

CONFIDENTIAL BRIEF

MISLEADING AND INCOMPLETE DISCLOSURE TO MAYOR AND COUNCIL

Municipality	Resort Municipality of Whistler (RMOW)
Bylaw	Land Use Contract Termination Bylaw No. 2323
Meeting Date	May 10, 2022 – Regular Council Meeting (Third Reading and Adoption)
Staff Presenting	Courtney Beaubien, Manager of Planning; Mike Kirkegaard, Former Director of Planning
Subject Property	Horstman Estates, Blackcomb Benchlands – 33 single-family lots (15 within LUC, 8 RS3 zone, 10 split-zoned)
Key Issue	Whether Tourist Accommodation (TA) was a permitted use under the Blackcomb Land Use Contract for Horstman Estates
Prepared By	Alan Gelfand, Owner, Horstman Estates
Status	Draft – Exhibits to be attached

This brief documents a pattern of material omissions, misrepresentations, and factual inaccuracies made by senior municipal planning staff to Mayor and Council at the May 10, 2022 council meeting, which directly caused an illegal downzoning classification of Horstman Estates contrary to the requirements of the Local Government Act.

EXECUTIVE SUMMARY

On May 10, 2022, the Resort Municipality of Whistler (RMOW) adopted Bylaw No. 2323, terminating the Blackcomb Land Use Contract (LUC) as it applied to Horstman Estates and applying a revised RS3 zone to those lands. In doing so, staff determined that Tourist Accommodation (TA) was not a permitted use within Horstman Estates.

This brief sets out that this determination was reached through a pattern of deliberate misrepresentation, selective omission of material facts, red herrings, lies, and misleading framing by former Director of Planning Mike Kirkegaard and Manager of Planning Courtney Beaubien. Mayor and Council were denied the information necessary to make a properly informed decision, and the result was an illegal downzoning classification of Horstman Estates – a result that is contrary to both the legal requirements of the Local Government Act and the established principle that LUC terminations must result in like-for-like zoning.

This brief is organized as follows:

- Part A – Background and Legal Framework
- Part B – Chronology of the May 10, 2022 Meeting
- Part C – Findings: Specific Misrepresentations and Omissions
- Part D – The Like-for-Like Requirement and the Official Community Plan
- Part E – The Public Hearing Summary Breach
- Part F – Conclusion

Exhibits are referenced throughout this brief and will be attached as they are provided.

PART A Background and Legal Framework

A.1 Horstman Estates and the Blackcomb Land Use Contract

Horstman Estates is a bare land strata development comprising 33 single-family residential lots located on the Blackcomb Benchlands within the Resort Municipality of Whistler. The development is situated on resort-designated land in close proximity to the Blackcomb ski base. Fifteen lots fall within the Blackcomb Land Use Contract (LUC), eight lots are within the RS3 zone, and ten lots are split-zoned (both LUC and RS3).

Horstman Estates was established in 1989 and adopted as part of the Blackcomb LUC. At the time of adoption, the Zoning and Parking Bylaw did not contain a definition of "residential." The Design Guidelines registered on title for Horstman Estates reference the "current" Zoning and Parking Bylaw for definitions – meaning the bylaw as it existed at the time of adoption, before the 1990 introduction of Bylaw 814. Critically, the covenant registered on title cannot have any retroactive effect – it regulates future development only and cannot strip rights that were vested at the time of adoption.

A.2 The Provincial Mandate: Like-for-Like Zoning

The Province of British Columbia mandated that all municipalities terminate their Land Use Contracts under the Local Government Act. A foundational requirement of this process is that the terminating zoning must replicate the permitted uses under the original LUC – referred to throughout this brief as the like-for-like requirement. A municipality cannot use the LUC termination process to downzone a property or strip vested permitted uses. Any such change requires a separate, properly noticed rezoning process.

Furthermore, a Land Use Contract is a binding legal contract between the municipality and the original property owners. It cannot be unilaterally amended by bylaw, by a 75% strata vote, or by any mechanism other than the agreement of all original parties. This distinguishes it fundamentally from standard zoning, and it is this distinction that renders the G20 Policy entirely inapplicable to Horstman Estates, as set out in Part C below.

A.3 Staff's Obligation Under the Local Government Act

When presenting a report to council for adoption of a bylaw, staff bear a statutory obligation under the Local Government Act to provide a full, accurate, and complete summary of public hearing submissions and material facts relevant to the council's decision. Omitting material facts – particularly facts that are directly contrary to the conclusion staff are recommending – violates this obligation and renders the council's decision susceptible to challenge.

PART B Chronology of Key Events

B.1 Pre-Meeting Events

DATE	EVENT
-------------	--------------

1982	Official Community Plan lays out the public bed policy limiting certain areas to "public beds" (TA) only, with goals to maintain as such. This eventually became the "warm bed" policy.
1988	Official Community Plan mandates all TA intended zones to be designated for Resort Land status and introduces optioned lands outside of the Blackcomb LUC in the Benchlands for "substantial tourist commercial accommodation".
1993	Official Community Plan designates entire Blackcomb LUC for Commercial Accommodation. Schedule A clearly distinguishes the Horstman Estates lots within the Commercial Accommodation area, and the area outside the LUC as designated for Substantial Tourist Commercial Accommodation.
1989	Horstman Estates established and adopted within the Blackcomb Land Use Contract. No definition of 'residential' existed in the Zoning and Parking Bylaw at this time. Original intention was to permit both residential and tourist accommodation uses.
1990	Bylaw 814 introduced, adding a definition of 'residential' to the Zoning and Parking Bylaw for properties outside the LUC. The legal opinion prepared at the time (on file with the RMOW) confirms that the RS3 zone was expressly excluded from the residential definition.
1997–1999	Over three consecutive Annual General Meetings, Horstman Estates owners voted on a motion to prohibit nightly rentals. The motion was defeated in all three years.
1999 (May)	Five strata members filed a civil action against owner Alan Gelfand to stop nightly rentals and requested RMOW enforcement. RMOW retained independent legal counsel (agreed to be shared equally with Mr. Gelfand). Both parties agreed in advance to abide by the outcome of the legal opinion. Legal Opinion 1 (Brian Taylor, May 6, 1999) concluded RMOW would likely be unsuccessful in obtaining injunctive relief, and noted the term 'single residential building' was not determinative on the question of tourist accommodation.
1999 (September)	RMOW sought a second legal opinion. Opinion 2 (Brian Taylor, September 27, 1999) maintained the same conclusion: RMOW would likely be unsuccessful in enforcement. Mike Kirkegaard was a party to both opinions.
October 4, 1999	Letter to Mike Kirkegaard confirming that the rental prohibition motion had been defeated for the third consecutive year, that the former strata president driving the effort was no longer on the strata council, and that there was no longer disagreement within Horstman Estates on the tourist accommodation question. (Exhibit D)
1999	G20 Policy enacted. Applies only to properties outside all Land Use Contracts, designated resort lands in the Official Community Plan, with rental pool covenants or resort designations. Not applicable to Horstman Estates (which was inside the LUC).
Bylaw 1021 (1993)–OCP 2018	Every Official Community Plan from 1982 through to OCP Bylaw 1021 (in force until the 2018 OCP consolidation) designated Horstman Estates as 'Commercial Accommodation' on Schedule A.
1996–2022	Over a dozen Horstman Estates properties paid commercial tourist accommodation fees to Tourism Whistler since 1996, and collected and forwarded MRDT back to RMOW. As of January 2022, four properties were still assessed at commercial accommodation rates, actively advertising and renting.
2017	Council Policy G26 (Tourist Accommodation Bylaw 2142) enacted under Mike Kirkegaard's stewardship. Schedule 3 to that policy listed tourist accommodation dwelling units without a rental pool. Horstman Estates Lots 5 and 10 were expressly listed in Schedule 3. The OCP at that time (Bylaw 1021) designated those lots as commercial accommodation, consistent with their inclusion in Schedule 3.
2018	OCP consolidated (under Kirkegaard and Beaubien). Schedule A was amended to remove Horstman Estates' commercial accommodation designation. No public notice was given. No owner notification was provided. No community engagement process was followed. No documentation of the change is on file. There is no record of the required OCP Schedule A formal amendment process having been followed, nor any council resolution authorizing the change. Three other comparable properties (Prison Lands, 5298 Alta Way, 2077 Garibaldi

