

Regular MeetingJanuary 8, 2002

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, January 8, 2002.

Council members in attendance were: Mayor Walter Gray, Councillors R.D. Cannan, B.A. Clark, C.B. Day, B.D. Given, R.D. Hobson, J.D. Nelson and S.A. Shepherd.

Council members absent: Councillor A.F. Blanche.

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, A.V. 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 7:57 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, December 10, 2001  
 Regular Meeting, December 11, 2001  
 Public Hearing, December 11, 2001  
 Regular Meeting, December 17, 2001

Moved by Councillor Given/Seconded by Councillor Nelson

**R22/02/01/08** THAT the Minutes of the Regular Meetings of December 10, December 11 and December 17, 2001 and the Minutes of the Public Hearing of December 11, 2001 be confirmed as circulated.

Carried

4. Councillor Nelson 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. 8774 (TA01-014) – Zoning Bylaw Text Amendment

Withdrawn from the agenda.

5.2 Bylaw No. 8775 (Z01-1046) – William Halton – 318 Aspen Road

Withdrawn from the agenda.

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- 5.3 Bylaw No. 8776 (OCP01-010) – Marlene Collinson (William Collinson) – 551 Sherrydale Crescent **requires majority vote of Council (5)**

Moved by Councillor Nelson/Seconded by Councillor Given

**R23/02/01/08** THAT Bylaw No. 8776 be read a second and third time.

Carried

Councillor Hobson opposed.

- 5.4 Bylaw No. 8777 (Z01-1043) – Marlene Collinson (William Collinson) – 551 Sherrydale Crescent

Moved by Councillor Given/Seconded by Councillor Nelson

**R24/02/01/08** THAT Bylaw No. 8777 be read a second and third time.

Carried

Councillor Hobson opposed.

Moved by Councillor Shepherd/Seconded by Councillor Given

**R25/02/01/08** THAT adoption of Bylaw No. 8777 be considered in conjunction with a Development Variance Permit Application to waive the requirement to provide services to lands beyond the subject property and reduce the servicing requirements to a minimum level sufficient to service the subject property only.

Carried

**(BYLAWS PRESENTED FOR SECOND & THIRD READINGS AND ADOPTION)**

- 5.5 Bylaw No. 8772 (OCP01-014) – The Board of School Trustees School District No. 23 (Culos Development Inc.) – 1180 Houghton Road **requires majority vote of Council (5)**

Moved by Councillor Shepherd/Seconded by Councillor Given

**R26/02/01/08** THAT Bylaw No. 8772 be read a second and third time, and be adopted.

Carried

- 5.6 Bylaw No. 8773 (Z01-1052) – The Board of School Trustees School District No. 23 (Culos Development Inc. and Crown Provincial) – 1180 Houghton Road and 471 O’Keefe Court

Council:

- Staff to bring forward a recommendation for consideration by Council dealing with the disposition of public walkways when they get closed.

Moved by Councillor Clark/Seconded by Councillor Shepherd

**R27/02/01/08** THAT Bylaw No. 8773 be read a second and third time, and be adopted.

Carried

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6. PLANNING

- 6.1 Planning & Development Services Department, dated December 5, 2001 re: Development Variance Permit Application No. DVP01-10,084 – School District No. 23 (Culos Development Inc.) – 1180 Houghton Road

Staff:

- The requested variances would permit a reduced lot depth for 7 of the 34 lots that are proposed as part of a bareland strata housing development on the subject property.

Mayor Gray invited anyone in the public gallery who deemed themselves affected by the required variance(s) to come forward. There was no response.

Moved by Councillor Nelson/Seconded by Councillor Given

**R28/02/01/08** THAT Council authorize the issuance of Development Variance Permit No. DVP01-10,084; Part of Lot A, Plan KAP53622 and Lot Park, Plan 30321, Sec. 27, Twp. 26, ODYD, located on Houghton Road and O'Keefe Court, Kelowna B.C.;

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

**Section 13.5.4 (d)** – the required minimum lot depth for an RU5 bareland strata lot is 25.0 m, Lot 28 is 23.4 m proposed and Lots 29 to 34 are 21.3 m proposed.

