
CITY OF KELOWNA

MEMORANDUM

Date: January 29, 2002
File No.: 6740-20
To: City Manager
From: Planning and Development Services Department
Subject: Building Permits for Docks

RECOMMENDATION

THAT the City of Kelowna continue its current policy of not requiring building permits for docks.

BACKGROUND

At a November 19, 2001 Council meeting, Council passed a resolution (R911/01/11/19) directing that "staff investigate the pros and cons of requiring Building Permits for new docks as a tool for foreshore management and bring forward a recommendation for Council's consideration."

DISCUSSION

Current System

Those wishing to build docks must first obtain a license of occupation from the Province of British Columbia. In order to obtain a license, an applicant must demonstrate that the dock will adhere to the Province's guidelines as noted in Attachment 1. The guidelines regulate issues such as: dock length, shape, size, setbacks, siting and material. The guidelines also require that docks not block pedestrian access along the foreshore. Licenses issued by the Province include the additional provision that the licensee "must observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting. . . use and occupation of the Land and the Improvements". The Province's offer of a license also stipulates that by accepting the dock

license, the property owner confirms knowledge of "all municipal and regional bylaws regulating the use and development of the Land."

In Kelowna, there are additional regulations noted in the Zoning Bylaw and the Development Permit guidelines of the Official Community Plan (see Attachments 2 and 3).

The Zoning Bylaw specifies that docks will be permitted if developed consistently with the Zoning Bylaw regulations or as approved by the Ministry of Environment, Lands and Parks (now Ministry of Sustainable Resource Management). The Zoning Bylaw goes slightly further than the Province's Private Moorage Guidelines in that it specifies the provisions that are necessary to ensure that a dock does not block casual public access along the foreshore.

The Official Community Plan requires that those constructing docks obtain a development permit. A waiver from that process can be granted if the proposed facility complies with the Zoning Bylaw and has been approved by relevant provincial authorities.

Additional Regulatory Tools

In addition to the above, the City could also require building permits for docks. By requiring a building permit, the City would be able to proscribe requirements pertaining to dock construction. These guidelines could in theory be more stringent than any imposed by the Province. At one time, the City did require building permits for docks. That approach was abandoned in December 1993 in response to a Council directive.

Evaluation of Additional Regulatory Tools

Requiring building permits for docks would give the City more local control of dock construction. That control, however, also brings with it a number of accompanying issues:

Liability Issues

By getting directly involved in the approval of dock construction, the City would be opening itself up to the possibility of being named in liability claims. Liability waivers could be required, but these would not necessarily offer complete protection.

Cost Issues

If the City required building permits for docks, then staff time would have to be spent on associated administration. Staff time would be needed to respond to inquiries, process permit applications, inspect constructed facilities, investigate complaints, and enforce against infractions.

Based on data available from the Province, it is estimated that there are currently 380 licensed docks in the City. There are 495 residentially-zoned waterfront lots. Unless some owners of existing docks decide to rebuild, there is currently potential for a maximum additional 115 applications for docks (assuming that all waterfront owners eventually want docks). It is suggested that many of those who want docks already

have them, and that it is unlikely that the City would receive applications for more than 50-60 additional docks. For this number, it is suggested that it would not be cost-effective for the City to issue dock building permits.

Responsibility Issues

At present, the Crown is primarily responsible for addressing the construction of docks. The City's Zoning Bylaw and Development Permit system both defer to the Province's approvals. As a result, if there are issues surrounding the licensing of docks, such remain the Province's responsibility. The Province has, over recent years, encouraged the City to require building permits for docks. It is suspected, however, that should the City do so, it would mean that the Province would rely on the City as the "first line of defense" in resolving dock disputes. Many disputes would likely revolve either around docks constructed prior to City involvement or would revolve around confusions as to jurisdictional control (for example, disputes between property owners and the Crown as to who controls the foreshore in particular areas). These issues could not be dealt with by City staff. Getting involved by issuing building permits would, however, likely increase Provincial and public expectations to the contrary.

Dock Owner Impact

If the City were to require building permits for docks, then applicants would be faced with more paperwork, possibly further time delays, and certainly greater costs.

Effectiveness Issues

Despite the above issues, it might be in the City's interests to pursue building permits for docks if such action would result in tangible improvements to the management of the shore zone. Perhaps the most important question to address is whether requiring building permits would achieve anything more than is being achieved today.

The difficulties with the current system are that there are many structures on our waterfront which do not conform to current guidelines. The greatest concern seems to be with those docks that block public access along the waterfront. Requiring building permits would not rectify those problems as such a process would address only future docks. The docks which are being built under current guidelines are, however, not the problem. The Province has been quite willing to address the City's concerns in processing new dock permits. By and large, the Province has also been reasonably responsive in enforcing against new docks which contravene the guidelines agreed to by the Province and City.

At this point, it is suggested that there are minimal advantages to be gained from requiring building permits for docks and it is therefore recommended that this approach not be pursued. If, however, Council does wish to introduce a requirement for Building Permits, such could be done quite readily with an amendment to the Building Bylaw.

SUMMARY

It is recommended that building permits not be required for docks. The system currently in place seems to be resulting in new docks being built in a manner consistent with City objectives. There remain significant issues surrounding resolution of past infractions, but introducing a building permit requirement now will not address those problems. Instead, it is suggested that, as per an earlier report to Council, the City continue to lobby the Province to devote the resources necessary to resolve non-conforming foreshore structures.

Signe K. Bagh, MCIP
Long Range Planning Manager

Approved for inclusion

R.L. (Ron) Mattiussi, ACP, MCIP
Director of Planning & Development Services

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Attachments

**ATTACHMENT 1: PROVINCIAL PRIVATE MOORAGE GUIDELINES
FOR THE OKANAGAN VALLEY**

**ATTACHMENT 2: CITY OF KELOWNA ZONING BYLAW DOCK
AND BOATLIFT REGULATIONS**

**ATTACHMENT 3: CITY OF KELOWNA OFFICIAL COMMUNITY
PLAN DEVELOPMENT PERMIT GUIDELINES
FOR THE PROTECTION OF THE NATURAL
ENVIRONMENT, ITS ECOSYSTEMS AND
BIOLOGICAL DIVERSITY**