February 8, 2022	Way) underwent formal Schedule A amendment processes during the same period, with proper notice and documentation. Notice letter sent to Horstman Estates owners regarding the LUC termination process under Bylaw 2323. The letter did not reference or address tourist accommodation – the most significant and contentious aspect of the termination.
April 19, 2022	Public Hearing (online). Six written submissions and three verbal representations received, addressing seven key topics including TA as a permitted use. Owner Alan Gelfand spoke twice, including a submission that the proposed bylaw would amount to a downzoning and devalue Horstman Estates properties.
May 10, 2022	Regular Council Meeting – Third Reading and Adoption of Bylaw 2323. Staff report reference: 22-045 / 22-065. Bylaw adopted. No record exists in the staff summary of public hearing submissions of Mr. Gelfand's second submission that the bylaw would constitute an illegal downzoning of Horstman Estates properties.

B.2 The May 10, 2022 Council Meeting – Minute-by-Minute

TIME	SPEAKER	CONTENT / NOTE
2:04:00	Mayor Crompton	Opens item: LUC Termination Bylaw Public Hearing, Third Reading and Adoption for Horstman Estates. Introduces Courtney Beaubien, Manager of Planning.
2:04–2:10	Beaubien	Presents site context: 33 single-family lots; 15 in LUC; 8 in RS3; 10 split-zoned. Bylaw does two things: (1) revises RS3 zone re: intent and parking; (2) terminates LUC and applies revised RS3. Presents seven public hearing topics including TA as a permitted use.
2:10:56	Beaubien	States G20 Policy (1999) and that Horstman Estates was not included in the blanket rezoning. Cites 'no agreement within Horstman Estates' and that RMOW received enforcement requests against TA use. Does NOT disclose the outcome of those enforcement inquiries – i.e., that two legal opinions concluded enforcement would be unsuccessful. [FINDING 4]
~2:11	Beaubien	States staff's interpretation: under the LUC, Horstman is comprised of 'single residential buildings.' States RS3 specifies 'detached single family residential dwellings.' Concludes TA is not a permitted use. [FINDINGS 6, 7]
~2:11	Beaubien	Notes outside the LUC termination process, staff support a rezoning application for TA, subject to strata application. Cites three reasons: resort lands designation, proximity to Blackcomb base, contribution to accommodation diversity.
2:14:36	Councillor Jewett	Asks directly: 'Horstman Estates has not been paying tourism or surcharges as most TAs do.' [Critical question – see Finding 5]
2:14:40	Beaubien	Beaubien, who had been answering questions throughout the presentation, opts to walk away without saying a word, silently signalling to Kirkegaard to take the question. [FINDING 5]
2:14:52	Kirkegaard	Responds: 'I believe Horstman Estates is designated resort lands and they do pay tourism fees.' Does NOT answer the question. Deflects to general resort lands fee structure. Does NOT disclose that numerous Horstman properties had been paying commercial accommodation (TA) fees since 1996, and that four properties were still assessed at commercial TA rates as of January 2022. [FINDING 5]
2:15:00	Councillor Jewett	Remains confused: 'So they're paying Tourism Whistler fees because they're resort lands, but they're not tourist accommodation.' Accepts deflection and thanks Kirkegaard.
2:15:13	Kirkegaard	Further explains resort lands fee distinctions (properties that rent vs. those that do not) without answering whether Horstman properties had actually been paying commercial TA fees. Council left with false impression.

2:18:06	Councillor Jackson	Begins substantive questioning. Notes the split zoning is creating friction and asks how single residential and multiple residential definitions can lead to different TA treatment when the definitions are identical in the LUC.
2:27:58	Kirkegaard	Distinguishes single vs. multiple residential by stating multiple residential buildings had rental covenants, lobbies, and check-in facilities implying TA use. Does NOT disclose that 17 of 22 TA-zoned properties in the LUC had no lobbies, check-in, or rental pool covenants – they were structurally indistinguishable from Horstman's single residential buildings. [FINDING 6]
2:29:03	Councillor Jackson	References the 2017 council report (authored by Kirkegaard) and Schedule 3 of Council Policy G26, which listed Horstman Estates Lots 5 and 10 as TA properties without a rental pool.
2:30:58	Beaubien	Responds that the inclusion of Horstman Estates Lots 5 and 10 in Schedule 3 'was subsequently recognized to be an error' and would be corrected. Does NOT acknowledge that at the time of the 2017 policy, the OCP (Bylaw 1021) designated Horstman Estates as commercial accommodation, making the inclusion entirely consistent – not an error. Does NOT disclose that those same lots were paying commercial TA fees at that time. [FINDING 8]
2:30:58	Beaubien	States no tourist accommodation business licenses have been issued to any Horstman Estates properties. [Note: this does not address the Tourism Whistler assessment fees, which is a separate matter]
2:32:00	Councillor Jackson	Notes confusion over split zoning. Asks whether a rezoning for TA could apply to the whole strata or just individual properties.
2:25:45	Kirkegaard	There was no decision at that time by the strata to enter into that process. [FINDING 3]
2:32:12	Kirkegaard	States 75% strata affirmative vote was the prerequisite for the 1999 G20 rezoning process. Implies same threshold would apply to Horstman. This reiterates the G20 framework, which is inapplicable to Horstman Estates. [FINDING 2] Furthermore, this contradicts Beaubien's presentation which stated Horstman was not 'offered' the G20 process – Kirkegaard here implies the owners chose not to participate. [FINDING 7]
2:33:52	Kirkegaard	When asked by Mayor Crompton about the covenant, Kirkegaard confirms: 'That's correct' – the covenant applies to the zoning at the time of adoption. This is a critical admission: at the time of adoption (1989), there was no residential definition and no bylaw excluding TA.
2:35:10	Councillor Forsythe	Hypothetically: if an owner believes staff's TA interpretation is incorrect and seeks rezoning, it would be conditional on 75% strata approval. Kirkegaard confirms this is ultimately a decision of council.
2:35:56	Mayor Crompton	Calls for a resolution. Motion carries. Bylaw 2323 adopted.

