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**MEETING TYPE AND DATE:** REGULAR COUNCIL MEETING – DECEMBER 7, 2021  
**AUTHOR:** PAUL DUPUIS, SENIOR PLANNER  
**SUBJECT:** **DVP2020-017 (10650 TYNDALL ROAD) – VARIANCES TO REDUCE THE SERVICING STANDARD FROM AN URBAN STANDARD (RU) TO A RURAL STANDARD (RR2) FOR A POTENTIAL ONE LOT SUBDIVISION (SERVICING OF TWO LOTS)**

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**ESSENTIAL QUESTION:**

Does Council support the proposal to reduce the servicing standard from an urban standard RU to a rural residential standard RR2 to support a 1 ha. single lot subdivision, meaning that two lots could be serviced with Septic as opposed to Community Sewer?

Is Council satisfied that the future subdivision potential of the RU1-Single Family Housing Zone has been protected where possible?

Does Council feel that the variance to reduce the servicing standard from urban to rural is in the community's best interest until further development occurs when full urban servicing will then be required?

**OPTIONS:**

- A. THAT Development Variance Permit DVP2020-017 for the property located at 10650 Tyndall Road legally described as Lot 66 Shown on Plan B13454, Section 9 and 16, Township 20, ODYD, Plan 521 Except Plans H18660 and KAP70483, Roll: 2541000, be approved, varying Subdivision and Development Servicing Bylaw 1121, 2020, Schedule C (Table C-1) Servicing Requirements:
  - 1. From ALL RU ZONING to Rural Residential (RR2).AND THAT a Section 219 Restrictive Covenant be registered on the Land Titles as part of the Subdivision (S2020-025 – one lot split) to ensure that upon any further subdivision of either parcel, the RU1 servicing standards as found within the Subdivision and Development Servicing Bylaw in effect at that time are constructed.
  
- B. THAT Development Variance Permit DVP2020-017 for the property located at 10650 Tyndall Road legally described as Lot 66 Shown on Plan B13454, Section 9 and 16, Township 20, ODYD, Plan 521 Except Plans H18660 and KAP70483, Roll: 2541000, varying Subdivision and Development Servicing Bylaw 1121, 2020, Schedule C (Table C-1) Servicing Requirements for ALL RU ZONING, be denied.

**EXECUTIVE SUMMARY:**

The owner of this 3.58 ha property (Lot 66) had it rezoned in 2015 (Z2014-007) from RR1-Rural Residential 1 to RU1 – Single Family Housing. As part of the application, a conceptual lot layout showed the potential for 43 lots which is just short of the low-density guideline for Urban Residential areas of the community as within the Official Community Plan of 12.5 units per ha. (3.58 ha. \* 12.5 lots / ha. = 44.75 lots). It is important to note a lot is not a unit and that the density guideline is for an area, not an individual property. That rezoning occurred under the previous Official Community Plan (OCP). The more recent OCP includes an Urban Containment Area (Map 3) and a

separate community Sewer Service Infrastructure Area (Map 6). Portions of the Urban Containment Area are not included in the community sewer service in Map 6. Under Section 9.3 of the new OCP, urban development will not be supported in areas within the Urban Containment Area that are not included for community sewer service in Map 6. That is the situation with this parcel.

Given that this property was granted a land use change without servicing being in the area (most notably the Community Sewer System), development cannot be contemplated for urban densities under the RU1 Zone. However, the applicant would now like to complete a one-lot subdivision of 1 ha, at rural standards (the minimum lot size required for subdivision without sewer). The applicant has noted that the 1 ha. lot will be sold while maintaining ownership of the remainder 2.58 ha. lot and anticipates developing that in the future when the servicing is available. It is expected that further subdivision will occur later when community sewer service becomes available.

