



Corporate NO: L012

Report COUNCIL DATE: November 25, 2002

REGULAR COUNCIL - LAND USE			
TO:	Mayor & Council	DATE:	November 21, 2002
FROM:	General Manager, Planning & Development	FILE:	7900-0161-00
SUBJECT:	Proposed Rezoning to RC Zone, By-law No. 14724 for Property at 9219 - 168 Street – NRT Development Ltd. & Marco Development Corp.		

RECOMMENDATION

It is recommended that Council:

1. Receive this report as information; and
2. Provide direction to staff regarding the further processing of Rezoning By-law No. 14724.

INTENT

The purpose of this report is to obtain Council direction with respect to the further processing of a rezoning by-law for the site located at 9219 – 168 Street, which is south of Bothwell Park, between 164 and 168 Streets.

BACKGROUND

The 10-hectare (25-acre) site (Appendix I) is designated Suburban in the Official Community Plan (OCP) and is zoned General Agriculture (A-1). It is bounded by the following land uses:

- existing Bothwell Park to the north, designated Suburban;
- the Agricultural Land Reserve (ALR) to the south, across the unopened 92 Avenue, designated Agricultural;
- half-acre gross density (RH-G) lots to the west, across 164 Street, designated Suburban; and

- acreage parcels (A-1) across 168 Street to the east, designated Suburban.

The subject site is treed and is host to a significant watercourse system (Classes A and B) that contains food and nutrient value for fish.

The applicant is proposing to rezone the subject site from General Agriculture Zone (A-1) to Cluster Residential Zone (RC) to allow subdivision into approximately 50 clustered single-family lots (Appendix II). The RC Zone is permitted under the Suburban designation. Because the intent of the RC Zone is to preserve special amenities such as significant slopes, mature vegetation and watercourses, a minimum of 50% of the site area is required to be set aside for open space purposes.

The proposal fulfils all requirements of the RC Zone, including the 50% open space provision. The proposed subdivision consists of two cul-de-sacs: the westerly cul-de-sac connecting to 164 Street that provides access to 19 proposed lots and the easterly cul-de-sac connecting to 168 Street that provides access to 31 proposed lots. The two cul-de-sacs are separated by proposed open space that contains the watercourse system.

In accordance with the City's OCP, a Development Permit is required for the subject development to ensure adequate buffering along the ALR boundary to the south.

Council considered a Planning Report on the application for rezoning, a copy of which is attached as Appendix VIII and, subsequently, gave First and Second Readings to Rezoning By-law No. 14724 on May 28, 2002. The Public Hearing for the By-law was held on June 17, 2002, at which time a number of local residents raised concerns about the proposed density of the development as well as the impact of the proposed development on the existing watercourses, particularly on the eastern end of the site. After the Public Hearing, Council deferred consideration of Third Reading of the Rezoning By-law and passed the following resolution (No. R02-1351):

"That By-law No. 14724 be referred to staff to look at the greater context of Bothwell Park lands as well as the whole quadrant of land and preservation of the waterway".

Council more recently considered the option of acquiring all or a portion of the subject site and determined that based on the Parks Master Plan there is no need to acquire any additional property in the vicinity of Bothwell Park for park purposes and, as such, resolved that the City will not pursue any acquisition of the subject lands.

DISCUSSION

The subject site is immediately south of Bothwell Park (see Appendix IX). Bothwell Park, located south of 96 Avenue between 164 and 168 Streets, is in majority an environmentally sensitive area, impacted by salmon-bearing creeks and significant vegetation. The Serpentine River also runs across the Park. In 2000, a total of 9.7 hectares (24 acres) was acquired to expand Bothwell Park, for the purposes of environmental preservation. Today, Bothwell Park is 40.9 hectares (101 acres) in size. However, there is an area of 8.19 acres, that is not considered to be environmentally sensitive, located at the most south-westerly edge of the park (see Appendix III) and this area is in the process of being sold.