PART C Findings: Specific Misrepresentations and Omissions

The following findings are presented in the order in which the relevant events occurred. Each finding identifies the specific representation made, the material fact omitted or misrepresented, and the prejudice caused to Mayor and Council's decision-making.

Finding 1 – Failure to Address Tourist Accommodation in Owner Notice

The February 8, 2022 notice letter described the LUC termination process in general terms: the provincial mandate, the proposed RS3 zoning, and the opportunity to comment. Nowhere in the letter, or public notice, was tourist accommodation mentioned. At the time, four Horstman Estates properties were actively renting nightly and paying commercial tourist accommodation fees to Tourism Whistler. The LUC

termination process was the mechanism staff intended to use to permanently extinguish those rights, yet owners were given no notice of this intent.

The Local Government Act requires that notice to property owners provide sufficient information to understand and respond to proposed changes. A termination that strips commercial accommodation rights without disclosing that intent fails this standard. This omission cannot have been inadvertent. The TA question dominated the public hearing submissions and the council Q&A at the May 10 meeting. The February 8, 2022 notice letter sent to all Horstman Estates owners did not reference tourist accommodation, the central issue of the termination. This deprived owners of adequate notice and the ability to fully respond to the proposed bylaw before adoption.

Exhibit A, February 8, 2022 Owner Notice Letter. From the meeting transcript, May 10, 2022 (2:06:50) – MS. BEAUBIEN: "The submissions related to seven key topics. First, was inclusion of maximum GFA in the proposed revised RS3 zone. The second, was the applicability of Part 5, Section 26, which respects GFA exclusions of the zoning bylaw. The third, was the ability to rebuild in the event of a total loss due to a fire. The fourth, was tourist accommodation as a permitted use in Horseman Estates. The fifth, was an active rezoning application. The sixth, was the discharge of the related covenant, and finally the seventh was a request for additional information." Note: Tourist accommodation was the fourth of seven topics presented, confirming staff knew it was a central issue. Yet the February 8 owner notice letter did not mention it once.

FINDING 1: Failure to Address TA in Owner Notice. The February 8, 2022 notice letter sent to all Horstman Estates owners regarding Bylaw 2323 did not reference tourist accommodation – the central issue of the termination. This deprived owners of adequate notice and the ability to fully respond. Exhibit Reference: Exhibit A – February 8, 2022 Owner Notice Letter

Finding 1b – Statutory Breach: LGA Section 466 and Section 533

Section 466(4) of the LGA requires that where a bylaw alters a permitted use, owners must be notified of that alteration. If TA was a permitted use at Horstman Estates – supported by 33 years of OCP commercial accommodation designations, 26 years of Tourism Whistler commercial TA fee assessments, and two RMOW-retained legal opinions concluding enforcement would fail – then Section 466 required that alteration to be disclosed in the February 8, 2022 notice. It was not.

Section 533 of the LGA provides that if land is being lawfully used under a land use contract and that use would not apply under the new bylaw, the use may continue as a non-conforming use. Even under RMOW's own position that TA was never permitted, four properties were actively operating at the time of termination. Section 533 entitled those owners to non-conforming use protection – a right they were denied by the omission from the notice.

RMOW cannot credibly claim the use was always unlawful or that they were unaware of the use. Their own conduct establishes estoppel:

- Commercial TA fees collected from Horstman Estates properties by Tourism Whistler since 1996, with four properties still assessed at commercial TA rates as of January 2022.
- MRDT tax forwarded back to RMOW from those actively renting properties throughout that period.
- Two RMOW-retained legal opinions in 1999 concluding enforcement would likely fail – after which RMOW took no enforcement action for 26 years.

FINDING 1b: Statutory Breach – LGA Section 466 and Section 533. The February 8, 2022 notice omitted tourist accommodation entirely. Under Section 466, if TA was a permitted use, RMOW was required to disclose its alteration in the notice – they did not. Under Section 533, if TA was non-conforming, actively operating owners were entitled to non-conforming use protection – which the omission denied them. RMOW is estopped from claiming TA was always unlawful having collected 26 years of commercial TA fees and taken no enforcement action. Either way, the omission was a statutory breach. Exhibit Reference: Exhibit A – February 8, 2022 Owner Notice Letter & LGA Relevant Sections (466, 533, 548)

Finding 2 – G20 Policy Presented as a Comparable Remedy When It Was Legally Inapplicable

Staff cited the G20 Tourist Accommodation Rezoning Policy (Council Policy G-20, May 31, 1999) as historical context for why Horstman Estates was not rezoned to permit tourist accommodation. This framing was legally meaningless. The G20 Policy was structurally and legally incapable of applying to Horstman Estates, and its citation was nothing more than a red herring that obscured from Council the true legal position. The evidence establishing the inapplicability of G20 to Horstman Estates is now documented in two attached exhibits.

The G20 Policy Applied Exclusively to Properties Outside Land Use Contracts

All 17 properties that were processed and rezoned under the G20 Policy were located outside the Blackcomb Land Use Contract. Horstman Estates was inside the Blackcomb Land Use Contract. This distinction is not merely technical – it is legally fundamental.

A Land Use Contract is a binding contractual agreement between a municipality and original property owners. Unlike standard zoning, it cannot be amended, altered, or overridden by a subsequent bylaw, a strata vote of any threshold, or any unilateral municipal action short of the agreement of all original parties. The G20 Policy mechanism – which required a 75% affirmative strata vote to trigger a rezoning application – presupposes that the underlying land use rights are governed by municipal zoning law and can therefore be altered by municipal zoning amendment. That presupposition is legally false with respect to any property inside a Land Use Contract.

Staff knew this. Kirkegaard's own conduct at the May 10 meeting revealed the internal contradiction: Beaubien stated Horstman was never "offered" the G20 process, while Kirkegaard implied owners had the option and failed to take it. These are irreconcilable accounts that together expose that the G20 citation had no coherent legal basis.

