

To: CAO for the Electoral Area Services Committee

Date: 2019-05-08

From: David Bennett, Planner II

File No: 3060-20-2019-02

Subject: Aquadel Crossing Ltd. applied to amend an existing Development Permit (relating to form and character) to permit fencing across common strata property at the development known as Aquadel Crossing, 1885 Columbia Valley Road, Electoral Area "H".

RECOMMENDATION

THAT the Fraser Valley Regional District Board **refuse** Development Permit 2019-02.

STRATEGIC AREA(S) OF FOCUS

Provide Responsive & Effective Public Services

BACKGROUND

Proposal Description

Aquadel Crossing Ltd. applied to amend an existing Development Permit (relating to form and character) to permit fencing across common strata property.

Aquadel Crossing Ltd submitted a site plan (attached) showing the specific locations of the proposed fencing. Fences are proposed primarily at the rear of strata lots.

The existing Development Permit issued for this development does not address or expressly permit fencing across common strata property.

The purpose of this Development Permit amendment application is to identify the type of fencing material permitted and the locations where fencing may be installed. The developer submitted this Development Permit application to allow for the installation of fences and cedar hedging across common strata property. Common strata property surrounds this development and buffers this development from neighbouring single family properties

The fences and hedges shown in the images below were installed without FVRD approval and are contrary to the existing Development Permit. The developer is seeking to legalize the cross fencing and hedging by obtaining a new Development Permit from the FVRD. This Development Permit application requires a resolution by the FVRD Board.



The image above shows the design and material of fencing proposed and how the fences would cut across common strata land within the strata subdivision. The bulk mulched area with plantings is common strata property. The individual's strata lot ends where the grass ends. This common strata property acts as a buffer from neighbouring developments and it is a requirement of the zoning bylaw.



In other areas, the developer is proposing to install dense cedar hedging across the common strata areas as shown above. The bulk mulched area with plantings is common strata property and it forms the buffer between the Aquadel development and adjacent lands. The individual's strata lot ends where the grass ends.