Following the Public Hearing for the subject Rezoning By-law and in response to Council's directive, staff examined alternatives for further processing the subject development application. Three general options have been identified and evaluated. These options take into consideration Council's directive to not acquire any additional land from the subject property, the City's policy to preserve watercourses, the comments expressed at the Public Hearing, policies and by-laws approved by Council (the OCP policies, Parks Master Plan policies and the Zoning By-law, in particular) and the applicant's aspirations regarding this site. The following provides a description of the options that have been considered and an evaluation of each option:

Option 1 – *Give Third Reading to the By-law No. 14724 to Rezone the Entire Site to the RC Zone*

Pros:

- Consistent with the OCP designation for the site and related City policies.
- Provides open space dedication for purposes of preserving the most environmentally sensitive areas on the site consistent the Parks Master Plan.
- Complies with the requirements of the RC Zone.
- The Department of Fisheries and Oceans (DFO) has accepted the creek preservation measures as proposed by the applicant.
- The applicant could proceed with the 50-lot development as planned.

Cons:

- Does not provide watercourse preservation to the same extent, as would be the case if there were no development on the subject site at all.
- Does not fully address the neighbourhood concerns, as voiced at the Public Hearing.

Option 2 – Deny the Rezoning Application in its Entirety

Pros:

- Resolves, for the moment, the concerns of the neighbourhood, as voiced at the Public Hearing.
- Preserves, for the moment, the watercourses and natural environment on the site.

Cons:

- The proposal is in compliance with the Suburban designation and the intent of the RC Zone, as established in the Zoning By-law, is to allow property owners the ability to develop property in proximity to environmentally sensitive areas on the condition that a minimum of 50% of the site area, specifically the identified environmentally sensitive area, is set aside while at the same time achieving an overall density to a maximum of two units per acre.
- Denying the rezoning on the entire site may send a negative message to the development industry.
- The owners may opt to pursue a subdivision under the current A-1 Zone. Based on the minimum lot dimensions of the A-1 Zone, two lots could be created on the easterly portion of the site and one lot on the westerly portion. Pursuant to Section 941 of the *Local Government Act*, such a subdivision would preclude any open space dedication and the City may only rely on a Restrictive Covenant as a tool for protecting the environmentally sensitive areas on the site, which would not be as effective in ensuring the on-going protection of these areas.

Option 3 – Rezone Only the Westerly Part of the Subject Site to the RC Zone and Retain the A-1 Zoning on the Easterly Portion

Under this option, Council would give Third Reading to a Rezoning By-law for the westerly part of the property only. The westerly portion of the site is adjacent to lands zoned or proposed for RH-G residential lots

(The RA-G lot to the north is under an application for rezoning to the RH-G Zone.) The easterly portion of the site is more isolated, being surrounded by A-1 zoned lands, including Bothwell Park. A total of 19 RC lots are proposed on the westerly portion of the site. To fulfil the RC Zone requirements and the maximum unit density of two units per acre under the Suburban designation, the proposed subdivision plan for the westerly part of the site, involving 19 lots, would require a site area of 9.5 acres, of which 4.89 acres must be preserved as open space (see Appendix IV).

The current Rezoning By-law would need to be amended to eliminate the easterly part of the subject property, prior to Council considering Third Reading of the By-law. The excluded easterly part of the site (Appendix IV) would be retained under the current A-1 Zone. No further public hearing will be required to delete the easterly portion of the site from the Rezoning By-law.

Although protection of the creek system can be achieved for the westerly portion through the 50% dedication provision of the RC Zone, the outcome of preserving the easterly portion will vary, depending on which of the following four courses of action is pursued by the owner:

- Rezone to the RA Zone which would allow a subdivision of up to six lots (Appendix V); or
- Rezone to the RA-G Zone which would allow for a subdivision of up to nine lots (Appendix VI); or
- Rezone to the RH-G Zone, which would allow for the subdivision of up to 19 lots (Appendix VII).
- Subdivide the property under its current A1 Zone; or

Under the RA Zone, the easterly portion of the site has a six-lot development potential with the rest of the site (approximately 8-acres) being impacted by the creek. The impacted area does not have any development potential and the City does not have any authority to require dedication of more than 5% of the gross site area. This impacted area, however, may be incorporated into the lots or voluntarily dedicated to the City by the developer.