Bylaw 814 Is the True Origin of G20 – And It Did Not Apply to Horstman Estates

The Snowridge Crescent Bareland Strata rezoning (Staff Report to Council No. 05-140, October 17, 2005 – Exhibit B) provides a concrete illustration of why G20 was necessary for non-LUC properties and inapplicable to Horstman Estates.

Snowridge Crescent (Strata Plan VR 2049) consisted of 22 detached dwellings developed in 1988 on Whistler Mountain near the Creekside base. Its existing zoning was RS1 (Single Family Residential One). In 1990, Zoning Amendment Bylaw 814 was enacted, which introduced a new definition of "residential" into the Zoning and Parking Bylaw: "a fixed place of living, excluding any temporary accommodation, to

which a person intends to return when absent." This definition expressly excluded temporary tourist accommodation from all properties zoned under the standard Zoning and Parking Bylaw.

Bylaw 814's definition, by its own terms, applied to properties governed by the Zoning and Parking Bylaw. Snowridge was one such property. As the Snowridge staff report confirms, the effect of Bylaw 814 was to prohibit nightly rentals in the RS1 zone. When the Snowridge strata sought to permit nightly rentals in 2005, they were required to apply for a full rezoning – from RS1 to RTA 25 (Residential/Tourist Accommodation Twenty-Five). The G20 Policy was the framework that enabled that corrective rezoning process. The rezoning was necessary precisely because Bylaw 814 had extinguished those rights.

Horstman Estates was never in that position. Horstman Estates was governed by the Blackcomb Land Use Contract – not by the Zoning and Parking Bylaw. Bylaw 814 could not alter, override, or restrict the contractual rights conferred by the LUC. The Snowridge staff report itself confirms that the public hearing requirement for Bylaw 814 was waived at the time of its enactment – further underscoring why a corrective rezoning mechanism (G20) was required for the properties it had affected. Horstman Estates, being inside the LUC, was never subject to Bylaw 814 and therefore never required G20 to restore rights that had never been extinguished.

Staff Report 22-011 Confirms That LUC Definitions Displace Zoning Bylaw Definitions

The RMOW's own Staff Report No. 22-011 (February 8, 2022 – Land Use Contracts Termination Approach Update) directly confirms why a zoning bylaw definition such as Bylaw 814's definition of "residential" is legally inapplicable within a Land Use Contract.

"On the second issue, the termination of LUCs will simplify the administration and improve the clarity of land use management in BC municipalities by eliminating a contractual form of land use control that makes the general zoning regulations, including definitions of standard regulatory terms, either partially or wholly inapplicable to certain lands. In some cases, there are minor differences between how standard regulatory terms are used in LUCs and related development permits and covenants, and how those terms are used in the Zoning Bylaw. The 'like-for-like' principle was not intended to apply at a granular level to require that definitions in regulatory documents drafted in the 1970s be carried forward into the Zoning Bylaw fifty years later."

This passage is an admission by RMOW staff – in a report authored by Kirkegaard and Beaubien themselves – that the LUC structure rendered the standard zoning bylaw definitions "partially or wholly inapplicable" to LUC lands. The very purpose of the LUC termination project, as staff described it, was to replace that contractual layer with consistent zoning regulations.

The direct implication is this: if the Zoning and Parking Bylaw definitions are "partially or wholly inapplicable" to LUC lands, then Bylaw 814's definition of "residential" – a standard zoning bylaw definition – was inapplicable to Horstman Estates throughout its existence within the Blackcomb LUC. The rights that existed under the LUC at the time of adoption in 1989, including tourist accommodation, were not displaced by Bylaw 814 and cannot be treated as though they were.

Staff cited Bylaw 814's residential definition as part of the interpretive basis for concluding TA was not a permitted use at Horstman Estates. Their own Report 22-011 confirms that very definition was inapplicable to LUC lands. The argument they made to council was contradicted by their own written report submitted less than three months earlier.

The Four Blackcomb Benchlands Properties Were a False Comparator

Staff cited four Blackcomb Benchlands properties as context for the G20 process: those four properties were located in optioned lands designated for "substantial tourist accommodation" – a designation categorically distinct from Horstman Estates' designation as commercial accommodation within the LUC. These properties were outside the LUC and subject to standard zoning. They are not comparable to Horstman Estates in any legally material sense, and their citation reinforced a false equivalence between properties with fundamentally different legal status.

Exhibit B, G20 Policy with list of rezoned properties including Snowridge Rezoning Report (Staff Report No. 05-140, October 17, 2005). Exhibit C, Staff Report No. 22-011, Land Use Contracts Termination Approach Update (February 8, 2022). From the meeting transcript, May 10, 2022 – MS. BEAUBIEN [2:10:56]: "Staff also note the existence of tourist accommodation rezoning policy G20, which dates back to 1999. Under this policy Horseman Estates is not included in the blanket rezoning. One of the reasons for this is that there was no agreement within Horseman Estates regarding TA use. Staff also note that in the past the RMOW has received request to enforce against TA use in the Horseman Estates area." Note: The G20 Policy could never legally have applied to Horstman Estates, which was inside the Blackcomb LUC. The Snowridge example in Exhibit B demonstrates that G20 was the corrective mechanism for properties whose tourist accommodation rights had been extinguished by Bylaw 814. Bylaw 814 did not apply to Horstman Estates. Staff Report 22-011 in Exhibit C confirms that standard zoning bylaw definitions – including Bylaw 814's definition of 'residential' – are 'partially or wholly inapplicable' to LUC lands. The G20 citation was legally meaningless and a red herring.

FINDING 2: G20 Policy Cited as Applicable When It Was Not. The G20 Policy was legally inapplicable to Horstman Estates due to its status within the Blackcomb LUC. G20 was a corrective mechanism for non-LUC properties whose tourist accommodation rights had been extinguished by Bylaw 814 – a bylaw that did not apply to Horstman Estates. RMOW's own Staff Report 22-011, authored by Kirkegaard and Beaubien, expressly confirms that standard zoning bylaw definitions, including Bylaw 814's definition of 'residential,' are 'partially or wholly inapplicable' to LUC lands. Staff's reliance on the Bylaw 814 residential definition to exclude TA at Horstman Estates was directly contradicted by their own written report. The G20 citation created a false impression that Horstman had been properly considered under a process designed for similar properties when the policy could never legally have applied. Exhibit Reference: Exhibit B – G20 Policy with list of rezoned properties and Snowridge Rezoning Report (Staff Report No. 05-140); Exhibit C – Staff Report No. 22-011, LUC Termination Approach Update (February 8, 2022)

Finding 3 – Strata Disagreement Mischaracterized

Between 1997 and 1999, owners voted three consecutive times on a motion to prohibit nightly rentals. The motion was defeated all three years. The effort was driven by a former strata president whose personal agenda was rejected by the membership three consecutive times. On October 4, 1999, Kirkegaard received a formal written letter confirming the disagreement had resolved, the motion had been defeated for the third year, and the former strata president was no longer on the strata council.