Staff is concerned that if the District were to approve the proposal for this single lot subdivision, it would create a gap in servicing along the street. It could occur when the remainder of this parcel is subdivided and developed to urban standards. That subdivision would have urban streetscape standards, while this 1 ha. parcel would continue to have rural standards with no ability to be upgraded unless another developer or the District paid for them. That would be an untenable situation. To avoid this problem, staff is proposing as part of Option A that a Restrictive Covenant be placed on the Land Titles, noting that the future subdivision of either parcel requires full RU Servicing for both lots to be constructed. This arrangement means that this is only a temporary variance to the servicing, amounting to a deferral of the RU servicing until sewer servicing is within the area allowing for subdivision to the RU1 land use and servicing standard. Also, if subdivided, the servicing for the subject property is significant as it is double fronting, meaning frontage requirements are to be constructed along both streets. In this case Nighthawk Road to the West and Tyndall Road to the East.

To achieve this 1 ha subdivision, the applicant is seeking a reduction of the RU servicing standards (set for all Zones classified as Urban Residential) set by the Subdivision and Development Servicing Bylaw (SDS) to a Rural Residential standard (RR2). Staff has requested that the applicant provide a conceptual plan to assess the impact of this subdivision on the future subdivision potential for the remainder of the site (Attachment C)).

Future subdivision and development of the property to smaller (RU) parcels would require an Official Community Plan (OCP) amendment to extend the sewer service area shown on Map 6, "Sewer Servicing Infrastructure," to this lot. The conceptual Map 6 does not show sewer servicing to this parcel and Section 9.3.4. (b) is explicit that the extension of the outer limit of the community sewer system in Map 6 is not to be supported. Changes to the OCP could be considered with the new Liquid Waste Management Plan. However, the proposed variances are an interim solution for the property owner and infrastructure installed now may be removed later. If Council does not support the variance, the lot is undevelopable until a sewer solution is found.

The Approving Officer is currently assessing an application for the 1 ha lot subdivision. A Preliminary Layout Review (PLR) is being drafted; it is unlikely to be issued before Council considers the variances. If Council were to deny this Permit, then the subdivision would not be possible. Conversely, if Council approves the Option A resolution the PLR will include the requirement for a Restrictive Covenant to ensure urban standard servicing if either lot were to further subdivide in the future. At this stage, Engineering has reviewed the Driveway Access Permits and determined that access to both sites is possible. However, Driveway Access Permits would not be issued until either the Subdivision or Development Permit stage of the development process.

**TABLE C-1 SERVICING REQUIREMENTS**

TYPE OF WORKS		Highways and Walkways	Sidewalks	Curb & Gutter	Boulevard & Landscaping <sup>3</sup>	Water Distribution System	Water Source	Community Sewer <sup>2</sup>	Onsite Sewerage system	Storm Drain System	Drainage, Sediment & Erosion Control	Street lighting	Overhead wiring	Underground Utilities
See Schedule		G	H	H	H	I	J	K	L	M	N	O	P	P
Zone														
RU	ALL RU ZONING	✓	✓	✓	✓	✓		✓		✓	✓	✓		✓
RR2	Rural Residential	✓				✓			✓		✓		✓	

**BACKGROUND/HISTORY:**

The owner applied to rezone the property from RR1-Rural Residential 1 to RU1-Single Family Housing in 2014 (Z2014-007) as supported by the previous OCP Bylaw 750, 2010 Map 1 "Future Land Use" and Map 4 the "Identified Growth Area." At that time, Map 7, "Sewer Service Infrastructure," was simply an indication of Sewer Infrastructure's location within the District. That map clearly stated, "it is not intended that this map bind the boundaries of the sewer system. Should the sewer service infrastructure be extended, an OCP Amendment to change this map is not required." Council adopted Zoning Amendment Bylaw 912, 2015 for this site, on April 7, 2015. A conceptual plan was provided at that time, showing the potential for 43 lots to be subdivided sometime in the future.

Although rezoned to RU1-Single Family Housing, the potential Subdivision of the subject property to achieve higher densities allowed by that zoning designation are not yet possible as sewer infrastructure is a limiting factor. Since the adoption of the RU-1 zone, the OCP has been updated. The zoning is still supported by Map 1, "Future Land Use," and located within the newly titled Map 3 "Urban Containment Boundary," however, Map 6, "Sewer Service Infrastructure," does not include the property within the conceptual Sewer Service Boundary. Section 9.3.4. (b) t explicitly states,

"The outer limit of the community sewer system is set out in Map 6. The extension of the community sewer collection system beyond the outer limit is not to be supported."

