

Public HearingJanuary 26, 1999

A Public Hearing of the Municipal Council of the City of Kelowna was held in the Council Chamber, 1435 Water Street, Kelowna, B.C., on Tuesday, January 26, 1999.

Council members in attendance were: Mayor Walter Gray, Councillors A.F. Blanleil, M.I. Bremner, R.D. Cannan, C.B. Day, R.D. Hobson, J.D. Leask, J.D. Nelson and S.A. Shepherd.

Staff members in attendance were: City Manager, R.A. Born; City Clerk, D.L. Shipclark; Director of Planning & Development Services, R.L. Mattiussi; Current Planning Manager, F.B. Pritchard; Long Range Planning Manager, L.V. Foster; Planning & Development Officer, D. Huang; and Council Recording Secretary, B.L. Harder.

(* denotes partial attendance)

1. Mayor Gray called the Hearing to order at 7:00 p.m.
2. Mayor Gray advised that the purpose of the Hearing is to consider certain bylaws which, if adopted, will amend "Kelowna Official Community Plan (1994-2013) Bylaw No. 7600", and all submissions received, either in writing or verbally, will be taken into consideration when the proposed bylaws are presented for reading at the Regular Council Meeting which follows this Public Hearing.

The City Clerk advised the Notice of this Public Hearing was advertised by being posted on the Notice Board at City Hall on January 8, 1999, and by being placed in the Kelowna Daily Courier issues of January 18 & 19, 1999, and in the Kelowna Capital News issue of January 17, 1999, and in addition, at Council's request, 139 letters were sent to property owners abutting the 74 protected wetlands, to the Chamber of Commerce, the Urban Development Institute and the Economic Development Commission for OCP Amendment No. 98-025 (Wetland Habitat Management).

3. INDIVIDUAL BYLAW SUBMISSIONS

- (a) Bylaw No. 8339 (OCP Amendment No. 98-024) – City of Kelowna – To amend the Official Community Plan to provide for the establishment of a Public Route of Access along both banks of the south arm of Fascieux Creek between Okanagan Lake and Lakeshore Road.

The Long Range Planning Manager indicated the Fascieux Creek corridor on a map displayed on the overhead projector and advised that in 1997 when the South Pandosy/KLO sector plan work was prepared there was a movement to achieve a public route of access along the entire Fascieux Creek corridor. At that time, there was also discussion about whether this creek warranted a public route of access and staff were directed to review the matter further and report back. Having done that, staff found there were a large number of meandering water courses in 1951 that have disappeared today. The public park area at the mouth of the creek and Oasis Park on the east side of Richter Street have been secured; however, much of the creek has been piped and is buried underground to accommodate stretches of multi-family development along K.L.O. Road.

The Long Range Planner advised that the current Official Community Plan provides for continued multi-family development east of Richter Street and major institutional in the Gordon Drive area of K.L.O. It would be appropriate to amend the OCP to not pursue the public route of access through the area where the creek has either been compromised by being buried underground or something else has happened to make that objective difficult. The proposed amendment would provide for a public route of access on both banks of the creek only between Okanagan Lake and Lakeshore Road.

The City Clerk advised that no correspondence or petitions had been received.

Mayor Gray invited anyone in the public gallery who deemed themselves affected to come forward or any comments from Council.

There were no further comments.

- (b) Bylaw No. 8327 (OCP Amendment No. 98-025) – City of Kelowna – To amend the Official Community Plan to provide direction for managing and preserving wetlands in the City in accordance with the recently adopted Wetland Habitat Management Strategy. The proposed amendments include the addition of the Natural Environment/Hazardous Condition Development Permit designation to thirteen wetland areas.

