



THE CORPORATION OF THE CITY OF COURTENAY

STAFF REPORT

To: Council

File No.: 3360-20-1915/RZ000038

From: Director of Development Services &
Director of Corporate Services

Date: January 25, 2023

Subject: Parkland Disposition Bylaw No. 3050 (4070 Fraser Road) and
AAP Determination of Eligible Voters

PURPOSE:

The purpose of this report is for Council to consider initiating a parkland disposition process that is a condition of Zoning Amendment Bylaw No. 2989, to rezone the subject properties from RU-8 to CD-21 and PA-2, and to facilitate a 12-lot subdivision of 4070 Fraser Road.

POLICY ANALYSIS:

Under section 30 of the *Community Charter*, Council may, by bylaw, dedicate land as parkland. Prior to Council's consideration of removing any parkland dedication a bylaw must be prepared and approval of the electors must be sought. There are two processes where approval of the electors may be gained, either an alternative approval process (AAP) or assent vote (referendum). Following the selection of one of these two processes, Council may consider removing the park dedication and sell the land.

CAO RECOMMENDATIONS:

THAT Council give first, second and third readings to Parkland Disposition Bylaw No. 3050, 2023;

THAT Council seek the approval of the electors for Parkland Disposition Bylaw No. 3050 through an Alternative Approval Process (AAP);

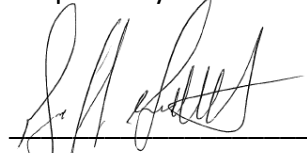
THAT Council establish the elector response form as attached to this report (**Attachment No. 3**);

THAT Council establish 22 656 as the total number of electors to which the AAP process applies;

THAT Council establish the 10% response threshold as 2266 electors;

AND THAT Council establish the deadline for receiving responses for the AAP as March 24, 2023 at 4:00 pm.

Respectfully submitted,



Geoff Garbutt M.PL., RPP, MCIP
City Manager (CAO)

BACKGROUND:

Rezoning Application Review

The subject property is in South Courtenay, as outlined in the staff report presented to Council on September 8th, 2020 (see **Attachment No. 1**). Zoning Amendment Bylaw No. 2989 would rezone a 2.21 ha (5.46 ac.) parcel located at 4070 Fraser Road to permit a 12-lot subdivision. See Figures 1 & 2 – Location of Subject Property.

Figures 1 and 2: Location of the Subject Property near the Ridge Neighbourhood in South Courtenay (Figure 2 Millard Creek shown with blue line)





Bylaw No. 2989 was granted First and Second Reading subject to the following: a public hearing; completion of the park land disposal process; and registration of Section 219 covenants securing contributions towards the City's Affordable Housing Fund and City's Parks, Recreation, Cultural, and Senior's Amenity Reserve Fund (both payable at the time of subdivision) and covenants requiring park land dedication, protection of the non-disturbance zone for Millard Creek riparian area including installation of permanent fencing and maintenance of the riparian buffer, as well as a 15m vegetated buffer, fencing and signage between the development site and the agricultural lands to the south. These covenants would be registered on the title of the subject properties prior to Council's consideration of final approval of Bylaw No. 2989.

Bylaw No. 2989 received a Public Hearing on December 14th, 2020, and Council gave it Third Reading on January 11th, 2021. Moving the Parkland Disposition Bylaw No. 3050 process forward has been delayed for a number of reasons: confirming the value of the parkland, staffing changes in the different departments with oversight for this action, and the decision to hold the AAP process after the November 2022 election to avoid confusion for the electorate.

The proposed strata road access to the subject property is from Harbourview Boulevard through an undeveloped single-family lot (Lot 44, EPP87922, DL153) and a 232.6m² portion of undeveloped parkland. The subject parkland is part of a long linear park that was originally dedicated in 2005 when the subject properties were still in Electoral A of the CVRD. These lands were incorporated

into the City in 2007 to enable the “The Ridge” subdivision. See Figure 2: Proposed Parkland Disposition Area and **Attachment No. 4** (Parkland Disposition Bylaw No. 3050).

To consider the disposition of parkland to facilitate the strata road access, the opinion of the electorate must be sought. The *Community Charter* and the *Local Government Act* provide two processes: Assent voting or the Alternative Approval Process (AAP). These processes are described below.

