

# DECISION/DIRECTION NOTE

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**Title:** Residential use in floodplain buffer – 6 and 8 Winter Ave. REZ2100007

**Date Prepared:** July 7, 2021

**Report To:** Regular Meeting of Council

**Councillor and Role:** Councillor Maggie Burton, Planning & Development

**Ward:** Ward 4

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## **Decision/Direction Required:**

To decide on text amendment for St. John's Development Regulations Amendment No. 721, 2021, to enable Council to approve residential use at 6 and 8 Winter Avenue in the floodplain buffer of Rennie's River.

## **Discussion – Background and Current Status:**

The City received an application to develop a single detached house at 6 Winter Avenue, which is an approved lot. When that lot and the adjacent one at 8 Winter Avenue were approved, the floodplain and buffer of Rennie's River did not affect the lots. (Note that the owner of #8 has not applied yet to develop the lot, but it is affected by the floodplain and buffer similar to #6.) Since the time the lots were approved, the foodplain mapping for Rennie's River has been updated to account for future effects of climate change. The floodplain and buffer now extend across Winter Avenue and affect these two undeveloped lots. The house for #6 is proposed to be located outside the floodplain and in the buffer, so there should be no risk of flooding the house. These lots were approved as part of the development of Judge Place, the former estate of the late Judge Furlong.

The updated floodplain map prevents the residential development of these two lots as per Section 11.2.4 "Development within Lands Adjoining Bodies of Water and Flood Hazard Areas" of the St. John's Development Regulations. The properties are zoned Residential Low Density (R1) but the floodplain and its buffer overrule the zone.

Winter Avenue has houses on both sides. Across the street is the Residential Special (RA) Zone on the south side of Winter Avenue, and behind those houses, Rennie's River flows. Nearby there are new houses on Judge Place and on the north side of Winter Avenue. Several of these properties are affected by the revised floodplain and buffer.

Council has approved a capital works project to construct berms along sections of Rennie's River as part of a long-term plan to control flooding. This project is undergoing provincial

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environmental review. Once the project is built, this section of Winter Avenue will no longer be located in the floodplain or buffer of Rennie's River.

It would not normally be recommended to allow residential development in a floodplain or buffer. However, there are extenuating circumstances in this situation, namely:

- These are approved building lots;
- If houses had already been built on the lots, there would be no issue;
- The proposed house at #6 is located in the buffer, not the floodplain;
- The buffer here is not a natural buffer due to nearby urban development of properties that were approved and developed before the current floodplain mapping was created;
- The City's planned project to berm this part of Rennie's River will remove this area of Winter Avenue from the floodplain and buffer, thus this site-specific amendment is intended as an interim measure.

The proposed text amendment is similar to amendments made in the early 2000s to accommodate a food bank at Corpus Christi Church in the floodplain of the Waterford River and to expand the Feildian Grounds change rooms in the floodplain of Rennie's River. These are exceptional situations and would not typically be allowed.

At Council's direction, the amendment was advertised and all comments received are attached in the Council agenda. Comments are mixed. Some people support the amendment or are not concerned. Others are concerned that this may cause flooding on other properties or may reduce the protection afforded to the river. Notably, the Quidi Vidi-Rennie's River Development Foundation oppose the amendment as well as the proposed berming of the river.

The amendment was referred to the City's Environment and Sustainability Experts Panel. They expressed opposition to it as follows:

*The Environmental and Sustainability Expert Panel voted unanimously to recommend Council does not approve this application. Considerations for Council put forward by the ESEP include:*

- *The notion that a flood protection structure (e.g, a berm) removes the floodplain is only partially true. This has been seen in several municipalities in Canada. While the berm structures do provide protection, there are some events where flooding could still occur by capturing water on the wrong side of the berm, or by an event making the berm fail. Flood protection measures reduce the risk to existing infrastructure, but do not eliminate it from the area.*
- *The proposed location, nearby areas, and Pringle Place (upstream on Rennie's River) have ongoing problems that are exacerbated by upstream development, while the proposed location could see future decrease in risk (from the construction of a berm) there is a lot of factors at play and risk that remains.*

- *Council should consider supporting a managed-retreat approach due to the high risk of this location (meaning a management approach that incorporates protecting people and their assets that are already there with flood structures, pre-emptively preventing additional people and assets from entering the hazard zone, and in some situations considering relocation).*

Ultimately, this amendment is proposed as a solution to a difficult situation for two property owners who have been affected by updated floodplain mapping. Their properties are on the north side of Winter Avenue, away from Rennie's River, and there are already houses in the buffer and in the floodplain on the river side of the road.

Note that there is no need for a Municipal Plan amendment, so there will be no commissioner's public hearing. Council's decision on the amendment will be final.

### **Key Considerations/Implications:**

1. Budget/Financial Implications: Not applicable.
2. Partners or Other Stakeholders: : The affected property owners; nearby residents and property owners; environmental groups.
3. Alignment with Strategic Directions/Adopted Plans: St. John's Strategic Plan 2019-29: *A Sustainable City* – Plan for land use and preserve and enhance the natural and built environment where we live.
4. Legal or Policy Implications: A text amendment of the St. John's Development Regulations is required. Development of a residential use in a floodplain and buffer would not normally be considered; it is contrary to the floodplain provisions of the Development Regulations. This amendment is proposed to address an exceptional situation that should only be temporary; the problem will be resolved once the City can build berms as flood-control structures along Rennie's River.
5. Privacy Implications: Not applicable.
6. Engagement and Communications Considerations: This amendment was advertised in *The Telegram* newspaper and on the City's website; notices were mailed to property owners within 150 metres of the site as per Section 5.5 of the St. John's Development Regulations.
7. Human Resource Implications: Not applicable.
8. Procurement Implications: Not applicable.

9. Information Technology Implications: Not applicable.

10. Other Implications: Not applicable.

**Recommendation:**

That Council consider adopting the attached text amendment for St. John's Development Regulations No. 721, 2021, to allow residential uses at 6 and 8 Winter Avenue, in the floodplain and buffer of Rennie's River.

**Prepared by: Ken O'Brien, MCIP, Chief Municipal Planner**

**Approved by: Jason Sinyard, P.Eng., MBA, Deputy City Manager – Planning,  
Engineering and Regulatory Services**

**Report Approval Details**

Document Title:	Residential use in floodplain buffer – 6 and 8 Winter Ave. REZ2100007.docx
Attachments:	- 6 and 8 Winter Ave - Attachments.pdf
Final Approval Date:	Jul 7, 2021

This report and all of its attachments were approved and signed as outlined below:

**Jason Sinyard - Jul 7, 2021 - 2:25 PM**