Carried

- 6.2 Planning & Development Services Department, dated December 18, 2001 re: Development Permit Application No. DP01-10,058 and Development Variance Permit Application No. DVP01-10,059 – B.P.Y.A. 1333 Holdings Ltd. (Rudy Swab, Barnes/Swab Partners Architects) – East of Whitman Road

Staff:

- The Development Permit is for approval to proceed with a condominium project of 112 units in three 4-storey buildings.
- The variances are for minor setback reductions for one corner of one of the proposed buildings.

Mayor Gray invited anyone in the public gallery who deemed themselves affected by the required variance(s) to come forward. There was no response.

Moved by Councillor Hobson/Seconded by Councillor Day

**R29/02/01/08** THAT Council authorize the issuance of Development Permit No. DP01-10,058 for Lot 43, Sec. 33, Twp. 26, ODYD, Plan KAP48643, located on Whitman Road, 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. Landscaping to be provided on the land be in general accordance with Schedule "C";

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4. The applicants be required to post with the City a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a professional landscaper;

AND THAT Council authorize the issuance of Development Variance Permit DVP01-10,059 for Lot 43, Sec. 33, Twp. 26, ODYD, Plan KAP48643, located on Whitman Road, Kelowna, B.C,

AND THAT variances to the following section of City of Kelowna Zoning Bylaw No. 8000 be granted:

**Section 13.11.5 (d) Site front yard:** Reduce the minimum site front yard from 6.0 m required to 4.5 m proposed for one corner of Building 1;

**Section 13.11.5 (e) Site side yard:** Reduce the minimum side yard from a flanking street from 7.5 m required to 6.9 m proposed for one corner of Building 1;

**Section 6.4.2 Projection of balcony into flanking side yard:** Increase the maximum projection of balconies into a flanking side yard from 0.6 m permitted to 1.5 m proposed for one corner of Building 1;

AND FURTHER THAT the applicant be required to complete the above-noted conditions within 180 days of Council approval of the development permit application in order for the permit to be issued.

Carried

- 6.3 Planning & Development Services Department, dated December 18, 2001 re: Liquor Licencing Application No. LL01-012 – Victor Projects (Jill Johnstone/Kelowna Lazerium) – 1551 Water Street

Staff:

- A Lazerium is an entertainment venue for lazer shows, concerts and plays.
- A Class "C" liquor licence is not exactly the licence needed for a Lazerium but it is the closest available.
- The applicant is seeking a Class "C" licence for one side of the building. The other side of the building would remain as a theatre and the front portion of the building would be retained for food services.
- The retrofitting work that has been done to date has not triggered requirement for a Development Permit Application.
- Council could consider imposing conditions on a recommendation to approve a liquor licence permit but it would be up to the Liquor Control Board (LCB) in Victoria to ultimately decide whether or not the conditions would be enforced. Hours of operation are considered by the local LCB office to be a viable condition. Once a licence has been issued, the City has no control over transfer of a licence. The LCB in Victoria does not support any conditions on transfer of a license other than the conditions that they now have in place themselves.
- Several months ago staff recommended expanding the moratorium on Class "C" liquor licences in the downtown core; however, Council chose to remove the moratorium instead. Staff still feel the existing number of Class "C" licenced establishments within the downtown are adequate to meet the needs and do not support adding to the existing problems with patrons leaving these facilities at the same time. Staff share the RCMP's concerns and recommend non-support of this application.