The Parkland

The 15 m wide linear park is currently undeveloped. It runs from the cul-de-sac at the end of Rhys Road (south-east of the subject property) to a larger treed area that is part of the Millard Creek riparian buffer area (north-west of the subject property) to Fraser Road. The linear park is shown on Figures 3 and 4.

Figure 3: Proposed Parkland for Disposition (red). Blue arrow shows bare land strata proposed access. Green area shows park land proposed to be dedicated to maintain pedestrian public access to existing linear park.

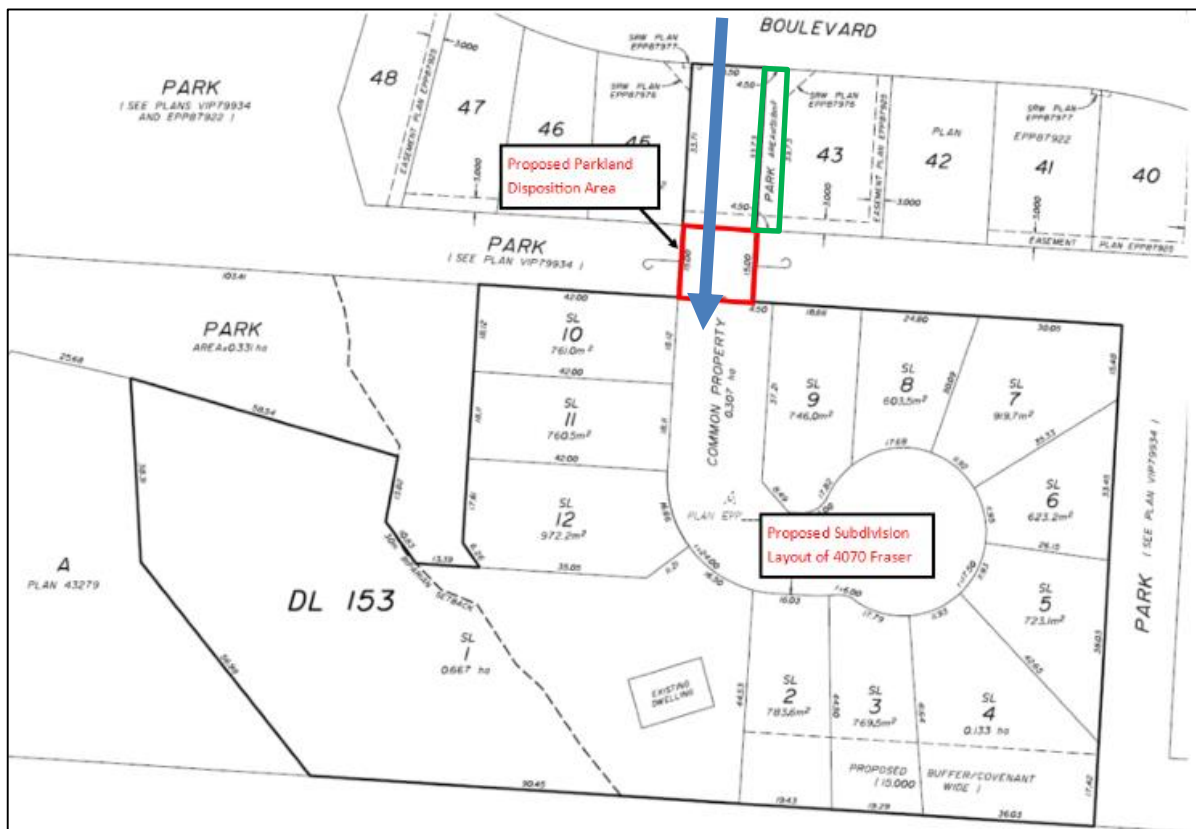
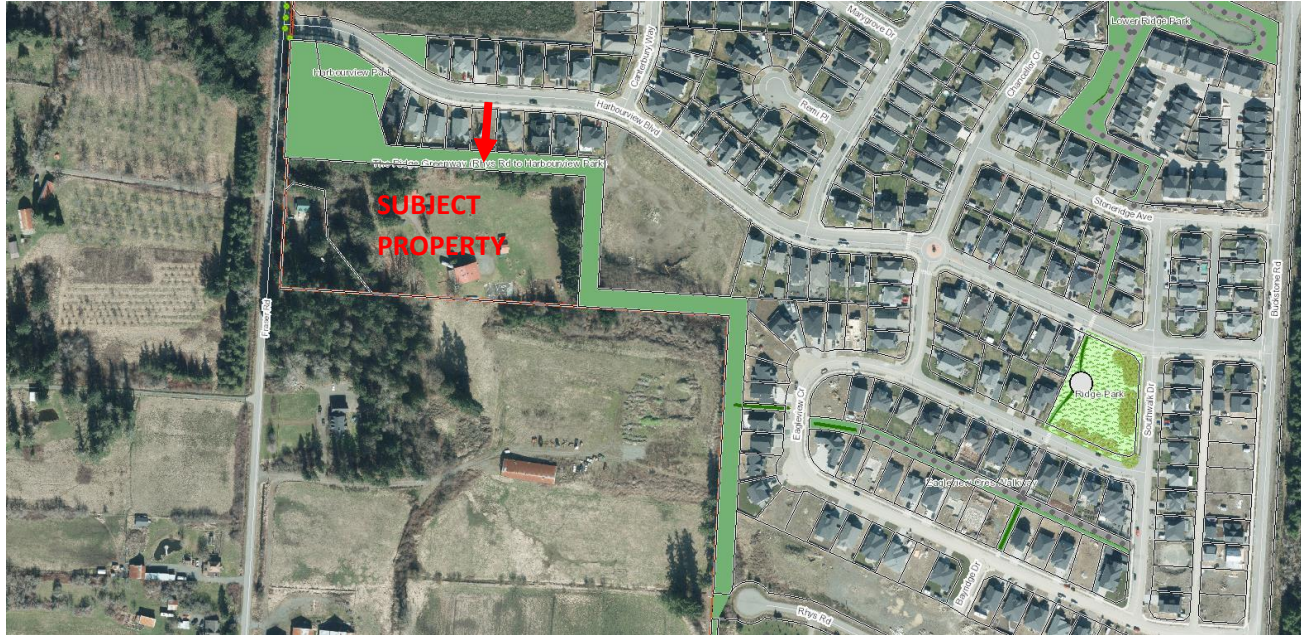


