unextinguished aboriginal title to the land and resources within our traditional territory. The above-noted activity / development is within PIB's Area of Responsibility within Okanagan territory and as such, is subject to Okanagan title, jurisdiction, rights and interests, and PIB decision making and responsibility.

Over the last two decades, the Supreme Court of Canada has clarified the law respecting the rights of aboriginal people in British Columbia, which includes the Penticton Indian Band, Okanagan Nation. The Court has clarified that Aboriginal title continues to exist in British Columbia, and is protected by s. 35 of the *Constitution Act, 1982*.

Most recently, in June 2014, the Supreme Court of Canada in the *Tsilhqot'in* case set out the following characteristics and implications of Aboriginal title:

- ◆ Aboriginal title is not limited to intensively used sites; it extends to lands physically occupied and lands over which Indigenous peoples exercised control. Regular use of territories for hunting, fishing, trapping and foraging, with an intention and capacity to control the lands, grounds Aboriginal title.



- ◆ The Crown has no beneficial interest (the right to use, enjoy and profit from the economic development of lands) in Aboriginal title lands and resources; the beneficial interest is held by the Aboriginal title holding group. Allocations of Aboriginal title lands or resources to third parties are serious infringements of Aboriginal title.
- ◆ Aboriginal title includes the right to proactively use and manage the resources.
- ◆ Once Aboriginal title is "established", the constitution prohibits incursions without the consent of the Aboriginal title holders unless the Crown can justify the infringement, which in turn requires a compelling and substantial public purpose as well as consistency with the Crown's fiduciary duty to the Aboriginal title holders, requiring the involvement of the Aboriginal title holding group in decisions.
- ◆ Before Aboriginal title is "established", the only way to ensure certainty is to obtain consent; in the absence of consent, the Crown must consult and accommodate. If consultation or accommodation is inadequate, the Crown decision can be suspended or quashed. Moreover, fulfilling the duty to consult and accommodate does not provide the certainty that consent provides; once Aboriginal title is established, the Crown may be required to cancel projects where there was no consent and the justification test noted above cannot be met.

At this time there has been no reconciliation of our interests with those of the Province of British Columbia and Canada and no process in place to adequately recognize and negotiate co-existence or accommodation of our jurisdiction and title. The Province continues to act as though we have no beneficial interest or authority, and it takes for itself the revenues derived from our lands and resources. The payment of the referral fee is necessary in order for us to assess your proposal, assess potential impacts and determine whether it should be approved and if so, on what conditions. Because we are unable to undertake such an assessment, we must at this time advise you that we are opposed to your proposed development/activity.

If you require further information or clarification, please do not hesitate to contact me.

limləmt,

Lavonda Nelson
Data Management Clerk

cc:

RESPONSE SUMMARY

AMENDMENT BYLAW NO. 2743

- Approval Recommended for Reasons Outlined Below
- Interests Unaffected by Bylaw
- Approval Recommended Subject to Conditions Below
- Approval Not Recommended Due to Reasons Outlined Below

Signature: John C. Beaupré
Agency: Interior Health
Date: July 22, 2016

Signed By: John C. Beaupré
Title: EHO





Your File #: X2016.057-
ZONE

eDAS File #: 2016-03184

Date: June 22, 2016

Regional District Okanagan-Similkameen
101 Martin Street
Penticton, BC V2A 5J9

Attention: Lauri Feindell

Re: **Proposed Bylaw 2743 for:**
RDOS - Electoral Area's "A", "C", "D", "E", "F", and "H"

Preliminary Approval is granted for the rezoning for one year pursuant to section 52(3)(a) of the *Transportation Act*.

If you have any questions please feel free to call Rob Bitte at (250) 490-2280.

Yours truly,

Rob Bitte
District Development Technician

Local District Address
Penticton Area Office 102 Industrial Place Penticton, BC V2A 7C8 Canada Phone: (250) 490-8200 Fax: (250) 490-2231



Lauri Feindell

MANUFACTURED HOMES
X2016.057-ZONE

From: Carly Rimell <crimell@rdkb.com>
Sent: August 9, 2016 8:20 AM
To: Planning
Subject: RE: Bylaw No 2743, 2016 Project No. X2016.057-ZONE
Attachments: 2016-08-09-RDKBResponse.pdf

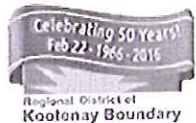
Bylaw No 2743, 2016
Project No. X2016.057-ZONE

Good Morning,

Attached is the RDKB's response form for the bylaw noted above. It indicates our interests are unaffected by the bylaw. My apologies for missing the response date deadline of July 20.

