

**CITY OF ENDERBY
TEMPORARY USE PERMIT APPLICATION**

AGENDA

File No.: 0005-21-TUP-END (Heins)

May 26, 2021

APPLICANT: Lori Heins

Owner: Heins North Services Ltd.

LEGAL DESCRIPTION: LOT 7 AND THAT PART OF LOT 6 BLOCK 14 PLAN 211A SHOWN ON PLAN B1133 AND THOSE PARTS OF LOTS 38 AND 39 PLAN 211 SHOWN ON PLAN B1133 THE WHOLE TO FORM A SINGLE PARCEL AND TO BE KNOWN HEREAFTER AS PARCEL A (DD KC7720 AND PLAN B1133) DISTRICT LOT 150 KAMLOOPS (FORMERLY OSOYOOS) DIVISION YALE DISTRICT PLAN 211A

P.I.D #: 012-977-535

CIVIC ADDRESS: 607 Cliff Avenue, Enderby BC

PROPERTY SIZE: 0.0264 hectares (0.0651 acres or 263.56 m²)

PRESENT ZONING: General Commercial

PRESENT O.C.P DESIGNATION: General Commercial

PROPOSED TEMPORARY USE: Mobile vendors

PROPOSED TEMPORARY USE PERMIT TERM: 3 years

RECOMMENDATION (Do not support):

THAT Council does NOT authorize the issuance of a Temporary Use Permit to permit mobile vendors to operate on the property legally described as LOT 7 AND THAT PART OF LOT 6 BLOCK 14 PLAN 211A SHOWN ON PLAN B1133 AND THOSE PARTS OF LOTS 38 AND 39 PLAN 211 SHOWN ON PLAN B1133 THE WHOLE TO FORM A SINGLE PARCEL AND TO BE KNOWN HEREAFTER AS PARCEL A (DD KC7720 AND PLAN B1133) DISTRICT LOT 150 KAMLOOPS (FORMERLY OSOYOOS) DIVISION YALE DISTRICT PLAN 211A and located at 607 Cliff Avenue, Enderby.

ALTERNATE RESOLUTION A (Two year Permit, limit of only one mobile vendor operating at a time, mobile vendors restricted from selling prepared food):

THAT Council authorizes the issuance of a Temporary Use Permit to permit mobile vendors to operate on the property legally described as LOT 7 AND THAT PART OF LOT 6 BLOCK 14 PLAN 211A SHOWN ON PLAN B1133

AND THOSE PARTS OF LOTS 38 AND 39 PLAN 211 SHOWN ON PLAN B1133 THE WHOLE TO FORM A SINGLE PARCEL AND TO BE KNOWN HEREAFTER AS PARCEL A (DD KC7720 AND PLAN B1133) DISTRICT LOT 150 KAMLOOPS (FORMERLY OSOYOOS) DIVISION YALE DISTRICT PLAN 211A and located at 607 Cliff Avenue, Enderby, subject to the following terms and conditions:

1. The term of the Temporary Use Permit shall be 2 years;
2. No more than one mobile vendor may operate on the property at any given time and mobile vendors are restricted from selling prepared food (i.e. foods produced for immediate consumption);
3. The property owner shall provide a surfacing/grading plan to the satisfaction of the City of Enderby, and surface the property in accordance with the approved plan prior to any mobile vendors operating on the property;
4. The property owner shall be responsible for providing suitable garbage collection containers and to keep the area around the property free of any waste material originating from the mobile vendors' operations;
5. The operation of mobile vendors shall not result in nuisances by way of excessive noise, unsightliness, or odour;
6. Any mobile vendor operators operating on the property must obtain a City of Enderby Business License;
7. The property owner shall provide a fire prevention plan to the satisfaction of the City of Enderby; and
8. The property owner shall provide a sworn affirmation acknowledging that they are responsible for ensuring that the above conditions are adhered to and that failure to do so may result in the City revoking the Temporary Use Permit.

