



# BOARD REPORT

**TO:** Chair and Directors

<b>File No:</b> BL 825-37 PL20150149
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**SUBJECT:** Electoral Area F: Scotch Creek/Lee Creek Zoning Amendment (Ted & Lucille Tash) Bylaw No. 825-37

**DESCRIPTION:** Report from Dan Passmore, Senior Planner, dated August 4, 2017.  
1 – 1022 Scotch Creek Wharf Road, Scotch Creek.

**RECOMMENDATION #1:** THAT: Scotch Creek/Lee Creek Zoning Amendment (Ted & Lucille Tash) Bylaw No. 825-37, be read a second time this 21<sup>st</sup> day of September, 2017.

**RECOMMENDATION #2:** THAT: a public hearing to hear representations on Scotch Creek/Lee Creek Zoning Amendment (Ted & Lucille Tash) Bylaw No. 825-37 be held;

AND THAT: notice of the public hearing be given by staff of the Regional District on behalf of the Board in accordance with Section 466 of the Local Government Act;

AND FURTHER THAT: the holding of the public hearing be delegated to Director Larry Morgan, as Director for Electoral Area 'F' being that in which the land concerned is located, or Alternate Director Bob Misseghers, if Director Morgan is absent, and the Director or Alternate Director, as the case may be, give a report of the public hearing to the Board.

**SHORT SUMMARY:**

The applicant is planning to rebuild a new single family dwelling on Strata Lot 1, Section 27, Township 22, Range 11, West of 6th Meridian, KDYD, Strata Plan K227. Unfortunately, the proposed building exceeds the parcel coverage for the R1 zone. The applicant is proposing a site specific amendment to the R1 zone to allow for a parcel coverage of 75.24%, as well as setback relaxations that will permit the proposed house to be constructed on the subject property.

The Board gave Bylaw No. 825-37 first reading at the October 15, 2015 regular meeting and directed staff to utilize the simple consultation process. The development notice was posted in accordance with Development Services Procedure Bylaw No. 4001, as required. Staff has referred the bylaws to affected Ministries, agencies and First Nations and comments received have been summarized in this report.

It is now appropriate for the Board to consider second reading of Bylaw No. 825-37.

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**VOTING:** Unweighted  Corporate LGA Part 14  (Unweighted) Weighted  Corporate Stakeholder  (*Weighted*)

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**BACKGROUND:**

## PROPERTY OWNERS:

Ted and Lucille Tash

## ELECTORAL AREA:

F' (Scotch Creek)

## LEGAL DESCRIPTION:

Strata Lot 1, Section 27, Township 22, Range 11, West of 6th Meridian, KDYD, Strata Plan K227

## ADDRESS:

1 – 1022 Scotch Creek Wharf Road

## SIZE OF PROPERTY:

103 m<sup>2</sup> (1,108.7 ft<sup>2</sup>)

## SIZE OF K227:

5,625.1 m<sup>2</sup> (1.39 Ac.) (Total of 10 strata lots)

## SURROUNDING LAND USE PATTERN:

NORTH	Residential
SOUTH	Park/Shuswap Lake
EAST	Residential
WEST	Residential

## CURRENT OCP DESIGNATION:

NR Neighbourhood Residential, Scotch Creek Primary Settlement Area

## CURRENT ZONING:

Residential 1 (R1)

## PROPOSED ZONING:

Residential 1 (R1) – Special Regulation

## CURRENT USE:

Single Family Dwelling

**PROPOSED USE:**

New Single Family Dwelling

**POLICY:****Electoral Area 'F' Official Community Plan Bylaw No. 830**

Development Services staff provided the Board with a complete review of OCP policies impacting this proposal in the September 25, 2015 report, reviewed by the Board during the October 15, 2015 regular meeting. However, it is important to stress to the Board that this property is within the Scotch Creek Primary Settlement area and, as such, new development is discouraged without servicing from a community sewer and water system that has been approved by the jurisdiction having authority.

**Proposed Residential - 1 (R1) Zone Amendments**

A special regulation is proposed that would be specific to the subject property as follows:

Notwithstanding subsection (3), on Strata Lot 1, Section 27, Township 22, Range 11, West of 6th Meridian, KDYD, Strata Plan K227 as shown hatched on the map below, the following supplemental siting characteristics for a proposed new single family dwelling shall be permitted:

- .1 Notwithstanding subsection 3(c), the maximum parcel coverage for the proposed new single family dwelling is 75.24%.
- .2 Notwithstanding subsection 3(f), the minimum setbacks for the proposed new single family dwelling are as follows:

(f) Minimum <i>setback</i> from:	
▪ <i>front parcel boundary</i>	▪ 0.0 m (0.0 ft.)
▪ <i>interior side parcel boundary (west side)</i>	▪ 0.0 m (0.0 ft.)
▪ <i>interior side parcel boundary (east side)</i>	▪ 0.246 m (0.808 ft.)
▪ <i>rear parcel boundary</i>	▪ 0.388 m (1.273 ft.)

