



# BOARD REPORT

**TO:****Chair and Directors**

<b>File No:</b>	BL 701-89 PL20170174
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**SUBJECT:**

Electoral Area C: South Shuswap Zoning Amendment (Ron Lindblad)  
Bylaw No. 701-89

**DESCRIPTION:**

Report from Dan Passmore, Senior Planner, dated October 11, 2017.  
#1 to #6, 1541 Blind Bay Road, Blind Bay.

**RECOMMENDATION:**

THAT: "South Shuswap Zoning Amendment (Ron Lindblad) Bylaw No. 701-89" be read a first time this 16<sup>th</sup> day of November, 2017.

AND THAT: the Board utilize the simple consultation process for Bylaw No. 701-89, and it be referred to the following agencies and First Nations:

- Area C Advisory Planning Commission;
- Interior Health Authority;
- Ministry of Environment;
- Ministry of Forests, Lands, Natural Resource Operations and Rural Development;
- Ministry of Forests, Lands, Natural Resource Operations and Rural Development – Archaeology Branch;
- CSRD Operations Management; and
- All relevant First Nations.

**SHORT SUMMARY:**

The owners of Strata Plan EPS162 have applied for a rezoning amendment to address several illegal non-conforming issues, as a result of bylaw enforcement action. The property is currently regulated by a special regulation within the CH2 - Cluster Housing 2 Zone, which does not reflect on the current site development.

**VOTING:**

Unweighted  
Corporate

☐

LGA Part 14  
(Unweighted)

☒

Weighted  
Corporate

☐

Stakeholder  
(Weighted)

☐**BACKGROUND:****APPLICANT:**

Ron Lindblad, representing all strata owners

**ELECTORAL AREA:**

C

**LEGAL DESCRIPTION:**

Strata Lots 1 to 6, Section 15, Township 22, Range 11, West of the 6<sup>th</sup> Meridian, Kamloops Division, Yale District, Strata Plan EPS162

**CIVIC ADDRESS:**

#1 to #6, 1541 Blind Bay Road

**SURROUNDING LAND USE PATTERN:**

North = Shuswap Lake

South = Blind Bay Road/Vacant/Single Family Dwelling

East = Robertson Road Community Park (CSRD)/Single Family Dwelling

West = Single Family Dwelling

**CURRENT USE:**

6 single family dwellings

**PARCEL SIZE:**

0.215 ha (0.53 ac)

**DESIGNATION:**

RR – Rural Residential

**ZONE:**

CH2 – Cluster Housing 2 Zone (subject to special regulation 14.3.12)

**POLICY:****Electoral Area C Official Community Plan Bylaw No. 725****2.3 Shoreline Environment***2.3.2 Policies*

.2 Land owners must not alter the natural habitat and shoreline processes unless specifically authorized. The placement of fill and the dredging of aquatic land are not generally acceptable.

**3.4 Residential***3.4.1 Policies*

- .1 New residential development will be directed to the Village Centre and Secondary Settlement Areas identified on Schedules B and C. Outside these areas, residential development is discouraged unless co-located with an agricultural use.
- .2 Residential development is subject to the following land use designations, housing forms and maximum densities:

Land Use Designation	Housing Form	Maximum Density
Medium Density (MD)	Detached	5 units/ac (1 unit/0.2 ac) 12 units/ha (1 unit/0.08 ha)
	Semi-detached	8 units/ac (1 unit/0.13 ac) 20 units/ha (1 unit/0.05 ha)
	Townhouse	12 units/ac (1 unit/0.13 ac) 30 units/ha (1 unit/0.03 ha)
Neighbourhood Residential (NR)	Detached, Semi-detached	2 units per 1 acre (1 unit/0.2 ha)
Country Residential (CR)	Detached, Semi-detached	1 unit per 1 acre (0.4 ha)
Rural Residential (RR)	Detached, Semi-detached	1 unit per 2.5 acres (1 ha)
Rural Residential 2 (RR2)	Detached, Semi-detached	1 unit per 5 acres (2 ha)

