

Regular MeetingApril 16, 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, April 16, 2002.

Council members in attendance were: Mayor Walter Gray, Councillors A.F. Blanleil, R.D. Cannan, B.A. Clark, C.B. Day*, B.D. Given, R.D. Hobson, 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, 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 7:14 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, March 25, 2002
Public Hearing, April 2, 2002
Regular Meeting, April 2, 2002
Regular Meeting, April 8, 2002

Moved by Councillor Nelson/Seconded by Councillor Given

R346/02/04/16 THAT the Minutes of the Regular Meetings of March 25, April 2, and April 8, 2002 and the Minutes of the Public Hearing of April 2, 2002, be confirmed as circulated.

Carried

4. Councillor Hobson 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. 8827 (Z01-1068) – Philip Flett – 2205 Bonn Road

Moved by Councillor Day/Seconded by Councillor Hobson

R347/02/04/16 THAT Bylaw No. 8827 be read a second and third time.

Carried

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- 5.2 Bylaw No. 8828 (Z01-1069) – John & Sarina Weisbeck and John, Patricia, Walter & Henk Verwoerd – 1494 Highway 33 East & 1177 Oswell Drive

Councillor Day declared a conflict of interest because he owns property within the notification area and left the Council Chamber at 7:15 p.m.

The City Clerk advised that Ministry of Transportation approval was received after preparation of the agenda, allowing the bylaw to also be considered for adoption.

Moved by Councillor Blanleil/Seconded by Councillor Cannan

R348/02/04/16 THAT Bylaw No. 8828 be read a second and third time and be adopted.

Carried

Councillor Day returned to the Council Chamber at 7:16 p.m. and took his place at the Council Table.

6. PUBLIC MEETING TO RECEIVE INPUT ON LIQUOR LICENSE APPLICATION:

- 6.1 Planning & Development Services Department, dated April 4, 2002 re: Liquor Licencing Application No. LL02-0003 – G and R Holdings Ltd. (Sammy and David Habib) – 274 Lawrence Avenue

Staff:

- The applicant is seeking Council's support of an application to the Liquor Licencing & Control Branch to transfer an existing cabaret liquor licence from 540 Leon Avenue to 274 Lawrence Avenue. Current provincial policy requires a resolution from Council to indicate support for the transfer.
- Snooty Fox has not operated since last year when the building was destroyed by fire.
- The conditions of the existing licence would remain unchanged, at 304 occupancy capacity.
- The applicant has submitted a floor plan indicating the Lawrence Avenue premises could be easily converted to accommodate the cabaret uses proposed.
- Do not recommend support of the transfer because of concerns with concentrating these establishments in the downtown area (there is already one other Class "C" licensed establishment in the same block of Lawrence Avenue and there are three more one street over but within the same block); current provincial restrictions on hours of operation make it impossible for these establishments to conduct any activity during daytime hours making it very difficult for them to contribute to the daily activity of downtown life and creating "dead zones" during daytime hours; and the policing challenges when the patrons of these establishments are released out onto the street at closing time.
- Provincial regulations are apparently changing and dual operations may be permitted but staff have not seen the regulations to know all the details of how that would work.
- Indicated on a map the location of the 4 existing cabaret licenced premises within the downtown area.

Mayor Gray invited anyone in the public gallery who deemed themselves affected by the liquor license application to come forward.

David Habib, applicant:

- Over the years the number of downtown nightclubs has been reduced from 7 to 4 for a loss of about 300 seats in the downtown and that would be if Snooty Fox was open. There are line-ups at the bars already and during summer months it will be worse.
- The 2 a.m. shut down for nightclubs is likely to be increased within the next 6-8 weeks, giving operators the option of remaining opening later so that all patrons are not leaving at the same time.
- Snooty Fox catered to the 30-65 age group which none others do and provided a place for people to go after the nightclubs close at 2:30 a.m., allowing them to disperse by 5:00 a.m. when there is little or no congestion in the streets.
- The Cabaret liquor licence is far more restrictive than a Special Occasion licence which requires that drinks be sold at a discounted price, allows entrance to minors, allows sale of alcohol from 7 p.m. to 1:30 a.m., and imposes no closing time.
- Five neighbouring restaurants (to the Lawrence Avenue location) are all closed during the day and also contribute to the 'dead' zone.
- Prepared to do what is necessary to make the neighbourhood cleaner, brighter and more friendly and prepared to move to a dual operation with a storefront business during the day once the new provincial regulations come down.
- Submitted letters from the neighbouring Leon Avenue businesses supporting the transfer of the Snooty Fox liquor license to the new location.
- The insurance companies are still sorting out liability issues from the fire at the Leon Avenue location and at this point the move to another location is essential for the Snooty Fox to survive.
- Victoria has 19 bars on their downtown waterfront, all with Class "C" licenses.
- The existing nightclub owners spoke in opposition to the Lazarium application in anticipation of the re-opening of Snooty Fox and because they feel that if all the existing clubs were allowed to increase their seating to maximum capacity, they could accommodate the majority of the crowd.