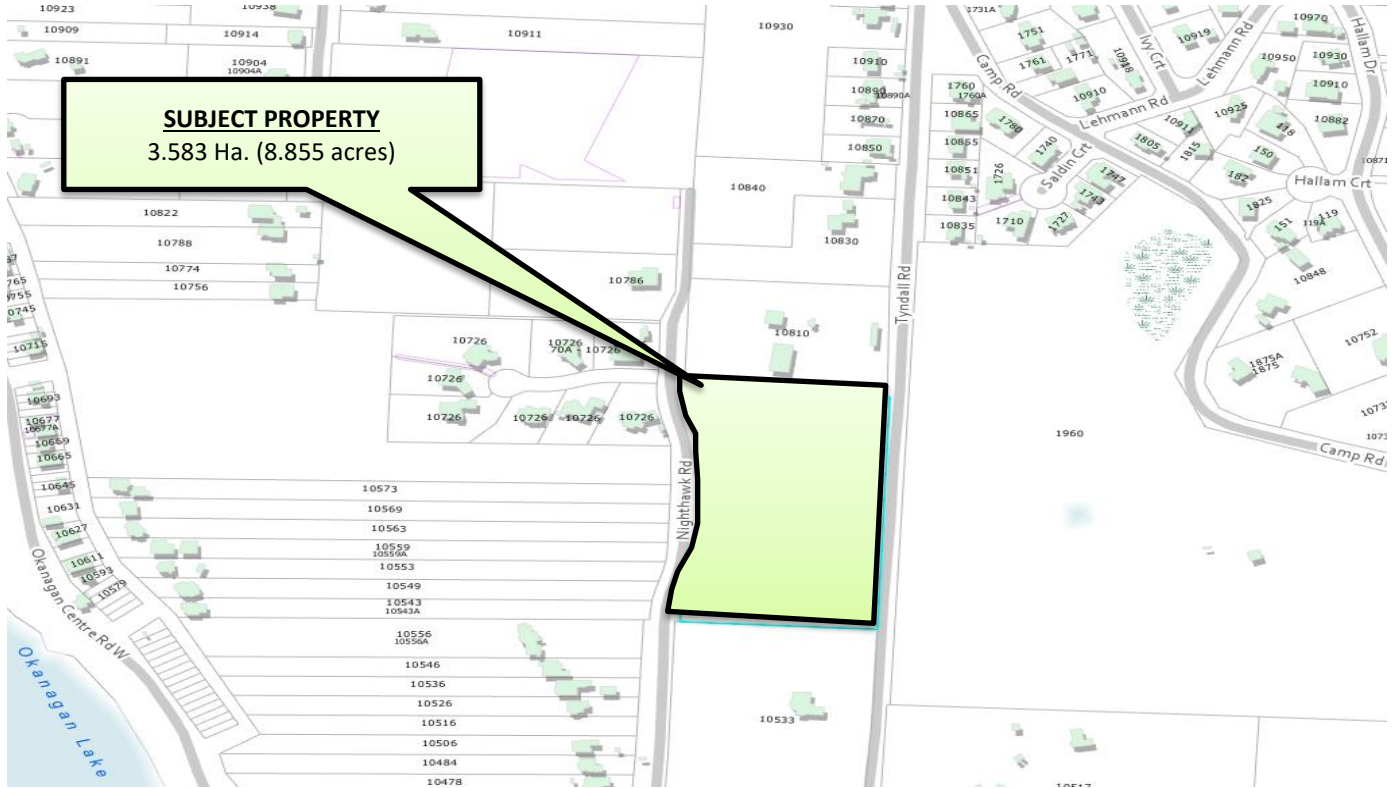
Therefore, if the lot is to be developed in the future to smaller lot parcels under the existing RU1-Single Family Housing zoning, an OCP Amendment to revise Map 6 would be required. A new Liquid Waste Management Plan is currently being prepared for consideration in 2022. The OCP Conceptual Sewer Service Area Map 6 is expected to be updated at that time. Conflicts between the Sewer Service Area and OCP Future Land Use Map/Urban Containment Map may be reassessed at that time. Given the realities of the LWMP and current infrastructure location, there is some time before sewer could be extended to this area.