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Moved by Councillor Shepherd/Seconded by Councillor Cannan

**R30/02/01/08** THAT Council hear from the applicant.

Carried

Jill Johnstone, applicant:

- The goal of the business plan is to provide a complete entertainment complex to Kelowna. The cabaret licenced area would be marketed to the 25-55 age bracket and the intent is to give patrons of dining facilities in the downtown area a place to go when they leave the restaurants. The facility would be similar to the former 'Cave' where patrons could be entertained, perhaps dance, and have a wonderful time.
- She and her partners have extensive experience in the restaurant and entertainment business.
- The subject property was selected because the location is ideal being near dining facilities in the area and the building is acoustically sound.
- Is committed to keeping the exterior of the building and the surrounding area clean and tidy and to doing some refacing to the front of the building that would complement the Keg and the Frescos facades and include exterior lighting.
- Would be willing to enter into a Social Contract with the City of Kelowna.
- Would be willing to consider a 1:30 a.m. closing for a short term on a trial basis but would hope to change that to 2 a.m. if it was found that patrons were choosing to go somewhere else that was open later.
- Was told by a representative of the LCB in Victoria that they would not accept a condition that a liquor licence be non-transferrable but that applicants could volunteer to agree not to transfer a licence unless with the approval of Council.
- Has 648 letters of support from the public and from local businesses. Read a letter of support from the owners of Mon Thong Restaurant.
- The facility has a capacity load of 135. All health regulations have been met and the interior of the theatre has been extensively renovated. Refacing the exterior of the building is top priority as soon as the licensing is in place and then would be willing to commit to completion of the exterior improvements within a certain time period, weather permitting.
- The children's shows would be during the daytime and so would be completely different than the hours of operation in Class "C" licenced side.
- Would agree to a list of services that would ensure the level of clientele.

Mayor Gray invited anyone in the public gallery to come forward.

Clint McKenzie, Executive Director, Downtown Kelowna Association:

- Concerned about considering a 7<sup>th</sup> cabaret licence within an area where there is already over 1,000 seat capacity.
- Opposed to granting any additional Class "C" licences in the downtown core because of adverse affects on neighbouring properties, the establishments detract from the animation of downtown streets because they typically close early, the lack of parking creates a strain on other businesses in the area, and the application does not coincide with the vision to enhance the downtown.
- There are ways around the non-transferability (i.e. silent partner who takes over).
- The DKA could support a new licence category for this establishment once one is developed, but cannot take the risk of supporting a Class "C" licence.

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Staff:

- Splashes cabaret has an application pending to expand their seating capacity and Flashbacks has potential to expand.

David Habib, Senior Frog's:

- Every nightclub downtown already offers what this establishment is proposing to offer. The existing clubs are not full and people do not have to wait in line to get in.
- All the downtown nightclubs have done everything they have been asked to do including signing Social Contracts in an effort to improve the downtown and keep the downtown streets clean.
- There are still people on the street after 3 a.m. making a mess so it is hard to clean up all the litter left behind.
- Questioned how many daytime shows there would be for children since children are in school during the day.
- When the holder of a Class "C" licence ceases to operate an establishment, the licence is turned over to the building owner who would then have the option of signing the licence over to a new operator.
- As a nightclub owner and a restaurant owner, has found that it is hard to survive when trying to cater to the 25 and up crowd because people over 25 tend not to go out every night.
- When it comes to survival, hours get longer and some establishments get into price wars on drinks.

Doug McMinniman, General Manager at Gotchas Nightclub:

- Cabaret customers arrive between 10 a.m. and midnight. 1,000 patrons would maybe occur in the summer on a great night most times between the 4 cabarets there are maybe 100 people out on the streets at closing.
- Concerned that when the 25-55 age group target fails the applicant will change to the cabaret age target which is 19-35 and that market is already flooded.
- Another Class "C" establishment in the downtown would cause job and profit loss for the cabarets that are already trying to survive in the downtown area.

Andrew Mercer, Manager of Splashes Nightclub:

- Splashes initiated an application last spring to increase their capacity by 114 seats. Would like that application to be approved before any new applications are dealt with.
- There are enough Class "C" licenced establishments in the downtown area.