Regards,

Carly Rimell | Planner
Regional District of Kootenay Boundary
Direct: 250.368.0252 | Cell: 250.368.7647 | 1.800.355.7352
crimell@rdkb.com
www.rdkb.com



8

MINUTES
Electoral Area F Advisory Planning Commission
Meeting of Thursday June 9 2016
RDOS 101 Martin Street, Penticton

Present

Members:

Sandy Berry

Bob Nicholson

Stewart Patterson, Secretary

Don Barron

Absent:

Natalie Minunzie, Chair

Hillary Ward ,Vice-Chair

Staff:

Chris Garrish, RDOS Planning Supervisor

Also Present:

Michael Brydon, RDOS Director Area F

1. CALL TO ORDER:

The meeting was called to order at 7:00p.m.

ADOPTION OF AGENDA

MOTION

It was Moved and Seconded that the Agenda be adopted.

CARRIED

2. APPROVAL OF PREVIOUS MEETING MINUTES

MOTION

It was Moved and Seconded by the APC that the Minutes of Thursday May 6 2016 be approved.

CARRIED

3. DEVELOPMENT APPLICATIONS

3.1 Development Variance Permit Application -Smith, Darick (Agent)

F07395.005 / Project # F2016.039-DVP

Legal: Lot 2, Plan KAP26033, DL 5076, SDYD, Except Plan KAP51065

Delegates: Paddy & Sharon Mullaney (not present); Smith, Darick (Agent) (present)

Discussion

MOTION

It was Moved and Seconded that the APC recommends to the RDOS Board that the subject Development Application be approved.

CARRIED (UNANIMOUSLY)

there is equipment on site. There is a well in place and they would need to put in a septic system.

Motion: by Gerry Hesketh, seconded by Bonnie Douglas

That the APC recommends to the RDOS Board that the proposed temporary use be approved.

Vote: All in favor

Other

4.1 X2016.057-ZONE

Evelyn Riechert discussed The Zoning Bylaws in regards to Modular and Mobile Homes. There was discussion about the difference between modular and mobile homes, and about wording of current by-law.

Summary of Questions 1-5 and APC recommendations:

#1 Modular Homes to be permitted as a form of "single detached dwelling" in all zones.

Vote: All in favor

#2 Modular homes to be permitted as an allowable form of accessory dwelling in all zones.

Vote: All in favor

#3 Mobile homes be permitted as an allowable form of principal dwelling unit in the RA, LH and AG zones.

Vote: 4 in favor, 1 abstained

#4 Mobile homes be permitted as an allowable form of accessory dwelling in the RA, LH, and AG zones.

Vote: All in favor

#5 Should consistent building width requirement for principal dwelling units be introduced in SH and RS Zones?

There was discussion on this question, is this being targeted on single wide mobile homes?

Vote: 4 no, 1 yes

More discussion, all in favor of the building width requirement for RS Zone but not for the SH size. The APC felt there was too much discrepancy in the size of Small Holdings.

Motion to adjourn by Peter Beckett at 8:11 pm. ²

July 11, APC AREA 'A' MINUTES

4. REFERRALS

4.1 C2016.059-CROWN - Integrated Land Management Bureau Referral Application; Crown Land Referral – Trails and Recreation Facilities Tenure

There was incomplete information presented in the referral documents to the APC by FLNRO Ministry staff on this matter and they had not provided answers to the RDOS planning staff request for additional information prior to this meeting. The APC responded to the limited information they had received for the meeting.

Discussion: APC members raised a number of concerns regarding this application for motorized recreation track on Oliver Mountain:

- Potential noise impacts to neighbours and beyond
- Impacts to species at risk including Lewis Woodpecker and Antelope-brush
- Motorized vehicles will not stay within designated area due to lack of fencing
- It needs to be shown how this use would be compliant with the Okanagan Shuswap LRMP direction on uses of this particular Crown Land which we understand was to be reserved for a protected area
- No provisions for monitoring usage
- Motorized and non-motorized users groups sharing same area is not compatible
- APC would like to see defined guidelines or protocol for motorized use, that could be used as assessment tool (i.e. staying within designated area, noise restrictions, use of spark arrestors and the concerns noted here) to determine whether used should continue after 5 year trial
- After 5 years the tenure should expire automatically and a new application be made for this use on these lands. It should not be an automatic renewal. Review of any new application will be made conditional upon the compliance of the motorized users with the terms of the use guidelines in the previous period.
- If guidelines/protocols are not followed, prior to end of 5 year trial, motorized use of the recreation area should be removed and the tenure cancelled for the motorized use of these lands.