As per the chronology, current applications are very similar to applications for variance and subdivision made in 2013 and 2014.

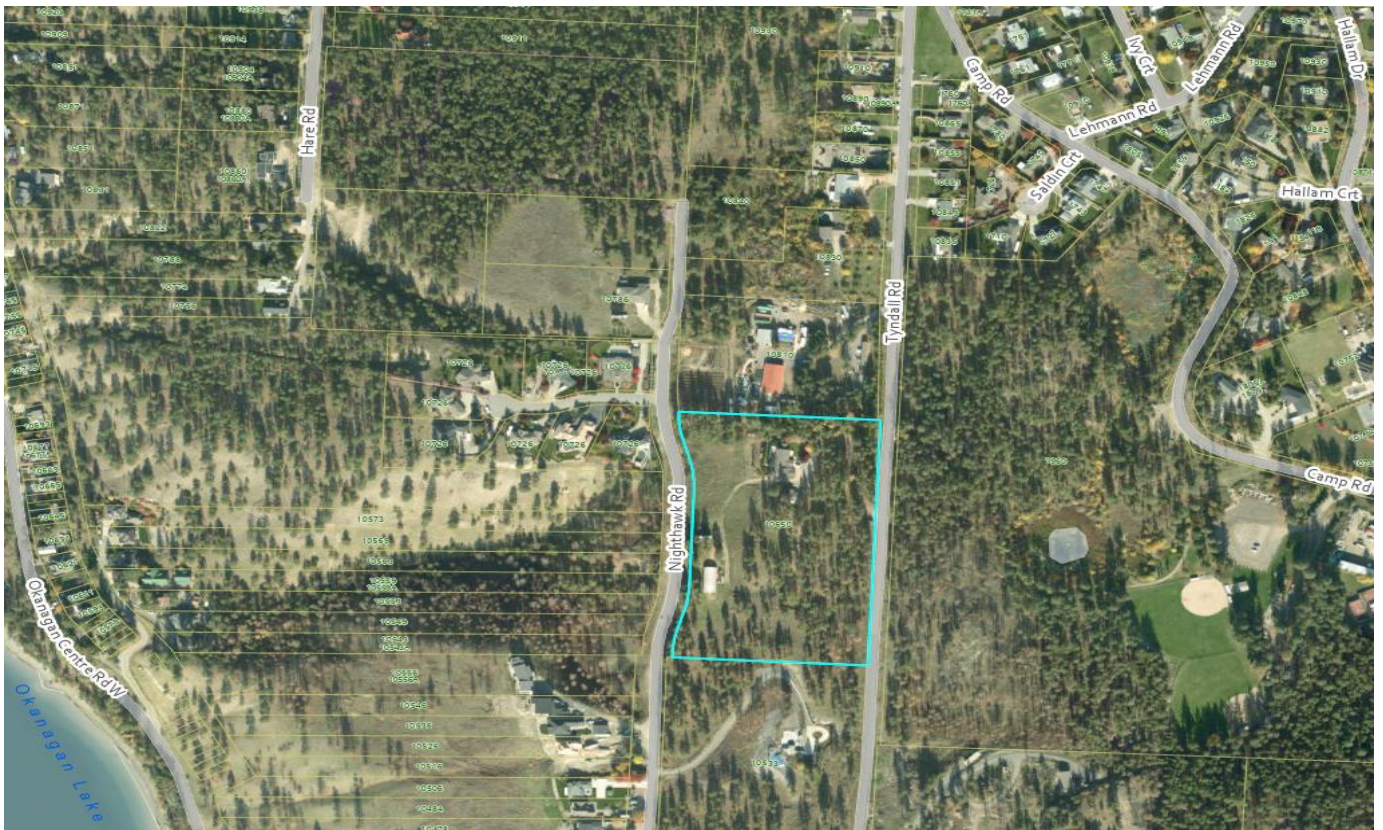
Application Type	Development Variance Permit
File Number:	DVP2020-017
Roll Number:	2541000