Michael Zaphiris, worker at Splashes Nightclub:

- There are very few times when the downtown nightclubs are at capacity. Concerned that allowing another nightclub could result in price wars and a cut in hours for the employees.
- The Keg, Blue Gator, Doc Whilloubghby's, and Rose's already bring in shows for live entertainment.
- The premises in question need to be developed but not with a cabaret.

John Hertay:

- Spoke as owner of a property directly next door to a downtown nightclub.
- Patrons go from club to club and the trick is to see how many beer bottles they can get out of the club they are leaving that they can drink and fling through windows, etc. before getting to the next club.
- Downtown Kelowna does not need another liquor establishment.

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Bill Scutt:

- Spoke as owner of 2 buildings across the street from the subject property.
- Frescos is one of his tenants and they do not support this application. Mon Thong is also a tenant but they have a very short lease with no options for renewal.
- Has never been contacted about this application to see what his concerns would be and so would be leery about any promises being made by the applicant.
- Opposed to more Class "C" space, but if this application is approved, would like to see a written contract about cleaning up and something in writing for the proposed improvements to the exterior of the building.

Sam Habib, owner of the Snooty Fox:

- The wall separating the theatre and the cabaret licenced portion of the subject premises could be removed and the subject premises expanded from 135 seats to a 300 seat nightclub in a heartbeat.
- The LCB in Victoria would not honour restrictions put on the liquor licence by Council.

Deidra Mercer, owner of Splashes Nightclub:

- This is a great idea for downtown Kelowna, but concerned that it may not work out, the applicant could decide to sell, and the establishment become another nightclub. Competition is good but cabarets cannot drop prices like stores can in order to compete.
- Would support a different category liquor licence but not a cabaret licence.

Jonathan Marshall:

- Spoke as owner of two properties in the downtown, one at 1004 Bernard Avenue and the other at 265a Lawrence Avenue.
- It is not a good idea to have children on one side of a cabaret type establishment.
- Concerned about the transferability of Class "C" licences.

Jill Johnstone, applicant:

- Held an open invitation function yesterday to show the Lazarium facility and it was attended by many DKA members none of whom voiced concerns of any nature.
- Our facility would complement the surrounding facilities; the business plan is set to complement what exists in the downtown not take away from other facilities.
- Would continue to do shows for the children.
- Need to be able to do both children's shows and adult shows to be viable. The older crowd responds well to the adult shows and each event so far has been very successful.
- The type of clientele that is attracted to an establishment is dictated by the surroundings, the music and entertainment provided. Would like to be able to appeal to all audiences but are targeting the older crowd because word is there is nowhere for them to go.
- Janitorial staff should be on past 3 a.m. if littering problems are still occurring after that time.
- There is special licence pending for Lazariums but for today the only choice is either restaurant or cabaret licencing.
- The building has been designed as an entertainment facility but a restaurant would be an option if this application was denied.
- Has no intention of removing the centre wall and expanding the cabaret licenced area.

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Dave Johnstone:

- The building is set up for 2 major occupancies. Fire Code requirements preclude patrons going from one side to the other.
- A restaurant in the proposed facility would blow away all other restaurants.
- The existing nightclubs would not be asking for increased capacity if there was no demand for it. Afraid of competition.
- Would at least like a chance to try to make the proposed facility a success.

Council:

- Would need to determine a fair way of allocating costs for the additional resources the RCMP say they would need if another cabaret was approved in the downtown core.
- Staff to clarify what Council's powers are revoking or suspending a business licence.
- Staff to obtain information from the LCB about the extent of food service that is required to serve liquor, whether the centre wall of the existing facility could be removed and the liquor licence capacity expanded, whether there is a way to control transferability of a liquor licence, and what if any conditions Council could put on a liquor licence that would be enforced by the LCB.
- Staff to clarify Council's ability to control drink price setting and to preclude sale of beer in glass bottles in the downtown core.

