

ADMINISTRATIVE REPORT



TO: Board of Directors
FROM: B. Newell, Chief Administrative Officer
DATE: October 5, 2023
RE: Temporary Use Permit Application – Electoral Area “A” (A2023.017-TUP)

Administrative Recommendation:

THAT Temporary Use Permit No. A2023.017-TUP, to allow the residential use of three recreational vehicles and one mobile home, the year-round operation of a mobile vendor, and the outdoor storage of a mobile vendor at 9418 Highway 97, be denied.

Legal: Lot 1, District Lot 2450S, SDYD, Plan KAP16080 Folio: A-06070.005

OCP: Commercial Tourist (CT) Zone: Tourist Commercial (CT1)

Proposed Development:

This application is seeking to allow the following uses on the subject property through the issuance of a Temporary Use Permit (TUP):

- the residential use of one (1) mobile home and three (3) recreational vehicles (RVs);
- the year-round operation of a mobile vendor (i.e. food truck) to provide food services; and
- the outdoor storage of a mobile vendor (i.e. food truck).

It is understood that the three RVs are currently being used by; (1) the business operators in relation to the on-site food truck, (2) a business employee in relation to the off-site food truck, and (3) occasional accommodation by family members of the business operators.

The mobile home is unoccupied and disconnected from on-site servicing.

NOTE: Despite the requested uses listed above, it is understood that one of the two food trucks has been removed from the subject property.

Site Context:

The subject property is approximately 1,598 m² in area and is situated on the west side of Highway 97, approximately 55 metres northwest of the boundary of the Town of Osoyoos. The applicant has already placed the RVs, while the mobile home was placed on the property by a former property owner. One food truck is currently located on the property.

The surrounding pattern of development is generally characterised by agricultural lands to the north, west, and east, and commercial lands within the Town of Osoyoos to the southeast.

Background:

The property was created on March 1, 1966, while available Regional District records indicate that building permits have been issued for a storage shed (1993) and the demolition of a restaurant (2018).

The property is designated Commercial Tourist (CT), which supports commercial services and activities catering to visitors and tourists.

Section 22.3.4 of Electoral Area “A” OCP establishes the following criteria in evaluating a Temporary Use Permit application:

- The use must be clearly temporary or seasonal in nature;
- Compatibility of the proposal with adjacent uses;
- Impact of the proposed uses on the natural environment, including groundwater, wildlife, and all environmentally sensitive areas;
- Intensity of the proposed use;
- Opportunity to conduct the proposed use on land elsewhere in the community; and
- The remedial measures to be carried out to mitigate any damage to the natural environment as result of the temporary use.

Zoning Provisions

The property is zoned Tourist Commercial (CT1) and “mobile vendors” are permitted as an accessory building or structure in the Tourist Commercial zones. The CT1 Zone also permits “tourist accommodation” and “accessory dwelling”, but currently requires that the latter be on parcels with a land area of 4.0 ha, or greater.

The mobile home appears to have been a non-conforming use on the property, having predated both zoning and building permit requirements; however, the mobile home is unoccupied and not connected to any community or on-site servicing.

Legislative Requirements

The *Local Government Act* provides for the ability to continue undertaking a non-conforming use where it was lawfully undertaken at the time in which new zoning regulations were adopted. However, if a non-conforming use is discontinued for a continuous period of six months, any subsequent use of the land or building/structure becomes subject to the applicable zoning bylaw.

In this case, the mobile home has lost its non-conforming status due to its lack of residential use. The onus is on the property owner to provide proof that the non-conforming use has not been discontinued for a continuous period of six months. The applicant was provided the opportunity to provide such evidence; however, no submission has been made to this effect to date.

The business owner has indicated an interest in removing the mobile home from the property as it has been described as being “in bad disrepair”, but has not confirmed if/when this would take place. In the meantime, a TUP is required to retain the mobile home on the property.

Bylaw Enforcement

In 2022, the Regional District received a written complaint regarding the use of the property as a campground (four recreational vehicles), and unsightly, unsavory activity. The property owner was provided with options to bring the property into compliance, including the submission of a rezoning or Temporary Use Permit (TUP) application.