Under the RA-G and the RH-G Zones, the easterly portion of the site can be subdivided into 9 lots and 19 lots respectively while meeting the minimum subdivision requirements of these zones. Again, subdivision and development may only occur outside the 8-acre area that is impacted by the creek. Based on the density provisions of both the RA-G and RH-G Zones, the Zoning By-law requires the applicant to set aside 15% of the gross site area for open space. Where lands being set aside include undevelopable lands, the area is discounted by 50% (or in other words, the required area to be set aside is increased by 100%). The following table illustrates the potential lot yield based on the referenced zones as well as areas required for open space purposes.

	RA Zone	RA-G Zone	RH-G Zone
Total Lot Area	15.5 acres	15.5 acres	15.5 acres
Environmentally Sensitive Area	8.0 acres	8.0 acres	8.0 acres
Number of Potential Lots (& units per acre)	6 (0.4 u.p.a.) Max. 1 u.p.a.	9 (0.6 u.p.a.) Max 1 u.p.a.	19 (1.2 u.p.a.) Max 2 u.p.a.
Required Dedication	5%	15% (undevelopable land discounted by 50%)	15% (undevelopable land discounted by 50%)
Actual Dedication	0.8 acre	4.7 acres	4.7 acres

In practice, developers usually dedicate the entire undevelopable area identified for environmental preservation purposes to the City. Therefore, it can be assumed that the entire 8-acre area impacted by the creek would likely be dedicated to the City if the easterly part of the site were developed under either the RA-G Zone or the RH-G Zone.

Council always retains the prerogative not to approve any further rezoning on the easterly part of the subject site.

Rather than pursuing rezoning, the owner could consider a two-lot subdivision of the easterly portion of the site, based on its current A-1 zoning. As explained under Option 2, pursuant to Section 941 of the *Local Government Act*, a two-lot subdivision would preclude any open space dedication. As such, subdividing the easterly part of the subject site into two lots under the A-1 Zone would not facilitate reasonable protection of the environmentally sensitive area within the site.

In summary, the pros and cons of this option are:

Pros:

- Satisfies, for the moment, the concerns of the neighbourhood since development will not proceed immediately on the easterly part of the site. However, it is likely that the owner will pursue a new application for development on that part of the site, almost immediately.
- Consistent with the OCP designation for the site and related policies.
- Preserves, for the moment, the most environmentally sensitive areas on the site consistent the Parks Master Plan.

Cons:

- Will not achieve, over the longer term, any greater degree of environmental protection than the applicant's current proposal. However, the applicant's current proposal satisfies the objectives of the Parks Master Plan and the OCP policies and is satisfactory to the DFO.

CONCLUSION

Some residents in the immediate neighbourhood wish to preserve the entire watercourse system on the subject site to the fullest extent possible, particularly on the easterly part of the property. Based on the Parks Master Plan, no additional parkland acquisition, beyond the voluntary dedication, is required from this site for Bothwell Park and, on this basis, Council has determined that the City should not acquire any part of this site. The current proposal for development of the site, in accordance with Zoning By-law No. 14724, provides for an acceptable level of protection for the environmentally sensitive areas on the site through parkland dedication to the City in conjunction with the rezoning and subdivision of the site. Not to allow the rezoning will send a negative message to the development industry. Approving a rezoning on the westerly portion of the site, while leaving the easterly portion of the site in its current A-1 Zone, will probably only defer having to address the development of the easterly part of the site at a later date when the applicant submits a new development application. Regardless, of the type of zoning and subdivision that may occur on the easterly part of the site, it is unlikely that environmentally sensitive areas will be better protected than would be the case if the current

proposal is approved. Staff request that Council provide direction on the further processing of this application.

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- Appendix I Subject Site
- Appendix II Applicant's Proposed Subdivision Layout
- Appendix III Excess City Lands in the Vicinity
- Appendix IV Revised Site Area for the Westerly Portion/Easterly Portion
- Appendix V Subdivision Concept under the RA Zone
- Appendix VI Subdivision Concept under the RA-G Zone
- Appendix VII Subdivision Concept under the RH-G Zone
- Appendix VIII Planning Report
- Appendix IX Development Site