

Public HearingAugust 10, 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, August 10, 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. Nelson and S.A. Shepherd.

Council members absent: Councillor J.D. Leask.

Staff members in attendance were: Acting-City Manager/ Director of Planning & Development Services, R.L. Mattiussi; City Clerk, D.L. Shipclark; Special Projects Planning Manager, H.M. Christy; 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 City of Kelowna "Zoning Bylaw No. 8000", 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 July 21, 1999, and by being placed in the Kelowna Daily Courier issues of August 3 & 4, 1999, and in the Kelowna Capital News issue of August 1, 1999, and by sending out or otherwise delivering 160 letters to the owners and occupiers of surrounding properties between July 21-23, 1999.

3. INDIVIDUAL BYLAW SUBMISSIONS

- (a) Bylaw No. 8445 (Z99-1035) – Constance Burgher, William Burgher and Margaret Burgher (Lorne Robinson) – 527 Radant Road - THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 3, Sec. 1, Twp. 25, O.D.Y.D., Plan 7334, located on Radant Road, Kelowna, B.C., from the _RU1 – Large Lot Housing zone to the RU1s – Large Lot Housing with Secondary Suite zone to allow the construction of a secondary suite in the new lower level of the single family dwelling.

Councillor Day declared a potential conflict of interest as owner of a property within the notification radius and left the Council Chamber at 7:03 p.m.

The Special Projects Planning Manager indicated the property on maps displayed on the overhead projector and advised that the applicant is proposing to raise the existing single storey dwelling and construct a new lower floor with a secondary suite located in the lower floor. The property is currently accessed from Radant Road but access would be changed to off a rear lane from Bluebird Road. The lane would have to be upgraded in accordance with City requirements. The proposal is consistent with planning documents and staff recommend support for the application.

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The City Clerk advised that no written submissions were received as a result of the advertising for this public hearing. However, a petition bearing 11 signatures of support has been circulated for Council's information; the petition was submitted by the applicant along with the application for rezoning.

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

The applicant indicated she had nothing to add at this time.

A member of Council noted that the existing lane behind the property is considered a bridle path by the neighbours. The Special Projects Planning Manager advised that although the road is unconstructed, it is shown on the survey map as a dedicated legal road right-of-way.

There were no further comments.

Councillor Blanleil entered the Council Chamber and Councillor Day returned to the Council Chamber at 7:10 p.m. and took their respective place at the Council Table.

- (b) Bylaw No. 8446 (Z99-1021) – Thelma & Andy Davis – 1590 Lindsay Drive - THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 9, Sec. 29, Twp. 26, O.D.Y.D., Plan KAP58501, located on Lindsay Drive, Kelowna, B.C., from the RU1 – Large Lot Housing zone to the RU1s – Large Lot Housing with Secondary Suite zone to allow construction of a secondary suite in the eastern portion of the first floor of the single family dwelling.

The Special Projects Planning Manager indicated the property on maps displayed on the overhead projector and advised that the applicant is proposing to construct a secondary suite within a new single family dwelling that is currently under construction. The lot slopes to the rear and is one of the larger lots within the subdivision. The upper floor comprises the main dwelling unit and one side of the first floor is intended for the secondary suite. Should this application proceed, a second building permit would be necessary to finish off the proposed secondary suite. The application meets all zoning bylaw requirements and is consistent with planning documents and staff recommend support.

The Special Projects Planning Manager displayed a map on the overhead projector showing the location of the area residents who have indicated opposition to the application. She noted that some letters indicated opposition to construction of a multi-family dwelling on the site and clarified that the proposed dwelling is a single family dwelling with suite. She read the conditions of the building scheme for having suites in the subdivision and advised that a separate outside entrance is provided to the suite and Council's approval of the subject rezoning application would fulfil the requirement to meet City bylaws.

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The City Clerk advised that the following correspondence or petitions had been received:

- petition of opposition bearing 50 signatures of area residents
- letters from the following, all opposing the application on the basis that the registered building scheme does not include legal suites, the character of the neighbourhood would change, the proposed elevations and number of units is not consistent with the building scheme, multi-family development is not consistent with the plan of a small neighbourhood, and property values would decrease:
 - Ken & Shelley Gottfred, 1583 Lindsay Drive
 - Julie Buchenauer, 1614 Lindsay Drive
 - illegible signature and no return address
 - Frank Sun, 1526 Lindsay Drive
 - Dave & Glenda Field, 1599 Lindsay Drive
 - Shirley & Henry VanOs, 1638 Lindsay Drive
 - Stanley & Sandra Walt, 1607 Lindsay Drive
 - John Jordan, 1591 Lindsay Drive
 - Dev & Celia Randhawa, 1523 Sonora Drive
 - Mrs. C. Hudson, 1536 Sonora Drive
 - Darrell Hudson, 1536 Sonora Drive
 - Greg & Leslie McClelland, 1507 Sonora Drive
 - Holly Balfour, 1531 Sonora Drive
 - S. Knorr, 1534 Lindsay Drive
 - illegible signature, 1575 Lindsay Drive
 - Charles & Gaby Keller, 1615 Lindsay Drive
 - Kelly & Sherrill Fix, 1631 Lindsay Drive
 - Rosemarie & Darcy Nagel, 1660 Sonora Drive
 - Peter Newell, 1550 & 1542 Lindsay Drive
 - Ed & Wilma Zabowski, 1672 Sonora Drive
 - R.E. Swail, 1631 Sonora Drive
 - Gary & Lois Novakowski, 1515 Sonora Drive
 - Lester & Irma Lundstrom, 1539 Sonora Drive
- letter from the solicitor for the developer advising that all properties within the subdivision are charged with a registered building scheme, that it would be irresponsible of the City to proceed with any zoning that conflicts with the building scheme, and asking the City to review whether the application is contrary to the building scheme.
- letter from the applicants, Thelma & Andy Davis, responding to comments made in the letters of opposition and explaining their proposal.