A map showing the subject property would also be included in the bylaw amendment.

**FINANCIAL:**

There are no financial implications to the CSRD with regard to this application.

**KEY ISSUES/CONCEPTS:****Anchor Bay Strata KAS227**

The original strata plan K227 was deposited in the Land Title's Office in July, 1978. The plan shows Lot 1 has an area of 103 m<sup>2</sup>. The plan of subdivision was modified in November, 2008 to include areas of Limited Common Property (LCP) consisting of a 2.6 m wide strip around each of the 10

lots defined in the original plan. Lot 1 only had 2.6 m of LCP described in the amending plan added onto the north and west sides.

Cabins were constructed on each of the strata lots. A survey plan of the development shows that the lot lines established in the original plan of strata subdivision appeared to coincide with the walls of existing cabins. The addition of the 2.6 m LCP strip around each of the lots in the strata plan appears to have been an attempt to reconcile the fact that eaves on all the cabins extended over lot lines.

In the case of Lot 1, a fishing cabin was constructed in the 1950's which had a footprint of 16' x 24' with a large deck attached at ground level to the east side of the cabin. The deck extended out to the east side property line. When the survey plan was deposited, the cabin's south east corner encroached onto the neighbouring property to the south (Plan B5406) by a small amount (0.122 m<sup>2</sup> or 1.3 ft<sup>2</sup>), not including the roof eaves. The neighbouring property to the south is currently owned by the CSRD for a Park. The proposed plan of development of the property will remove this encroachment, when the old cabin is demolished to make way for the new one. In all other respects the cabin and deck on Lot 1 fit fully onto the strata lot, but do not meet setback requirements.

#### **Anchor Bay Strata KAS227 – Sewer and Water Servicing**

Staff were able to ascertain from records associated with the approval of the strata subdivision in 1978 that a Final Certificate No. 11095 was issued by the Environmental Engineering Division of the Department of Health on August 18, 1977 for the waterworks system. Additionally the Medical Health Officer had reviewed pertinent information and advised the Provincial Approving Officer that the sanitary sewage disposal system met Health Unit requirements at that time.

In spite of this information current IHA staff had advised that no authorizations exist for the water and sewer systems and that the strata corporation must comply with both the Drinking Water Protection Act and Regulation for the water system and that an Authorized Person, must demonstrate that the existing onsite sewerage system is in compliance with the existing development along with a performance test to ensure that the system is capable of functioning as designed.

The proposed rezoning is for one strata lot within the overall 10 lot strata subdivision, and responsibility for servicing is entrusted to the strata corporation and not the owner of the subject property. The subject property owners had not received a great deal of information from the strata corporation and in any event would be simply unable to have the strata corporation commit to upgrading the systems or even have them authorized by the authority having jurisdiction. This represents a severe source of difficulty to the property owners when it comes to meeting the guidelines in the OCP about community sewer and water systems.

It is important to note that should any other strata owners decide to structurally alter or replace their cabins, they would face the same issues as the Tashes.

**The Re-Development Proposal**

The applicants would like to demolish the existing cabin and construct a new single family dwelling. The new building would be a 2 storey structure consisting of a total of 1,257 ft<sup>2</sup> with 786 ft<sup>2</sup> on the main floor and 471 ft<sup>2</sup> on the second floor. The new house would feature 3 bedrooms. A deck at or around ground level is also proposed.

The single family dwelling is proposed to be sited on the north and west property boundaries, with eaves overhanging the property lines into the Limited Common Property (LCP). The plans also indicated that the house would be built on the south property line, but this was amended because the eaves would encroach onto CSRD property to the south. A setback from the south property boundary will ensure that the eaves do not encroach.

**The Current Owners and the Process**

Mr. and Mrs. Tash purchased the property in 2003. It quickly became apparent that the cabin was too small for their family and needed significant repairs. In September 2005 the Tash's allege they submitted an application for a building permit to the CSRD for the proposed new house. The Tash's claim they were advised by CSRD staff that a permit could not be issued for the proposed building because the eaves overhung onto common property. As a result of this issue, the strata ownership undertook the amendment to the strata plan to include 2.6 m strips of LCP around each of the strata lots to deal with the eave overhang issues.