Dan Crocket, resident of Peachland:

- The Kelowna Running Club has 150 members and are 100% in support. The Club held their monthly meetings at Snooty Fox and Senor Frogs and would like to continue to meet there, whether it is at the Leon or Lawrence location.

Wes Rosso, 279 Bernard Avenue:

- His residence is right behind the Lawrence Avenue location.
- Was apprehensive when Snooty Fox moved there but they gave a facelift to a building that has been unattractive and there are less homeless people frequenting the back alley and rooftops now. The alley is cleaner than ever before.
- Has never witnessed any fights in the alley and Snooty Fox has done well at keeping noise down.
- Supports Snooty Fox becoming fully licenced at the Lawrence Avenue location.

Andrew Mercer, owner/operator of Splashes Nightclub:

- Opposed the Lazarium because thought the Snooty Fox licence would be reinstated bringing in another 300 seats to help handle the peak times.
- Would not support a new license but thought the Snooty Fox reopening would be inevitable and whether it is 1 or 2 blocks away from Splashes makes no difference.

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- Spoke in support as someone who works in the industry.
- The other clubs in the downtown cater to the 19-22 age bracket.
- The Lawrence Avenue location would be better than the Leon Avenue location because people would walk between nightclubs instead of driving to get to the Snooty Fox.

Donna Hansen, Orchard Country Ski Club:

- The Ski Club misses having their meetings at Snooty Fox/Senor Frogs. The average age of their membership is 30-50 and now there is no place to go in the downtown core which is where they would like to be for their meetings.

Robert Oadye, owner of Gotchas and Club Oasis Nightclubs:

- There are not enough people downtown for the existing clubs to be open every night. The downtown is saturated with too many clubs too close in proximity. Another club would put pressure on other clubs and cause price wars.
- It is not the owner of the facility who applies for Special Occasion licenses it is the organization putting on the event who applies.

Ms. Spence, resident of Lake Country:

- Speaking as a fourth year university student studying criminology, there is a theory to support that containing all the clubs in a relatively small area is better. It is a "journey to crime" diffusing people in a removed area when they have been drinking.

Clint McKenzie, Executive Director, Downtown Kelowna Association (DKA):

- Main concerns are the concentration of clubs in close proximity within the downtown and that if this is approved another cabaret could be established at the other end of the block on Lawrence.
- Need entertainment in the downtown but not to the point where it starts to choke out other development.
- The vision of the City of Kelowna Official Community Plan and the Downtown Plan is for the downtown area west of Water Street to redevelop for heritage and future residential. Would like to see that happen.
- There have been well over 500 incidences reported so far this year of public drinking in parks or on streets in the downtown and that is just up until midnight because the Downtown Patrol has been encouraged by the RCMP not to stay open after 12 a.m.
- The DKA will be bringing forward recommendations to the City for changes to the Social Contract, including a surcharge for cleanup.
- Maybe we need to question the reason why the businesses that are closed moved away from the Leon/Lawrence area.
- Why are cabarets not being developed in the other town centres instead of all in the downtown?
- Ask that Council wait until the new liquor licencing regulations come into effect before dealing with this application.

Maral Pucci, 122 Wyndham Crescent:

- She and her husband like to go out once in a while in an atmosphere where she does not feel like she has babysat some of the kids.
- Supports Snooty Fox and transfer of their licence to the proposed location.
- The bank where she works has had some of their branch parties and get-togethers at the Snooty Fox and she has heard nothing negative.
- Asked the gallery for show of hands in support of the application. The majority of the hands went up.

Marc Whittemore, 1690 Water Street:

- Owns part of a building on the corner of Lawrence Avenue/Abbott Street and also owns office space on the corner of Water Street/Harvey Avenue.
- The damage that occurs on Lawrence and Leon between Abbott and Richter and the decrepidness in the parking lots is directly attributable to bar business.
- It is the concentration of these establishments in such close proximity that is contributing to the problem. If the problem continues to escalate, the property owners will leave the area.
- Ask that Council not support transfer of the liquor licence.

Andrew Habib:

- Has been in business in Kelowna since 1980 and gets nothing but compliments from his customers.
- Moving the cabaret 3 blocks to the new location allows people to walk the short distance between the Snooty Fox and the other cabarets rather than driving between establishments when they have been drinking.