Proponent:	Michael Lewis	Owner(s):	Georgina Lewis
Legal Description:	Lot 66 Shown on Plan B13454, Section 9 and 16 Township 20 ODYD Plan 521 Except for Plans H18660 and KAP70483		
PID	007-574-746		
Civic Address:	10650 Tyndall Rd, Lake Country BC V4V 1N8		
OCP Designation:	Urban Residential		
Zoning Designation:	RU1; Single Family Dwelling		
Land Use Contract	No		
ALR:	No		
Parcel Size:	3.583 Hectares (8.855 Acres)		
DP Area(s):	Hillside/Drainage/Wildfire/Greenhouse Gas/Natural Environment/ Agricultural		
Water Supply:	Municipal		
Sewer:	Septic		
Site Summary:		Zoning:	Use:
	<i>North:</i>	A1; Agriculture 1	Residential
	<i>East:</i>	P1; Public Park and Open Space	Public Park and Open Space
	<i>South:</i>	RR1; Rural Residential 1	Residential
	<i>West:</i>	RR2; Rural Residential 2	Residential

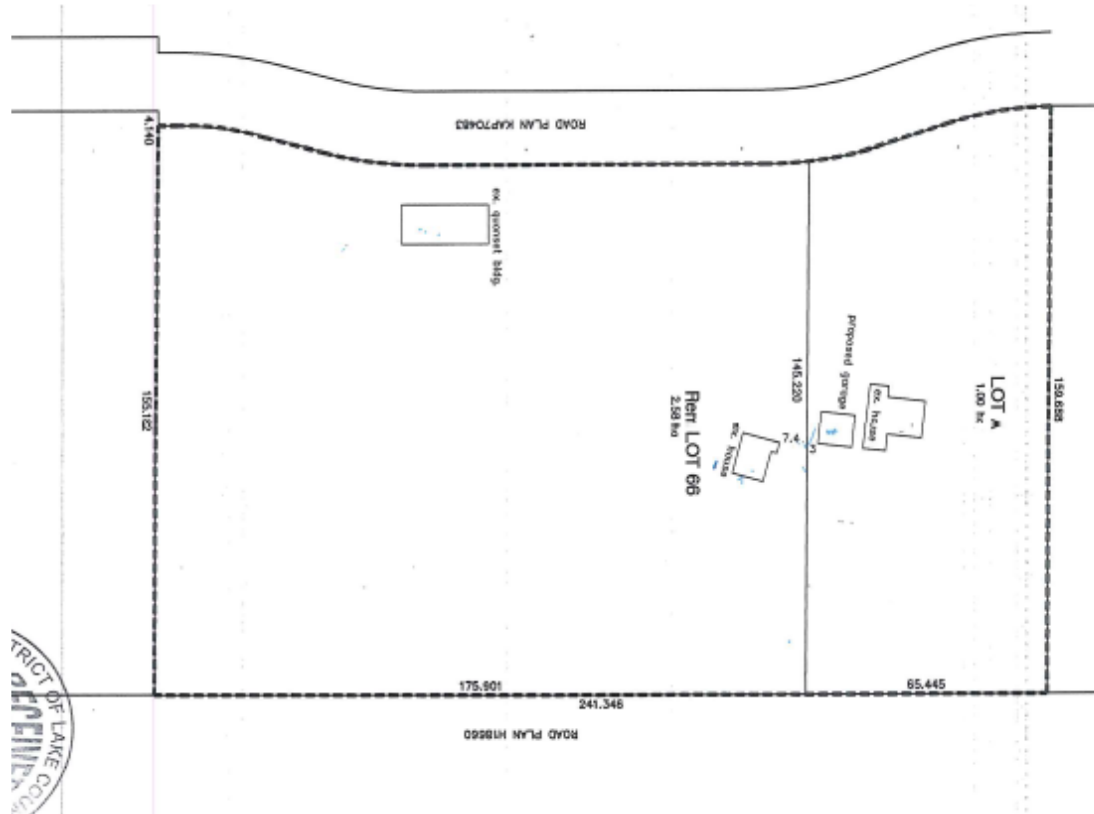
Map 1: Location Map



Map 2: Orthophoto



### Proposed Subdivision Plan:



### Site Photo:



### Chronology:

Date:	Event:
September 30, 2013	Application for Subdivision received (S2013-011). PLR was issued on June 24, 2014, to facilitate a one-lot split; it was never completed, and the PLR expired.
October 10, 2014	Application received (Z2014-007) to rezone the land from RR1-Rural Residential 1 to RU1-Single Family Housing. A conceptual plan showing a subdivision of 43 lots was part of the application.
October 11, 2014	Application for DVP to reduce the servicing Level from RU1- Single-Family Housing to RR2-Rural Residential 2 to allow for reduced servicing of the Subdivision above. A prior condition of the Permit was a 5.0 m of road dedication along Tyndall Road. The variance was only for the one-lot split; any future subdivision would require full servicing.
April 7, 2015	RU1 Single Family Housing zone adopted.
November 20, 2015	Email withdrawing both applications. The email noted that the road dedication was too much for a one-lot split.

October 15, 2020	Applications for Subdivision and Development Variance Permit received.
March 3, 2021	Referrals were sent out to be back in 30 days.
October 25, 2021	Access Permit A2021-020 was issued, showing that access for both lots is possible and allowing the variance to come forward.
November 16, 2021	DVP to Council for consideration and drafted PLR with the Approving Officer.

### **DISCUSSION/ANALYSIS:**

Variances are at Council's discretion. Currently, the property is outside the Sewer Servicing Boundary, and there is a firm policy of not supporting an extension to allow for development beyond the existing boundary. Staff has asked for a conceptual subdivision plan that shows that this one-lot split will have minimal impact on the future potential subdivision of RU1 lots. That conceptual subdivision plan shows that future subdivision will be possible. If the sewer is brought to the site, it might be considered a short-term measure until the time is right to subdivide the area per the RU 1 Zone.

