



BOARD REPORT

TO: Chair and Directors

File No: TUP850-04
PL20190000221

SUBJECT: Electoral Area B: Temporary Use Permit No. 850-04 (Bernacki et al)
(Renewal)

DESCRIPTION: Report from Erica Hartling, Planner I, dated November 18, 2019.
3304 Catherwood Road, Revelstoke

RECOMMENDATION: THAT: in accordance with Section 493 of the Local Government Act, Temporary Use Permit No. 850-04 (Renewal) for Legal Subdivision 13, Section 12, Township 23, Range 2, West of the 6th Meridian, Kootenay District, except parts included in Plans 9790 and 11177, for a vacation rental, be approved for renewal for the term November 10, 2019 to November 10, 2022, this 6th day of December, 2019, subject to the applicant fulfilling the following condition:

- (a) Submission of a new septic system evaluation report completed by a Registered On-site Wastewater Practitioner, confirming that the septic system is in good working order and adequate for the vacation rental use.

SHORT SUMMARY:

The Board approved issuance of Temporary Use Permit No. 850-04 (TUP) for use of a vacation rental for the subject property on September 15, 2016, subject to conditions. The conditions were fulfilled and the TUP was issued on November 9, 2016. The TUP is for a vacation rental use, which is operated in the single family dwelling located at 3304 Catherwood Road. The applicant has applied to renew the TUP for another 3 year-term.

VOTING:	Unweighted Corporate	<input type="checkbox"/>	LGA Part 14 (Unweighted)	<input checked="" type="checkbox"/>	Weighted Corporate	<input type="checkbox"/>	Stakeholder (Weighted)	<input type="checkbox"/>
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BACKGROUND:

REGISTERED OWNER(S):
Peter Bernacki, Melinda Bell, Richard Mickle

APPLICANT:
Melinda Bell

ELECTORAL AREA:
B (Revelstoke)

LEGAL DESCRIPTION:
Legal Subdivision 13, Section 12, Township 23, Range 2, West of the 6th Meridian, Kootenay District, except parts included in Plans 9790 and 11177

PID:

013-343-912

CIVIC ADDRESS:

3304 Catherwood Road, Revelstoke

SURROUNDING LAND USE PATTERN:

North = Camozzi Road, Residential, City of Revelstoke

South = Residential, Agriculture

East = Vacant, Proposed Commercial, Residential, City of Revelstoke

West = Catherwood Road, Residential, Agriculture

CURRENT USE:

5.29 ha property with a single family dwelling and two outbuildings (garage and an uninhabitable log cabin). Single family dwelling operated as a vacation rental use.

PROPOSED USE:

Same as current use. Owners would like to renew their TUP for another 3 year-term, to continue operating the single family dwelling as a vacation rental use.

PARCEL SIZE:

5.29 ha (13.07 acres)

DESIGNATION:

Electoral Area B Official Community Plan Bylaw No. 850

SH - Small Holdings

ZONE:

Electoral Area B Zoning Bylaw No. 851

SH - Small Holdings

AGRICULTURAL LAND RESERVE:

100%

SITE COMMENTS:

See "Maps_Plans_Photos_TUP850-04_renewal.pdf" attached.

Development Services staff visited the site on November 6, 2015 and the applicant has confirmed that the site and uses on the property since 2015 have not changed. Slopes of the property are gentle and increasing to become steep along the eastern boundary. There is one single family dwelling (used as the vacation rental), a garage, and an uninhabitable log cabin located on the property. The single family dwelling is connected to a septic system and well.

POLICY:

See excerpts of the relevant CSRD policies and land use regulations in the attached "BL850_BL851_Excerpts_TUP850-04_Renewal.pdf".