The Planning & Development Officer advised that the subject bylaw received first reading by Council on January 12, 1999. Staff are now recommending that the bylaw be amended at first reading to reflect the following changes:

- The wording of policy .15 being added as 1(e) of Bylaw 8327 was changed to read as follows:

“Wetland Guidelines. Where a Natural Environment/Hazardous Condition Development Permit is required for land disturbances within the leave strip of a Protected Wetland, the development shall comply with the Wetland Guidelines, attached as Appendix 16 to this OCP.”;
- “Lots 31 & 42, Sec. 35, Twp. 26, O.D.Y.D. Plan 425 both located on Cornish Road, Kelowna, B.C., and” was deleted from 2(c)(iv) of the bylaw (leaving Lot 43, Plan 425 as the only property under this section);
- Map 2.1 was revised to reflect new boundaries of wetland site 110, 124a and 124b;
- Map 4 was revised to remove two properties (Lots 31 & 42, Plan 425);
- Map 7 was revised to reduce the size of the wetland area for 124a and 124b.

The City Clerk confirmed that the public hearing is not compromised by these changes because the wetland areas are being reduced, not increased, in size.

The Planning & Development Officer advised that in 1991 the City of Kelowna completed a Natural Features Inventory which identified and assessed the significance of a number of natural features within the city and developed management strategies for their protection and enhancement. The Official Community Plan adopted in 1995 identifies properties within the city containing Natural Environment/Hazardous Condition areas based largely on the areas identified in the 1991 inventory. It was also recommended that more detailed work be completed to add additional inventoried features, including wetlands, and to more accurately identify the environmentally sensitive portions of the properties which would be subject to Development Permit designation. In 1997 consultants were commissioned to prepare the Wetland Habitat Management Strategy and through that process, with the assistance of a committee of volunteers, 81 wetland areas were identified and assessed. Of the 81 wetlands assessed, 40 were

identified as having a high wetland rating, 34 with a moderate rating and 7 with a limited rating. The strategy recommended that the 74 high and moderate rated wetlands be added as Natural Environment/Hazardous Condition Development Permit Areas. Of those 74 wetlands 61 are already in a NE/HC DP area; the subject bylaw adds the other 13 moderately rated sites as a NE/HC DP area. The subject bylaw also amends the definition of stream to include the word wetland and as such stream protection corridor policies would apply to the protected wetlands. The Planning & Development Officer also reviewed the 10 wetland guidelines being added as Appendix 16 into the OCP.

The Planning & Development Officer explained that properties within a Natural Environment/Hazardous Condition Development Permit Area seeking a building permit, subdivision or rezoning would have to go through an initial property profile, offered free from the Planning & Development Services Department, to determine whether a development permit would be required. He also noted that in December 1998, Chapter 13 of the Official Community Plan was amended to say that properties within the Agricultural Land Reserve would be exempt from the Development Permit requirement pertaining to land disturbances provided the land disturbances are a result of normal farm practises.

The City Clerk advised that the following correspondence had been received relevant to this application:

- letter of concern from Orlando & Dorothy Hepner, 799 Royal View Drive, advising that the wetland on their property is not a natural wetland;
- late letter from Dale & Cindy Hogg, 761 Douglas Road, opposing their Rifle Road property being a Development Permit area subject to wetland guidelines;
- late letter from Christian Reuter, 4180 Hughes Road, advising he generally supports the wetland proposal but has some concerns about his property;
- late letter from Tom Smithwick referring Council to the November 1994 report and recommendations of the ad hoc committee appointed to review the Environmentally Sensitive Areas bylaw;
- late letter from Lynn Welder, #13-980 Dilworth Drive, copying to Council correspondence requesting compensation for her client's property if designated a wetland area;
- late letter from Bromley Equity Ltd., #204A-1449 St. Paul Street, suggesting the City compensate when protection of a wetland area severely restricts the development potential of the property;
- late letter from Brian & Doris Callaghan, 989 Curtis Road, asking for assurance that the City will abide by the wetland guidelines by ensuring that there is no adverse effect on Robert Lake from the landfill and future construction of roads in the vicinity of Robert Lake;
- late letter from Urban Development Institute saying that society should pay for benefits to the community rather than individual property owners;
- late letter from Bruce & Margaret Moubray, 2685 Sexsmith Road, saying the wetland area identified on their property is a result of irrigation;
- late letter from Michelle & David Davies, 1585 Lewis Road, saying the pond on their property is man made and not a natural environment area;
- late letter from Black Knight Wines Ltd., owners of 1590-1640 Belgo Road, 1562 Belgo Road and 1758 Walburn Road, saying the proposed amendments discriminate against and impose an unfair financial burden on the owners of the lands and amount to expropriation without compensation;