Small Holdings (SH)	Detached, Semi-detached	1 unit per 10 acres (4 ha)
Medium Holdings (MH)	Detached, Semi-detached	1 unit per 20 acres (8 ha)
Large Holdings (LH)	Detached, Semi-detached	1 unit per 25 acres (10 ha)
Rural Holdings (RH)	Detached, Semi-detached	1 unit per 148 acres (60 ha)

- .3 Cluster forms of development are encouraged within the Sorrento Village Centre and Secondary Settlement Areas to reduce the amount of land affected by residential growth when the permitted number of units is clustered on part of the site, and the remaining area is protected in a natural state. Where cluster developments are located near natural features, such as waterbodies, the cluster development should be directed away from the natural features. Areas near the features should be protected common or public areas.

### 3.6 Waterfront Development

#### 3.6.1 Objective

- .1 To maintain the near shore areas of Shuswap Lake, White Lake and Little White Lake ecologically intact by focusing development away from the shoreline and by minimizing impacts from moorage facilities.

#### 3.6.2 Policies

- .1 New waterfront development will only be supported if it:
- a) Is residential in nature;
  - b) Has maximum densities of:
    - i. 1 unit / 1 ha ( 1 unit /2.47 ac) on the waterfront in Secondary Settlement Areas and the Sorrento Village Centre; or
    - ii. 1 unit / 2 ha (1 unit / 4.94 ac) in all other areas;
  - c) Creates lots each with a minimum of 30 m of water frontage;
  - d) Is located a minimum of 50 m away from the natural boundary of Shuswap Lake, White Lake and Little White Lake: Development Permit Areas may apply, see Section 12 of this plan; and
  - e) Provides adequate moorage subject to the moorage policies in Section 3.7.
- .2 Development on waterfront parcels should be clustered to minimize impact on the landscape and preserve natural open space. Applications that do not include Section 219 covenants to prohibit additional subdivision, protect natural areas from further development and address other site specific considerations will not be supported.

### South Shuswap Zoning Bylaw No. 701

#### CH 2 – Cluster Housing 2 Zone

##### Purpose

*The purpose of the CH2 zone is to recognize existing cluster housing arrangements as of March 16, 1995 but not to recognize any new cluster housing arrangements which were not existing on this date.*

### Permitted Uses

14.1 The following uses and no others are permitted in the CH2 zone:

- .1 single family dwelling;
- .2 cottage; permitted only on parcels greater than 4,000m<sup>2</sup>
- .3 home business;
- .4 accessory use.

### Regulations

14.2 On a parcel zoned CH2, no building or structure shall be constructed, located or altered and no plan of subdivision approved which contravenes the regulations established in the table below in which Column I sets out the matter to be regulated and Column II sets out the regulations.

COLUMN I MATTER TO BE REGULATED	COLUMN II REGULATIONS
.1 Minimum Parcel Size for New Subdivisions	10 ha
.2 Maximum height for: <ul style="list-style-type: none"> <li>• Principal buildings and structures</li> <li>• Accessory buildings</li> </ul>	<ul style="list-style-type: none"> <li>• 10 m (32.81 ft.)</li> <li>• 6 m (19.69 ft.)</li> </ul>
.3 Minimum Setback from: <ul style="list-style-type: none"> <li>• front parcel line</li> <li>• exterior side parcel line</li> <li>• interior side parcel line</li> <li>• rear parcel line</li> </ul>	<ul style="list-style-type: none"> <li>5 m</li> <li>4.5 m</li> <li>2 m</li> <li>5 m</li> </ul>
.4 Maximum Coverage	70%
.5 Maximum Number of Single Family dwellings	1
.6 Maximum Number of Cottages	1

14.3.12 This special regulation applies to Lot 2, Plan KAP62863, Section 15, Township 22, Range 11, W6M as shown on the map below.

- .1 Notwithstanding Section 14.2 the maximum density of single family dwellings is 32.6 /ha.
- .2 Notwithstanding Section 14.2 the maximum parcel coverage is 23%.

