

Regular MeetingMay 18, 1999

A Regular Meeting of the Municipal Council of the City of Kelowna was held in the Council Chamber, 1435 Water Street, Kelowna, B.C., on Tuesday, May 18, 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; Acting-Current Planning Manager, A. Bruce; Subdivision Approving Officer, R.G. Shaughnessy*; and Council Recording Secretary, B.L. Harder.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Gray called the meeting to order at 8:40 p.m.

2. PRAYER

The meeting was opened with a prayer offered by Councillor Leask.

3. CONFIRMATION OF MINUTES

3.1 Regular Meeting, May 3, 1999

Moved by Councillor Day/Seconded by Councillor Hobson

R435/99/05/18 THAT the minutes of the Regular Meeting of May 3, 1999 be confirmed as circulated.

Carried

3.2 Public Hearing, May 4, 1999

Moved by Councillor Blanleil/Seconded by Councillor Nelson

R436/99/05/18 THAT the minutes of the Public Hearing of May 4, 1999 be confirmed as circulated.

Carried

3.3 Regular Meeting, May 4, 1999

Councillor Shepherd asked that the second paragraph under item (b) on page 240 of the minutes be amended to add that staff were asked to find out more about the signs being used in Oregon and Washington before the matter comes back to Council.

Moved by Councillor Shepherd/Seconded by Councillor Day

R437/99/05/18 THAT the minutes of the Regular Meeting of May 4, 1999 be confirmed, as amended.

Carried

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3.4 Regular Meeting, May 10, 1999

Moved by Councillor Blanleil/Seconded by Councillor Nelson

R438/99/05/18 THAT the minutes of the Regular Meeting of May 10, 1999 be confirmed as circulated.

Carried

4. Councillor Leask was requested to check the minutes of this meeting.

5. PLANNING BYLAWS CONSIDERED AT PUBLIC HEARING

(BYLAWS PRESENTED FOR SECOND & THIRD READINGS)

5.1 Bylaw No. 8386 (Z98-1045) – The Okanagan Sikh Temple and Cultural Society, Kelowna (R. Turik/Turik Neumann Architects) – 1125 & 1145 Rutland Road North

Moved by Councillor Nelson/Seconded by Councillor Leask

R439/99/05/18 THAT Bylaw No. 8386 be read a second and third time.

Carried

5.2 Bylaw No. 8408 (Z98-1054) – Colin Day (Tom Smithwick/Porter Ramsay) – (east of) Lone Pine Drive

Councillor Day declared a conflict of interest as owner of the property and left the Council Chamber at 8:43 p.m.

The City Clerk advised that Ministry of Transportation and Highways' approval of the bylaw was received subsequent to the agenda being printed and it would now be in order for this bylaw to also be considered for adoption.

Moved by Councillor Blanleil/Seconded by Councillor Shepherd

R440/99/05/18 THAT Bylaw No. 8408 be read a second and third time and be adopted.

Carried

Councillor Day returned to the Council Chamber at 8:44 p.m.

5.3 Bylaw No. 8417 (Z99-1023) – Anton & Maria Wolf (Lambert & Paul Construction Ltd.) – 860 McCurdy Road

The City Clerk advised that a previous resolution of Council states, in part, that adoption of the zone amending bylaw is to be subsequent to the issuance of a Preliminary Layout Review letter by the Approving Officer. The Planning Department would like adoption to be considered subsequent to subdivision approval instead so that road issues raised at the public hearing tonight can be dealt with as a part of the subdivision approval process.

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Moved by Councillor Bremner/Seconded by Councillor Shepherd

R441/99/05/18 THAT the fourth paragraph of Resolution No. R327/99/04/26 adopted by Council at the Regular Meeting of April 26, 1999 be revised to read as follows:

AND THAT final adoption of zone amending bylaw No. 8417 be considered subsequent to subdivision approval being granted by the Approving Officer.

Carried

Moved by Councillor Shepherd/Seconded by Councillor Blanleil

R442/99/05/18 THAT Bylaw No. 8417 be read a second and third time.

Carried

The Subdivision Approving Officer left the Council Chamber at 8:46 p.m.