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- late letter from Roberta Crowthers, 4230 Swamp Road, saying the proposed amendments are bureaucratic interference with property rights and constitute downzoning and discrimination;
- late letter from Bryan Lakusta, on behalf of his mother, 415 Old Vernon Road, asking that Council postpone the public hearing on this item to allow him time to prepare a submission to show his mother's property is not a wetland;
- letter of support from a representative for the developers of Glenwest Properties, landholder of the Glenmore Highlands.

Mayor Gray invited anyone in the public gallery who deemed themselves affected to come forward or any comments from Council.

Mr. Tom Smithwick submitted a copy of a letter which he summarized. The letter suggests that the principles adopted by the ad hoc committee to review the Environmentally Sensitive Areas (ESA) bylaw, in particular items No. 6, 7 and 9, need to be reviewed again in light of the Wetland Guidelines. The letter also outlines concerns about how the Wetland Guidelines would generally be applied to lands adjacent to wetlands, and in particular to the farming operation adjacent to wetland areas 124a and 124b located at Spiers/KLO Road.

At the request of Council, the Planning & Development Officer explained the property profile process as the method of quickly determining whether or not a Development Permit would be needed for development activity on a property with a protected wetland area, and clarified that lands within the Agricultural Land Reserve would be exempt from the Development Permit requirement pertaining to land disturbances provided the land disturbances are a result of normal farm practises.

Mr. William Jurome, managing director and part owner of Black Knight Wines, read his submission into the record noting about 12 acres of their 26.4 acres would be considered wetland. The legal maps when they assumed title to the land showed no pond on the property. At that time the pond area was green meadow. The pond is now a valuable feature of the property that they would like to see remain unencumbered. If the pond is to be preserved for the benefit of the community, it should be taken into public ownership and not be the sole responsibility of the owner to preserve.

Mr. Dave Davies, 1585 Lewis Road, read the letter he had submitted advising that the pond on his property is man made and not a natural feature, that his land is within the Agricultural Land Reserve but is not in active farm use, and that in his view the proposed guidelines are prohibitive and would turn his property into a liability rather than an asset.

The Planning & Development Officer clarified that Mr. Davies property is already in a designated HC/DP area; the proposed amendment would add the stream protection leave strip/non-disturb area around the pond.

Mr. Davies confirmed that he was aware his property is already in a HC/DP area and added that since the pond is not a natural feature, he would like the HC/DP area designation to also be removed.

Mr. Ralph Saunders, 1755 Gallagher Road, agreed with previous speakers that this is expropriation without compensation as it severely affects his financial future and his use of the property. He advised that Gopher Creek runs through his 5.3 acre property and over the years the setbacks from the creek right-of-way have expanded to more than triple the original width. The protected area became sizeable with the addition of the swamp area (wetland #120) and now the usability and development potential of the property is severely impacted. Mr. Saunders expressed concern that the regulations could potentially open his land up for public use and could prevent his livestock from watering in the creek. He stated that saying *perhaps* there could be compensation is not adequate; there should be something in the bylaw to say there *would* be compensation.

Mr. Bryan Lakusta, read the letter he submitted on behalf of his mother requesting that this public hearing not be closed until he can research and present his case to show that her property at 415 Old Vernon Road is not a natural wetland area and should not be so encumbered. He asked for a period of 90 days before Council makes their decision on the subject bylaw.