ALTERNATE RESOLUTION B (Three year Permit, limit of two mobile vendors operating at a time, no restrictions on mobile vendors selling prepared food):

THAT Council authorizes the issuance of a Temporary Use Permit to permit mobile vendors to operate on the property legally described as LOT 7 AND THAT PART OF LOT 6 BLOCK 14 PLAN 211A SHOWN ON PLAN B1133 AND THOSE PARTS OF LOTS 38 AND 39 PLAN 211 SHOWN ON PLAN B1133 THE WHOLE TO FORM A SINGLE PARCEL AND TO BE KNOWN HEREAFTER AS PARCEL A (DD KC7720 AND PLAN B1133) DISTRICT LOT 150 KAMLOOPS (FORMERLY OSOYOOS) DIVISION YALE DISTRICT PLAN 211A and located at 607 Cliff Avenue, Enderby, subject to the following terms and conditions:

1. The term of the Temporary Use Permit shall be 3 years;
2. No more than two mobile vendors may operate on the property at any given time;
3. The property owner shall provide a surfacing/grading plan to the satisfaction of the City of Enderby, and surface the property in accordance with the approved plan prior to any mobile vendors operating on the property;
4. The property owner shall be responsible for providing suitable garbage collection containers and to keep the area around the property free of any waste material originating from the mobile vendors' operations;
5. The operation of mobile vendors shall not result in nuisances by way of excessive noise, unsightliness, or odour;

6. Any mobile vendor operators operating on the property must obtain a City of Enderby Business License;
7. The property owner shall provide a fire prevention plan to the satisfaction of the City of Enderby; and
8. The property owner shall provide a sworn affirmation acknowledging that they are responsible for ensuring that the above conditions are adhered to and that failure to do so may result in the City revoking the Temporary Use Permit.

BACKGROUND:

This is a Temporary Use Application which proposes to allow mobile vendors to operate on the property located at 607 Cliff Avenue, which is currently vacant, for a three year period. Given that the City of Enderby Zoning Bylaw No. 1550, 2014 does not permit mobile vendors to operate on private property, the applicant is seeking a Temporary Use Permit in accordance with Section 493 of the *Local Government Act*.

A Temporary Use Permit is a tool to allow a short-term use that does not comply with the Zoning Bylaw. A Temporary Use Permit may only be issued for a maximum of 3 years and may be renewed once for an additional 3 years as per Section 497 of the *Local Government Act*. Temporary Use Permits are intended to be temporary in nature, and are not a viable long term land use solution.

Site Context

The 0.0264 hectares (0.0651 acres or 263.56 m²) subject property is vacant with no improvements on the site. The property is located in the commercial core of the community along the northern side of Cliff Avenue, which is identified in Schedule 'C' of the City's Official Community Plan (OCP) as a 'Municipal Commercial' road; the property backs onto MacPherson Lane which runs east-west between George Street (Highway 97A) and Belvedere Street.

The subject property and properties to the north, east, south and west are all zoned General Commercial (C.1) and are designated in the OCP as General Commercial, while the properties to the northwest are zoned Assembly, Civic and Public Service (S.1) and Highway and Tourist Commercial (C.2), and are designated in the OCP as Institutional and General Commercial respectively.

The following map shows the Zoning designation of the subject and surrounding properties.