Figure 4 – Linear Park (green), Subject Property, and Park Disposition/Strata Road Access (shown with arrow)

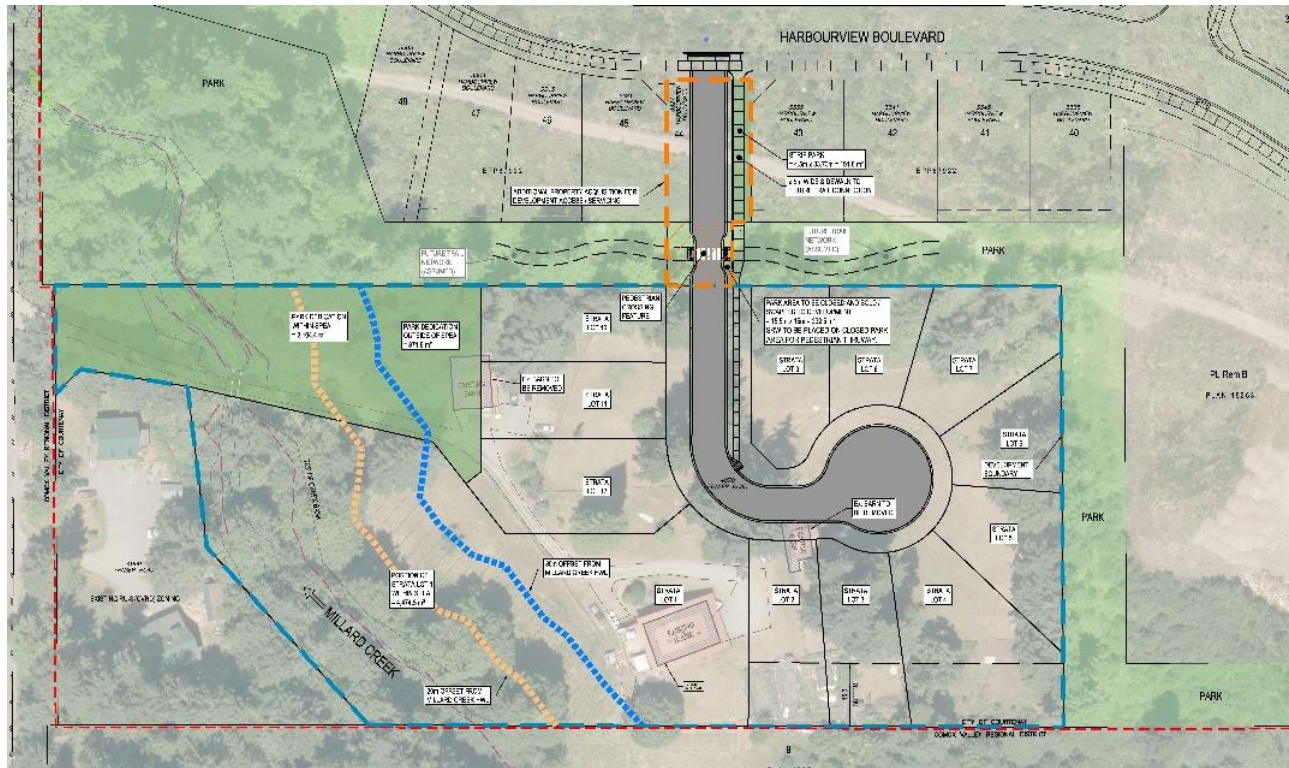


As part of this process and subsequent successful final zoning approval, the applicant is proposing to dedicate a 4.5 m wide strip adjacent to the proposed vehicular access and City owned parkland to ensure future public pedestrian access to the site and to the linear park. Should Council agree to the sale of the property, a public access right-of way will be required to be registered across the disposed parkland to ensure an east/west public pedestrian network. Final design of the crossing has not yet been considered but enabling safe pedestrian crossing will be a key element. As such, additional design requirements are recommended to be secured by way of registering a Section 219 covenant prior to Council’s consideration of final adoption of rezoning Bylaw No. 2989. A proposed design is attached as Figure 5.

In exchange for enabling access through the parkland, and as part of the overall zoning amendment amenities, the applicant is proposing to dedicate a larger area to the west of the proposed subdivision comprised of provincial minimum standard riparian protection area setbacks (Streamside Protection and Enhancement Area (SPEA)) of 2,104.4 m² plus a 876.1 m² additional protection area. The existing driveway from Fraser Road through the Millard Creek riparian area including an existing culvert that channels the creek, will be removed also representing further net habitat gain to the riparian area.

The applicant is also proposing a requirement for tree and vegetation planting on the rear 15 m of proposed strata lots 2–4 (see Figure 2) to establish a 15 m Agricultural Land Reserve buffer and that a covenant be registered to protect existing and future vegetation in this area.

Figure 5 – Proposed Access Design



Parkland Valuation