Moved by Councillor Shepherd/Seconded by Councillor Nelson

**R31/02/01/08** THAT further consideration of the application proposed by Jill Johnstone for a Class "C" liquor licence for the Kelowna Lazerium/Studio One at 1551 Water Street be deferred to allow staff time to clarify Council's powers to impose conditions on liquor licenses and address other concerns raised at this meeting.

Carried

Councillor Cannan opposed.

Moved by Councillor Clark/Seconded by Councillor Shepherd

**R32/02/01/08** THAT the Mayor contact the Solicitor General to ask that he authorize a senior member of his staff to meet with Council to respond to concerns that have arisen over the past couple of months about issues dealing with his ministry.

Carried

EXTENSION OF MEETING

Moved by Councillor Cannan/Seconded by Councillor Nelson

**R33/02/01/08** THAT the Rules of Procedure be suspended and the meeting be extended past 11 p.m.

Carried



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7.0 DRAFT RESOLUTIONS

- 7.0.1 Draft Resolution re: Notice of Intent to Amend Council Bylaw No. 7906 (B.L 8794)

Moved by Councillor Shepherd/Seconded by Councillor Clark

**R34/02/01/08** THAT Council give notice of their intention to consider amending Council Bylaw No. 7906 to require that any public in attendance presentations being considered for placement on a Council meeting agenda be submitted in writing to the City Clerk's office.

Carried

7. BYLAWS

**(BYLAWS PRESENTED FOR FIRST READING)**

- 7.1 Bylaw No. 8781 (Z01-1057) – Como Developments Ltd. (Ron Molina) – 371 Glenwood Avenue

Moved by Councillor Hobson/Seconded by Councillor Day

**R35/02/01/08** THAT Bylaw No. 8781 be read a first time.

Carried

- 7.2 Bylaw No. 8782 (Z01-1042) – Paul Leinemann Construction Ltd. (Gordon Hartley) – 2999 Tutt Street

Moved by Councillor Day/Seconded by Councillor Hobson

**R36/02/01/08** THAT Bylaw No. 8782 be read a first time.

Carried

- 7.3 Bylaw No. 8783 (Z01-1049) – Nino & Aimee Giammarino – 874 Raymer Road

Moved by Councillor Hobson/Seconded by Councillor Day

**R37/02/01/08** THAT Bylaw No. 8783 be read a first time.

Carried

- 7.4 Bylaw No. 8784 (Z01-1053) – Fred Sherbinin – 975 Guisachan Road

Moved by Councillor Hobson/Seconded by Councillor Day

**R38/02/01/08** THAT Bylaw No. 8784 be read a first time.

Carried

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- 7.5 Bylaw No. 8785 (Z01-1054) – CPAC (Lakeshore Gardens) Inc. (Doug Lane/ Water Street Architecture) – 654 Cook Road

Moved by Councillor Day/Seconded by Councillor Hobson

**R39/02/01/08** THAT Bylaw No. 8785 be read a first time.

Carried

**(BYLAWS PRESENTED FOR ADOPTION)**

- 7.6 Bylaw No. 8769 – Amendment No. 58 to Ticket Information Utilization  
Bylaw No. 6550-89

Moved by Councillor Cannan/Seconded by Councillor Day

**R40/02/01/08** THAT Bylaw No. 8769 be adopted.

Carried

Councillor Shepherd opposed.

- 7.7 Bylaw No. 8779 – Amendment No. 12 to Local Improvement Charges  
Bylaw No. 6600-90

Moved by Councillor Day/Seconded by Councillor Cannan

**R41/02/01/08** THAT Bylaw No. 8779 be adopted.

Carried

8. REMINDERS – Nil.

9. TERMINATION

The meeting was declared terminated at 11:08 p.m.

Certified Correct:

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Mayor

BLH/am

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City Clerk