(BYLAWS PRESENTED FOR SECOND & THIRD READINGS AND ADOPTION)

5.4 Bylaw No. 8418 (Z99-1017) – 564913 B.C. Ltd. (Don Kerr/Main Street Kelowna) – 1347, 1353, 1357 and 1379 Ellis Street

Moved by Councillor Day/Seconded by Councillor Hobson

R443/99/05/18 THAT Bylaw No. 8418 be read a second and third time, and be adopted.

Carried

Councillor Hobson left the Council Chamber at 8:48 p.m.

5.5 Bylaw No. 8402 (Z99-1010) – G. & M. Contracting (Gil Deleurme) – 460 Wigglesworth Crescent

Moved by Councillor Cannan/Seconded by Councillor Bremner

R444/99/05/18 THAT Bylaw No. 8402 be read a second and third time, and be adopted.

Carried

5.6 Bylaw No. 8403 ((Z99-1009) – G. & M. Contracting (Gil Deleurme) – 464 Wigglesworth Crescent

Moved by Councillor Bremner/Seconded by Councillor Cannan

R445/99/05/18 THAT Bylaw No. 8403 be read a second and third time, and be adopted.

Carried

Councillor Hobson returned to the Council Chamber at 8:48 p.m. and took his place at the Council Table.

Councillor Nelson left the Council Chamber at 8:48 p.m.

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- 6.1 Planning & Development Services Department, dated May 12, 1999 re: Development Permit Application No. DP99-10,014 – 564913 B.C. Ltd. (Don Kerr/Main Street Kelowna) – 1353-1379 Ellis Street (3060-20)

The Acting-Current Planning Manager indicated the property on maps displayed on the overhead projector and outlined the report noting rezoning of the property was considered at this evening's public hearing. This application for Development Permit would allow façade improvements along the entire frontage of the building.

Responding to questioning by Council, the Acting-Current Planning Manager advised that the covenant for off-site parking would be registered as a priority charge and as such the covenant could not be altered or released without the consent of the City. If the property under covenant was sold, the covenant would still be binding.

Moved by Councillor Hobson/Seconded by Councillor Shepherd

R446/99/05/18 THAT Municipal Council authorize the issuance of Development Permit No. DP99-10,014 for 564913 B.C. Ltd (Don Kerr/Main Street Kelowna); for Lot 9, D.L. 139, ODYD, Plan 432; Lot 10, D.L. 139, ODYD, Plan 432; Lot A, D.L. 139, ODYD, Plan 1667; That Part of Parcel Z (Plan B7376) D.L. 139, ODYD, Plan 645 as shown on Map "A" located on Ellis Street, Kelowna, B.C., subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A";
2. The exterior design and finish of the building to be constructed on the land be in general accordance with Schedule "B";
3. The applicant register a plan of subdivision for a lot line adjustment as generally shown on Map "A" prior to issuance of the development permit;
4. The applicant register a Section 219 Restrictive Covenant over a portion of Parcel Z to secure parking for Lots 9, 10 and A prior to issuance of the development permit.

Carried

- 6.2 Planning & Development Services Department, dated April 7, 1999 re: Development Variance Permit Application No. DVP99-10,001 – Space Centre Self Storage (1992) Ltd. – 3525 Edwards Road (3090-20)

The Acting-Current Planning Manager indicated the property on maps displayed on the overhead projector and reviewed the report for Council. The applicant also owns the adjacent self-storage development and intends to operate the proposed self-storage facility as part of the existing operation. As a result of recent amendments to the zoning bylaw, the requested variances for parking stalls and reduced side yard setbacks are no longer required.

Mayor Gray invited anyone in the public gallery who deemed themselves affected by the requested variances to come forward.

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The City Clerk advised that the following correspondence was received and has been circulated to Council:

- letter from Gard Ventures Ltd., #101-3573 Edwards Road, supporting development of the subject property but opposing the variance for increased site coverage because of the visual and aesthetic impact the proposed building would have on the exposure of his building and property to Highway 97.