### Proposed Amendments Bylaw No. 701

The following amendments are proposed to reflect the current development on the property:

- 1. Density is proposed to be a total of 6 single family dwellings at 27.9 units/ha.;
- 2. Parcel coverage is proposed to be 24.79%;

3. Setbacks as follows:

Front parcel line	5.0 m
Exterior side parcel line	0.66 m
Interior side parcel line	1.24 m
Rear parcel line	4.07 m
4. Maximum height for principal buildings, as follows:

Strata Lot 2	10.35 m
Strata Lot 3	10.07 m
5. Eaves and Gutters from 1.0 m from exterior side parcel line to:

Strata Lot 2	0.08 m
Strata Lot 3	0.03 m
Strata Lot 4	0.06 m
6. Floodplain Specifications for setback and flood construction level to be as follows:

Floodplain Setback	
Strata Lot 4	10.33 m
Strata Lot 5	13.62 m
Strata Lot 6	10.02 m
Flood Construction Level	
Strata Lot 2	350.91 m
Strata Lot 3	349.55 m
Strata Lot 4	349.57 m
Strata Lot 5	348.84 m
Strata Lot 6	348.83 m

## **FINANCIAL:**

The rezoning is the result of bylaw enforcement action. If the Board does not adopt the proposed amending bylaw, the Board may then wish to direct staff to seek a legal opinion regarding possible court action. Costs for the legal opinion and possible court action, although partially recoverable through Court, could nonetheless be substantial. Staff involvement in legal action is not recoverable.

## **KEY ISSUES/CONCEPTS:**

### **Bylaw No. 701-36**

Bylaw No. 701-36 was adopted by the Board at the February 15, 2007 regular meeting. The rezoning amendment introduced the set of special regulations under sub-section 14.3.12 (included above) allowing greater density and limiting parcel coverage on the site. The owners applied for the amendment to include the special regulation when it was revealed to them that the adoption of the new South Shuswap Zoning Bylaw No 701 did not recognize the existing development on the property and, therefore, the existing development (7 single family dwellings, and a mobile home, which was removed from the property through the course of the rezoning application) was non-conforming with respect to the existing use.

### **DVP 701-32**

Subsequent to the adoption of Bylaw No. 701-32, (the month after adoption) the owners applied for a Development Variance Permit (DVP) to correct some non-conformities with respect to siting of the

existing development on the property, prior to some proposed renovations and expansions of the existing cabins. This DVP 701-32, in addition to correcting exterior parcel line setbacks also purported to provide relief from Floodplain Specifications.

Initially, the applicant was advised that the DVP 701-32 could not be processed as some 3 buildings actually encroached onto Robertson Road, an unconstructed Highway Right-of-way, access to Shuswap Lake. The owners were also advised that Provincial Riparian Area Regulations had recently come into effect and a Riparian Area Assessment Report (RAAR) would be required to support the DVP application.

Finally, staff noted that the buildings did not comply with floodplain specifications. Staff advised the applicant that floodplain issues could be dealt with within the DVP 701-32 as long as the applicant had provided a report from a qualified professional with experience in assessing flood risk.

The applicant provided the necessary information, as follows, after considerable delay:

- RAAR dated December 31, 2007, by Michele Trumbley, R.P.Bio., of Trumbley Environmental Consulting Ltd.
- Flood Assessment Report, dated May 14, 2007, by Alan Bates, P.Eng., of Streamworks Unlimited
- Arborist Report, dated August 8, 2007, by Irene Palmer, Certified Arborist, of Horizon Tree Service Ltd.
- Letter Regarding On-Site Sewerage System, dated April 18, 2007, by Dick Bartel, P.Eng., of Point One Engineering.
- Encroachment Permit, (No. 02-131-17011) issued February 2, 2006, by Ministry of Transportation and Infrastructure (MoT).

The DVP 701-32 was issued by the Board at the August 21, 2008 regular meeting.

Provisions within the Local Government Act do not allow a Development Variance Permit to vary Floodplain Specifications.

Staff have attached the report to the Board from August, 2008 with attachments, for the Board's information.