Section 27 (2) (b) of the *Community Charter* requires that the proceeds of the disposition (sale) be placed in the City’s parkland acquisition reserve. In this case the proceeds equate to the assessed value of the adjacent lots proportioned to the size of the parkland disposition area. The applicant retained an independent property appraiser to determine the appraised value of the portion of the parkland. See the attached report prepared by Jackson and Associates, dated November 8, 2021 (**Attachment No. 2**). The report concludes that the valuation is **\$22,983.00**. While the land valuation is somewhat out of date, staff consider that it continues to be fair compensation in today’s market.

Legislative Options for Disposition

Pursuant to section 30 (3) and (4) of the *Community Charter*, Council may dispose of the parkland by adopting a bylaw that has first received the approval of the electors. There are two options

available to seek elector approval: 1) Alternative Approval Process (AAP), or 2) an assent vote (previously known as referendum).

As part of these processes, and in accordance with the *Community Charter* and *Local Government Act*, the public would be provided the following information:

- A general description of the proposed bylaw,
- A description of the area to which the approval process applies,
- The compensation/benefit the City will receive in exchange for the parkland,
- The deadline for elector responses (or voting date) in relation to the approval process, and
- A statement that the Council must obtain the assent of the electors before proceeding.

In the case of an AAP, the number of elector responses required to be received that would prevent Council from proceeding also needs to be detailed in all legislated notices.

1. Alternative Approval Process

Pursuant to section 86 of the *Community Charter*, approval of the electors is obtained under an AAP if by the deadline for receiving elector responses the number of responses received is less than ten percent (10%) of the eligible electors of the City of Courtenay for the applicable area.