Kirkegaard was therefore aware in 2022 that his characterization of ongoing disagreement was historically false. Kirkegaard and Beaubien cited owner disagreement to justify non-inclusion in G20, without disclosing that this disagreement had been formally resolved by October 1999 – a fact directly communicated to Kirkegaard in writing at the time.

Exhibit D, Letter to Mike Kirkegaard, October 4, 1999. From the meeting transcript, May 10, 2022 – MS. BEAUBIEN [2:10:56]: "Staff also note the existence of tourist accommodation rezoning policy G20, which

dates back to 1999. Under this policy Horstman Estates is not included in the blanket rezoning. One of the reasons for this is that there was no agreement within Horstman Estates regarding TA use. Staff also note that in the past the RMOW has received request to enforce against TA use in the Horstman Estates area."

FINDING 3: Strata Disagreement Mischaracterized. Kirkegaard and Beaubien cited owner disagreement to justify non-inclusion in G20, without disclosing that this disagreement had been formally resolved by October 1999 – a fact directly communicated to Kirkegaard in writing at the time. Exhibit Reference: Exhibit D – Letter to Mike Kirkegaard, October 4, 1999

Finding 4 – Enforcement History Weaponized, Outcome Hidden

The enforcement request arose from a civil action by five strata members against owner Alan Gelfand. RMOW retained independent legal counsel, costs shared equally with Mr. Gelfand on the condition both parties agreed to be bound to the opinion. Legal Opinion 1 concluded RMOW would likely be unsuccessful in obtaining injunctive relief. The term "single residential building" was expressly considered and found not to be determinative on the question of tourist accommodation.

RMOW sought a second opinion. Legal Opinion 2 (Brian Taylor, September 27, 1999) reached the same conclusion: enforcement would likely be unsuccessful. Mike Kirkegaard was a party to both opinions and was fully aware of their inclusions and the agreement to honour the opinions, which he did until 2018. In 2022, staff cited "single residential building" as the primary basis for excluding TA – the exact same language those 1999 opinions had already found not to preclude TA. On July 1, 2024, 25 years later, RMOW issued a cease and desist against the Gelfand property, directly contradicting the position both parties agreed to abide by in 1999.

Staff told council enforcement had been requested against TA use in 1999. They did not tell council that two independent legal opinions concluded enforcement would likely be unsuccessful, using the same single residential building language staff now cited as the basis for excluding TA.

Exhibit E, Brian Taylor First Legal Opinion (May 6, 1999); Exhibit F, Brian Taylor Second Legal Opinion (September 27, 1999). From the meeting transcript, May 10, 2022 – MS. BEAUBIEN [2:10:56]: "Staff also note the existence of tourist accommodation rezoning policy G20, which dates back to 1999, under this policy Horseman Estates is not included in the blanket rezoning. One of the reasons for this is that there was no agreement within Horseman Estates regarding TA use. Staff also note that in the past the RMOW has received request to enforce against TA use in the Horseman Estates area." Note: Beaubien discloses that enforcement was requested. She does not disclose that two independent legal opinions obtained by RMOW, both coordinated by Kirkegaard personally, concluded enforcement would likely be unsuccessful. The outcome of the enforcement inquiry was never mentioned.

FINDING 4: Enforcement History Weaponized, Outcome Hidden. Staff told council enforcement had been requested against TA use in 1999. They did not tell council that two independent legal opinions at the time – obtained by RMOW and coordinated by Kirkegaard personally – concluded enforcement would likely be unsuccessful, using the same single residential building language that staff now cited as the basis for excluding TA. Exhibit Reference: Exhibit E – Brian Taylor First Legal Opinion (May 6, 1999); Exhibit F – Brian Taylor Second Legal Opinion (September 27, 1999)

Finding 5 – Non-Disclosure of Commercial TA Fee Payments

Since 1996, over a dozen Horstman Estates properties had paid commercial tourist accommodation fees to Tourism Whistler and collected and forwarded MRDT back to RMOW. As of January 2022, four Horstman Estates properties were still assessed and paying at commercial accommodation rates, actively advertising and renting nightly. This directly contradicted staff's position that TA was not a permitted or recognized use. The municipality was receiving tax revenue from Horstman properties operating as tourist accommodation while claiming the use was not permitted.

Kirkegaard's response at 2:14:52 confirmed only resort lands fees, not commercial TA fees – a deliberate distinction that left Councillor Jewett with a false impression. Councillor Jewett's direct question about TA surcharge payments was not answered. Kirkegaard deflected to resort land fee structures without disclosing that over a dozen Horstman properties had paid commercial tourist accommodation fees to Tourism Whistler since 1996, with four still assessed at TA rates as of January 2022. Council was never told and was misled to believe the opposite.

Exhibit G, Tourism Whistler Assessment record (2021). From the meeting transcript, May 10, 2022 – COUNCILLOR JEWETT [2:14:36]: "Okay, and so Horseman Estates has not been paying tourism or surcharges as most TA's do?" MR. KIRKEGAARD [2:14:52]: "Mayor and council, I believe that Horseman Estates is designated resort lands and they do pay tourism fees." COUNCILLOR JEWETT [2:15:00]: "Right, and so that confused me. So, they're paying Tourism Whistler Fees because they're resort lands, but they're not tourist accommodation." MR. KIRKEGAARD [2:15:13]: "There are a number of properties within the municipality that are designated resort lands and not all of them have the zoning to permit tourist accommodation within the fee structure of Tourism Whistler, there are distinctions between properties that do rent and that do not rent." COUNCILLOR JEWETT [2:15:31]: "Okay, I wasn't aware of that. Thank you very much." Note: Councillor Jewett asked a direct yes or no question. Kirkegaard answered a different question entirely, deflecting to resort lands fees rather than confirming whether Horstman properties were assessed at commercial tourist accommodation rates. Over a dozen Horstman properties had paid commercial TA fees since 1996. Four were still assessed at those rates as of January 2022. Council was never told.

FINDING 5: Non-Disclosure of Commercial TA Fee Payments. Councillor Jewett's direct question about TA surcharge payments was not answered. Kirkegaard deflected to resort land fee structures without disclosing that over a dozen Horstman Estates properties had paid commercial tourist accommodation fees to Tourism Whistler since 1996, collecting and forwarding MRDT back to RMOW. Four properties were still assessed at TA rates, actively advertising and renting, as of January 2022. Exhibit Reference: Exhibit G – Tourism Whistler Assessment Records 1996–2022

Finding 6 – Misleading Distinction Between Single and Multiple Residential

Of 22 multiple residential properties in the Blackcomb LUC with TA zoning, only 5 have rental pool covenants and check-in facilities or lobbies. The remaining 17 have tourist accommodation rights without any such facilities, structurally and practically indistinguishable from Horstman Estates' single residential buildings. The first two multi-family developments in the Blackcomb LUC, The Gables (4510 Blackcomb Way) and Cedar Hollow (4701 Glacier Drive), were developed under the original BLUC, which used word-for-word identical definitions for single and multiple residential buildings. Critically, rental pool covenants did not yet exist under the original BLUC. They were only introduced in the amended BLUC. This means the very features Kirkegaard cited as justifying TA rights for multi-family properties were entirely absent

when The Gables and Cedar Hollow received those rights. His argument collapses entirely when applied to the developments that established the precedent.