This situation shows the difficulties when land uses are approved without the necessary servicing available. The situation clearly shows why the new OCP has more distinctly linked sewer infrastructure with land use regardless of minor anomalies that may have to be addressed moving forward. Despite the RU1 zoning, nothing can be done with the lot without some form of variance because the sewer is not in the vicinity. If Council approves the variance, it allows the applicant to sell a single 1 ha. lot that can be serviced with a septic system (1 ha.); however, if Council does not approve the variance, the land will remain undevelopable without sewer.

### **Legislation & Applicable Policies**

*Local Government Act:* Section 498 states: (1) On application by an owner of the land, a local government may, by resolution, issue a development variance permit that varies, in respect of the ground covered in the Permit, the provisions of a bylaw including a Subdivision and Development Servicing Bylaw.

*Official Community Plan:* Sets out an Urban Containment Boundary and a Sewer Servicing Map, but as noted, the property is outside the service area. An OCP amendment would be required before the property is developed under the RU1 Zone.

*Zoning Bylaw:* The bylaw sets out the land uses, and regulations based on the designation. In this case RU1-Single Family Housing.

*Subdivision and Development Servicing Bylaw:* Sets out the Engineering requirements for Subdivision and development based on zoning designation. This application is seeking to change this requirement.

*Highway and Driveway Access Bylaw* – Requires that the lots have proper access that meets the requirements as set out in the bylaw.

*Heritage Conservation Act:* There is a significant potential for the existence of archaeological sites in the area. As such, landowners are advised to inform themselves of their responsibilities under the Provincial Heritage Conservation Act. An Archeological Impact Assessment may be required to satisfy local FLNRO and First Nations that the proposed development impacts no archeological site.

### **Technical Considerations:**

- **Impact on Infrastructure and Other Municipal Services**

Because this is a change from RU Servicing to Rural Servicing RR2 with the potential sale of a 1 ha lot, then to ensure that we do not end up with gaps in our infrastructure, staff are suggesting that the District require a

Restrictive Covenant on the Land Title. With a covenant, this variance allows a deferral of the servicing until the land is ready to be fully developed and serviced. It would ensure that future servicing costs are not passed along to any unsuspecting owners/developers or the District in the future. In this way, the RU service standards will be achieved for both lots created by the proposed Subdivision but at a later time. An onsite sewerage system will serve the proposed 1 ha lot, and the property will be required to connect to the water distribution system main that fronts the property on Tyndall Road. An Erosion and Sediment Control Plan will be required as standard procedure. All the subdivision development servicing requirements will form part of the Preliminary Layout Review to be issued as part of the Subdivision. The driveway Access Permit has been reviewed to assure that access to the lots can occur. However, the permits will not be issued until the Development Permits are approved, allowing this application to move forward.

