

**David Dale-Johnson, Ph. D.**  
**2505 Whistler Road**  
**Whistler, BC V8E 0A6**

July 15, 2020

**Mayor and Council**  
**Resort Municipality of Whistler**  
**4325 Blackcomb Way**  
**Whistler, BC V8E 0X5**

Re: Rezoning application RZ1169

To His Honour Mayor Jack Crompton and Council:

My name is David Dale-Johnson. I have owned a home at Whistler since 1990, skied at Whistler since 1968 and lived here full time since 2010.

I am a real estate economist and the Stan Melton Executive Professor of Real Estate at the Alberta School of Business. I was on the faculty at the Marshall School of Business and the Sol Price School of Public Policy at the University of Southern California for 25 years beginning in 1979. I have written numerous articles published in academic and professional journals focused on real estate markets and the impact of constraints imposed on such markets. I have been an expert witness in real estate valuation cases some involving the valuation of leases. I have also spent several years as the senior vice president of real estate for an entity involved in international retail real estate investment that later acquired a US based restaurant company. In that capacity, I was involved in multiple lease negotiations on behalf of the restaurant entity.

I teach real estate development, real estate finance and urban, housing and real estate economics. My students go to work in the private sector and the public sector for real estate developers, lenders and investors as well as real estate consulting firms, commercial and residential brokerage firms, planning agencies and planning consulting firms.

I am in full support of initiatives to help retailers including restaurants to address the required social distancing along with travel restrictions that are impacting retailing in Whistler Village, Whistler Village North and Creekside retail areas. Anything that can be done to facilitate a lively retail shopping, bar and dining environment is welcome and an important initiative of the RMOW.

The proposed zoning change (Rezoning application RZ1169) as I understand it would cause existing restaurant uses to remain so forever. While I disagree strongly with the proposed zoning change, even if I agreed with the change, this would be the wrong time to take that step due to the uncertainty arising from the impact of COVID 19.

COVID 19 has brought tremendous uncertainty along with hardship to retail tenants and landlords. It has changing the economics of restaurant uses. In fact, the food service sector is the retail sector most dramatically impacted by COVID 19 with multiple business failures as restaurant owners struggle to survive with financial and lease obligations and limited or no revenue. Expert observers as well as

participants in the market are unsure what the new normal will look like. Certainly, there will be casualties particularly among retailers including restaurants and landlords that depend on month to month cash flow for survival and do not have the capital to sustain either their business or the investment real estate. To lock in existing uses at this time as retailers and landlords struggle to survive would impose an unnecessary constraint on the property rights of both.

Now regarding my views on the proposal zoning change in a post CV 19 environment. Real estate markets and particularly retail real estate markets are continuously evolving. Consumers change their preferences and retail development along with retail tenants and restaurant tenants evolve to meet the needs of those changing preferences. To constrain retail real estate uses within a shopping area based on current uses is a bad idea. Of course we want uses that generate traffic and create an experience for shoppers and tourists that brings them back again and again and makes Whistler shopping the best experience possible. However to presume that the current uses are the highest and best use forever while the market evolves assumes that today we know and understand the future of retailing including food services.

The buzzword in retail real estate these days is 'lifestyle' retail. Most shopping areas are trying to enhance the lifestyle component of their retail. As a consequence of the growth in on-line shopping (that has been given a boost by COVID 19), landlords and retailers are making every effort to create spaces and concepts that generate traffic as shoppers seek a comfortable, walkable, relaxed, enjoyable shopping, dining, bar and entertainment experience. Restaurants, bars, fashion, sporting goods and sportswear shops, galleries, some specialty shops and food stores including bakeries and coffee shops are typical tenants in a lifestyle center along with entertainment which may be provided in the bars or in the public spaces. Landlords and retailers work 24/7 seeking synergy among these uses across the shopping day, week and year to enhance pedestrian traffic and consumer expenditure. Locking in bits of this dynamic process is a mistake.

Whistler Village and Whistler Village North having evolved from the original Eldon Beck concept of a village and village form are characteristic of what planners, developers and retailers seek to create when they conceive of 'lifestyle retail' in their communities. I can assure you that if a restaurant concept is feasible at Whistler, it will happen. Rules will not make it happen or keep it feasible as time passes and markets evolve. In fact, rules may keep it away or at least make landlords reluctant to make space available for a new restaurant.

For us to assume we know where the market is going and to lock in the current spatial retail arrangement in the Whistler Villages and Creekside presumes that we are smarter than the market and can foresee the way things will be and should be. We are simply not that smart and we do not have a crystal ball.

