



Date: 06/09/2019

MEMORANDUM

To: Chair and Directors, Committee of the Whole
And To: John MacLean, Chief Administrative Officer
From: Havan Surat, Manager of Development Services
Date of Meeting: Committee of the Whole_Sep12_2019
File: 6480-01
Subject: OCP Impacts to Land Owners

Background:

At the March 22, 2019 Board meeting, the Board resolved as follows:

That discussion regarding Official Community Plan (OCP) development and impacts to property owners who become legal non-conforming as a result of OCP implications, be referred to a future Committee of the Whole meeting.

Official Community Plan

An Official Community Plan is a statement of the long-term vision for the future of the community, with objectives and policies which guide planning and land use management decisions. Any bylaws passed by the Regional Board, or works undertaken, must be consistent with the policies in the applicable OCP.

There is standard content in each OCP due to requirements of the *Local Government Act*, such as designated areas for residential and other land uses, and existing and proposed public infrastructure systems.

OCP Content requirements per LGA

473 (1) *An official community plan must include statements and map designations for the area covered by the plan respecting the following:*

(a) the approximate location, amount, type and density of residential development required to meet anticipated housing needs over a period of at least 5 years;

(b) the approximate location, amount and type of present and proposed commercial, industrial, institutional, agricultural, recreational and public utility land uses;

(c) the approximate location and area of sand and gravel deposits that are suitable for future sand and gravel extraction;

(d) restrictions on the use of land that is subject to hazardous conditions or that is environmentally sensitive to development;

(e) the approximate location and phasing of any major road, sewer and water systems;

(f) the approximate location and type of present and proposed public facilities, including schools, parks and waste treatment and disposal sites;

(g) other matters that may, in respect of any plan, be required or authorized by the minister.

(2) An official community plan must include housing policies of the local government respecting affordable housing, rental housing and special needs housing.

Future Land Use Designations in OCP

The Official Community Plan usually consists of a future land use map added as an appendix attached to the plan document. The future land use map identifies proposed land use designations for the entire plan area.

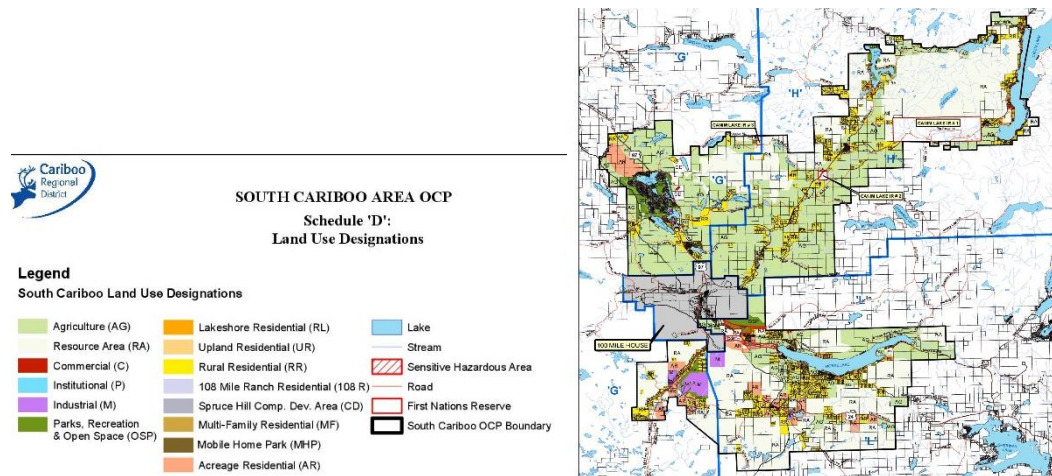


Figure-1: South Cariboo OCP Land Use Designations Map

The above map is an example of South Cariboo OCP land use designations where each parcel is coded with a specific land use colour category. The predominant green colour in the map indicates areas for proposed agricultural land use and yellow for residential land use respectively. Land Use designations are assigned based on several factors such as community vision, soil data, natural features, and surrounding amenities. During the OCP plan-making process, these land use designations are also derived from public feedback in multiple community meetings.