### **Capri Cabins – Subsequent Development**

On February 12, 2009, the Provincial Ministry of Environment accepted the RAAR report and authorized the approvals. On March 26, 2009, the Interior Health Authority authorized repair of an existing Type 3 on-site sewerage system for 14 bedrooms with 479.4 m<sup>2</sup> of total living area. On December 15, 2009, a plan for deposit of a building strata subdivision was registered in the Land Title Office. The plan of strata subdivision showed that 6 lots were created. Registration for a building strata plan typically happens when the buildings are framed up completely to lock-up stage.

What had occurred on the site was that rather than renovation and expansion of the existing 7 cabins on the site, the owner had demolished all of the existing units and had constructed 6 new single family dwellings on the site. The new buildings are located closer to the natural boundary, and other parcel lines than the old cabins. There are also some units that violate maximum height restrictions.

The impact of this is that the reports which both the rezoning bylaw and the subsequent DVP were based on, were invalidated, because they reflected the old development, which was demolished.

In 2010, the CSRD pursued a bylaw enforcement complaint against the construction on the property. A letter was sent to the owners on June 15, 2010. A subsequent letter from the CSRD, dated June 22, 2010 advised the owners that the development of the 6 new cabins was in violation of DVP 701-32. Through the Bylaw Enforcement process, and many additional letters, it has taken until 2017 for the owners to understand the various issues and to apply to rezone the property to correct the situation.

**RAR Issues**

The owners of Capri Cabins had a RAAR performed by Michele Trumbley, R.P.Bio. to support the DVP. The RAAR dealt with the existing cabins and development on the site and did not contemplate the new configuration of the new units, which in some cases were sited closer to the Lake. However, development of the site occurred prior to the adoption of Electoral Area C Official Community Plan Bylaw No. 725, which instituted a requirement for a RAR DP when it was adopted. So a RAR DP for the new replacement development was not required.

The RAAR submitted to and accepted by the Provincial Government advises that additions are proposed to the 3 lakeshore cabins, but that these additions will occur to their south sides away from the Lake.

The demolition of the existing cabins and the construction of the new single family dwellings, did not require any approval from the CSRD at the time. It would have been a requirement for a revised RAAR, had any approvals been required, such as a building permit, or a subdivision.

As such, the new single family dwellings have been constructed within the SPEA defined in the original RAAR. But this occurred at a time when no approvals were required. The current rezoning application seeks to amend the zoning bylaw to sanction the current siting, but does not constitute development under RAR. Nevertheless, staff intend to send a referral to Ministry of Environment to give them an opportunity to provide their guidance.

**Floodplain Issues**

The original Flood Assessment Report dealt with flood hazards with respect to the existing cabins. The demolition of those 7 cabins and the construction of 6 new single family dwellings invalidated that report, because the new structures were placed closer to the natural boundary of Shuswap Lake. The owners have provided a new report, dated September 25, 2017 from Alan Bates, P.Eng., of Streamworks Consulting Inc., which addresses the new single family dwellings.

The report advises that new units have been constructed including new foundations and excavated basements with changed setback distances and floor elevations. The report advises that the 3 buildings constructed closer to Shuswap Lake (Units No. 4, 5, and 6) are in violation of the floodplain setback of 15.0 m, requiring an exemption.

In addition to this, the report advises that of the excavated basements, only Unit No. 1 complies with the flood construction level of 351.0 m geodetic. Units 2 to 6 all fall under the flood construction level requirement, however main floor elevations do comply. The report advises that the basements are unfinished and are not used for living space, but that they do house furnaces and hot water tanks for the units. The report advises that it is the understanding of Mr. Bates that these mechanical components have been constructed on above floor platforms of some unspecified height, which may or may not comply with the flood construction level. Mr. Bates did not do a site examination to verify this information.

Mr. Bates reports that foundation walls are likely close to the flood construction level, so the danger of floodwaters overtopping the foundation walls is unlikely. To mitigate the risk of inundation the owners have installed sump pumps in each cabin. Again Mr. Bates has not verified this information through a site visit.