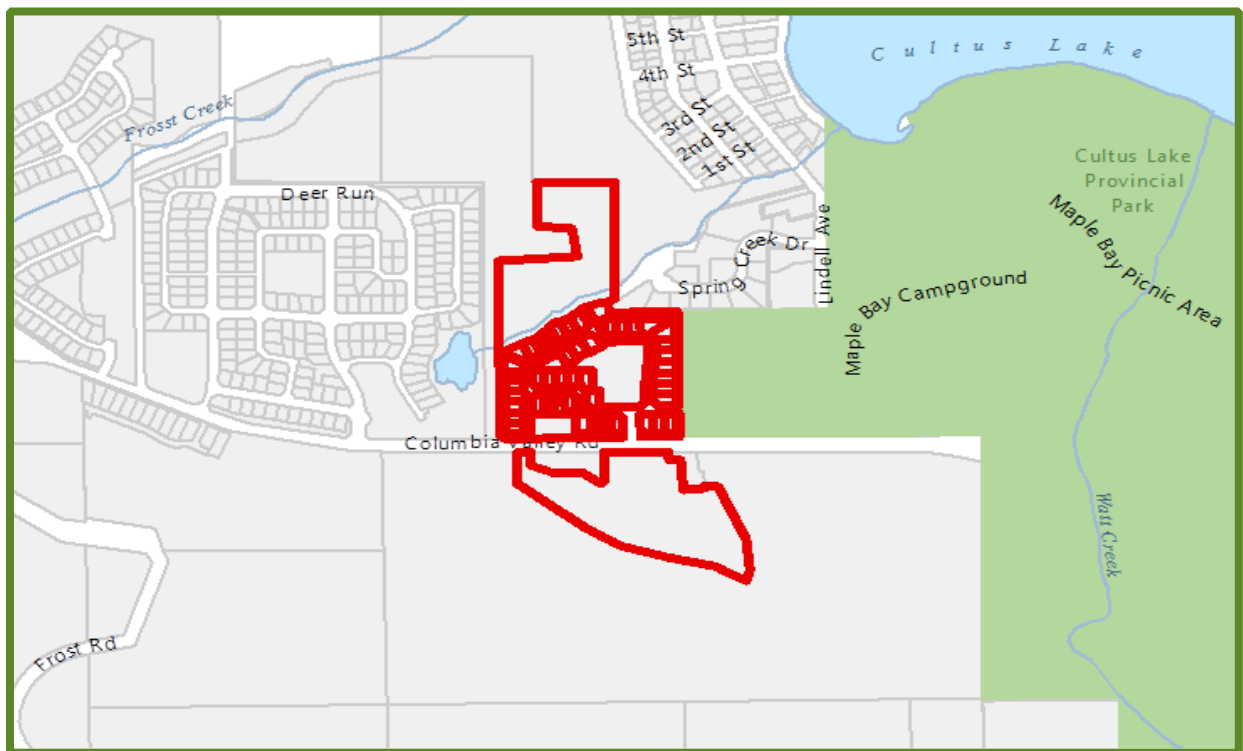
PROPERTY DETAILS

Electoral Area	H		
Address	1885 Columbia Valley Rd		
PID	030-179-122		
Folio	733-02970-122		
Lot Size	8.08 acres		
Owner	Aquadel Crossing Ltd (Cody Les)	Agent	-----
Current Zoning	Private Resort Residential Dev. 1 (PRD-1)	Proposed Zoning	No Change
Current OCP	Resort (RT)	Proposed OCP	No Change
Current Use	Residential	Proposed Use	Residential
Development Permit Areas	DPA 1-E Frost Creek; DPA 4-E Form and Character		
Agricultural Land Reserve	No		

ADJACENT ZONING & LAND USES

North	^	Park Reserve (P2) & Campground- Holiday Park (CHP); Campground & Park
East	>	Park Reserve (P2), Park (P1), Urban Residential (RS-1), Campground-Holiday Park (CHP); Park, Single Family Homes & Campground
West	<	Campground-Holiday Park (CHP); Single-family homes & park
South	v	Campground-Holiday Park (CHP); Park

NEIGHBOURHOOD MAP



PROPERTY MAP



DEVELOPMENT PERMIT AREAS

This application applies to the bare-land strata subdivision development located at 1885 Columbia Valley Road known as Aquadel Crossing.

The Aquadel Crossing is located in four (4) development permit areas, as detailed below:

- Frosst Creek Development Permit Area 1-E
- Riparian Areas Development Permit Area 5-E
- Cultus Lake South Ground & Lake Water Quality Development Permit Area 7-E
- Cultus Lake Resort Form and Character Development Permit Area 4-E

A Comprehensive Development Permit was issued for this property as part of the overall subdivision and development approvals for the 103 lot resort residential subdivision, Permit 2017-01. Permit 2017-01 addressed geo-hazard, form and character, and environmental aspects of the project including riparian areas.

Frosst Creek Development Permit Area 1-E

During the rezoning process, the developer submitted Geo-hazard Reports to identify and mitigate hazards on the lands. Mitigation measures include minimum building elevations and slope setbacks. A covenant was also registered at the time of rezoning. A development permit was issued and is in effect for all of the development's phases. No amendments are proposed with this application.

Riparian Areas Regulation (RAR) Development Permit Area 5-E

The RAR report that accompanies Development permit 2017-01 included a condition for a clear-span bridge crossing of Spring Creek. A covenant was registered on title to identify Streamside Protection and Enhancement Areas (SPEA) boundaries. In the summer of 2017, the developer did not install a clear-span bridge as per the conditions of Permit 2017-01, but rather three culverts. The Province determined that the three culverts were not authorized and ordered their removal and ordered an alternative crossing design. A Box Culvert design was then submitted by the developer and accepted by the Province. A new development permit was issued to rectify the creek crossing (development permit 2018-06). No amendments are proposed with this application.

Cultus Lake South Ground & Lake Water Quality Development Permit Area 7-E

The development must be connected to a FVRD owned and operated Class A+ waste water treatment system as detailed in a covenant registered at the time of rezoning. Construction of the waste water treatment plant is under review with the FVRD engineering department and the FVRD Building Department. Registration of Phase II subdivision requires FVRD Engineering approval. No amendments are proposed with this application.