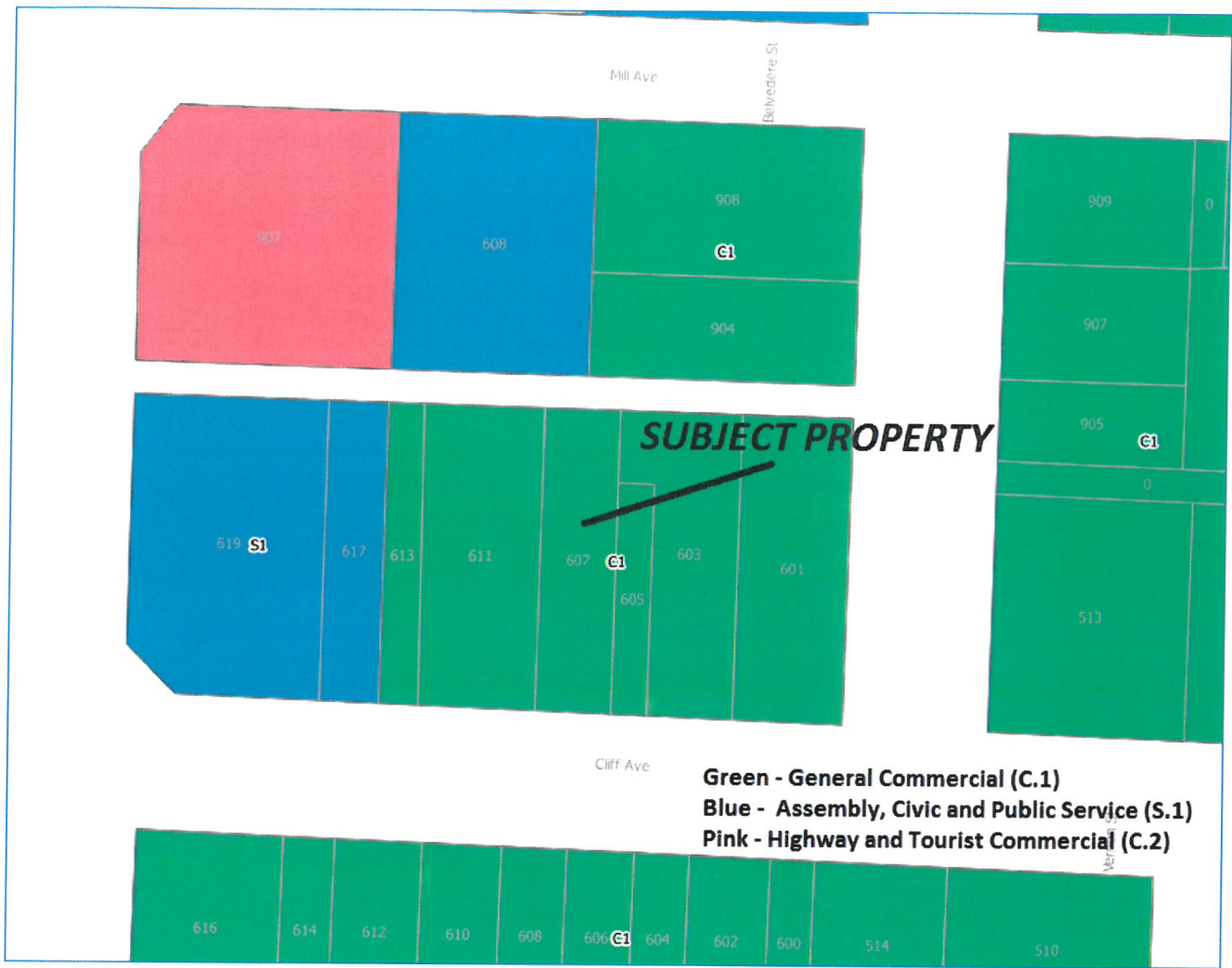


Figure 1: Zoning Map

The following orthophoto of the subject and surrounding properties was taken in 2011:



Figure 2: Orthophoto

Development History

A commercial building (Little City Fashions) was previously located on the property but it was damaged through a structure fire and was subsequently demolished. In 2017, the City of Enderby became the owner of the property through the tax sale process. The City prepared a Request for Expressions of Interest seeking proposals from parties interested in purchasing 607 Cliff Avenue to redevelop the property to a mix of commercial and residential land uses. One Expression of Interest was received from Alpine Consultants Ltd. (Alpine) which proposed a ground-level commercial space with three residential dwelling units on the second storey.

Ultimately, a sale was negotiated which included a subject where the parties entered into a Housing Agreement/Section 219 Covenant in order to ensure that, i) the use of the proposed residential dwelling units was preserved into the future (i.e. dwelling units cannot be redeveloped or converted to a different use

without amending the Housing Agreement), and ii) tenants of the dwelling units were restricted to parking no more than one vehicle per dwelling unit in a public parking lot at any one time. This was assumed to have a net change of 1 parking stall from the prior use, which had a dwelling above without any parking restrictions.

The proposed development never occurred and the property was subsequently sold to the current owner; the Housing Agreement remains registered on the title of the property.

The Proposal

The applicant is proposing to have mobile vendors operate on the vacant property. Given that the City of Enderby Zoning Bylaw No. 1550, 2014 does not permit mobile vendors to operate on private property, anywhere in the community, the applicant is seeking a Temporary Use Permit in accordance with Section 493 of the *Local Government Act*. The applicant has requested the maximum three year term for the Temporary Use Permit.

The applicant has advised that they intend to gravel and clean the lot, install fencing, and place picnic tables and a port-a-potty on the lot. The applicant has advised that their primary focus for mobile vendors is food trucks, but they may explore other forms of mobile vendors (example: retail).

ZONING BYLAW:

The subject property is zoned General Commercial (C.1); uses permitted within this zone include:

- Accessory buildings and structures;
- Accommodation including apartments, dwelling units, hotels and motels;
- Assembly and civic use;
- Educational facilities and professional studios;
- Entertainment and recreation facilities;
- Food service;
- Office and commerce facilities;
- Public service use;
- Retail sales;
- Service and repair; and
- Transportation facilities.