A member of Council advised that Mr. Carlin of Gard Ventures was unable to be at the meeting tonight but his concern is the access into his property and the potential for the value of his property to be decreased because of unsightliness. Mr. Carlin would like the proposed second storey cantilever to be reduced to that of his building and he is concerned that with a zero setback from the lot line there would be no opportunity for a landscape screen.

The Acting-Current Planning Manager responded to questions of Council regarding the proposed building and how it would impact on the adjacent development.

There was no further response.

Moved by Councillor Blancheil/Seconded by Councillor Shepherd

R447/99/05/18 THAT Municipal Council authorize the issuance of Development Variance Permit No. DVP99-10,001; Pilling & Associates; Lot 25, Sec. 2, Twp. 23, O.D.Y.D. Plan 30107, located on Edwards Road, Kelowna, B.C.;

AND THAT variances to the following sections of Zoning Bylaw No. 8000 be granted:

Section 8.4.2 Off-Street Bicycle Parking Number of Spaces: to vary the requirement from the required 11 stalls to zero (0) as proposed;

Section 15.2.5(b) Development Regulations Site Coverage within the I2 – General Industrial zone: to vary the site coverage from the required 60% to 82.2% as proposed.

Carried

Councillor Cannan opposed.

6.3 Planning & Development Services Department, dated April 20, 1999 re: Development Variance Permit Application No. DVP99-10,016 – Gordon & Norma Joyner (Mark Turner/Dogwood Construction Ltd.) – 5249 Thalia Street (3090-20)

The Acting-Current Planning Manager indicated the property on maps displayed on the overhead projector and reviewed the report for Council. The requested variance would allow a garage that is 1.25 m higher than is permitted for accessory buildings in the Kettle Valley community, to remain. The error was detected after the Building Permit had been issued, by City staff while completing a framing inspection of the building. At that point, the framing was rejected and the builder was advised that a variance was needed for construction to continue. The building height has raised considerable concern in the Kettle Valley community and a petition bearing 48 signatures has been received in opposition to the requested variance. The Advisory

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Planning Commission recommends non-support for the variance because of concern that it would be precedent setting for the neighbourhood. Planning Department staff recommend support on the understanding that this is a one-shot variance and would not be considered precedent setting.

Mayor Gray invited anyone in the public gallery who deemed themselves affected by the requested variances to come forward.

Mr. Blair Staples, 427 Providence Avenue, spoke on behalf of the petitioners, noting that the City, the design architect and the builder have all acknowledged that the structure should not have been approved without approval of a variance first. The building is over 4 feet higher than what is permitted by bylaw and is obstructing the view from adjacent properties. There are currently 39 owner-occupied homes in this development but several hundred homes are anticipated in the future and the residents are strongly opposed because of concern that approval of the variance would set a precedent. The mistake is fixable and the parties responsible should have to make the building conforming at no cost to the owner.

Responding to questions of Council, the Acting-Current Planning Manager advised that there are other lots in Kettle Valley with higher garages but they are attached to the principal dwelling. Connecting the garage to the house is not an option in this case because then the maximum lot coverage would be exceeded.

Mr. Edward Jones, 422 Providence Avenue, stated that he has a direct view of this building from the back of his house and that it sticks out like a sore thumb. Granting the variance is covering up the mistake instead of fixing it. Work has been done to the building since the Stop Work Order was issued. If this variance was approved, it would be difficult for the City to deny others wanting the same building.

The Director of Planning & Development Services advised that there are higher accessory buildings throughout the city. The Kettle Valley area has considerable design criteria and it was a new Plan Checker not familiar with all the guidelines that approved the plans. Because there are areas of the city where this building height is allowed it was an easy mistake to make.

Mr. Lloyd Nestman, president of Kettle Valley, commented that the residents have a right to expect the lifestyle they purchased. To ensure that the theme of traditional homes is followed, extensive design guidelines were adopted and they are given to all builders and home owners who buy lots in the area. The two adjoining neighbours have both signed letters saying they have no objection to the garage height. Mr. Nestman advised that the owners of the subject property are senior citizens and that this whole situation has been a strain on them. He asked that Council support the variance on the basis that it was a mistake and that further variances would not be approved.