Cultus Lake Resort Form and Character Development Permit Area 4-E

This development is located in an area of high recreational and aesthetic amenities, including Cultus Lake, and this area experiences high intensity of visitation and recreational use. Development in this area is highly visible, and, in turn, relies on the natural beauty and recreational amenity of the area. Visual values and recreational amenity are integral to the economy and community of these areas. Accordingly, there is a need to ensure that resort development is of a form and character which does not detract from the aesthetic experience of the area or resort uses and visual values on adjacent parcels. Development should reflect, and enhance the natural landscape of the area in which it is located. In addition, the concentration of resort development in nodes such as Cultus Lake South requires that developments are carefully designed to coordinate and be compatible with adjacent developments to create a cohesive functional resort node. No amendments are proposed to the Form and Character of the structures in the development (form and character of houses or amenity buildings). This application is to amend the existing Form and Character Development Permit with a new landscaping and fencing plan.

NEIGHBOURHOOD CONSULTATION

Development Permits for Form and Character are considered by the Electoral Area Services Committee and are issued by the FVRD Board. Public Notice for form and character development permits is not required by the FVRD or the *Local Government Act*. However, the applicants were encouraged to communicate with the adjacent stratas and ratepayers association and encouraged to obtain neighbourhood approval prior to submitting an application.

Site Inspections, On-Site Meetings, Correspondence and a Public Information Meeting

In response to complaints about the fencing and landscaping of the required buffer areas, FVRD staff conducted a site inspection of Aquadel Crossing on August 16, 2018. At this time, the buffer area adjacent to Spring Creek was reviewed. No fencing was installed at this location and the landscaping was not completed.

FVRD staff were informed about installation of fences across common strata property adjacent to Spring Creek in September of 2018.

The FVRD wrote to the developer on September 26th, 2018 stating that the buffer area is to remain unfenced, except for the property lines and that cross fences are to be removed (letter attached).

FVRD staff conducted a site inspection on October 12th, 2018 and held a meeting on site. The meeting was attended by FVRD staff, the developer, a builder and area residents (meeting notes attached).

FVRD staff were invited to attend a second meeting at Aquadel Crossing on November 28th, 2018 where the developer met with area residents and confirmed their intention to submit a Development Permit application to address fencing.

Since September 2018, the FVRD received and responded to numerous telephone and email enquiries from area residents regarding the fencing issue.

This Development Permit application was made on January 22, 2019.

A Public Information Meeting was held by the FVRD on March 7, 2019 (minutes are attached).

DEVELOPMENT PERMIT GUIDELINES

To determine if a form and character development permit may be issued, staff review the application and supporting documents submitted by the applicant within the context of the development permit area guidelines. To issue this Development Permit, the FVRD Board must conclude that the proposed development meets the guidelines established for form and character.

Official Community Plan

The discussions and policies found within the Official Community Plan state that buffer spaces between developments are features that are important for resort residential developments. The Official Community Plan recommends that buffers are to be at least 7.5m wide. The zoning bylaw also requires the provision of a buffer around all Private Resort Residential Developments and Campgrounds and Holiday Parks.

During the rezoning process for this project, the developer proposed to buffer the development from adjacent land uses with varying buffer widths. A comprehensive development variance permit was issued by the FVRD Board in 2015 that established minimum buffer widths around the project. The buffer widths vary based on the adjacent uses. In general the development variance permit maintained a 7.5m buffer adjacent to neighbouring developments and reduced the buffer areas along logical pinch points and areas that are not near surrounding residences.

As stated in the Official Community Plan, the demand for resort residential continues. To ensure new developments, re-developments and new phases or expansion of existing developments achieve a high aesthetic value, unique developments and proper landscaping and buffering, a development permit area will be used to achieve these goals.

Official Community Plan Buffer Policies

14.4.12 Edges between the 'public' realm and private spaces shall be softened through variation of building heights and roof pitches along the road corridor, open space or vegetated buffers, landscaping or other means.

14.4.16 A landscaped, treed buffer of at least 7.5 metres shall be required to separate resort developments from land uses and developments on adjacent parcels.