Section 401.11.b of the City of Enderby Zoning Bylaw states that within the C.1 zone, every business or undertaking shall be conducted within a completely enclosed building, except for parking and loading facilities and outdoor garden shops. This provision restricts mobile vendors from operating on properties zoned General Commercial (C.1), except for temporarily delivering or catering to a residence, business, or construction site, in accordance with the City of Enderby Business License and Regulation Bylaw No. 1558, 2014; in those instances, a mobile vendor is temporarily servicing a permitted use on private property.

Section 313 of the Zoning Bylaw states that pursuant to Section 920.2 (now Section 492) of the *Local Government Act*, all zones within the City are designated as areas for the issuance of Temporary Use Permits, subject to the following general conditions:

- a. The use is temporary or seasonal in nature;
- b. The use is not noxious or undesirable because of smoke, noise, vibration, dirt, glare, odour, radiation, electrical interference, or an offensive trade within the meaning of the Health Act;
- c. There are no negative impacts on the lands in the vicinity;
- d. There is no significant increases in the level or demand for services;
- e. There are no permanent alterations to the subject site; and
- f. The use complies with all of the conditions specified by Council as a condition of the issuance of the Permit.

OFFICIAL COMMUNITY PLAN:

Policies contained within the OCP which apply to this development include:

- Policy 2.2.b - To maintain and enhance the City of Enderby as a sustainable, diverse, vibrant, unique and attractive community.
- Policy 3.3.c - Council recognizes that development of land has social impacts and will act through the approval process to minimize negative and maximize positive impacts.
- Policy 5.3.b - Council will review land use bylaws and policy in support of mixed uses in commercial, industrial and growth areas aimed at strengthening the existing business sector and attracting new business and industry.
- Policy 5.3.c - Council will work with the business community and stakeholders to promote a diverse local economy that provides the goods and services necessary to competitively meet local demand and attract visitors.
- Policy 12.3.c - Council encourages and supports creative and innovative infilling, development, redevelopment and renovation of existing buildings in order to maintain a strong focus on commercial activity in commercial areas.
- Policy 18.1 - Subject to the designation of areas and conditions in the Zoning Bylaw, Council may issue Temporary Use Permits in all areas of the City.

REFERRAL COMMENTS:

The subject application was referred for comment to the City of Enderby Public Works Manager, Building Inspector, and Fire Chief.

The Fire Chief advised that the applicant should provide a fire prevention plan as part of the proposed development, and confirmed that food trucks would be inspected as part of the Business Licensing process.

No other comments were received in response to the referral.

PLANNING ANALYSIS:

As noted above, Section 313 of the City of Enderby Zoning Bylaw states that pursuant to Section 920.2 (now Section 492) of the *Local Government Act*, all zones within the City are designated as areas for the issuance of Temporary Use Permits, subject to the following general conditions:

- a. The use is temporary or seasonal in nature;
- b. The use is not noxious or undesirable because of smoke, noise, vibration, dirt, glare, odour, radiation, electrical interference, or an offensive trade within the meaning of the Health Act;
- c. There are no negative impacts on the lands in the vicinity;
- d. There is no significant increases in the level or demand for services;
- e. There are no permanent alterations to the subject site; and
- f. The use complies with all of the conditions specified by Council as a condition of the issuance of the Permit.

Staff are recommending that Council not authorize the issuance of a Temporary Use Permit given that the proposed use of mobile vendors on the subject property would conflict with condition c. above, as follows:

- The proposal is inconsistent with the intent of the permitted uses of the General Commercial (C.1) zone, which are intended to foster a downtown experience involving brick-and-mortar dining and retail opportunities;
- The COVID-19 pandemic has had a profound impact on the restaurant industry, and permitting food trucks to operate in close proximity to several restaurants who have had to manage on-going restrictions related to Public Health Orders would place a further strain on these businesses;
- There is demand for commercial and mixed use floor space within the downtown and permanent construction should be encouraged; and
- Permitting mobile vendors on the subject property creates a precedent for other vacant parcels in the commercial core, which may encourage those property owners to seek alternatives to permanent construction that runs contrary to the development objectives for the downtown.