5. Other

5.1 X2016.057-ZONE Review of Zoning Bylaw Regulations – Modular and Mobile Homes

A discussion was held about the definitions of modular and mobile homes and the social stigma which appears to be held for variations of these types of home construction. Members felt modular homes were equal to a single family dwelling. Mobile homes give people on low incomes (i.e. seniors, youth, young farmers, etc.) an opportunity to have their own home.

A member of the public questioned why a registered double wide mobile home could not be moved to another property. She stated that the current RDOS definitions of a mobile home capture these types of structure which, in essence, are modular homes when established on a property yet exclude them on certain sized zonings.

In the absence of clear recommendations for the Area 'C' APC to address, the members present chose to address the summary conditions which were presented in the information package. These indicate where the two types of manufactured homes might be initially be accepted within the various zoning categories.

Generally, the members felt that on the larger size properties that either type of manufactured home would be acceptable. The smaller sized properties in the zonings of SH and RS will need to be further addressed to provide a process for allowing mobile homes under certain conditions, possibly parcel size. Additional work will be needed to provide for the conditions under which they might be acceptable to provide for administrative fairness.

The APC's response follows the questions regarding the proposed changes to the Electoral Area Zoning Bylaws:

.1 should modular homes be permitted as a form of "single detached dwelling" in all zones;
YES

.2 should modular homes be permitted as an allowable form of "accessory dwelling" in all zones; YES

.3 should mobile homes be permitted as an allowable form of principal dwelling unit in the RA, LH and AG zones; YES

.4 should mobile homes be permitted as an allowable form of "accessory dwelling" in the RA, LH and AG zones; YES and

.5 should consistent building width requirement for principal dwelling units be introduced in SH and RS Zones? APC is in favour of consistent building width requirements, so that all areas in the RDOS are consistent. However, as stated above, additional consideration should be given regarding allowing manufactured/mobile homes on other zoning with smaller parcel sizes like SH and RS.

CARRIED

6. ADJOURNMENT

6.1 MOTION

It was Moved and Seconded that the meeting be adjourned at 8:42 pm.

CARRIED UNANIMOUSLY

3.1 Referral Application: D01432.695 / D2016.025-CROWN

Delegate: McGinn, Tyler not present.

Discussion.

MOTION

It was Moved and Seconded that the Regional District recommends to FrontCounter BC that the application for Specific Permission Tenure for Private Moorage fronting on Lot A, Plan EPP51239, District Lot 105s, SDYD, be refused due to the reasons outlined below:

- Negative environmental impact
- Public safety concerns
- precedent setting regarding proliferation of docks
- RDOS Board to direct staff to draft bylaws extending zoning 50 meters into the lake

CARRIED (UNANIMOUSLY)

4. APPROVAL OF PREVIOUS MEETING MINUTES

MOTION

It was Moved and Seconded by the APC that the Minutes of May 10, 2016 be approved.

CARRIED (UNANIMOUSLY)

5. OTHER

5.1 X2016.057-ZONE – Review of Zoning Bylaw Regulations – Modular and Mobile Homes

Discussion.

MOTION

It was Moved and Seconded that the APC recommends to the RDOS Board of Directors that the subject development application be approved as follows:

1. Should modular homes be permitted as a form of “single detached dwelling” in all zones – **CARRIED**
2. Should modular homes be permitted as an allowable form of “accessory dwelling” in all zones – **CARRIED (UNANIMOUSLY)**
3. Should mobile homes be permitted as an allowable form of principal dwelling unit in the RA, LH and AG zones – **CARRIED**
4. Should mobile homes be permitted as an allowable form of “accessory dwelling” in the RA, LH and AG zones – **CARRIED (UNANIMOUSLY)**

JUNE 14, APC MINUTES - AREA 'D'

Roundtable discussion held in regards to the application. Concerns heard about the parking, vehicle accessibility and the role of the Ministry of Transportation.

3. DEVELOPMENT APPLICATIONS

- 3.1 E02140.000 (E2016.063-ZONE) - Zoning Bylaw Amendment Application Administrative Report written by Christopher Garrish, Planning Supervisor & presented in his absence by Donna Butler (Development Services Manager, RDOS).

No Motion was made due to unmaintained Quorum, but Karla Kozakevich (Area 'E' Director) & Donna Butler (Development Services Manager, RDOS) gained insight into matters regarding the application.

Heather Fleck, APC member, rejoined commission as active participant at 8:18 p.m. restoring Quorum for remaining matters.

Departure of all public guests at 8:19 p.m., except Justin Skidmore & Heidi Noble who left at 8:30 p.m.