Mr. Bates concludes his report by indicating that the new development on the site has not significantly increased the risk of flood damage on the property and has stated that the site may continue to be used safely. However, the caveat is added that the owners must not use the basements for living space or for the storage of valuables.

The Board had previously dealt with the issue of floodplain specifications in DVP 701-32, albeit for the previously existing buildings on the property, and in a DVP, which did not comply with the Local Government Act at the time. Rather than propose an exemption which is the usual vehicle for floodplain issues, and which would require a further application, and considering the Zoning Bylaw is the vehicle for establishing floodplains and their specifications, staff are proposing that the exemption to floodplain specifications incorporated into the zoning for this property based on the revised Engineer's report was a more efficient approach to the issue.

**Covenant KM95490**

Registered against the title of the parent property, Lot 2, Plan KAP62863, as a condition of subdivision approval in August 1998. The covenant is in favour of the Department of Fisheries and Oceans (DFO) and restricts the removal of vegetation from the site within 15.0 m of the 348.3 m contour. A review of the RAAR and the attached arborists report indicate that tree removal within this area was anticipated by the development but that planting of 29 other new trees would mitigate this loss. It is unknown if the owners approached DFO for approval to remove trees or planted the replacement trees.

**Covenant LB5664 – Sewerage System**

Registered against the title of the parent property, in favour of the CSRD at the time of the rezoning Bylaw No. 701-36. This covenant was offered by the owners in response to CSRD concerns regarding the efficacy of the existing on-site sewerage system. It was also offered to address public concerns raised at the Public Hearing. The covenant restricts the use of the property and the buildings thereon. The main provision is that the Owners would not construct, build, renovate, alter or reconfigure any of the existing dwellings to contain more than 2 bedrooms each. The covenant also restricts any increase in building area unless the owners have provided an inspection report by a qualified professional advising that the on-site sewerage system is in good working order and capable of handling the then-current amount of sewage generated on the site.

As reported earlier, a filing submitted by a qualified Engineer for a repair of the existing Type 3 system was approved for construction by the IHA at or around the time of reconstruction on the site. The filing was for 14 bedrooms, and a total of 479.4 m<sup>2</sup> of living space. A review of the strata plan of subdivision registered on the site indicates that the 6 new single family dwellings constitute a total of 1,210.6 m<sup>2</sup>. This figure includes basement areas, excluding basement areas leaves 824.9 m<sup>2</sup>. Staff are unaware of the number of bedrooms constructed, and have asked the applicant for this information.

The applicant has further advised that the number of bedrooms within the entire complex is 12, which means that the current filing for the sewerage system is adequate, regardless of the floor area change.

**Water Supply**

Information provided by the owners during the first rezoning application in 2007 indicate that the property is serviced by Shuswap Lake intake. It is unknown if there is a single intake for the entire property or if each unit has its own intake. If it is a single intake, the system is a water supply system and must be approved by the Interior Health Authority.

The applicant has provided staff with a copy of a Permit to Operate a Drinking Water System, as issued by the IHA under Facility No. 14-097-00185, dated April 1, 2009, and a Waterworks Construction Permit, No. TC-660, issued August 20, 2009, both of which predate the demolition of the existing units, and the construction of the new units. Again, staff will refer the bylaw to the IHA for their perspective. Staff will provide the Board with further information during consideration of future readings of the bylaw.



**Ministry of Transportation and Infrastructure – Encroachments onto Robertson Road**

As noted earlier, the Ministry of Transportation and Infrastructure (MoT) issued an encroachment permit for Capri Cabins in 2006. However, this permit was for the previously existing buildings. The applicant had applied for a renewed encroachment permit, which was issued (Permit No. 2017-05825), September 22, 2017 for the new site development.

**Robertson Road – CSRD Park**

The Electoral Area C Parks Plan was amended in 2010 to include Robertson Road, and a License of Occupation for the foreshore area and road was obtained from MFLNRORD and MoT in 2012 for a swim area.