Section 86(3)(c) of the *Community Charter* requires Council to make a fair determination of the total number of electors of the area to which the approval process applies. In addition, the council must make available to the public, on request, a report respecting the basis on which the determination was made. The section below will show the basis for determining the total number of electors in relation to Bylaw 3050.

Staff have determined that the applicable area for a parkland disposition is the entire City of Courtenay rather than a smaller area of the City. While a park may be located within a specific neighbourhood, it belongs to the City as a whole and all resident electors and non-resident property electors may have an interest in any parkland within the City.

The number of people eligible to be a resident elector or a non-resident property elector is determined based on those individuals who when signing an elector response form:

- are 18 years of age or older;
- are a Canadian citizen;
- have lived in British Columbia for at least six months;
- live in Courtenay as of the day they complete the response form OR have owned property in Courtenay for at least 30 days;
- live, or own property in the area defined for the AAP; and,

- are not disqualified under the *Local Government Act*, or any other enactment from voting in a local election, or be otherwise disqualified by law.

Based on City records and the Provincial voters list, dated November 16, 2022, staff have determined there are 22 656 eligible electors in Courtenay. The estimated number of eligible electors within the area defined for the AAP is calculated as follows:

Voters on the Provincial Voters List (dated November 16, 2022)	22 567
Non-resident property electors	84
Freedom of the City honour holders	5
Total	22 656

The City maintains its own register of non-resident property electors. Non-resident property electors must meet the registration qualifications above, and provide proof of ownership and proof of consent from the majority of property owners in order to register with the City. Prior to the 2022 general local election, staff updated the list by removing electors who no longer owned the property in relation to which they registered as a non-resident property elector. The updated number of 84 above includes the new registrations received during the 2022 election.

The Freedom of the City number includes only living, non-resident Freedom of the City Holders. Resident Freedom of the City holders are included in the provincial voters list, and deceased Freedom of the City holders are no longer electors.

Ten percent of 22 656 is 2266 electors. Should more than 10% of eligible electors oppose the proposed disposition, Council would not be able to proceed with considering Parkland Disposition Bylaw No. 3050 and it would have implications for the Zoning Amendment Bylaw No. 2989.

2. Assent Vote

An Assent Vote involves asking electors to cast their vote for or against proposed Parkland Disposition Bylaw No. 3050. Assent of the electors is achieved if a majority of votes (50% plus 1) are in favour of proceeding with the bylaw. If elector assent is not granted the bylaw cannot be adopted. An Assent Vote process requires holding a public vote similar to an election and is therefore much more expensive and resource intensive than an Alternative Approval Process.

Due to the cost and complexity necessary for an Assent Vote process, this option is not recommended by Development Services or Corporate Services staff.

Next Steps – AAP

Should Council wish to proceed with an AAP, the initial process requires the following steps:

1. Confirm the number of electors to which the alternative approval process applies and the 10% threshold. In the case of Parkland Disposition Bylaw No. 3050, the process applies to all 22 656 electors in the City, and the 10% threshold is 2266, as outlined above.
2. Establish a deadline by which elector responses are to be received, which must be at least 30 days after the second publication of public notice.
3. Establish hard copy elector response forms and make them available to the public from the time of the first publication until the deadline. The Elector Response Form is in **Attachment no. 3**;
4. Grant three readings to Parkland Disposition Bylaw No. 3050.

The following table summarizes the required steps and proposed timeline.

Key Dates	Milestone	Action
January 25, 2023	Council meeting	Confirm the required number of electors. Three Readings of Parkland Disposition Bylaw No. 3050 by Council.
February 8, 2023	First notice, forms and information	Publish first of two notices. Make response forms available at City Hall and information about the AAP available to the public
February 15, 2023	Second notice	Publish the second of two notices (must be at least 30 days prior to the deadline for elector responses)
March 24, 2023	Deadline for response	The deadline for elector responses must be at least 30 days after the second publication of the notice. This timeline allows an extra week for response and avoids local school spring break (March 27-April 10).
April 12, 2023	Council meeting	Council Meeting – Report to Council regarding elector responses. If AAP passes, then Council may consider final bylaw adoption of Bylaw No. 3050.