While Staff advise against it, should Council wish to authorize the issuance of a Temporary Use Permit to permit mobile vendors to operate on the property, it is recommended that the following modified terms and conditions be imposed to limit the impacts (Alternate Resolution A):

1. The term of the Temporary Use Permit shall be 2 years

A shorter term for the Temporary Use Permit is preferred in order to encourage the property to transition to permanent construction sooner rather than later.

2. No more than one mobile vendor may operate on the property at any given time and mobile vendors are restricted from selling prepared foods (i.e. foods produced for immediate consumption)

In order to mitigate potential negative impacts on adjacent businesses who would be in direct competition with the vendors, it is recommended that the number of mobile vendors that may operate on the property at any given time be limited to one. Furthermore, it is recommended that

mobile vendors be restricted from selling prepared foods in order to prevent competition with restaurants in the downtown, who have had been significantly affected by the pandemic.

3. The property owner shall provide a surfacing/grading plan to the satisfaction of the City of Enderby, and surface the property in accordance with the approved plan prior to any mobile vendors operating on the property

The vacant parcel is not surfaced and is predominantly dirt and weeds. In order to prevent dirt and debris from being tracked on to the adjacent street, lane or sidewalk through vehicular or pedestrian traffic, it is recommended that the applicant be required to surface the property to an adequate standard. The applicant would be required to provide a surfacing/grading plan to the satisfaction of the City of Enderby prior to commencing the temporary use.

4. The property owner shall be responsible for providing suitable garbage collection containers and to keep the area around the vending location free of any waste material originating from the vendor's operation

This is a standard condition for mobile vendors who are permitted to operate on public property, and would also be applicable to mobile vendors operating on private property.

5. The operation of mobile vendors shall not result in nuisances by way of excessive noise, unsightliness, or odour

Given that mobile vendors operate outside of an enclosed building, and generally do not have access to the same level of utilities and services as a typical business (i.e. bathroom facilities, electrical services, etc.), these types of operations are more prone to creating nuisances (i.e. odour from porta-potty, running generators, etc.); by explicitly stating that the operation of mobile vendors shall not result in nuisances, the property owner will need to ensure that the types of mobile vendors that they are bringing onto the property are appropriate for the context of the site, and that they are taking the necessary steps to mitigate any potential impacts to the downtown.

6. Any mobile vendor operators operating on the property must obtain a City of Enderby Business License

Under the City's Business License Bylaw, mobile vendors are required to obtain an annual Business License. The licensing process ensures that the mobile vendors obtain the necessary inspections (i.e. fire and health inspections, as applicable) prior to operating.

7. The property owner shall provide a fire prevention plan to the satisfaction of the City of Enderby

As mentioned by the Fire Chief in his referral comments, the provision of a fire prevention plan will ensure that the property owner is giving due consideration to fire prevention measures on the property.

8. The property owner shall provide a sworn affirmation acknowledging that they are responsible for ensuring that the above conditions are adhered to and that failure to do so may result in the City revoking the Temporary Use Permit.

This requirement will help to avoid a situation where the City is managing and enforcing potential impacts or nuisances related to the operation of mobile vendors on the property, and instead ensure that the property owner is aware that it is their responsibility to ensure that the above conditions are adhered to, and that failure to do so may impact their ability to continue the temporary use.

In the alternative, Council can issue a Temporary Use Permit that matches the owner's request, that being for a 3-year term, no restrictions on goods sold, and two mobile vendors permitted (Alternate Resolution B); the other requirements related to on and off-site impact management would continue to apply as conditions on the Permit.

Alternatively, Council may choose to authorize the issuance of a Temporary Use Permit with additional or fewer (if any) terms and conditions, as it feels appropriate.

SUMMARY

This is a Temporary Use Application which proposes to allow mobile vendors to operate on the property located at 607 Cliff Avenue for a three year period. Given that it is anticipated that the proposed temporary use would have negative impacts on the lands in the vicinity, the City of Enderby Planner recommends that Council does NOT authorize the issuance of a Temporary Use Permit.