**Electoral Area 'C' OCP Bylaw No. 725**

The current OCP designation RR Rural Residential allows for a density of 1 unit per ha. The current zoning and the existing development of 6 units on a 0.215 ha property do not comply with this designation. Current policies regarding infrastructure indicate that existing development must connect to a community sewer system to protect Shuswap Lake water quality.

**Foreshore Development**

At some point in the past the owners have installed an extensive retaining wall structure within Shuswap Lake. Stairs lead from the top of the retaining wall down onto the beach. The installation of the retaining wall effectively reclaimed landscaped area from the Crown which owns the land below the natural boundary. If this type of structure were contemplated to be constructed now, the owner would need to apply for a tenure from the Lands Branch (Front Counter BC), as well as receive a permission under Section 11 of the Water Sustainability Act. It is unlikely the owners have obtained the required permissions from the Provincial Government for these structures. Staff will forward a referral to the Ministry for their advice in this regard.

**SUMMARY:**

The applicant has applied to amend the current special regulation within the CH 2 – Cluster Housing – 2 Zone which regulates the subject property. The subject property was rezoned to a special regulation within the CH 2 zone and a DVP was issued to allow what was existing on the site at that time. Subsequent to this, the owners demolished all of the existing development on the site and re-developed in violation of the zone and the DVP. This application is a response to bylaw enforcement action, and, if supported by the Board would sanction all of the illegal non-conforming elements of the new development.

Staff are recommending that the Board consider the background in that context, give Bylaw No. 701-89 first reading, and consider directing staff to forward the bylaw and background information to referral agencies and First Nations.

**IMPLEMENTATION:**

As per CSRD Policy No. P-18 regarding Consultation Processes-Bylaws, staff recommends the simple consultation process. Neighbouring property owners will first become aware of the application for zoning amendments when a notice of development sign is posted on the property.

**Referral Process**

The following list of referral agencies is recommended:

- Area 'C' Advisory Planning Commission;
- Interior Health Authority;

- Ministry of Environment;
- Ministry of Forests, Lands, Natural Resource Operations, and Rural Development;
- Ministry of Forests, Lands, Natural Resource Operations, and Rural Development - Archaeology Branch;
- CSRD Operations Management; and
- All relevant First Nations.
  - Adams Lake Indian Band
  - Little Shuswap Indian Band
  - Neskonlith Indian Band.

**COMMUNICATIONS:**

If the bylaw is given first reading it will be forwarded to the referral agencies. Agency comments will be provided with a future Board report. The applicant will be required to post a Notice of Development sign on the subject property in accordance with Development Services Procedures Bylaw No. 4001.

**DESIRED OUTCOMES:**

That the Board endorse 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. MoT Encroachment Permit No. 2017-05825, dated September 22, 2017.
2. Electoral Area C Official Community Plan Bylaw No. 725.
3. South Shuswap Zoning Bylaw No. 701.
4. CSRD Letter November 9, 2015.

**Report Approval Details**

Document Title:	2017-11-16_Board_DS_BL701-89_Lindblad.docx
Attachments:	<ul style="list-style-type: none"><li>- 2008-08_Board_DS_DVP701-32.pdf</li><li>- BL701-89-First.pdf</li><li>- Letter to M Lindblad re Capri Cabins Flood Hazard Assessment - Streamworks Sep 2017.pdf</li><li>- CSRD_letter_2015-11-09_BL701-89.pdf</li><li>- Maps_Plans_Photos_BL701-89.pdf</li></ul>
Final Approval Date:	Nov 8, 2017

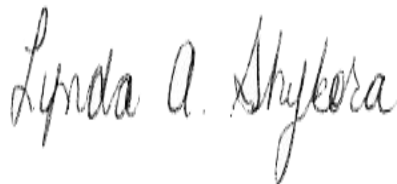
This report and all of its attachments were approved and signed as outlined below:



**Corey Paiement - Nov 6, 2017 - 11:29 AM**



**Gerald Christie - Nov 7, 2017 - 7:59 AM**



**Lynda Shykora - Nov 7, 2017 - 4:12 PM**



**Charles Hamilton - Nov 8, 2017 - 8:49 AM**