DEVELOPMENT SERVICES RECOMMENDATION:

Staff recommends Council use the Alternative Approval Process (AAP) to consider disposing of the 232.6m² piece of parkland in the Ridge neighbourhood in South Courtenay.

Disposing of parkland is a significant decision, and particularly when the proposed future use is to establish an access to a residential subdivision. Staff, however, support this disposition and use of the AAP because the proposed benefits outweigh the drawbacks. The area of land is small relative

to the larger linear park and pedestrian access will be maintained. In exchange, pedestrian access will be established between Harbourview Boulevard and the linear park, a larger area of the Millard Creek riparian area will be protected, and a culvert and driveway removed further reducing impacts to Millard Creek.

Note that with respect to the adjacent linear park, the applicant is not required to develop their portion of the parkland and this is consistent with previous approval conditions for any other subdivision in the “Ridge” comprehensive development.

If Council chooses not to consider disposing of the parkland the applicant would need to modify their proposal to establish the access from Fraser Road. This would require, at a minimum a revised or possibly a new zoning amendment application and a new public hearing as a result of a new layout. This would cause even greater delays for this development to be able to proceed.

Given the community benefit and environmental protection, the recommendation is to support the proposal including the park dedication and park disposition. Using the Assent Vote process is time consuming, expensive and resource intensive. Given the size of the property and the benefits to the City and the Millard Creek riparian area, staff recommends using the AAP.

FINANCIAL IMPLICATIONS:

The value of the land to be disposed is **\$22,983.00 (see Attachment 2, property appraisal report)**. These funds would be allocated to the City’s parkland acquisition reserve.

All costs associated with this AAP process will be borne by the applicant. Additional costs related to the establishment of rights of way upon disposition of the land will require legal review and registration with the land title office, estimated costs are \$1500 and will also be borne by the applicant.

ASSET MANAGEMENT IMPLICATIONS:

There are no immediate asset management implications related to the proposed bylaw. Should Zoning Amendment Bylaw No. 2989 and the subsequent subdivision be approved an additional 2,985 m² of parkland will be added to the City’s assets requiring future maintenance obligations.

2019 - 2022 STRATEGIC PRIORITIES REFERENCE:

- Communicate appropriately with our community in all decisions we make.

CITIZEN/PUBLIC ENGAGEMENT:

The Alternative Approval Process prescribes the notice requirements above under “Next Steps – AAP”. In addition, to the required notices, background information will be posted on the website and available at front counter for review.

Should Council immediately proceed with the AAP, neighbours will be made aware of the proposed rezoning and future proposed subdivision and may choose to give Council their opinions regarding the rezoning application as well as the parkland disposition. Staff note that according to legislation, Council is unable to receive new information on the topic of a public hearing after the public hearing has concluded. In order to ensure the public is aware of this procedural requirement, staff will ensure that the notices are clear that the information to be received by the public shall only be in relation to the parkland disposition bylaw.

OPTIONS:**Option 1: (AAP)**

THAT based on the January 25, 2023 staff report “Parkland Disposition Bylaw No. 3050 (4070 Fraser Road) and AAP Determination of Eligible Voters”, Council approve OPTION 1 and give first, second and third readings to Parkland Disposition No. 3050;

THAT Council seek the approval of the electors for Parkland Disposition Bylaw No. 3050 through an Alternative Approval Process (AAP);

THAT Council establish the elector response form as attached to this report (**Attachment No. 3**);

THAT Council establish 22 656 as the total number of electors to which the AAP process applies;

THAT Council establish the 10% response threshold as 2266 electors;

AND THAT Council establish the deadline for receiving responses for the AAP as March 24, 2023 at 4:00 pm.

Option 2: (New Public Hearing)

THAT Council defer consideration of Parkland Disposition Bylaw No. 3050 pending receipt of further information, and direct staff to schedule an additional public hearing of the Zoning Amendment Bylaw No. 2989, 2020.

Option 3: (Not proceed with bylaw)

THAT Council not proceed with the proposed Parkland Disposition Bylaw No. 3050.

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Interim Director of Development Services

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City Manager (CAO)

Attachments:

No.1 - September 8, 2020 Council Staff Report

No.2 - Property Appraisal Report

No. 3 - Elector Response Form

No. 4 – Parkland Disposition Bylaw No. 3050