Here are some bad things that this zoning change will cause:

- 1) Equity capital will find Whistler retail real estate less attractive. Investors will recognize that their hands are tied with respect tenant choices and will value Whistler retail real estate less than they otherwise would. In financial terms that means that Whistler existing and prospective retail real estate will be valued less than it would otherwise be without the constraint.
- 2) Developers of new properties or owners of existing properties will be reluctant to propose or allow restaurant uses knowing that including these uses will tie their hands in the future. As an



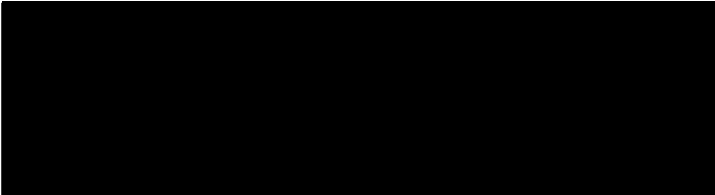
example, I believe *Stinky's on the Stroll* was not a bar/restaurant use prior. I doubt the landlord would have considered that use knowing it would forever be locked in.

- 3) Debt capital will find Whistler retail real estate less attractive. Lenders, just as investors will recognize the constraints that the zoning imposes on uses within a property and will adjust the cost and availability of debt accordingly. Typically this would mean higher interest rates and smaller loans.
- 4) Smart investors and lenders will understand the above and be less willing to commit funds to properties in these submarkets. At the margin, this will impact asset value.
- 5) Landlords and tenants will find their creativity constrained with respect to the design of restaurant uses. New restaurant tenants may be forced to live with existing spatial allocations and landlords will be reluctant to change knowing that whatever they change will be locked in.
- 6) Landlords and tenants will find it more difficult to adjust to the evolving retail market due to the constraints on the spatial allocation of the property. .

Again, the proposed zoning change is a bad idea. It assumes we have perfect foresight and that the current market meets the needs of what consumers will demand in the future. Retail is the most dynamic and volatile of the real estate sectors. To tie the hands of landlords and tenants beyond defining areas suitable for all retail uses including restaurants is a mistake.

Thanks for your attention to this matter.

Sincerely,

A large black rectangular redaction box covering the signature area.

David Dale-Johnson

July 23, 2020

**RESORT MUNICIPALITY OF WHISTLER**

4325 Blackcomb Way  
Whistler, B.C.  
V8E 0X5

*Via E-Mail in PDF Format*

Attention: Mayor Crompton, Members of Council & RMOW Staff

Dear Mayor, Council & Staff,

**RE: RMOW PROPOSED ZONING INITIATIVE**

Thank you for your time on our Monday call. This “Zoning Initiative” situation we discussed is of particular concern to us in terms of its impact on property ownership and infringement on landlord’s rights. In this age of Covid 19, life has become more challenging for everyone and landlords are certainly no exception.

With significant government supports and summer season in full swing at Whistler in one of the continent’s lowest Covid incident regions, the commercial real estate business is hanging on with very few tenants paying full rent, if any; and many coming up with only 25% on the CECRA program. Things could still get a lot worse with a continuance of the pandemic in slower seasons with limited or no external financial assistance. Not only do Landlords face reduced rents from successful tenants remaining in occupancy, but, inevitable vacancies as some business fail and lower rental rates that will most likely follow on lease renewals and new leases (for the lucky ones); ultimately this will lead to compression in valuations in commercial property which could be even further eroded by federal and provincial increased tax measures that are sure to come as public deficits balloon. **This rezoning proposed under any circumstances would be a harsh blow to village commercial property owners at any time, especially now it would be a brutal measure.**

The concern that we all together face now and moving forward should not be about specific uses for specific spaces, rather should be about keeping the Village commercial space occupied with any quality tenants whatever their use. The free market will sort itself out and if there is demand for restaurants (and staff availability), they will be there. Rather than impose usage legislations through this proposed rezoning, which is an expropriation of property owner rights, we urge that the municipality step up and find fair methods to incentivise food orientated uses. Below are a few areas we suggest that need attention in this regard:

- **Property Taxes / Tourism Whistler:** RMOW could provide better financial terms with discounts on municipal levies for food-oriented (or sit-down restaurants) or other financial incentives. Landlord and tenants already feel massive pain from this unfortunate situation that is nobody’s fault and thus should be shared by all parties.

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- **Increased Physical Flexibility of Premises:** The resort should be more nimble and creative helping restaurants find ways to better perform such as patios in unique areas, possibly allowing restaurants to serve in different public areas around the village. Reduced bureaucracy in the approval process of such modifications, and any other creative measures that may help business prosper should be sought.
- **Employee Housing Shortage:** Some restaurants have closed during the best of high demand times at Whistler because they have been unable to find enough staff. That's a huge problem that needs to be tackled by the municipality and should not be put on commercial property owners. Imagine this scenario:
  - A Village Stroll restaurant tenant does not survive these times and shuts down
  - Alternative restaurants willing to accept the massive business risk realize that they won't be able to adequately staff the facility so stand down.
  - The Landlord, who must continue paying high operating costs is prohibited from leasing to an alternative user type suffers perpetual vacancy which results in negative value in owning that property.

With respect to our particular circumstance at Tyndall Stone North, we acquired the RETAIL property (as evidenced by our holdco name) in 2013 with a partially weak tenant roster taking on many risks that included:

- Significant building deficiencies, which we worked with the strata corp. and outside engineers and contractors to rectify.
- Leasing risk as we lost tenants early in our tenure.
- Risk as to all other conditions business, resort, and mountain related.