In June, 2012 CSRD Development Services staff sent a letter to the Tash's advising that since the proposed re-development was within 30 m of Shuswap Lake a Development Permit (DP) application, together with a Development Variance Permit (DVP) application to relax R1 zone setbacks, and an exemption to floodplain setbacks would be required to be submitted. In response to this letter the Tash's submitted an application for DP and a DVP in November, 2012.

Staff reviewed the application and advised the Tash's in a letter dated January 23, 2013 that the DP could not be issued because it did not comply with Scotch Creek/Lee Creek Zoning Bylaw No. 825 (Bylaw No. 825) R1 zone setbacks. The letter went on to further state that the DVP also could not be issued because of the eave encroachment onto Limited Common Property (LCP). Over the next months the issue of the eave encroachment was discussed and settled with legal advice.

In August 2013, the DP and DVP application was returned to the Tash's together with their fee and a letter explaining that while a DVP could deal with the matter of setback relaxation, it could not deal with a relaxation of parcel coverage, as this is a matter of density and would require a rezoning application.

**Sewer and Water Servicing**

Water is drawn from Shuswap Lake via a strata operated pumphouse and distributed to all of the lots in the strata. Similarly sewer is collected from the lots and treated in a strata operated septic

sewage system. No documentation was originally provided that permits are in place to operate either the water or sewer system. Further, no documentation was supplied from the strata indicating that the existing sewer system is adequate to service the proposed new construction.

Referral comments from IHA indicated that their records did not contain authorizations for the water and sewer systems. As a result, the IHA had recommended that the owner provide information that the lot is capable of being serviced with an on-site septic sewerage system and an independent on-site water system. Development Services staff had forwarded the IHA comments to the applicant and had asked the applicant to contact IHA to provide additional information regarding the community water and sewer systems.

Development Services staff researching the subdivision files from the late seventies obtained Certificate No. 11095 issued August 18, 1977 by the Regional Engineer of the Environmental Health Division for Public Health for the waterworks system. Development Services staff forwarded this certificate to IHA for comment. The IHA responded by advising that the community water supply system does not exist and that the system must comply with the Drinking Water Protection Act and Regulations.

The Strata President and the Tashes have since, in 2016 met on-site with Katie McNamara of IHA. At that meeting the strata presented to the IHA representative water quality test results for the system intake, together with the "Boil Water" notice that is given to the resident's in the strata. The practice of boiling water from the supply system to use for drinking water is common operating practice for all resident's within the strata currently.

The IHA representative discussed alternatives at the meeting, including the following:

- Strata Lot #1 to obtain a license from the Water Rights Branch for obtaining drinking water directly from Shuswap Lake via their own surface water intake.
- All strata owners could follow suit with their own separate intakes.
- Install a new water treatment plant to current regulations in an enlarged pumphouse.
- Strata Lot #1 to install an above ground water storage tank and have drinking water trucked in to the site.

The recent approval by the CSRD Board of funding to pursue a preliminary engineering study on the feasibility of a CSRD community water system for the Scotch Creek area has also presented the strata with another alternative, which is to continue to operate for the time being, and commit to become a subscriber for a connection to the community water system when it becomes available. In this regard the strata has passed a resolution to support the community water system. All of this information has been included in a letter from the Strata Board Chair, which is attached to this report.

A referral response from the Medical Health Officer issued April 11, 1978 to the Ministry of Highways Provincial Approving Officer indicated that the proposed subdivision met Health Unit

requirements. This information was also forwarded to the IHA for comment. The IHA responded by advising that an Authorized Person must demonstrate that the existing onsite sewerage system is in compliance with the existing development along with performance test to ensure that the system is capable of functioning as designed.

In an effort to follow through on this aspect, the strata hired Mr. Chad Meier, P.Eng. of Cleartech Consulting Ltd. (an Authorized Person) to review the current community septic system. Mr. Meier prepared a report, dated October 24, 2016 which reviewed the current system. A copy of this report has been included as an attachment to this report. The report concludes that the existing system is satisfactory to service the proposed re-development of Lot #1, and that the system is in good working order.

### **Riparian Area Regulation**

In order to support their application for a DP, the applicants had hired a Qualified Environmental Professional (QEP), Mr. Jeremy Ayotte, RPBio, to prepare a Riparian Area Assessment Report (RAAR). The RAAR was filed with the Provincial Riparian Area Assessment Report Notification System (RAARNS) on July 26, 2012. The RAAR indicates that the proposed construction is in compliance with RAR.