Prepared By:



Kurt Inglis, MCIP, RPP
Planner and Deputy Corporate Officer

Reviewed By:



Tate Bengtson
Chief Administrative Officer

THE CORPORATION OF THE CITY OF ENDERBY

TEMPORARY USE PERMIT APPLICATION

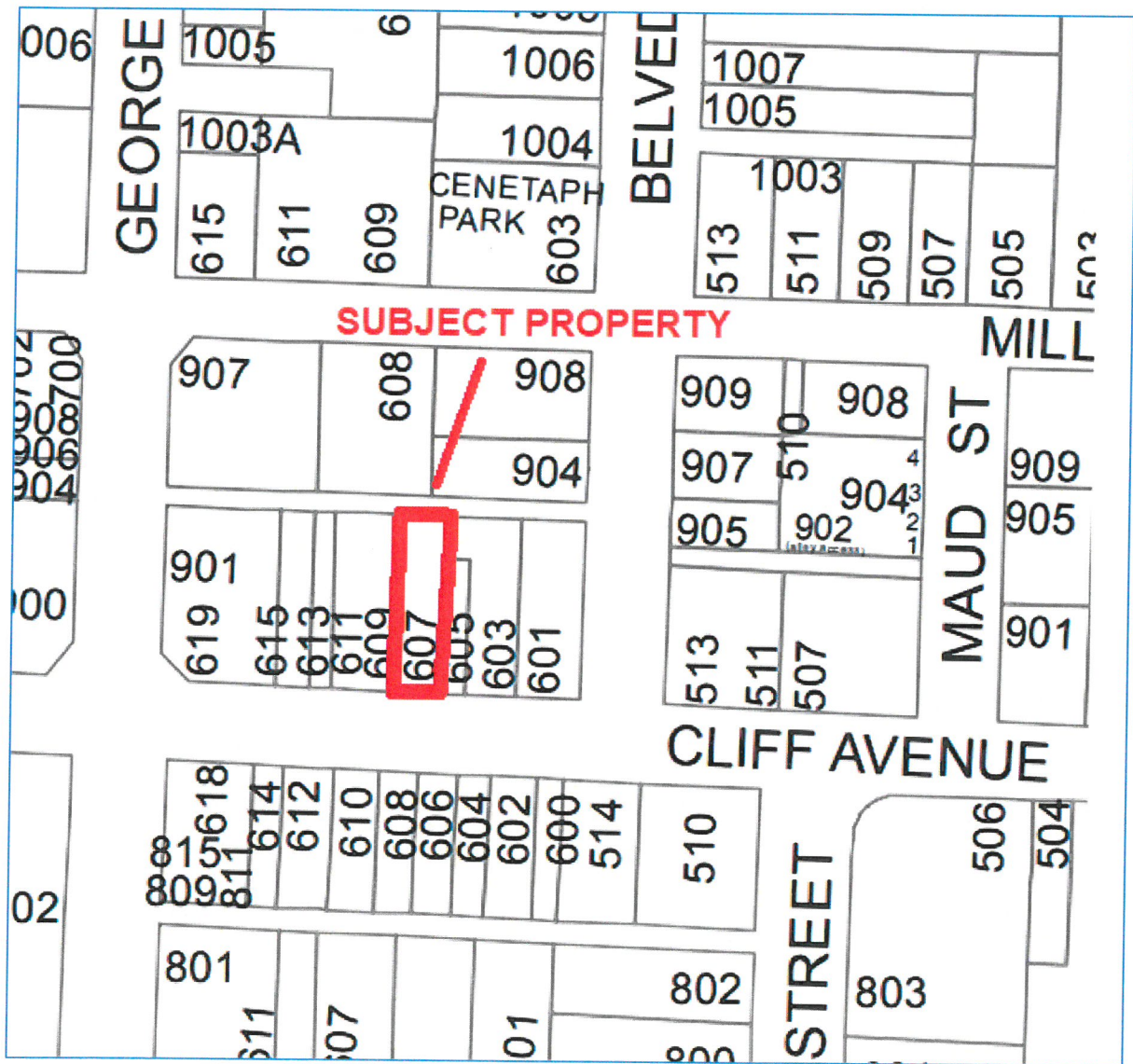
SUBJECT PROPERTY MAP

File: 0005-21-DVP-END (Heins)

Applicant: Lori Heins

Owner: Heins North Services Ltd.

Location: 607 Cliff Avenue, Enderby BC



Rough Plan

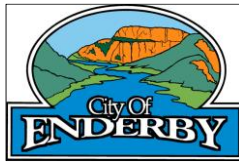


Cliff Ave

We purchased the downtown lot with the intent of building. Covid hit and building costs skyrocketed. At this time we would like to utilize the lot in a small way to enhance the downtown core and sty covid compliant.