We participated in the post-Olympic doldrum Whistler committees to do our part in bringing the Village back to glory days, which no doubt happened in recent years. We acquired this property as a "retail" opportunity and certainly never envisioned having our hands tied on the potential for a variety of uses. Ultimately at the time of re-working and re-tenanting in 2014 we were thrilled to bring a CIBC branch and Arc'Teryx store to Village North. We contend that our two food-oriented users, DQ and Blenz, are effectively retail uses and should remain zoned as such whether they sell tee shirts, ice cream, ski gear or coffee. We vehemently argue that ALL of our strata lots should remain zoned retail no matter which direction the municipality goes with this proposal and no matter who our tenants are.

We appreciate your understanding of our concerns and look forward to better times ahead. Feel free to reach out to us if we can be of further assistance.

Yours truly,



Tony Kalla

**ETAIL LTD.**

**TYNDALL STONE RETAIL LTD.**

July 23 , 2020

Resort Municipality of Whistler

4325 Blackcomb Way

Whistler BC, V8E 0X5

By E mail

Attn: Mayor and Council

Re Proposed Zoning Amendment as Outlined in RZ1169 ; Use Specific designation for selected F and B selected locations

Dear Mayor and Council

I have reviewed the proposal outlined as well as the supporting documents and all though I understand the concept and supposed need ( which in my experience is based on fear and not on any actual events ) , and I agree that ground floor F and B locations are important to the tourist experience . I do not believe that spot zoning the identified locations is the right process.

This current initiative seems to be knee jerk reaction to current events which at this point have yet to play out. We have had many adverse economic periods in Whistler since I arrived in 1980, many I would suggest with as serious financial implications for business operators as this may end up being .

By the thinking outlined here supporting this proposal , there should be no F and B left on ground level and yet despite 3 to 4 recessions this has not happened . Where re -purposing has occurred it has done so because the type of operation could not succeed

The activities of a free market allow the adapting of the local economy to the challenges it faces, ie. it evolves in the face of consumer demands, financial requirement, and environmental framework . Any time government policy/or legislation is inserted into the operation of the marketplace there have been unforeseen and often negative outcomes . In this case I doubt that the loss of flexibility in adapting our experience , the reduction of future potential retail space and the consequent impact on lease rates , the loss of investor and lender confidence , and the impacts of the discriminatory nature of this policy has been adequately considered against the perceived benefit .

I have several concerns relative to the data and support documentation

- A) It assumes that landlords will always attempt to get the highest paying user (ie retail) if the opportunity exists . This is not true, landlords understand that a mix of uses are important to the

overall success of their investment , and operations that draw potential customers (like F and B ) are important and are valued within their tenant mix . Where repurposing has occurred it has been because the location and size of the venue were inappropriate for a successful F and B location.

- B) It seems to not consider the actual costs and complications associated with repurposing larger spaces to be successful retail. This can be a significant barrier to re-purposing .
- C) The report was written over 10 years ago in an environment (I imagine regarding concerns related to the 2009 Financial crisis) that was greatly different than today, relying on this report as the basis of decision today is dangerous .
- D) The policy will have a measurable negative impact on the value of the impacted locations. This will impact both investor and lender confidence in Whistler and raise costs. This should not be marginalized as a concern. Investors/landlords need flexibility to best adapt to an always changing marketplace. Demonstrating a willingness to compromise a potential investment is not a measure that I think we should be considering during a pandemic when the outcome is still very unclear
- E) This will limit the supply of potential retail ( unless some new commercial development is planned) and will cause lease rates to climb higher on existing/remaining retail and ultimately only make sense for the high margin operators and large national /international brands. Ultimately space will be unachievable for local business people in the village and perhaps elsewhere , an outcome that you are trying to avoid .
- F) Should a designated F and B location operation fail it may stay empty for a significant period of time( more so than retail ) . The landlord may have specific requirements for a tenant and a rate. Zoning would not require a landlord to sign a lease just to fill the space . Black windows in high traffic areas are is not a look that says success ( think Larco) . There is a high demand for F and B locations , particularly those with the necessary kitchen exhaust ,however there is nothing that requires the landlord accommodate any user who is interested
- G) This will disincentivize future developers from considering F and B locations in their buildings

Your report outlines a variety of other strategies that appear to work in other communities to achieve animation and its associated goals that do not involve the permanence of use specific spot zoning. I would hope that all of these are investigated in detail.

I also wonder where this ends; Is the next thing that we believe Art Galleries, Grocery stores or ski retailers can only be in certain locations. There is no guaranteed locational formula for retail or F and B success as any tour of a mall or shopping neighbourhood demonstrates.

Taking away potential opportunities and adding more regulation and rules does not contribute to a vital, vibrant and adaptable business framework that Whistler has become known for

Thank you for your consideration

Pat Kelly , President , The Whistler Real Estate Company