The LUC definition for multiple residential buildings uses the word "may" for lobbies and check-in facilities – an optional condition, not a requirement. Kirkegaard presented them as universal and defining. The term "dwelling units" as used in the LUC definition refers to construction use, not occupancy use. A building designed as a dwelling unit may still be used for tourist accommodation without changing its construction classification. This distinction is critical and directly undermines Kirkegaard's rationale.

Under the original BLUC, both the single residential and multiple residential building definitions used identical occupancy wording. Both Staff Reports to Council, Report 17-057 and Report 22-045, stated that "dwelling units could be used for tourist accommodation when not being used for residential purposes," with no distinction made between single and multiple residential buildings. Staff's own reports contradict their position at the May 10, 2022 meeting. Kirkegaard's explanation that multiple residential buildings universally had rental pool covenants, lobbies and check-in facilities was false. Seventeen of 22 TA-zoned LUC properties had none of these. The actual definition uses permissive language, not mandatory requirements.

Exhibit H, LUC & Zoning Definitions; Exhibit I, Council Policy & Multi-Family Comparison in BLUC. From the meeting transcript, May 10, 2022 – MR. KIRKEGAARD [2:27:58]: "I'm trying to go down the question. I'd then just like to comment in terms of the distinction between single residential and multiple residential within the land use contract. There were also requirements for rental covenants for some of the multifamily properties with and requirements for lobbies, etcetera, which implied the tourist accommodation use so I just wanted to add that clarification as part of the distinction between single residential and multiple residential." Note: Kirkegaard states that lobbies and check-in requirements 'implied' tourist accommodation use for multi-residential properties. In fact, 17 of the 22 TA-zoned multi-residential LUC properties had no such facilities nor a rental pool covenant. The distinction Kirkegaard drew was false.

FINDING 6: Misleading Distinction to Justify Different TA Treatment. Kirkegaard's explanation that multiple residential buildings universally had rental pool covenants, lobbies and check-in facilities – implying TA – was false. Seventeen of 22 TA-zoned LUC properties had no such facilities. The actual definition uses permissive language ('may'), not mandatory requirements. Furthermore, the first two multi-family developments, The Gables and Cedar Hollow, received TA rights under the original BLUC before rental pool covenants even existed. Exhibit Reference: Exhibit H – LUC & Zoning Definitions; Exhibit I – Council Policy & Multi-Family Comparison in BLUC

Finding 7 – Kirkegaard Contradicted His Own Staff Report

The written Staff Report and Beaubien's presentation stated Horstman was not offered the G20 process. During Q&A, Kirkegaard stated that owners "opted not to participate" – implying they were offered the process and declined. These two accounts are irreconcilable. Either Horstman was not offered the process, or it was offered and owners declined. Both cannot be true. No correction or clarification was made by staff. Council was left with contradictory information and no means of resolving it.

Exhibit J, Staff Report to Council 22-065; Exhibit K, OCP Bylaws 1021 & 2199 with Schedule A; Exhibit L, Council Policy G26 (TA). From the meeting transcript, May 10, 2022 – MS. BEAUBIEN [2:10:56]: "Staff also note the existence of tourist accommodation rezoning policy G20, which dates back to 1999, under

this policy Horseman Estates is not included in the blanket rezoning." Later in Q&A – MR. KIRKEGAARD [2:25:45]: "There was no decision at that time by the strata to enter into that process." Note: Beaubien states Horstman 'is not included', implying it was excluded from the process. Kirkegaard's answer implies owners could have applied through a 75% strata vote process, implying they had the option and did not take it. Council received both accounts in the same meeting with no correction.

FINDING 7: Kirkegaard Contradicted His Own Staff Report. The written Staff Report and Beaubien's presentation stated Horstman was not offered the G20 process. Kirkegaard then told council the opposite in the same meeting. These are irreconcilable accounts from the same staff team. No correction was made. Exhibit Reference: Exhibit J – Staff Report to Council 22-065; Exhibit K – OCP Bylaws 1021 & 2199 with Schedule A; Exhibit L – Council Policy G26 (TA)

Finding 8 – Schedule 3 Listing Called an Error, It Was Not

In 2017, Council Policy G26 (Tourist Accommodation Bylaw 2142) was enacted under Kirkegaard's stewardship. Schedule 3 listed tourist accommodation dwelling units without a rental pool. Horstman Estates Lots 5 and 10 were expressly included. At the time, OCP Bylaw 1021 designated Horstman Estates as commercial accommodation and substantial tourist accommodation on all their schedules. The Schedule 3 listing was consistent with the OCP, not an error. Those same lots were paying commercial tourist accommodation fees to Tourism Whistler at the time of the 2017 policy.

Beaubien's claim that the listing was an "error" was made without any documentation of when the "error" was identified, who identified it, or what process was followed to address it. Beaubien called the inclusion of Horstman Estates Lots 5 and 10 in Schedule 3 an "error." At the time of the 2017 policy, the OCP designated Horstman as commercial accommodation and those lots were paying TA fees. The claim of error was false and unsupported by any documentation.

Exhibit M, OCP Bylaw 1021 Schedule A; Exhibit H, Tourism Whistler Assessment Records. From the meeting transcript, May 10, 2022 – COUNCILLOR JACKSON [2:29:03]: "...there's a section called Tourist Accommodation Rental Fee, and there's a summary of properties and there's Schedule 3, Tourist Accommodation within their region board so not a part of the land use contract... it also has Horseman Estates... limited to... two properties. How do we reconcile that that we have a report saying that it's tourist accommodation and it's in our schedule, but it's not zoned?" MS. BEAUBIEN [2:30:58]: "Yes, thanks for your question, Councillor Jackson. That was subsequently recognized to be an error within the council policy and at some point in the future amendments to that council policy will be brought forward to address that and other issues that staff have noted." Note: Beaubien calls the Schedule 3 listing an 'error' without any documentation, without identifying when the error was discovered, and without acknowledging that at the time of the 2017 policy the OCP designated Horstman as commercial accommodation and those lots were paying TA fees. There was no error – the listing was entirely consistent with the OCP as it stood in 2017.