Mayor Gray noted that almost all of the letters and the petition are dated back to mid-April and asked why. The Special Projects Planning Manager advised that the application was received March 11, 1999 and the letters were written as soon as the neighbours learned of the application.

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

Andy Davis, applicant, advised when he purchased the property in 1998 it was with the intent of building a house with a suite and the proposal is in accordance with the building scheme for the subdivision. He made reference to his written submission regarding the lot elevation and the floor area for the main floor and the suite and advised that the developer approved the 2½ storey building height and gave the green light for building the suite. He added that the neighbours who address Council should also state whether they have a summer kitchen.

Responding to questions of Council, Mr. Davis advised he was aware that the rezoning application would have to go to a public hearing but that he did not anticipate any opposition since the building scheme allows a suite and all the requirements of the building scheme would be met. The upper floor area would be 2,102 sq. ft., the main floor would be 1,424 sq. ft. with an additional 962 sq. ft. for the suite, and the garage would be 824 sq. ft. in size. Mr. Davis further advised the basement would be used for storage and that he would live on the upper floor. An electrical meter has been installed for the proposed suite and the plumbing has also been roughed in and that work was done with a building permit. The electrical plugs have also been installed in all the outside walls. Mr. Davis advised he has built one other dwelling in Kelowna and that was a duplex in Rutland. Each side of the duplex had a summer kitchen with a covenant restricting its use to a family member.

Stan Walt, 1607 Lindsay Drive, commented that all the local residents have opposed this application since the day the rezoning sign went up. As that opposition came forward, the response from Mr. Davis was to simply write "in-law suite" across the sign in big black letters as if to say it was for his mother-in-law. Mr. Walt submitted that this home is being built strictly for rental purposes and that the applicant is deceiving the neighbourhood. The zoning should have been approved before construction started. The neighbourhood residents notified the City of their concerns back in April but still there was no regard for their concerns and construction continued. The building scheme could include a basement suite but in this home, the main primary living space is the suite and the applicant intends to live in the top floor leaving the entire basement and additional space on the main floor of the home available to be developed as more living space. The residents paid a premium for their lots on the basis of the assured standards of the building scheme. The proper zoning should have been obtained in advance of construction. The building is more like a duplex or even a triplex and the proposed secondary suite is primary instead of secondary in nature and is being used to avoid the costs that go with building a duplex. Other developers pay the price to create rental properties. There are 42 residents on Sonora and Lindsay Drive and all have voiced their opposition to this application many through written submissions. Mr. Walt asked that Council consider whether this application is really nothing more than a rental property and a duplex that is outside its proper zoning area and that Council base their decision on what is right for this neighbourhood.

Responding to questioning by Council, Mr. Walt advised his home is 2,700 sq. ft. on two levels plus a full basement.

Dave Field, 1599 Lindsay Drive, commented that there are similarities between the number of kitchens and suites in Mr. Davis's Rutland duplex and the proposed house. According to his calculations, the proposed home comprises 2,387 sq. ft. on the basement, 2,387 sq. ft. on the main floor and 2,102 sq. ft. on the top floor for a total of 6,876 sq. ft. Mr. Field referred to overheads that he provided showing the 42 addresses in the petition and the results of further petitioning in which they have since obtained a 97% consensus against approving this application. He submitted that the building is a duplex in disguise and that it is a multi-family dwelling not a single family dwelling. The residents that bought in the subdivision thinking that the building scheme would protect the neighbourhood from multi-family dwellings. Mr.

Field commented that just because the house is already built is not reason for Council to approve the application. The building permit should not have been issued without the rezoning being approved. The applicant's acquisition of the lot should have been conditional upon the zoning for a suite being approved. The building scheme says no suite in the **basement** unless authorized by bylaw. The proposed secondary suite is on the main floor and there is a door at the foot of the stairs that goes to the top floor so the proposed design violates the rules for the 's' zone. Also, a business license is required for a secondary suite but clause 9 of the building scheme prohibits having a business. Mr. Field asked that Council defeat this application based on the wishes of the majority.