BUFFER means any device arranged and maintained to screen or separate adjoining land uses or properties, and includes any combination of setbacks, existing vegetation, ditches, roads, landscaping, berming and fencing.

Zoning Bylaw Regulations

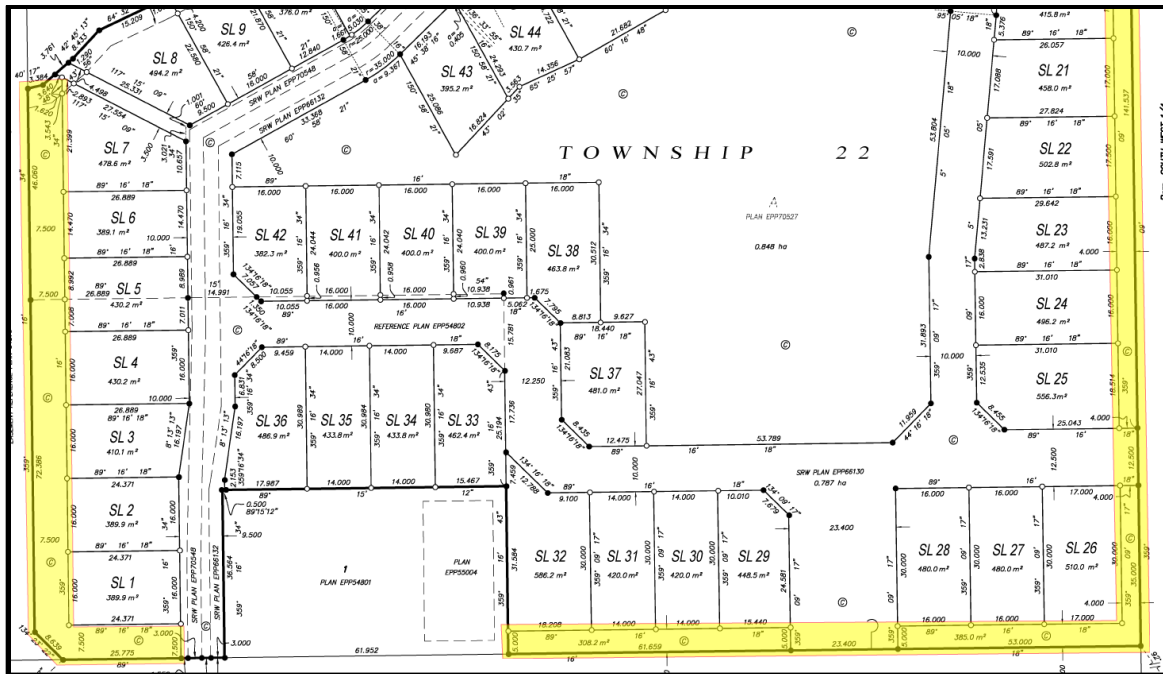
Within the Zoning Bylaw, it is required that no strata lot boundaries cross a buffer area. Section 2404.

OFFICIAL COMMUNITY PLAN DEVELOPMENT PERMIT AREA GUIDELINES REVIEW

This application proposes to install fences across required buffer areas (common strata property) and to install dense cedar hedges across required buffer areas.

The planting of cedars (specifically *Thuja occidentalis* 'Smaragd') within the Buffer is permitted as the species is native and was specifically approved in the original Development Permit as a permitted species. Although this plant material is permitted, the purpose of the planting of the cedars is to "visually continue the aesthetic of separation between lots" as stated in the April 1, 2019 letter prepared by Van der Zalm Associates (attached). The zoning bylaw prohibits the crossing of the buffer area by strata lots. The subdivision plan for this development delineates all of the buffer strips at the rear of each strata lot as 'common strata'. The planting of the cedars through the buffer spaces creates the impression that the common strata land behind the strata lot is for the personal and private use of the individual strata lot owner. Over time, the individual strata lot owners will treat this common strata property as private and the encroachment of residential uses will intrude into the buffer space and defeat its purpose. Site inspections have already confirmed that existing strata lot owners are treating this common strata property as private space as shown in the images in this report. Degradation of the vegetation has already occurred and private structures have been erected in the buffer spaces.