FINDING 8: Schedule 3 Listing Called an Error, It Was Not. Beaubien called the inclusion of Horstman Estates Lots 5 and 10 in Schedule 3 an "error." At the time of the 2017 policy, the OCP designated Horstman as commercial accommodation and those lots were paying TA fees. The claim of error was false and unsupported by any documentation. Exhibit Reference: Exhibit M – OCP Bylaw 1021 Schedule A; Exhibit H – Tourism Whistler Assessment Records

Finding 9 – The 2018 OCP Schedule "A" Replacement: No Notice, No Process, No Record

Every OCP from 1982 to 2018, 36 years, designated Horstman Estates as "Tourist Commercial Accommodation", "Commercial Accommodation", and "substantial Tourist Accommodation" on all their schedules. During the 2018 OCP consolidation of Schedule "A", the OCP replacement Schedule "A" substituted Horstman Estates' prior tourist accommodation designation with a residential designation, without public notice, owner notification, community engagement, or documentation, and without expressly disclosing that an existing tourist accommodation designation was being removed.

Three comparable properties – Prison Lands, 5298 Alta Way, and 2077 Garibaldi Way – underwent formal Schedule A amendment processes during the same period, with proper notice and documentation. In 2022, Staff Report 22-046 stated the proposed termination bylaw was "consistent with the Official Community Plan Schedule A." This statement was technically accurate only because Kirkegaard and Beaubien had quietly removed the designation in 2018 without due process. The commercial accommodation designation for Horstman Estates was removed from OCP Schedule A in 2018 without notice, documentation, or due process. Staff then cited consistency with Schedule A as justification for the 2022 termination. Three comparable properties underwent proper formal amendment processes during the same period.

FINDING 9: The 2018 OCP Schedule "A" Replacement: No Notice, No Process, No Record. The commercial accommodation designation for Horstman Estates was removed from OCP Schedule A in 2018 without notice, documentation, or due process. Staff then cited consistency with Schedule A as justification for excluding TA in 2022. Three comparable properties underwent proper formal amendment processes during the same period. Exhibit Reference: Exhibit K – OCP Bylaw 1021 Schedule A (Sub Schedules C & Q); OCP Bylaw 2199 Consolidated Schedule A; Schedule A Amendment Rules

Finding 10 – Public Hearing Summary Omitted Property Devaluation Submission

The Local Government Act, section 465(5), requires a written report of all public hearing submissions to be prepared and maintained as a public record. Alan Gelfand's submission that Bylaw 2323 would cause property devaluation for Horstman Estates was the most legally significant submission made at the April 19 public hearing. Report 22-065 acknowledged that tourist accommodation was discussed at the public hearing but did not include, summarize, or address the property devaluation argument. Council therefore voted to adopt the bylaw without knowing a formal legal challenge to its validity had been raised.

Had the submission been disclosed, council would have been put on notice that adoption of the bylaw carried significant legal risk. The decision to adopt may well have been different. Report 22-065's summary of public hearing submissions omitted Mr. Gelfand's express submission that adoption of Bylaw 2323 would cause property devaluation and materially reduce Horstman Estates property values. This omission violated the Local Government Act's summary requirements and deprived council of material information at the moment of adoption.

Exhibit N, Public Hearing Minutes; Exhibit J, Report 22-065. Note: Although Alan Gelfand raised the property devaluation issue at the April 19 public hearing, Council was not re-informed or reminded of that submission in the public hearing submission summary presented at adoption of Bylaw 2323. This submission was required by the Local Government Act Section 465(5) to be summarized in the staff report. It was not. The property devaluation issue was arguably the most critical point of the entire meeting. Stripping tourist accommodation rights from properties that were sold, marketed and taxed as

such fails the like-for-like equivalency requirement mandated under the provincial Land Use Contract termination process, leaving owners with materially less than what they were legally entitled to receive.

FINDING 10: Public Hearing Summary Omitted Property Devaluation Submission. Report 22-065's summary of public hearing submissions omitted Mr. Gelfand's express submission that adoption of Bylaw 2323 would amount to an illegal downzoning and devalue Horstman Estates properties. This omission violated the Local Government Act's summary requirements and deprived council of material information. Exhibit Reference: Exhibit N – Public Hearing Minutes; Exhibit J – Report 22-065

PART D The Like-for-Like Requirement and the Official Community Plan

D.1 The Like-for-Like Obligation

The provincial mandate for LUC termination required RMOW to apply zoning that replicated the permitted uses of the original LUC. This is the like-for-like requirement. It prohibits a downzoning through the termination process. In his public hearing submission, Alan Gelfand explicitly raised this issue, stating that adoption of Bylaw 2323 as proposed would devalue Horstman Estates properties by stripping a permitted use.

This submission was not included in staff's summary of public hearing submissions in Report 22-065 (addressed separately in Part E). The like-for-like concern went unaddressed in council's deliberations.

FINDING Da: The Like-for-Like Requirement Was Not Met. The provincial mandate required that the terminating zoning replicate the permitted uses of the original LUC. Tourist accommodation was a permitted use at Horstman Estates at the time of adoption. Bylaw 2323 did not include tourist accommodation as a permitted use in the replacement RS3 zone. This constitutes a prohibited downzoning through the LUC termination process, contrary to the requirements of the Local Government Act and the like-for-like obligation.

D.2 Finding Db – The 2018 OCP Schedule A Amendment – An Undocumented Change

For thirty-three years, every OCP designated Horstman Estates as commercial accommodation, identical to every other property within the Blackcomb Benchlands Land Use Contract. This 33-year consistent designation was material evidence that TA was the intended and recognized use for Horstman Estates. This designation was consistent with and part of the "warm bed" policy that designated the lands Horstman Estates sits on as public beds in 1982, specifically for tourist commercial accommodation.

In 2018, during the OCP consolidation overseen by Kirkegaard and Beaubien, Schedule A was amended to remove Horstman Estates' commercial accommodation designation. This change:

- Was made with no public notice to owners or the community
- Was made with no documentation on file
- Followed no community engagement process
- Was never brought to council for a formal Schedule A amendment application

- Did not follow the explicit policy rules required for Schedule A amendments, which mandate a formal process including public notice, documentation, and council approval

By contrast, three comparable properties underwent formal Schedule A amendment processes during the same period, with proper notice, documentation, and community engagement. These were the Prison Lands properties, a property at approximately 5298 Alta Way, and a property at 2077 Garibaldi Way. Both Beaubien and Kirkegaard oversaw all three of these comparable amendment processes, confirming they were both explicitly aware of the legal requirements they ignored when quietly amending Horstman Estates' classification in Schedule A.

The 2022 staff report stated that the proposed termination bylaw was 'consistent with the Official Community Plan Schedule A.' This statement was technically accurate in 2022 – because Kirkegaard and Beaubien had quietly changed Schedule A in 2018 without following due process. The statement was deployed to legitimize a predetermined outcome that had been engineered through a procedurally defective OCP amendment.