Debra Watson, 1585 Abbott Street:

- Presented a petition from the residents of the Caravelle building asking that the transfer be denied. Living in the heart of the downtown the residents have seen their property values decrease as a result of public drunkenness and vandalism. The Caravelle residents put up with broken beer bottles in their parking lots and regularly seeing people throwing up.
- Main concern of the residents is the concentration of clubs within the downtown core.
- Asking for a bit of balance and the existing Leon location seems more supportable.
- Wonder if the people who raised their hands in support of this live in the downtown and have these types of establishments in their back yards. Having all the clubs in one area is great when you are coming to the area for entertainment but when you live in the area it is different.

Dave Spence, resident of Naramata:

- Spoke in support as someone who works in the industry.
- Bars will soon be permitted to remain open until 4 a.m. and that will allow people to leave as they want instead of all at once.
- Older people have a right to go to a club in the downtown too.

Greg Fedun, 120 McTavish Avenue:

- Lived in the Caravelle building before moving to McTavish where he continues to experience the same problems with broken glass, transients, etc.
- Transients are probably as much or more of a problem as the people from the bars. The people he sees causing the problems would not be allowed in a lot of the cabarets.
- Supports the license transfer.

Bruce Antoniuk, McKinley Landing:

- The building at 274 Lawrence Avenue has been a liquor licensed establishment for the history of the building.
- Insurance companies can take years to settle a fire claim.
- Need to let Snooty Fox relocate to get established and up and running.

Shane Vere, resident of Lake Country:

- Supports the license transfer. Better to have these establishments in walking distance, competition will feed off each other, and the applicant has said that he is willing to work with the City and the DKA for a storefront daytime use.

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Randy LaRue, 256 Lawrence Avenue:

- Owns the business two doors down from the applicant's desired location. Has seen a lot of businesses come and go from the area and will sell his business and move on too if the liquor license is transferred from Leon to Lawrence.
- Is a paramedic and any time after about 1 a.m. there is typically a rush of calls in the downtown as a result of fights and stabbings outside nightclubs.
- People urinate in the street and Monday mornings there are beer bottles, condoms, syringes, etc. It is great having all the cabarets together until you live or have a business in the area.

The City Clerk stated for the record that correspondence had been received from the following relevant to this application:

- letter from Bill Scutt, Viewcrest Estates, 291 Bernard Avenue
- letter from Rick Miller, Victor Projects Ltd., 252 Lawrence Avenue
- letter from Marc Whittemore, 1690 Water Street
- letter from Steve Stinson, Kelowna Keg, 1570 Water Street
- letter from Lindsay Webster, Webster Management Ltd., 251 Lawrence Avenue
- letter from Randy LaRue, 256 Lawrence Avenue

all opposed on the basis that transfer of the licence would do nothing to benefit the community, would increase the amount of damage and litter in the area, negatively impact urban revitalization, and create another blank, lifeless wall on the daytime streetscape.

The City Clerk further stated that the following correspondence and petitions had been received at this meeting and circulated to members of Council:

- 4 letters of support from Trend College, Salloum Dirk, Kelly O'Bryans and Pushor Mitchell.
- petition of opposition bearing 9 signatures of residents of Caravelle by the Lake, 1585 Abbott Street and 2 of those who signed the petition (Richard Sharpe and Margaret Stewart) also sent in letters of opposition.
- 6 letters of support from Champion Marine, 207 Clothing Company, Original Beach & Body Co., Concrete Image, Orchard City Ski Club and Douglas Welder.

David Habib, applicant:

- Even if reconstruction at the Leon Avenue location was to start now, it would be too late for the summer season. Cannot afford that and so would not survive.
- Proposing to move a licensed establishment to a building that is properly zoned and has always been licenced.
- The building at Lawrence Avenue was closed and had transients on the roof. Now it is opened, painted, cleaned and the transients are gone. It is better for the building to be occupied than vacant.
- Has never called the RCMP or paramedics to the Snooty Fox/Senor Frogs and has never been closed down because of a violation.
- The 500 incidents the Downtown Patrol responded to were people out on the streets not the people who were indoors. During the summer, the problems are on the streets because not everyone can get in.
- Would have stayed on Leon Avenue had it not been for the fire - it was a viable location because Snooty Fox offered something the public wanted.

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- Spent over \$100,000 to buy a liquor license. Looked for alternate locations and found none. Asked for the right to continue his business at the proposed location.
- Is prepared to take on the responsibility of keeping the neighbourhood clean and would agree to the City tying the nightclub license to a restaurant.
- If this transfer is not approved, Kelowna will be going into the May long-weekend with only 3 nightclubs and then the RCMP will have problems because of the all the people on the streets.

Moved by Councillor Shepherd/Seconded by Councillor Clark

R349/02/04/16 THAT Municipal Council **not** support the transfer of a Class "C" cabaret license for the relocation of the Snooty Fox from 540 Leon Avenue to 274 Lawrence Avenue subject to all other conditions of the license remaining the same.