A land use designation in an OCP denotes future land use for each property which indicates the property's preferred land use in 5-10 years from now. Land use designation is assigned to the property which is usually independent from the underlying current zoning and does not necessarily correlate with the zoning use of the subject property. When a land use designation and current zoning for a specific property are different, then they are not in compliance with each other. For instance, if a property has land use designation in the OCP as commercial where the current zoning for the same property is residential, then the property's future/proposed land use and zoning are in non-compliance.

When a land use designation in the OCP and zoning use in the bylaw have the same use then they both are in compliance. In general, OCP land use designations and current zoning uses (with the exception of a few properties that are non-compliance in nature) are in compliance within the CRD. A land use designation that is contrary to existing zoning use does not necessarily place the property under a non-

conforming use situation, it is only when the zoning use is different from what is actually on the ground that results in non-conforming status.

Legal Non-Conforming Uses

If the regional district initiates the rezoning proposal to change the existing zoning for the purpose of public benefit or to be in compliance with land use designation in the OCP, then the subject property might receive a legal non-conforming status depending on if the property lawfully exists to the previous zoning bylaw. Section 528 of the Local Government Act (LGA) states that:

528 (1) Subject to this section, 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.

When current CRD Zoning and Rural Land Use Bylaws (3500 - 3505) replaced the previous Zoning Bylaw 1000, a few properties in the regional district had been placed under non-conforming status. For example, if a parcel that was zoned residential under Bylaw 1000 had been changed to commercial use in Bylaw 3501 it would result in the property needing to acquire legal non-conforming status provided that the property is in compliance with the zoning regulations of Bylaw 1000. Planning staff can investigate if the property is legally established in the previous zoning bylaw and thus determine whether the property has acquired legal non-conforming status.

Benefits of non-conforming status

The building or use is not required to close or shut down the business due to zoning change even after any changes in ownership.

534 For the purposes of this Division, a change of owners, tenants or occupants of any land, or of a building or other structure, does not, by reason only of the change, affect the use of the land or building or other structure.

Limitations

The use is allowed to continue until such time as the building is destroyed where the building inspector determines that the building is damaged more than 75% of the value above foundation level. In the event that the building is completely destroyed, then the new replacement building has to meet the current existing zoning regulations.

532 (1) If a building or other structure, the use of which does not conform to the provisions of a land use regulation bylaw, is damaged or destroyed to the extent of 75% or more of its value above its foundations, as determined by the building inspector, the structure must not be repaired or reconstructed except for a conforming use in accordance with the bylaw.

The non-conforming structure is allowed to have minor repairs but any major structural alterations or additions are not permitted.

Financial Impacts

The parcel owner with legal non-conforming status might have difficulty in the resale of the property due to non-compliance with current zoning, but the property value does not necessarily depreciate due to a non-compliance issue.

The *Local Government Act* states that there will be no compensation paid to any person for any reduction of property value.

458 (1) *Compensation is not payable to any person for any reduction in the value of that person's interest in land, or for any loss or damages that result from any of the following:*

(a) *the adoption of an official community plan;*

The owners might find difficulty in attaining a reasonable insurance quote for non-conforming properties as there are very few insurance companies that are able to insure the assets, and there are often higher premiums.

Summary

The Cariboo Regional District encompasses a vast land size and consists of seven Official Community Plans. Following the adoption of an Official Community Plan, the properties that become non-compatible between land use designation and current zoning uses would not attain legal non-conforming status. The CRD is not initiating any rezoning proposals to amend the zoning based on OCP land use designations, but instead use the future land use designation while evaluating the rezoning applications.

Few properties in the CRD became non-conforming after the adoption of current zoning and rural land use bylaws that replaced the previous Zoning Bylaw 1000. It is not the intention of the CRD to place these properties as non-conforming, but the real aim for amending the zoning bylaws is to align with a community vision that benefits the public and the entire neighbourhood. In general, local governments review and rewrite their zoning bylaws periodically to meet or exceed the public expectations and also to align with changes in building code or provincial regulations. The implementation of these zoning amendments results in placing a few properties under non-conforming status, but it is under the scope of public benefit that the local government should weigh accordingly rather than individual interests.