Previous Board Consideration

In 2017, the Regional District issued a TUP for the operation of a “mobile food trailer” on the property, including the provision of associated parking, seating areas, and washrooms. (NOTE: this TUP was issued to a previous property owner for a different food truck).

At its meeting of August 17, 2023, the Regional District postponed consideration of the application until staff could meet further with the applicant.

On September 8, 2023, the applicant confirmed that they would not be amending their application.

Agricultural Land Reserve

While the subject property is located within the Agricultural Land Reserve (ALR), Section 23(1) (Exceptions) of the *Agricultural Land Commission Act*, states that restrictions on the use of agricultural land do not apply to land that, on December 21, 1972, was, by separate certificate of title issued under the *Land Registry Act* (1960), less than 2.0 acres (0.81 ha) in area.

The Agricultural Land Commission has provided written confirmation that the property is exempt from restrictions on the use of agricultural land under Section 23(1).

BC Assessment has classified the property as “Business and Other” (Class 06).

Public Process:

Adjacent property owners will have received notification of this application with written comments being accepted up until one (1) week prior to the Board’s regular meeting at which the application is to be considered. All comments received are included as a separate item on the Board’s Agenda.

Analysis:

The proposal does not appear to meet the TUP criteria listed under the Area “A” OCP. More specifically, the proposed use is not seasonal in nature, is not seen to be compatible with the surrounding agricultural and residential uses, and would more appropriately be carried out on commercial lands elsewhere in the community.

The intent of a “mobile vendor” such as a food truck is to provide temporary food or retail services in support of a predominating principal land use. Typically, this would involve temporary food/retail services to short-term/seasonal events, or businesses such as wineries and fruit stands where the mobile vendor is moved and stored off-site when not in use.

In this case, the applicant is in part requesting to operate a year-round food service business out of a food truck, where the truck and associated structures appear to be permanently parked on the subject property. In this regard, the nature of the food service operation expands beyond the Zoning Bylaw’s definition of “mobile vendor”, and rather than supporting a principal use, has become the principal use of the property.

Recreational Vehicles:

Dwelling units permitted by a local government should uphold the public interest as it relates to health and safety standards for occupants (e.g. adequate ventilation, heating, etc.) as well as environmental health (e.g. proper sewage disposal).

Recreational Vehicles do not meet the standards established in the Building Code for a permanent residential use as they can't be inspected or certified and the health and safety of occupants for year-round residential use may be compromised.

Interior Health has recently provided guidance regarding "healthy housing", which it considers to be attainable, stable, high quality, in a location and community that meets residents needs and that supports health and well-being and how RVs fail to meet this, and which Administration supports:

RVs do not meet quality standards for living in long-term and may be susceptible to potential health hazards (e.g. extreme heat or cold). We understand that most recreational vehicles are not intended, designed or constructed as a permanent form of housing. Appropriate heating, insulation and venting systems which support indoor air quality helps people to maintain good general and respiratory health. Poor quality housing is characterized by hazards that increase the risk of unintentional injuries such as burns and physical trauma. Energy inefficient housing in cold climates is also linked to illnesses caused by cold and damp living conditions.

Water and Sewer Services:

Despite the presence of a septic system on-site, the RVs are not connected to that septic system and instead rely on weekly disposal by a septic service. This method of on-site sewage disposal is normally discouraged, especially considering the year-round use of the property.

Additionally, the property is serviced by the Town of Osoyoos Rural Water District System #8. According to a July 28, 2023 referral response from the Town, water services were turned off in 2019 and the current property owner has illegally connected to the Town's irrigation water system (as opposed to the municipal water system) and has not been paying for this service.

Town of Osoyoos has confirmed that they had no knowledge of the water service being turned on for the property at any date in 2022. It was further confirmed that staff did turn on the domestic, municipal water on August 17, 2023, and that the irrigation service remains off.

The applicant has indicated that their intent is to apply for a rezoning while the TUP is in effect, which effectively provides the applicant with a trial period to demonstrate its compatibility with the surrounding land uses in its current location.

Summary:

The proposal is not consistent with the TUP criteria under the OCP and presents site servicing concerns for adequate food service and residential purposes.