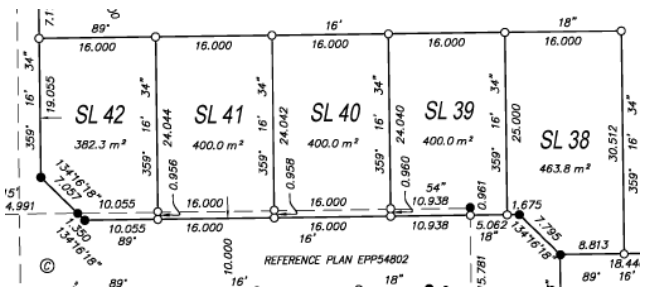
The same can be said for the installation of the cross fences. Although fences are permitted in the buffer areas, those fences are to be installed around the perimeter of the development not across the buffer spaces. Fences are permitted to the extent that they screen or separate adjoining land uses. The buffer areas are not intended to provide screening or separation between internal strata lots.



The image above highlights the location of the buffer areas around the perimeter of the development.

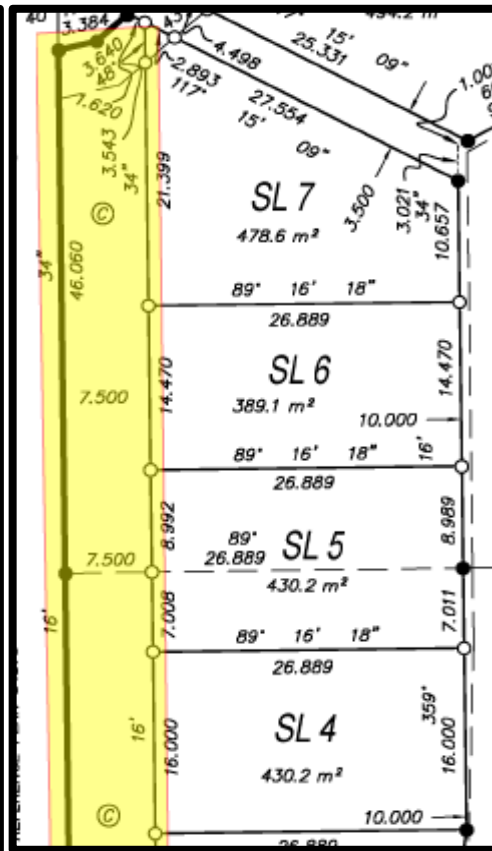


The image above is taken from Google Maps (retrieved April 26 2019) and shows the development progressing through the construction phase.



As shown in the Google Earth image above, fences installed around the perimeter of strata lots achieves the separation between individual units in the development. There is no concern with strata lot owners fencing along their own lot lines. Lots #38 to 42 are fenced along the boundary of the strata lots and do not extend the rear yards into the adjacent common strata lands. An extract of the subdivision plan is shown above.

The Google Earth image below shows buffer areas are not being maintained equally. In this image, the strata lot #4 increased the lawn area into the required buffer area. Strata lot #7 has installed fences to the north bumping out into a common strata walkway.



The installation of cross fencing has already shown that the landscaping is not maintained equally throughout this development. The cross fences impede access to the common strata lands which in turn does not allow the strata to inspect and maintain the vegetation. The common strata buffer spaces need to be open in order for the strata to perform inspections to ensure maintenance is undertaken properly. To ensure uniform compliance, the maintenance of the common strata lands should be the responsibility of the strata. The images above show that the common strata buffer spaces are not being maintained the same by all lot owners.

The installation of cross fencing is also not treated the same through the development. The lots that back onto internal strata common property, like lots #38 through 42 shown above, did not construct fences into the common strata property. Only the lots adjacent to the exterior of the development are expanded into common strata property.

Bare-land strata lots at an adjacent development (The Cottages) have buffers of continuous, unobstructed landscaped common strata land. As shown below, the common strata property is vegetated and maintained by the strata. This allows for a uniform treatment and maintenance of the common strata lands and ensures long-term compliance as there is no implied individual ownership of the common strata lands.