Our plan is to clean and gravel the lot. We would like to put fencing up (for security but aesthetically pleasing) picnic tables and porta pottys. We are exploring the possibility of providing water / electrical by way of a temporary lockable utilities connection. We are speaking with different food truck vendors and hoping to provide a variety of different options that will not conflict with existing brick and mortar businesses already in place. While food truck vendors are our primary focus we are not tied to that as the only usage for the lot. We have agreed to allow the Farmer's Market to use our lot for the porta potty and barricade storage. It could be used by other groups in the area for small covid compliant events. Our focus is to render the lot as it is to be more utilizable for the downtown core of Enderby for the benefit of the community and it's visitors.

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.



TEMPORARY USE PERMIT

Application / File No.: 0005-21-TUP-END

To: Lori Heins
Heins North Services Ltd.

Address: <>

1. This Temporary Use Permit is issued in accordance with Sections 493 and 497 of the *Local Government Act* and subject to compliance with all applicable Bylaws of the City of Enderby, except as expressly varied.
2. This Temporary Use Permit applies only to those lands described below, and any and all buildings, structures, or other development thereon:

LOT 7 AND THAT PART OF LOT 6 BLOCK 14 PLAN 211A SHOWN ON PLAN B1133 AND THOSE PARTS OF LOTS 38 AND 39 PLAN 211 SHOWN ON PLAN B1133 THE WHOLE TO FORM A SINGLE PARCEL AND TO BE KNOWN HEREAFTER AS PARCEL A (DD KC7720 AND PLAN B1133) DISTRICT LOT 150 KAMLOOPS (FORMERLY OSOYOOS) DIVISION YALE DISTRICT PLAN 211A

P.I.D #:012-977-535

3. Temporary Use Permit 0005-21-TUP-END is hereby approved allowing mobile vendors to operate on the property for a three year period, subject to the following conditions:
 - The term of the Temporary Use Permit shall be 3 years;
 - No more than two mobile vendors may operate on the property at any given time;
 - The property owner shall provide a surfacing/grading plan to the satisfaction of the City of Enderby, and surface the property in accordance with the approved plan prior to any mobile vendors operating on the property;
 - The property owner shall be responsible for providing suitable garbage collection containers and to keep the area around the property free of any waste material originating from the mobile vendors' operations;
 - The operation of mobile vendors shall not result in nuisances by way of excessive noise, unsightliness, or odour;
 - Any mobile vendor operators operating on the property must obtain a City of Enderby Business License;
 - The property owner shall provide a fire prevention plan to the satisfaction of the City of Enderby; and
 - The property owner shall provide a sworn affirmation acknowledging that they are responsible for ensuring that the above conditions are adhered to and that failure to do so may result in the City revoking the Temporary Use Permit.

4. As a condition of the issuance of this Temporary Use Permit, the Council is holding the security set out below to ensure that development is carried out in accordance with the terms and conditions of this Permit. Should any interest be earned upon the security, it shall accrue to the Permittee and be paid to the Permittee if the security is returned. The condition of the posting of the security is that should the Permittee fail to carry out the development hereby authorized, according to the terms and conditions of this Permit within the time provided, the City of Enderby may use the security to carry out the work by its servants, agents, or contractors, and any surplus shall be paid over to the Permittee, or should the Permittee carry out the development permitted by this Permit within the time set out above, the security shall be returned to the Permittee. There is filed accordingly:
 - a. a Bearer Bond in the amount of \$ **N/A**; or
 - b. a Performance Bond in a form acceptable to the City of Enderby in the amount of \$ **N/A**; or
 - c. an Irrevocable Letter of Credit in the amount of \$ **N/A**;
 - d. a certified cheque in the amount of \$ **N/A**;
 - e. a cash deposit in the amount of \$ **\$N/A**.
5. The land described herein shall be developed strictly in accordance with the terms, conditions and provisions of this Permit and any attached plans and specifications shall form a part of this Permit.
6. Temporary Use Permit 0005-21-TUP-END expires on the day of , 2024.
7. Upon expiry of the Temporary Use Permit, the uses of the subject property shall only be those permitted under the Zoning Bylaw in effect at the time of the Permit's expiry.
8. This Permit is not a Building Permit.

AUTHORIZING RESOLUTION PASSED BY COUNCIL THE DAY OF , 2021.

ISSUED THIS DAY OF , 2021.

 Tate Bengtson
 Chief Administrative Officer

NOTICE OF PERMIT:

Issued	
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Amended	
Cancelled	

Filed with the Land Title Office this day of , 2021.