Responding to questioning by Council, the Special Projects Planning Manager advised that the definition of basement in the City's zoning bylaw may differ from the definition in the building scheme and that the proposed suite does conform to the RU1s zone.

John Jordan, 1591 Lindsay Drive, stated that his impression of the building scheme is that an in-law suite would be allowed in the home but not for income purposes or as a money-making venture. Mr. Jordan advised that in a conversation he had with the applicant, Mr. Davis first said his application was simply for an in-law suite intended for family but then he started talking about the money he would be generating and that he had done this in Rutland and that it makes good money. Mr. Jordan added that no-one in the neighbourhood was asked for their support before Mr. Davis made his application and he was one of the last to buy in the neighbourhood. In his view it is an income generating property and a business.

Ken Gottfred, 1583 Lindsay Drive, advised he was opposed for the reasons already stated by previous speakers. He said he paid \$350,000 for his home and expressed concern that the value of his property would diminish if this application is approved. He commented that a university student living in the basement would be acceptable but what is proposed is more than that because the applicant is putting in four water heaters.

Terry Belfour advised he is the realtor acting on behalf of the developer and that at no time did the applicant ever tell the developer that he would be applying for the 's' zone. The application was made after the fact. The proposed plans were looked at by the developer to ensure that the exterior design would blend in with the neighbourhood and the plans were actually sent back once for changes that were made to the exterior. The zoning is single family and it was on that basis that the exterior of the building was considered. At no time did the developer ever indicate he would support a suite on the subject property. Mr. Belfour added that the property was R-1 when the building scheme was put into place in 1990 and that R-2 zoning would never have been approved back in those days.

Fred Marshall, a director of Marshall Companies Ltd. which developed the subdivision, advised there was never any intention that the subject property would be a rental accommodation, the building scheme was written before there was any concept of the 's' zone, and to his knowledge there are no legal or illegal suites in the entire neighbourhood. He said he supports the speakers that have spoken tonight, that it would seem the applicant was speculating and there is a risk of loss as well as gain in that case, and that Council should reject this application. He also questioned whether a bylaw of the City of Kelowna can supersede a contract between the developer and the purchaser of a lot.

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The Director of Planning & Development Services advised that the City's position is that zoning matters are the purview of Council under the Municipal Act and building schemes are civil matters in which the City does not get involved.

Kelly Fix, 1631 Lindsay Drive, advised he was away so missed the petition but that he is opposed to the application. He talked about the challenge of dealing with the 's' zone in the upper Rutland area of the city and questioned whether it is City policy to approve zoning after buildings are constructed.

Bob Gracey, 1919 Sonora Drive, said he thought the 's' zone was intended to legalize existing suites and thereby provide more affordable housing in the community, not to encourage everyone to go ahead and build and get their zoning later. The applicant is flaunting the bylaw and the application should be rejected. He noted he is aware of 17 existing homes in the subdivision that at minimal expense could easily be modified to create legal suites under the new 's' zone. Mr. Gracey also expressed concern about the added traffic.

Council noted that the subject application is not within the normal timeframe for processing 's' zone applications.

Andy Davis, applicant, responded to comments made. He confirmed that there are four kitchens in his Rutland duplex which he built in 1997 and that he signed covenants restricting their use to family members. The floor plan that the developer initialled clearly indicated the suite area and so he was aware a suite was proposed. Mr. Davis advised that he had looked at a number of lots in other areas of the city but did not buy them because he was always told that no suites would be allowed. Two electrical meters are installed with 240 voltage wiring, one running from the main living unit and one from the suite but nothing is hooked up to the breaker panel. Mr. Davis said that when he started building he talked to some of the neighbours and found that people did not know what a legal suite was. The house is designed only for a legal suite and his own living area upstairs. There are only 4 doors in the entire house and there is no outside entrance to the basement. The building design is for a single dwelling unit with a secondary suite and that is what is being constructed.

Responding to questioning from Council, Mr. Davis advised that he bought the lot at the end of January and applied for the building permit in early February. The plans had to be redone because they were reversed and that took 3 weeks then he had to wait another 2 weeks to get the permit to start building the house. As soon as he got that, within 5-10 days he applied for the 's' zone. He could not apply sooner because he had to wait for clear title to the property. When he got the plan, he started to build and continued to build while waiting for the permit. He confirmed that he knew from the onset that zoning would be required for the suite but in his view building the suite was not taking a chance because if this application is not approved, he can sell to a big family and then there could be 6 cars on the street. Mr. Davis advised the top floor, the foyer and the garage will be constructed with the current building permit, because the City will not issue temporary Occupancy Permits anymore, and he will start finishing the rest of the house when he can.

There were no further comments.

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4. TERMINATION:

The Hearing was declared terminated at 9:20 p.m.

Certified Correct:

Mayor

City Clerk

/blh