In conclusion, the proposal to install dense cedar hedging, and fences across the common strata buffer areas for lots abutting the exterior of the development is not consistent with the intent of the buffer areas as outlined in the Official Community Plan and the proposal is not consistent with the Form and Character guidelines references above and defeats the intent of the buffer as a separation between adjacent developments.

Staff therefor recommend that the FVRD Board refuse the issuance of this permit.

ENFORCEMENT AND COMPLIANCE BACKGROUND

A Comprehensive Development Permit (Permit 2017-01) was issued for this property as part of the overall subdivision and development approvals for a 103 lot resort residential subdivision known as Aquadel Crossing, Permit 2017-01. Permit 2017-01 addressed geo-hazards, form and character of homes and common strata amenity buildings (clubhouse), and environmental performance aspects of the project including protecting and enhancing riparian areas.

After the rezoning for this development was approved and the initial permits were issued, the project was sold to the current developer. Through the subdivision and construction process phases, the FVRD has been enforcing a number of infractions at Aquadel Crossing, which have shown a blatant disregard to FVRD permits and Provincial requirements, including fencing installed within a watercourse contrary to the FVRD Development Permit requirements and Provincial Environmental authorizations; a residential occupancy without potable water service; and lack of fencing with a filled swimming pool creating a public safety hazard as well, in the summer of 2017, the developer did not install a clear-span bridge as per the conditions of Permit 2017-01, but rather three culverts. The Province determined that the three culverts were not authorized and ordered their removal and ordered an alternative crossing design. A Box Culvert design was then submitted by the developer and accepted by the Province.



The three culverts resulted in the destabilization of the stream channel, loss of flow in Spring Creek and impacted fish passage.



The image above shows the installation of fencing within the Spring Creek Riparian Area (March 2019).

In an email from a registered professional to the FVRD it was determined that...*"the construction of the fence in its current location (See Figure 1) is inconsistent with the recommendations and/or requirements of the RAR Detailed Assessment referenced through the Development Permit...new permanent structures are not permitted in the SPEA including fencing. Fencing can be (and has been) installed along the boundary of the SPEA at the interface with the private lots (i.e., parallel to the stream)....the section of fence that crosses the stream as constructed will need to be removed* (email dated March 22, 2019).

NEXT STEPS

If this application is refused the following steps are anticipated:

- 1) Removal of all fencing material installed across the common strata buffer areas.
- 2) Removal of cedars installed to create a hedge line across the common strata buffer areas.
- 3) Removal of the fencing from within the protected Riparian Area and certification of compliance from the registered professional biologist.
- 4) Inspection of the buffer areas by a qualified professional to determine compliance with the original development permit.
- 5) After completion of all phases of the subdivision and confirmation that all of the buffer areas are in compliance with the conditions of the original development permit, security deposits may be returned. There will be no partial refund of security until all phases are completed.
- 6) Individual strata lot owners may install fences around the perimeter of their strata lots, but not on common strata property.

COST

Development permit application fee of \$350.00 paid by the applicant

CONCLUSION

Staff recommend that the FVRD refuse the issuance of development permit 2019-02 as outlined in the recommendation section of this report. The additional options that the FVRD Board may consider are:

OPTION 1 Issue DVP

THAT the Fraser Valley Regional District Board **issue** Development Permit 2019-02.

OPTION 2 Refer to Staff

THAT the Fraser Valley Regional District Board **refer** the application for Development Permit 2019-02 to FVRD staff.

COMMENT BY:

Graham Daneluz, Deputy Director of Planning & Development

Reviewed and Support.

At issue here is public confidence that developments will be built in a way that is consistent with; (1) the plans presented to the public at the public hearings and, (2) local and provincial regulations.

COMMENT BY:

Margaret Thornton, Director of Planning & Development

Reviewed and Support.

There has been lengthy consultation with the developer and neighbours who are adjacent to the buffer areas with the intent that a facilitated resolution between the developer and the neighbours would be able to address the neighbourhood's concerns. This did not occur. It is recommended that the landscaping and the buffer areas be developed in accordance with the original Development Permit conditions and plans.

COMMENT BY:

Mike Veenbaas, Director of Financial Services

No further financial comments.

COMMENT BY:

Jennifer Kinneman, Acting Chief Administrative Officer: Reviewed and supported.