- **Impact on Staff Capacity and Financial Resources (Cost/Benefit Analysis)**

Regular staff time has been used to process the application. There were some issues with challenging driveway access, but they have been addressed. Engineering is satisfied access could be granted to both lots in the case of subdivision. The inconsistencies between the OCP Land Use Map 1 / Urban Containment Boundary Map 3 and the Sewer Service Area Map 6 have required staff attention.

**Comments from Other Government Agencies, Council Committees and Relevant Stakeholders:**

- BC Hydro - If this is subdivided, BC Hydro will require a ROW on one of the properties to serve the other or change how the properties are connected at the customer's expense. Please have the customer contact BC Hydro if this Subdivision is approved to get this completed.
- Fortis BC - has no concerns.
- TELUS - TELUS has no objections to this Lot split. To avoid trespass, TELUS will require an easement or separate services on separate properties. I would appreciate it if TELUS was notified of the Developer's decision.
- WALC - There is an important trail opportunity on this property. If a trail right of way (ROW) could be kept all along the South Boundary from Nighthawk to Tyndall, this would allow an excellent safe connection to Okanagan Centre from Jack Seaton Park, using the new waterline trail Nighthawk to Hare and then 6<sup>th</sup> Street. As far as the ROW goes, it is very steep to get up onto Tyndall Rd. Ideally, that southeast corner of the ROW would widen out as it gets to Tyndall. i.e. a triangle in that corner. This would allow a sloped trail up the Tyndall Road fill. If not, Stairs would be required.

**Consultation, Public Feedback, and Communication to and from the Public and the Applicant:**

Notification as per the Development Application Procedures Bylaw has been sent out. Those neighbours that feel their interests may be affected will be able to present their concerns to Council. Also, Development Signs on the property have been posted.

**ANALYSIS OF OPTIONS FOR CONSIDERATION:**

OPTION A: If Council approves the variance requested, there will be potential for a one-lot split to be approved by the Approving Officer. The option includes that a Restrictive Covenant is placed on both lots if the Subdivision is approved. This requirement will be included in any forthcoming PLR to be issued which means the variance amounts to a deferral of the urban servicing requirements until the sewer is in the area. The lots can be developed under their existing RU1 Zoning. This report outlines that this parcel is not within the sewer servicing map of the OCP, which means an OCP Amendment will be required to service this property with sewer to realize its development potential under the existing zoning. Also, the conceptual lot layout provided by the applicant shows that this variance would not preclude future subdivision but that there are a lot fewer lots than what was envisioned when the property was Zoned in 2015.

OPTION B: If Council were to deny the variance request, the subdivision would not occur. The subject property will be undevelopable until a solution to bring sewer to the area is devised. The applicant could rezone the property to



RR2-Rural Residential 2 to support the proposed subdivision, but this would amount to downzoning and is unlikely to be pursued by the applicant. The existing subdivision file S2020-025 for the proposed one-lot split will be closed.

Respectfully Submitted,

Paul Dupuis, MCIP, RPP  
 SENIOR PLANNER  
 PLANNING AND DEVELOPMENT DEPARTMENT

This report has been prepared with the collaboration of the following individuals:

<b>COLLABORATORS</b>	
<b>TITLE</b>	<b>NAME</b>
Senior Planner	Paul Dupuis
Senior Engineering Technician	Sid Smith
Engineering Technician	Evan Smith

This report has been prepared in consultation with the following departments:

<b>CONCURRENCES</b>	
<b>DEPARTMENT</b>	<b>NAME</b>
Chief Administrative Officer	Tanya Garost
Interim Director of Planning and Development	Gary Penway
Director of Engineering and Environmental Services	Matthew Salmon
Director of Infrastructure Services	Greg Buchholz
Manager of Planning	Cory Gain

**ATTACHMENTS:**

- A: Applicant's Project Description
- B: Draft Development Variance Permit
- C: Future Conceptual Subdivision Lot Layout
- D: Notification Map