Responding to questioning by Council, Mr. Nestman confirmed that the owners would not be expected to share in the cost of fixing the garage if the variance is not approved. The Joyners are artists and they want to use the loft area above the garage as an art studio.

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Mr. David Kates, 440 Quilchena Drive, stated that it is obvious walking by that the height of the subject garage does not conform to the Kettle Valley design guidelines or the City's zoning bylaw. Everyone else had to ensure their buildings met the bylaw and guideline requirements and an honest mistake should not be mitigated at the expense of the rest of the neighbourhood that conformed. The structure is too big for the lot for it to be connected to the house and so if the variance were approved they would be getting more than anyone else. It does not appear that Mr. Nestman is following up on his assurance to the residents that he would work to find a solution that would not penalize either the Joyners or the rest of the residents in the neighbourhood.

Mr. Edward Jones re-addressed Council to comment that the development sign advertising the date this application would be considered by the Advisory Planning Commission was posted at the rear of the subject property next to the garage rather than at the front of the lot.

Mr. Nick Manduka, 418 McCarren Avenue, advised that the garage was constructed prior to the house being built on the subject property and therefore the neighbourhood had no perspective about how high the garage would be. When the house construction started, the neighbourhood could then start to see the height of the garage. The three parties involved should accept responsibility and correct the problem.

Mr. Mark Turner, advised he is the builder that constructed the garage and house on the subject property. He circulated a letter for Council's information signed by both adjacent neighbours who agreed they are not negatively impacted by the garage. He clarified that the building was ready for roofing in early December and the problem was first noticed in early January or February but no-one seemed to know what to do at that point. Had it been noticed that the building was non-conforming earlier, the garage could have been moved 6 feet closer to the house and been connected to the house with a breezeway. However, that would have allowed the garage to be even taller and more imposing on the view for the neighbour complaining that their view is impeded by the garage. Ideally garages should be as close to the lane as possible. Once the garage is built on the adjacent lot, the garage on the subject property will not stand out nearly like it does now. The loft is intended to be used as a studio for arts and crafts; if the roof was lowered the loft would be useless to the owners. It seems that most people do not really have a problem with the garage, their main concern is precedence yet it was City staff that suggested applying for the variance in order to avoid precedence. The Stop Work Order was issued on March 1st and only the shutters were installed after that and that was with permission.

The City Clerk read the correspondence submitted by Mr. Turner into the record confirming that the letters are signed by the owners of 5245 and 5253 Thalia Street and state that they have no objection to the garage as constructed.

Mr. Turner responded to questions of Council regarding the alternatives he has considered for remediation noting that with a different roof configuration, the height of the building could be pretty much the same. He advised he took a leaflet around to the neighbours some time ago to try to clarify the issues and that he would be prepared to go around to the residents again but that it always comes down to the issue of precedence.

There was no further response.

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R448/99/05/18 THAT further consideration of Development Variance Permit Application No. DVP99-10,016; Dogwood Construction Ltd.; for Lot 5, Sec. 23, Twp. 28, S.D.Y.D. Plan 60948, located on Thalia Street, Kelowna, B.C.; be deferred to the Regular Meeting of Monday, May 31, 1999 to allow members of Council an opportunity to visit the site and view the garage.

Carried

The City Clerk confirmed that since this is not a public hearing item, Council can accept new information from the public between now and May 31st.

7. BYLAWS**(BYLAWS PRESENTED FOR ADOPTION)**

7.1 Bylaw No. 8378 – Amendment No. 5 to City of Kelowna Parks Bylaw No. 6819-91

Moved by Councillor Day/Seconded by Councillor Hobson

R449/99/05/18 THAT Bylaw No. 8378 be adopted.

Carried

7.2 Bylaw No. 8389 – Amendment No. 1 to Petroleum Products Storage Tank Bylaw No. 8267 (update requirement for installation permit under Fire Code)

Moved by Councillor Hobson/Seconded by Councillor Day

R450/99/05/18 THAT Bylaw No. 8389 be adopted.

Carried8. REMINDERS – Nil.9. TERMINATION

The meeting was declared terminated at 10:37 p.m.

Certified Correct:_____
Mayor_____
City Clerk

BLH/bn