A RAR DP will be required before a building permit can be issued for the new single family dwelling.

### **Floodplain Issues**

The RAAR contains mapping indicating that the proposed new house will be sited more than 15.0 m from the 348.3 m contour, and therefore will comply with the floodplain setback requirement. The applicant is aware that the proposed new home would not be issued a Building Permit if the flood construction level of 351.0 m is not met.

### **Access**

Access to the strata lot is from existing internal strata roadways, accessed directly from Scotch Creek Wharf Road.

### **Local Government Act – Non-Conforming Status**

The Local Government Act (LGA) permits structures that existed prior to the adoption of a bylaw to remain legally non-conforming until such time as they are altered or reconstructed. Part 14: Division 14 – Non-Conforming Use and Other Continuances, Section 528(1) of the LGA states: "If at the time a land use regulation bylaw is adopted, (a) land, or a building or other structure, to which that bylaw applies is lawfully used, and (b) the use does not conform to the bylaw, the use may be continued as a non-conforming use."

Section 531 of the LGA – Restrictions on Alteration or Addition to a Building or Other Structure, subsection (1) states: "Subject to this section, a structural alteration or addition must not be made in or to a building or other structure while a non-conforming use is continued in all or any part of

it." Section 529 of the LGA – Non-conforming structures: restrictions on maintenance, extension and alteration applies to a non-conforming use or density.

In this case, the existing home is not being repaired or altered; it is being replaced.

**Covenant KT017277**

This covenant is registered on the title of Lot 2, in favour of Lot 1, and establishes a 2.0 m wide area on the east side of the mutually shared property line where nothing can be constructed.

**Covenant N38625**

Registered on title in 1978 as a requirement of the approval of the strata subdivision to require a 7.5 m floodplain setback from Shuswap Lake and a flood construction level of 351.0 m.

**Groundwater Absorption Coefficient (GAC)**

For the Scotch Creek Primary Settlement Area, a policy regarding protection of water quality has been included. Policy 12.14 sets out the justification and criteria for calculating the GAC, in an effort to reduce impermeable surfaces in a given development to below 45%. This proposal with parcel coverage consisting of just the proposed building of 75.24% will exceed this, not counting the proposed deck. While the GAC is currently a guideline for development, Policy 12.14 recommends that provision for GAC be included in the Zoning Bylaw to augment the parcel coverage regulations. Since this is an amendment to increase the parcel coverage, the GAC is relevant to the proposed rezoning amendment.

**SUMMARY:**

The applicant would like to demolish an existing cabin and rebuild a single family dwelling on the subject property. A rezoning is required because the proposed new house vastly exceeds the allowed parcel coverage in the R1 zone of the Scotch Creek/Lee Creek Zoning Bylaw No. 825. Staff had proposed that a special regulation for this subject property only could be considered by the Board, which would increase the permitted parcel coverage to 75.24% and would also include parcel line setback relaxations.

Staff is recommending that the Board consider the new site servicing information provided by the applicant, and that the Bylaw can be considered for second reading and delegation of a Public Hearing.

**IMPLEMENTATION:**

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

**COMMUNICATIONS:**

If the Board gives Bylaw No. 825-37 second reading and a public hearing is delegated, staff will proceed with notification of adjacent property owners and advertising the Public Hearing as set out in the Local Government Act.

Referral agencies have provided their comments and they have been attached as Appendix B to this report.

**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. Electoral Area F Official Community Plan Bylaw No. 830, as amended:
2. Scotch Creek/Lee Creek Zoning Bylaw No. 825, as amended.
3. Application.

**Report Approval Details**

Document Title:	2017-09-21_Board_DS_BL825-37_Tash.docx
Attachments:	- Referral_ResponseSummary.pdf - K227-Letter.pdf - 13.5_BL825-37.pdf - BL825-37-ReportAttachments.pdf - BL825-37-Second.pdf
Final Approval Date:	Sep 11, 2017

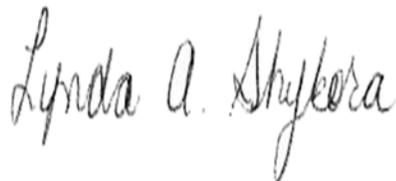
This report and all of its attachments were approved and signed as outlined below:



**Corey Paiement - Sep 7, 2017 - 10:00 AM**



**Gerald Christie - Sep 10, 2017 - 3:16 PM**



**Lynda Shykora - Sep 11, 2017 - 3:35 PM**



**Charles Hamilton - Sep 11, 2017 - 3:46 PM**