



REGIONAL
DISTRICT
OF NANAIMO

**ZONING AMENDMENT APPLICATION NO. PL2018-213
3452 JINGLE POT ROAD, ELECTORAL AREA C
REQUEST TO AMEND COVENANT**

RECOMMENDATION

That the request to amend Section 219 Covenant No. CA9920305 registered on title as a condition of Zoning Amendment Application PL2018-213 and the adoption of Amendment Bylaw No. 500.432, 2021 to require a water licence to be obtained prior to final inspection of the proposed school, rather than prior to building permit issuance, be denied.

BACKGROUND

The Regional District of Nanaimo (RDN) received a request from the Discover Montessori Society on behalf of T. & R. Ventures Ltd., Inc. No. BC1112945 to amend a Section 219 Covenant (CA9920305) registered on title of the subject property to secure several conditions required as a condition of Zoning Amendment Application PL2018-213 and adoption of Amendment Bylaw No. 500.432, 2021 (Bylaw 500.432). Bylaw 500.432 was adopted by the Regional Board on June 14, 2022, to rezone a 0.55-hectare portion of the subject property, legally described as The Easterly 60 Acres of Section 16, Range 3, Mountain District Except that Part in Plan 29404, VIP68415, VIP68636, and VIP72060, to permit the development of a Montessori Farm School (See Attachment 1 – Subject Property Map). The purpose of the request is to modify the covenant requirement for the applicant to obtain a non-domestic water licence for the proposed school prior to the issuance of the building permit and instead, require the water licence to be obtained prior to final inspection of the building (See Attachment 2 – Covenant No. CA9920305). The applicant has applied for a non-domestic water licence from the province; however, a water licence has not been issued. The specific condition outlined in the covenant is as follows:

“The Owner must obtain as part of the Development a secured water source approval from the Vancouver Island Health Authority, Public Health Engineering, Third Floor – 6475 Metral Drive, Nanaimo, British Columbia, V9T 2L9, together with a Non-domestic Water Licence from the Ministry of Environment and Climate Change Strategy prior to the issuance of a building permit save and except where these required approvals are obtained prior to the adoption of Bylaw No. 500.432.”

The applicant has indicated that the school’s lease for their current location will expire at the end of this calendar year, 2022, and construction of the new building on the subject property must be completed by December 2022 to accommodate approximately 100 children currently attending the school. The applicant has advised that to meet these deadlines construction must commence immediately (See Attachment 3 – Applicant’s Submission). An amendment to the covenant to postpone the requirement to obtain a water licence until the school is complete, unless obtained prior to completion, would allow the building permit to be issued and construction of the building to proceed to meet this deadline.

As a part of Zoning Amendment Application PL2018-213 and in accordance with Policy B1.21 - Groundwater Application Requirements for Rezoning of Un-serviced Lands (Policy B1.21), the applicant submitted a Preliminary Hydrogeological Assessment (Assessment) prepared by GW Solutions, dated June 10, 2020. The Assessment considered it likely that a new well could meet the maximum demand for the school operation, the irrigation demand for the small crops near the classrooms and potentially part of the demand for irrigation of crops outside the area subject to the re-zoning. Staff support for the zoning amendment application was, in part, based on the likelihood the property would provide adequate potable water to support the proposed school. In addition, while Policy B-21 suggests that a water licence should be obtained prior to Bylaw adoption, recognizing the length of time it can take to obtain a water licence and that the province typically issues a water licence for a specific use, the details of which are often unknown at the time of re-zoning, standard practice has been for the RDN to instead require the registration of a covenant on title to require the water licence prior to building permit issuance.

As part of their water licence application and to satisfy the covenant condition, the applicants have drilled and tested a new well on the property. However, an assessment of the new well indicates that the available capacity of the well alone cannot support the potable water needs for the school. If the applicants can obtain a water licence for a portion of the schools demand, it is very likely that potable water would need to be supplemented through alternative sources, such as a combination of hauled water and rainwater harvesting.

The applicant has obtained a source approval from Island Health supporting a combination of water sources for potable water use, considering well (ID. 63311), harvested rainwater, and hauled potable water, as a drinking water source for the proposed school subject to several conditions. The applicants have indicated that if a water licence cannot be obtained, they are exploring an alternative proposal to service the school with a combination of hauled/delivered and rainwater harvesting alone, without the benefit of an approved water licence. At this time, no additional information or professional assessments have been provided to support the use of rainwater harvesting and hauled water alone to meet the potable water needs of the school. If a water licence cannot be obtained, the applicant would have an opportunity to request that the Board consider an additional amendment to the covenant at that time to allow an alternative source of potable water, subject to the submission of additional information and professional reports to support the request.

Given the uncertainty of the water licence application, limited groundwater available to support the proposed use, lack of information provided to support alternative water sources should a water licence not be issued, and relative risk to the RDN and applicant of permitting construction to proceed without an approved source for potable water, staff do not recommend supporting the request to amend the covenant to delay the requirement for a non-domestic water licence until final inspection of the proposed school building.

Should the Board approve the request to modify the covenant (different from the staff recommendation), staff recommend that the covenant be modified so that final inspection of the building is contingent on the issuance of a water licence for the school and that any use or occupancy of the building is prohibited until a water licence is issued. In addition, the applicant should be required to enter into a separate agreement with the RDN requiring the applicant to provide monetary security to the RDN that would be released upon the issuance of the water licence and to take responsibility for removing the building and restoring the land if the water licence is not received by a specified date.

FINANCIAL IMPLICATIONS

There are no Financial Implications related to the Board 2022-2026 Financial Plan.

STRATEGIC PLAN ALIGNMENT

The proposed request to amend the covenant has been reviewed in relation to the key strategic areas outlined in the 2019-2022 Board Strategic Plan. While the proposed development would support the creation of additional childcare spaces and alternative educational opportunities for children, the request to amend the covenant conflicts with the growth management goal to provide effective regional land use planning and responsible asset management as it would allow development to proceed without an approved source of potable water. In addition, the applicant's proposal to provide a portion of the potable water demand for the school via hauled water conflicts with the plans key strategic areas related to climate change adaptation and mitigation and environmental stewardship.

REVIEWED BY:

L. Grant, General Manager, Planning and Development
D. Holmes, Chief Administrative Officer

ATTACHMENTS

1. Subject Property Map
2. Covenant No. CA9920305
3. Applicant's Submission