Should the Board choose to issue this TUP, conditions should be placed on the TUP requiring that the on-site year-round food truck and RVs be connected to the on-site septic system and the Town of Osoyoos's municipal water system. Further, given the current condition of the mobile home, it should be removed prior to the expiry of the TUP.

Alternatives:

1. THAT Temporary Use Permit No. A2023.017-TUP, to allow the residential use of three recreational vehicles and one mobile home, the year-round operation of a mobile vendor, and the outdoor storage of a mobile vendor at 9418 Highway 97, be approved.
2. THAT Temporary Use Permit No. A2023.017-TUP, to allow the residential use of three recreational vehicles and one mobile home, the year-round operation of a mobile vendor, and the outdoor storage of a mobile vendor at 9418 Highway 97, be approved with conditions.

Respectfully submitted:



Shannon Duong, Planner II

Endorsed By:



C. Garrish, Senior Manager of Planning

Attachments: No. 1 – Agency Referral List

No. 2 – Aerial Photo (2023)

No. 3 – Site Photo 1 (2023)

No. 4 – Site Photo 2 (2023)

No. 5 – Site Photo 3 (2023)

No. 6 – Site Photo 4 (2023)

No. 7 – Site Photo 5 (September 20, 2023)

Attachment No. 1 – Agency Referral List

Referrals have been sent to the following agencies as highlighted with a , regarding Temporary Use Permit No. A2023.017:

<input checked="" type="checkbox"/>	Agricultural Land Commission (ALC)	<input checked="" type="checkbox"/>	Fortis
<input checked="" type="checkbox"/>	Interior Health Authority (IHA)	<input type="checkbox"/>	City of Penticton
<input type="checkbox"/>	Ministry of Agriculture	<input type="checkbox"/>	District of Summerland
<input type="checkbox"/>	Ministry of Energy, Mines & Petroleum Resources	<input type="checkbox"/>	Town of Oliver
<input type="checkbox"/>	Ministry of Municipal Affairs & Housing	<input checked="" type="checkbox"/>	Town of Osoyoos
<input type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Ecosystem Section)	<input type="checkbox"/>	Town of Princeton
<input type="checkbox"/>	Ministry of Forest, Lands, Natural Resource Operations & Rural Development (Archaeology Branch)	<input type="checkbox"/>	Village of Keremeos
<input type="checkbox"/>	Ministry of Jobs, Trade & Technology	<input type="checkbox"/>	Okanagan Nation Alliance (ONA)
<input checked="" type="checkbox"/>	Ministry of Transportation and Infrastructure	<input type="checkbox"/>	Penticton Indian Band (PIB)
<input type="checkbox"/>	Integrated Land Management Bureau	<input type="checkbox"/>	Osoyoos Indian Band (OIB)
<input type="checkbox"/>	BC Parks	<input type="checkbox"/>	Upper Similkameen Indian Band (USIB)
<input type="checkbox"/>	School District #53 (Areas A, B, C, D & G)	<input type="checkbox"/>	Lower Similkameen Indian Band (LSIB)
<input type="checkbox"/>	School District #58 (Area H)	<input type="checkbox"/>	Environment Canada
<input type="checkbox"/>	School District #67 (Areas D, E, F, I)	<input type="checkbox"/>	Fisheries and Oceans Canada
<input type="checkbox"/>	Central Okanagan Regional District	<input type="checkbox"/>	Canadian Wildlife Services
<input type="checkbox"/>	Kootenay Boundary Regional District	<input type="checkbox"/>	OK Falls Irrigation District
<input type="checkbox"/>	Thompson Nicola Regional District	<input type="checkbox"/>	Kaleden Irrigation District
<input type="checkbox"/>	Fraser Valley Regional District	<input type="checkbox"/>	
<input checked="" type="checkbox"/>	Osoyoos Fire Department	<input type="checkbox"/>	

Attachment No. 2 – Aerial Photo (2023)



Attachment No. 3 – Site Photo 1 (2023)



Attachment No. 4 – Site Photo 2 (2023)



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Attachment No. 5 – Site Photo 3 (2023)



Attachment No. 6 – Site Photo 4 (2023)



Attachment No. 7 – Site Photo 5 (September 20, 2023)