Electoral Area B Official Community Plan Bylaw No. 850

- 4.1 Residential - Community Context
- 4.3 Land Use & Density Policies

- Small Holdings
 - Vacation Rental
- 4.4 Community Specific Policies - South Revelstoke
- 14. Temporary Use Permits

Electoral Area B Zoning Bylaw No. 851

- Definitions
- General Regulations - Vacation Rental
- Parking and Loading Regulations
- SH - Small Holdings Zone

Local Government Act**Part 14: Division 8 – Temporary Use Permits****497 Term of permit and renewal of permit**

(1) The owner of land in respect of which a temporary use permit has been issued has the right to put the land to the use described in the permit until the earlier of the following:

- (a) the date that the permit expires;
- (b) 3 years after the permit was issued.

(2) A person to whom a temporary use permit has been issued may apply to have the permit renewed, subject to the restriction that a temporary use permit may be renewed only once.

FINANCIAL:

The owners have provided proof of adequate vacation rental and liability insurance for 2019 and 2020. Insurance is renewed on an annual basis and the owners have provided proof of insurance the last three years.

KEY ISSUES/CONCEPTS:

See "2016-08-26_Board_DS_TUP851-04_Bernacki.pdf" attached.

There is currently a 4 bedroom single family dwelling (constructed in 1992) located on the subject property. The owners have operated the dwelling as a vacation rental for the last eight years (2012 – 2019), rented approximately 100 days/year, with rentals being primarily over the winter season and sporadic in the spring/summer/fall months. The applicant has noted that when the property is vacant it is inspected every 48 hours.

The Board approved issuance of the Temporary Use Permit No. 850-04 (TUP) for use of the vacation rental for the subject property on September 15, 2016, subject to conditions. The conditions were fulfilled and the TUP was issued on November 9, 2016. The subject property is permitted a year-round vacation rental subject to compliance with the following conditions:

- a) Limited to the single family dwelling at 3304 Catherwood Road.
- b) Maximum number of guests is 8.
- c) Quiet time is from 11 PM to 6 AM daily.
- d) Vacation rental signage shall be limited to one sign.
- e) All parking must be accommodated on site; no parking shall occur on Catherwood Road or Camozzi Road.

- f) The owner is wholly responsible for the proper disposal of all garbage, recycling, and yard waste created by the operation of the vacation rental.

This past May 2019, staff notified the subject property owners of the upcoming November 9, 2019 expiry of the TUP and presented the options to either renew the TUP for one more term or to apply to rezone the property. The owners would like to continue operating the vacation rental and applied on September 17, 2019 to renew the TUP. With the original TUP application in 2016, staff only received one complaint that was regarding noise and lack of regulations (e.g. fines) that deal with "troublesome" vacation rental properties. Since the issuance of TUP850-04, staff have received no complaints from the public over the last three years and the owners are not proposing any changes to the current vacation rental use.

In consideration of staff processing, referrals, and report deadlines, the December 6, 2019 Board meeting is the earliest meeting that this renewal could be placed on the agenda. The renewal date of the TUP850-04 permit reflects a date of November 10, 2019 to November 10, 2022, in consideration of the November 9, 2019 expiry date.

Local Government Act – Number of TUP renewals

The Local Government Act allows for one renewal application of a Temporary Use Permit; if the Board approves this renewal the owners may operate the vacation rental use for the next three years from November 10, 2019 to November 10, 2022. If they want to continue to operate beyond the three years, they will be required to make an application to rezone the property to permit a permanent vacation rental use on the subject property.

Water Supply and Sewage Disposal

The 4 bedroom single family dwelling is connected to a septic system and a well. With the original TUP issuance, staff received a Septic System Evaluation dated June 6, 2016 by Dave Seaton, Registered On-site Wastewater Practitioner (ROWP) of Elite Septic & Excavation. The ROWP's Septic System Evaluation confirmed that the system at the time was "functioning and in good working order" for the 4 bedroom dwelling. However, the ROWP recommended that the septic system be upgraded to meet current Sewerage System Standard Practice Manual v3 Standards. The applicant at the time indicated that they understood the recommendations and that an upgrade would be completed in the future. During the referral process with the original TUP, both Interior Health and the Electoral Area B Advisory Planning Commission (APC) also recommended that septic be upgraded.