FINDING Db: Undocumented 2018 OCP Schedule A Change Used to Legitimize 2022 Termination. The commercial accommodation designation for Horstman Estates was removed from OCP Schedule A in 2018 without notice, documentation, or due process. Staff then cited consistency with Schedule A as justification for excluding TA in 2022. Three comparable properties underwent proper formal amendment processes during the same period. Exhibit Reference: Exhibit M – OCP Bylaw 1021 (Schedule A) + amendment policy rules; Exhibit N – 2018 OCP Consolidated Schedule A

PART E The Public Hearing Summary Breach

Under the Local Government Act, staff are required to provide council with a complete and accurate summary of all public hearing submissions when presenting a bylaw for third reading and adoption. Report 22-065 was the vehicle for that summary at the May 10, 2022 meeting.

Alan Gelfand spoke twice at the April 19, 2022 public hearing. In his second submission, he expressly stated that adoption of Bylaw 2323 as proposed would constitute a downzoning of Horstman Estates and would devalue owners' properties.

Report 22-065 acknowledged that tourist accommodation was discussed at the public hearing. It did not include, summarize, or address Mr. Gelfand's second submission that the bylaw would constitute an illegal downzoning – the like-for-like violation. This omission is significant because:

- The downzoning argument was the most legally significant submission made at the public hearing.
- Had it been disclosed, it would have put council on notice that adoption of the bylaw carried legal risk.
- Its omission meant council voted to adopt the bylaw without being aware of a substantive legal challenge to its validity.

FINDING E: Public Hearing Summary Omitted Downzoning Submission. Report 22-065's summary of public hearing submissions omitted Mr. Gelfand's express submission that

adoption of Bylaw 2323 would amount to an illegal downzoning and devalue Horstman Estates properties. This omission violated the Local Government Act's summary requirements and deprived council of material information. Exhibit Reference: Exhibit O – Public Hearing Minutes / Transcript; Exhibit J – Report 22-065

PART F Conclusion

F.1 Summary of Conduct

The pattern of conduct documented in this brief demonstrates that former Director of Planning Mike Kirkegaard and Manager of Planning Courtney Beaubien:

- Breached LGA Section 466 by failing to disclose in the February 8, 2022 notice that tourist accommodation rights were at stake – a required disclosure where a bylaw alters permitted use. Simultaneously denied owners their non-conforming use protection under LGA Section 533 by concealing the TA issue from the notice, depriving actively operating owners of their statutory right to assert continued use protection. RMOW is estopped from claiming the use was unlawful having collected commercial TA fees from Horstman Estates properties for 26 consecutive years while taking no enforcement action.
- Presented the inapplicable G20 Policy to council as though it were relevant historical context for Horstman Estates, knowing it could not apply to a property within a Land Use Contract. Bylaw 814 – the zoning amendment that made G20 necessary for non-LUC properties – did not apply to Horstman Estates, a fact confirmed by RMOW's own Staff Report 22-011, which states that standard zoning bylaw definitions are 'partially or wholly inapplicable' to LUC lands.
- Characterized unresolved owner disagreement as justification for non-inclusion in the G20 process, when Kirkegaard had been formally advised in October 1999 that this disagreement had been resolved.
- Disclosed that enforcement had been sought without disclosing the outcome of that enforcement inquiry – namely, two independent legal opinions concluding enforcement would be unsuccessful using the same terminology staff were now relying on.
- Evaded Councillor Jewett's direct question about TA fee payments, concealing 26 years of commercial accommodation fee assessments from council.
- Misrepresented the distinctions between single and multiple residential properties, implying all TA-zoned LUC properties had lobbies and check-in facilities when 17 of 22 did not.
- Contradicted each other in the same meeting regarding whether Horstman was ever offered the G20 process, leaving council with irreconcilable accounts from the same staff team.
- Called the accurate Schedule 3 listing of Horstman Estates Lots 5 and 10 an "error" with no documentation, in direct contradiction of the OCP designation in effect at the time.
- Used a quietly and improperly amended 2018 OCP Schedule A as 'consistency' cover for the 2022 termination, without disclosing that the amendment had been made without due process.
- Omitted from the public hearing summary the most legally significant submission – the like-for-like downzoning argument.

F.2 Exhibits Index

EXHIBIT	DOCUMENT	RELEVANCE
A	February 8, 2022 Owner Notice Letter	Finding 1 – Failure to address TA in owner notice

B	G20 Policy with list of rezoned properties and Snowridge Rezoning Report (Staff Report No. 05-140, October 17, 2005)	Finding 2 – G20 Policy inapplicable to LUC properties; Snowridge demonstrates G20 corrected Bylaw 814 impacts that did not apply to Horstman Estates
C	Staff Report No. 22-011, Land Use Contracts Termination Approach Update (February 8, 2022)	Finding 2 – RMOW's own report confirms standard zoning bylaw definitions, including Bylaw 814's residential definition, are partially or wholly inapplicable to LUC lands
D	Letter to Kirkegaard, October 4, 1999	Finding 3 – Disagreement formally resolved
E	Brian Taylor First Legal Opinion (May 6, 1999)	Finding 4 – Enforcement deemed likely unsuccessful
F	Brian Taylor Second Legal Opinion (September 27, 1999)	Finding 4 – Second opinion confirms same conclusion
G	Tourism Whistler Assessment Records 1996–2022	Finding 5 – Commercial TA fees paid by Horstman properties
H	LUC Zone Definitions (Single & Multiple Residential)	Finding 6 – Definition uses permissive, not mandatory, language
I	Council Policy & Multi-Family Comparison in BLUC	Finding 6 – 17 of 22 had no lobbies or check-in
J	Staff Report to Council 22-065	Finding 7 & Part E – Contradicted G20 offer; omission from public hearing summary
K	OCP Bylaws 1021 & 2199 with Schedule A; Schedule A Amendment Rules	Findings 7, 9 – OCP designation history and amendment rules
L	Council Policy G26 (TA)	Finding 7 – G20 policy context
M	OCP Bylaw 1021 Schedule A (1993–2018)	Finding 8, Part D – Commercial Accommodation designation + amendment policy rules
N	2018 OCP Consolidated Schedule A	Finding 9, Part D – Undocumented removal of designation + amendment policy rules
O	Public Hearing Minutes / Transcript	Part E – Gelfand downzoning submission

This brief is a working document. Exhibits will be appended as they are provided. The findings set out herein are based on the oral submissions of Alan Gelfand and the certified transcript of the May 10, 2022 RMOW Regular Council Meeting. All findings are subject to review and amendment as additional documentary evidence is incorporated.

For full documentation, exhibits and evidence: www.whistlermislead.ca