4. OTHER

4.1 X2016.057-ZONE

Review of Zoning Bylaw Regulations - Modular and Mobile Homes Administrative Report submitted by Christopher Garrish, Planning Supervisor

Delegate: Christopher Garrish (Planning Supervisor) not present. Donna Butler (Development Services Manager, RDOS) present.

Donna Butler (Development Services Manager, RDOS) presented details of the review. Discussed definitions, current bylaws and zoning for mobile vs. modular (manufactured) homes.

The APC then considered the following questions before making their recommendation to the Board regarding the proposed changes to the Electoral Area Zoning Bylaws:

4.1.1 Should modular homes be permitted as a form of "single detached dwelling" in all zones?

Yes, subject to same limitations as in any normal home dwelling.

4.1.2 Should modular homes be permitted as an allowable form of "accessory dwelling" in all zones?

Yes, subject to same limitations as in any normal home dwelling.

4.1.3 Should mobile homes be permitted as an allowable form of principal dwelling unit in the RA, LH and AG zones?

Yes, in RA & LH zones and only in AG zones on lot sizes of greater than 5 acres.

4.1.4 *Should mobile homes be permitted as an allowable form of "accessory dwelling" in the RA, LH and AG zones?*

Yes, but only for the RA & LH zones and only on AG zones greater than 10 acres.

4.1.5 *Should consistent building width requirement for principal dwelling units be introduced in SH and RS Zones?*

Yes, but with no mobile homes in SH & RS zones and modular homes permitted only for greater than a 5 metre width.

MOTION

It was Moved and Seconded in favour of Option 2. THAT the APC recommends to the RDOS Board of Directors that the proposed textual amendments addressing the placement of modular and mobile homes be approved with the following conditions:

- i) THAT modular homes be permitted as single detached dwellings in all zones, subject to the same limitations as any 'normal' homes.
- ii) THAT modular homes be permitted as accessory dwellings in all zones, subject to the same limitations as any 'normal' homes.
- iii) THAT mobile homes be permitted as an allowable principal dwelling unit in RA & LH, but in AG zones only on lot sizes of greater than 5 acres.
- iv) THAT mobile homes be permitted as an allowable form of accessory dwelling in the RA & LH zones and only on AG zones with lot sizes greater than 10 acres.
- v) THAT consistent building width requirements for principal dwelling units be introduced for RS and SH zones but no mobile homes to be permitted and modular homes only with a greater than 5 metre width.

CARRIED (UNANIMOUSLY)

5. APPROVAL OF PREVIOUS MEETING MINUTES

MOTION

It was Moved and Seconded by the APC that the Minutes of May 9th, 2016 be approved.

CARRIED (UNANIMOUSLY)

6. ADJOURNMENT

Rationale: We addressed our concerns about the applicant proceeding to replace an existing horse barn without a permit.

We were also concerned that the applicant would have been denied a permit to replace the existing barn, that was in poor repair, under the current bylaws, which seemed completely unfair as he is buying it with the intent of keeping horses on the property as had previous owners.

The APC feels that this is a good example why our community plan and bylaws need to be reviewed and updated more often, so as to actually reflect the situation in the community – a new demographic of owners, making different uses on smaller parcels than was the historic norm.

4. OTHER 5.1 X2016.057-ZONE

Review of Zoning Bylaw Regulations – Modular and Mobile Homes Administrative
Administrative Report submitted by Christopher Garrish, Planning Supervisor

Discussion

MOTION

THAT the APC recommends to the RDOS Board of Directors that the subject development application be approved, with specific reference to the following questions:

1. Should modular homes be permitted as a form of "single detached dwelling" in all zones? **YES**
2. Should modular homes be permitted as an allowable form of "accessory dwelling" in all zones? **YES**
3. Should mobile homes be permitted as an allowable form of principal dwelling unit in the RA, LH and AG zones? **NO**
4. Should mobile homes be permitted as an allowable form of "accessory dwelling" in the RA, LH and AG zones? **YES**
5. Should consistent building width requirement for principal dwelling units be introduced in SH and RS Zones? **YES**

CARRIED (UNANIMOUSLY)

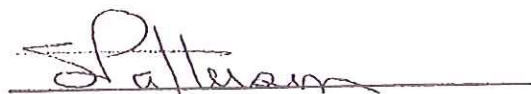
5. ADJOURNMENT

MOTION

It was Moved and Seconded that the meeting be adjourned at 8:50pm.

CARRIED

For Advisory Planning Commission Chair



Advisory Planning Commission Recording Secretary

JUNE 9, APC AREA "F" MINUTES

AREA 'H' APC

JUNE 14, NO QUORUM