Staff requested information from the applicant concerning the servicing of the subject dwelling for the current TUP renewal. The applicant has informed staff that they haven't upgraded the existing septic system but have not had any issues with the functioning of the system.

Staff referred the current TUP renewal application to the APC, who recommended approval and that the existing septic system be re-evaluated to confirm that it is in good working order and adequate for the vacation rental use (see APC minutes in the attached [Agency_Referral_Responses_TUP850-04_Renewal.pdf](#)). Staff support and agree with the APC recommendation and have communicated to the applicant that staff recommendation to the Board is to approve the TUP renewal on the condition that the applicant submits a new Septic System Evaluation completed by a ROWP, confirming that the septic system is in good working order and adequate for the vacation rental use. If staff receive a report stating that the system is not in good working order for the vacation rental use, then the ROWP's recommended upgrade would be required.

The applicant acted on the APC recommendation right away and informed staff that they had a ROWP inspect the existing septic system on November 18, 2019 and they expect the completed report the week of November 25, 2019. Staff will provide a verbal update to the Board if the ROWP's report is received before the December 6, 2019 Board meeting.

Access and parking:

Access to the single family dwelling is off Catherwood Road. The vacation rental home contains 4 bedrooms; therefore, the required number of parking spaces is 4. The applicant has included "gravel parking" on the site plan and there is ample room for parking on the property to meet the required 4 parking spaces.

Agricultural Land Reserve Use

The subject property is 100% in the Agricultural Land Reserve (ALR) and the Agricultural Land Commission (ALC) Act and Regulations apply to the property. The subject vacation rental use as proposed will not require a Non-Adhering Residential Use application to the ALC, as the proposed use is within the existing principal residence and no additional dwelling units are proposed on the property.

Development Services staff sent a referral to ALC Planning staff, which included a summary of the current proposal and also a copy of the original issued TUP (TU850-04_CA5639572.pdf), staff Board Report (2016-08-26_Board_DS_TUP851-04_Bernacki.pdf) and the Maps, Plans, and Photos (Maps_Plans_Photos_TUP850-04_Renewal.pdf). See complete ALC response in the attached "Agency_Referral_Responses_TUP850-04_Renewal.pdf".

The ALC has communicated the following for the subject application:

- Recognizing that the subject property is adjacent to the ALR on its west and south boundaries, ALC staff understands the importance of mitigating the impacts on adjacent agricultural lands. ALC staff support the CSRD's requirement for a limitation on the number of guests, quiet hours, and a local contact to deal with any potential issues that may arise regarding noise or other inconveniences.
- The ALC does not regulate the tenure of principal residences within the ALR. As the vacation rental is proposed to be contained within the single-family dwelling (i.e. the principal residence), which was constructed lawfully in 1992, the ALC has no objection to the issuance of the TUP.

2016 TUP850-04 Conditions of Issuance

As part of the original TUP condition of issuance, the owners were required to meet the following conditions:

- a) Proof of adequate vacation rental and liability insurance with a minimum of \$5 million dollars in coverage for the vacation rental house, and naming the CSRD as an additional insured.

Update: The owners have provided proof of adequate vacation rental and liability insurance for 2019 and 2020. Insurance is renewed on an annual basis and the owners have provided proof of insurance the last three years.

- b) Registration of a suitably worded Section 219 Covenant on the title of the subject property agreeing to obtain the acceptable insurance and agreeing to a release and indemnification to the CSRD for any damage that occurs as a result of the temporary use/vacation rental.

Update: The Section 219 Covenant was registered on the title as CA5594243 dated October 6, 2016.

- c) Written confirmation of an application to register the existing groundwater well with the Ministry of Forests, Lands and Natural Resource Operations (FLNRORD).

Update: The owners made an application to FLNRORD for an Existing Use Groundwater License, dated September 8, 2016 and provided a copy of the application to staff.

