

April 24, 2024

To: Legislative Services

From: Brenda Garrett, Red Deer, AB., (403)358-2646, garrettb@telus.net

Re: Legality of proposed changes to PS zone in the Bylaw Review

I am writing with serious concerns over the legality of significant changes being made to the PS zone in the proposed Bylaws. Since Phase 1 of the bylaw review focused only on the Residential, Commercial and Industrial zones, these changes are being made without public review.

In the Purpose section:

1. The descriptor in both the current and proposed bylaw remains basically the same. The new version states, “this zone provides land for uses that are public and quasi-public in nature” (9.40.1). However, the definition of public and quasi-public has been removed from the definitions. That definition was:

Public and Quasi-Public: means any government or similar body and includes an agency, commission, board, authority, public corporation, or department established by such a body.

Without the definition, the wording in the proposed bylaw not only becomes very unclear but also alters the PS zone by removing reference to the relationship between public service land use and governmental and public bodies. This creates significant change without public review.

In the Permitted uses:

1. The current bylaw states, “Recreation and sport activities operated or sponsored by a governmental body or agency for the participation of the public at large.” This is replaced in the proposed bylaw with “Indoor Recreation Facility” and “Outdoor Recreation Facility.” These replacements are defined as:

Indoor Recreation Facility: a building is used for athletic, recreation and leisure activities. This use may include outdoor sports fields on the same site.

Outdoor Recreation Facility: providing sports and cultural facilities which are available to the public for sports and active recreation conducted outdoors.

The proposed uses omit the requirements that the facility be “operated or sponsored by a governmental body or agency” and must be “for the participation of the public at large.” Again, this removes the relationship between public service land use and governmental and public bodies which was clearly intended originally. Would a Motion Fitness gym or axe throwing company now be a permitted use on PS land?

In the Discretionary uses:

1. **Gaming or Gambling Establishments are added as a discretionary use in the proposed bylaw.** These are defined as “a use where games of chance or percentage are the Principal Use of the Site.” In the current bylaws, a gaming establishment was discretionary at the Westerner site only. Extending gambling establishments on PS land across the city is a significant change to the current PS district.
2. **“Private Clubs or Organizations” and “Offices for community-oriented groups which have recreation as part of their programs” are removed as discretionary uses.** (Utilities and Parking are as well, but these uses are enabled in other sections of the new bylaws.)
3. **“Supportive Living Accommodation” replaces “Assisted Living” in the new bylaw.** In my opinion, this is the most serious change. Assisted Living is currently a discretionary use in the PS district and is defined as:

Assisted Living means a building or a portion of a building operated for the purpose of providing live in accommodation for six or more persons with chronic or declining conditions requiring professional care or supervision or ongoing medical care, nursing or homemaking services or for persons generally requiring specialized care but may include a secured facility as an accessory component of an assisted living facility. An assisted living facility does not include a temporary care facility.

Without any public consultation or review, this has been replaced with:

Supportive Living and Accommodation means a use that is intended for the permanent residential living where an operator also provides to arrange for the onsite service to assist residents to live independently or to assist residents requiring full time care.

This is not a one-to-one, or like-to-like, shuffling of terminology. With the turn to “supportive living” the proposed bylaw now includes independent living apartment and condo complexes on PS land across the city. These complexes can have vastly different impacts on traffic and neighbourhood amenities. Is a 55+ for profit high rent apartment building where a hairdresser comes by every six months similar in use to assisted living with nursing care? This is a question that should be answered through public review and not made by a few people behind the scenes.

In the Reports given to Council for first and second/third readings of the new bylaws, it states that if passed, the proposed bylaws can be amended and decisions to do so will be based on severity, impacts on landowners, and level of risk. The severity of the proposed unreviewed changes to PS zoning is demonstrated by East Lincoln Property’s May 2023 application to build an independent 55+ living complex on PS land in Waskasoo. Under the current bylaws, it was deemed by the City that the project East Lincoln intended to build did not fit the definition of Assisted Living and that East Lincoln had to apply for a rezoning to R3. Now, *without public review*, the PS zone is being modified so that the use East Lincoln applied for becomes discretionary city-wide. What a difference a few months make...

The impact of this bylaw change on landowners is demonstrated by the response to East Lincoln’s rezoning application. That response included approximately 185 letters of

opposition, a nine-hour public hearing before Council attended by approximately 100 citizens, and Council's unanimous decision to deny the rezoning. The proposed bylaw with its shift from needing a zoning change for these types of builds to the simpler approval of a discretionary use (particularly with the changes to how discretionary use applications will be decided) *significantly* reduces the impact of community members on the decision and in my opinion undermines Council's decision. All of this has happened without any review or consultation with the citizens of Red Deer.

Finally, the level of risk is high. East Lincoln has been very clear that they will reapply for approval to build an independent 55+ rental apartment at 4930 59 street soon.

I believe the fix may be relatively simple. Replace the changes with the original wording of the PS district with all its definitions and uses and reinsert the relevant definitions that have been removed in the proposed document. Leave the new definitions in the proposed document to be used in the portions of the document that have been fully and transparently reviewed (e.g. residential). Then, after due process and a full public review of the PS zone in phase 2 of the bylaw review, make any agreed upon changes to the PS zone and, at that time, remove, add, or replace the definitions and uses. Doing so may be messy, but it is what is needed to have a phased approach to the bylaw changes. Removing the input of the public from changes to Public Service land is irony at its best.

Throughout the bylaw review process, it was clearly and repeatedly stated that PS zoning would be publicly reviewed in phase 2 (for examples see March 6, 2023, Council Meeting Report; What We Heard Report; March 18, 2024, Council Meeting Land Use Bylaw Review Project Summary). Also, the implication of any changes to the definitions on the unreviewed portions of the bylaws has never been made explicit to the public. It is not even mentioned in the published council documents. For example, although it would be an apt location for such a warning, the sections in the various council documents that outline the Risks and Benefits of this type of phased approach to the bylaw revision do not mention it. And while the last report to council finally points out key zoning changes in Part 9 of the proposed bylaws, which includes PS, it describes them as:

- Minor operational changes in Phase 1, comprehensive review planned for Phase 2.
- Made like-for-like permitted and discretionary use adjustments
- Made various minor tweaks to terminology and formatting to be consistent with the update.

(See p. 548, Council Meeting Land Use Bylaw Review Project Summary, March 18, 2024) Using terms such as "like-for-like," "minor tweaks," and "minor operational changes" obfuscates the gravity of how the new definitions, additions, and omissions impact these zones.

I apologize for bringing this up at this late stage. However, because PS was to be reviewed later, I did not review it to the same degree as I did the residential, commercial, and industrial zones. It was not until Mr. Girardin pointed out in his presentation at second and third reading that the change in definition from Assisted Living to Supportive Living had implication for the PS land in Waskasoo that I looked more closely. While I am grateful that he did so, the preamble at second and third reading was too late to be considered transparent and fair community consultation.

I do not want to hold up the bylaw review process and look forward to seeing many of the changes to the bylaws go through, which is why I am reaching out now before the April 29th Council Meeting. At that meeting, the process of how the Bylaw review will be moved forward will be discussed. I am hoping that if it is agreed that PS zoning is being improperly altered without due process, the means to address that fact can be incorporated into the proposed process for that meeting. Also, note that I have reviewed changes to the PS zoning only. There may be similar unreviewed changes to other sections slated for review in Phases 2 and 3.

Thank you for your consideration of this matter.