The Planning & Development Officer displayed a photograph on the overhead projector to show the wetland on the Lakusta property and advised that that he could not confirm whether the tests were taken from the subject property or from the property to the south but that the consultants recommended a moderate rating for the wetland area.

Ms. Michelle Davies, 1585 Lewis Road, advised that her property is within the Agricultural Land Reserve and that she was not aware her property was subject to a HC/DP until she received the letter sent to the owners of properties with wetlands identified for protection. She noted she would like to someday get horses and asked for clarification whether her property would be affected by these guidelines.

The Long Range Planning Manager clarified that property within the ALR being farmed under normal agricultural practices is not subject to the wetland guidelines; Ministry of Environment regulations regarding setbacks from water bodies would still apply.

Mr. Bruce Farrow, 3787 Lakeshore Road, commented that he appreciated receiving the letter regarding the Public Hearing on this item. He owns just over 14 acres on the north side of Wilson Creek, including a campground, mobile home park and one other parcel. He said he did not object when his property was put into a HC/DP area but he did object at the public hearing that established a right of public access along his side of the creek. He agreed with previous speakers that this is expropriation without compensation and that it would be reassuring to know there is something in place to say there could be a density exchange or some other means of compensation for the public route of access when the property redevelops given the impact on the value of the property. He expressed concern that he could end up going through this process again in 5 years and find out then that the setback distance is expanded to 150 ft. He added that for his campground purposes, it is nicer to have Wilson Creek designated a creek but it really it is just a slough that rises and falls with the height of Okanagan Lake.

Mr. Alex Rezansoff advised he owns the property next to the Mission Sportsfields. He submitted that a contributing factor to the creation of the Michaelbrook wetland and the wetland on his property was the City's placement of fill material on the Mission Sportsfields property. He expressed frustration that ditches he has dug to try to cope with the problem are now getting named, including Michaelbrook. If the

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ditches keep getting named, with the City's setback requirements there soon won't be any land left to worry about farming. Mr. Rezansoff advised that his property used to be good farmable land that drained off after the spring. He noted that a solution would be to pump the water across Gordon Drive but that is not an option because of the need to protect the Michaelbrook wetland. There has also been talk about removing a 25 ft. concrete abutment that holds back Thompson Creek but that has not been done yet either.

Mr. Brian Callaghan, 989 Curtis Road, advised he owns 6 acres of land at Robert Lake and that his main concern is assurance from the City that it will abide by the wetland guidelines by ensuring that there is no adverse effect on Robert Lake from the landfill and future construction of roads in the vicinity of Robert Lake. He was also concerned about protecting bird nesting areas around wetlands on ALR land that is being actively farmed.

Mr. Les Gyug, speaking on behalf of the Central Okanagan Naturalists Club, read a lengthy presentation in support of the proposed guidelines and pointed out that there is a statement in the Wetland Habitat Management Strategy that the City will consider compensation or density transfers.

Council asked that staff clarify the City's criteria for determining what is a natural and what is a manmade water feature, and whether manmade water features such as Garner Pond and Belgo Pond are subject to Ministry of Environment regulations. Staff were also asked to check with other municipalities to see what their policies are for compensation, and clarify how the proposed bylaw applies to different categories of wetlands within and outside the ALR.

Council debated whether to terminate the public hearing and deal with the issues raised at the Regular Meeting or to adjourn the public hearing to a future date.

Moved by Councillor Shepherd/Seconded by Councillor Blanleil

P70/99/01/26 THAT the portion of the public hearing dealing with bylaw No. 8327 (OCP98-025 – Wetland Habitat Management Strategy) be adjourned to the Public Hearing of March 23, 1999.

Carried

Mayor Gray and Councillors Day, Hobson and Leask opposed.

4. TERMINATION:

The Hearing was declared terminated at 10:13 p.m.

Certified Correct:

Mayor

City Clerk

BLH/bn