The owners received a letter dated April 10, 2017 from FrontCounter BC on behalf of FLNRORD, stating that the Province cancelled the application as it is not required for the existing use. This cancellation of the application is based on:

- the average daily consumption of 1 to 41.5 m³ per/day on average.
- the subject vacation rental use does not meet the definition of 'Commercial Enterprise' and is considered a 'Domestic Use', even if the property is used for short term rentals and has a commercial element to it.
- Domestic Use is not licensable under the Water Sustainability Act for Groundwater applicants.

SUMMARY:

Staff support the renewal of the TUP for the following reasons:

- No complaints have been received from the public over the last three years regarding the vacation rental use; and,
- The owners have complied with the originally issued TUP requirements over the last three years including obtaining the required liability insurance coverage.

Staff are recommending that this TUP renewal be approved subject to the applicant submitting a new septic system evaluation report completed by a Registered On-site Wastewater Practitioner, confirming that the septic system is in good working order and adequate for the vacation rental use.

IMPLEMENTATION:

If the Board issues the TUP renewal the owners will continue to operate their vacation rental use for another three years. If the owners want to continue to operate this use beyond the three years they will need to apply to rezone the property.

COMMUNICATIONS:

Neighbouring property owners first became aware of this application when a sign was posted on the subject property on September 5, 2019, in accordance with Section 7.2 of the Development Services Procedures Bylaw No. 4001 as amended. Further, as per Section 466 and 494 of the Local Government Act, local government must give notice to owners and tenants within 100 m of the subject property, and must publish a notice in a newspaper at least 3 days prior to Board consideration of this TUP. The notice will be advertised in the Revelstoke Review on November 28, 2019.

As of the date of this report, no written submissions or complaints have been received regarding the vacation rental use over the last three years.

Referrals have been sent to the following:

- Area B Advisory Planning Commission (APC)

- Agricultural Land Commission (ALC)

The Electoral Area B APC reviewed the application at their November 14, 2019 meeting. The APC recommended approval and that the existing septic system be re-evaluated to confirm that it is in good working order and adequate for the vacation rental use.

The ALC reviewed the application and submitted a response letter dated November 5, 2019. The ALC supports the CSRD's requirement for a limitation on the number of guests, quiet hours, and a local contact to deal with any potential issues that may arise regarding noise or other inconveniences. The ALC stated that they do not regulate the tenure of principal residences within the ALR. As the vacation rental is proposed to be contained within the single-family dwelling (i.e. the principal residence), which was constructed lawfully in 1992, the ALC has no objection to the issuance of the TUP.

DESIRED OUTCOMES:

That the Board endorse the staff recommendation.

BOARD'S OPTIONS:

1. *Endorse the Recommendation.*
2. *Deny the Recommendation.*
3. *Defer.*
4. *Any other action deemed appropriate by the Board.*

LIST NAME OF REPORT(S) / DOCUMENT(S) AVAILABLE FROM STAFF:

1. Electoral Area B Official Community Plan Bylaw No. 850
2. Electoral Area B Zoning Bylaw No. 851
3. TUP850-04 Board Report, August 26, 2019
4. Existing Use Groundwater Application and Letter
5. Covenant CA5594243 and Priority Agreement CA5594244

Report Approval Details

Document Title:	2019-12-06_Board_DS_TUP850-04_renewal_Bernacki.docx
Attachments:	<ul style="list-style-type: none">- TUP850-4_Renewal.pdf- BL850_BL851_Excerpts_TUP850-04_Renewal.pdf- Agency_Referral_Responses_TUP850-04_Renewal.pdf- Maps_Plans_Photos_TUP850-04_Renewal.pdf
Final Approval Date:	Nov 26, 2019

This report and all of its attachments were approved and signed as outlined below:



Corey Paient



Gerald Christie

No Signature - Task assigned to Lynda Shykora was completed by assistant Jennifer Sham

Lynda Shykora



Charles Hamilton