Carried

Councillors Blanleil, Cannan and Day opposed.

Council:

- Staff to bring forward a report as soon as possible after the new liquor laws come down.

7. PLANNING

7.1 Planning & Development Services Department, dated March 20, 2002 re: Development Variance Permit Application No. DVP02-0010 – Tyler Van Nice – 674 Armour Crescent

Staff:

- Variances are requested for a deck that is currently under construction and that encroaches into the side and front yards of the property.
- The applicant has submitted letters of support from the neighbouring properties.

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

Tyler Van Nice, applicant:

- Obtained the support of all 7 neighbours on the cul-de-sac.

There were no further comments.

Moved by Councillor Hobson/Seconded by Councillor Cannan

R350/02/04/16 THAT Council authorize the issuance of Development Variance Permit No. DVP02-0010, Tyler Van Nice, Lot 8, Sec. 6, Twp. 26, ODYD, Plan 18510, located on Armour Crescent, Kelowna, B.C.;

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

Section 13.1.5 (c) Front yard: Reduce the minimum front yard for a carport from 6.0 m required to 3.8 m existing;

Section 13.1.5 (d) Side yard: Reduce the flanking side yard from 4.5 m required to 1.0 m.

Carried

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- 7.2 Planning & Development Services Department, dated March 26, 2002 re: Development Permit Application No. DP01-10,042 and Development Variance Permit Application No. DVP01-10,043 – Pasadena Estates Ltd. (Keith Funk/New Town Planning Services Inc.) – 1950 Durnin Road

Staff:

- The property is currently partially developed with a 4-storey apartment building close to Durnin Road and there is an existing underground parkade for the first phase of development. The applicant is now proposing to develop a 97-unit, 17-storey residential building with 2 retail units at the other end of the property and to extend the underground parkade to connect to the new building.
- Landscaping on top of the underground parkade would be a continuation of what is there now.
- Main access would be off Baron Road from a new road that would align with Underhill Street.
- Two retail spaces are proposed at the main floor level of the highrise.

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

Moved by Councillor Nelson/Seconded by Councillor Given

R351/02/04/16 THAT Council authorize the issuance of Development Permit No. DP01-10,042; New Town Planning Services (Keith Funk), Lot CP, Sections 20 & 29, Township 26, ODYD, Plan K2046, located on Durnin 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";
4. The applicant 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;
5. Council approval of the road exchange bylaw to close Haynes Road and create a new road to line up with Underhill Road to the north;

AND 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;

AND THAT Council authorize the issuance of a Development Variance Permit No. DVP01-10,043; New Town Planning Services (Keith Funk), Lot CP, Sections 20 & 29, Township 26, ODYD, Plan K2046, located on Durnin Road, Kelowna, B.C.;

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

13.12.5 (c) Maximum height: A variance for the maximum height of the building from 55.0m to 57.5m and from 16 storeys to 17 storeys;

13.12.5(e) Side yard: A variance to reduce the side yard setback from 4.5 required to 0.0m proposed at the north property line and from 4.5m required to 0.0m proposed at the south property line.;

6.1.2 (c) Daylighting Standards: A variance for the vertical angle from 65° to 81° on the north side and 81° on the south side.

Carried

8. BYLAWS

(BYLAWS PRESENTED FOR FIRST READING)

8.1 Bylaw No. 8831 (Z02-1006) – Jozsef & Elizabeth Csiki – 455 Hollywood Court

Moved by Councillor Given/Seconded by Councillor Nelson

R352/02/04/16 THAT Bylaw No. 8831 be read a first time.

Carried

8.2 Bylaw No. 8832 (OCP01-019) – Luigi Russo (Tom Smithwick/Porter Ramsay) – 982 & 1040 Old Vernon Road **requires majority vote of Council (5)**

Moved by Councillor Nelson/Seconded by Councillor Given

R353/02/04/16 THAT Bylaw No. 8832 be read a first time.

Carried

Councillor Shepherd opposed.

8.3 Bylaw No. 8833 (Z01-1063) – Luigi Russo (Tom Smithwick/Porter Ramsay) – 982 & 1040 Old Vernon Road

Moved by Councillor Given/Seconded by Councillor Nelson

R354/02/04/16 THAT Bylaw No. 8833 be read a first time.

Carried

Councillor Shepherd opposed.

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- 8.4 Bylaw No. 8834 (Z01-1051) – 434003 BC Ltd., Singla Bros. Holdings Ltd., South Okanagan Construction Ltd. (Tony Markoff/Planning Solutions Consulting Inc.) – 4639 Lakeshore Road

Moved by Councillor Nelson/Seconded by Councillor Given

R355/02/04/16 THAT Bylaw No. 8834 be read a first time.

Carried

- 8.5 Bylaw No. 8835 (Z02-1003) – Steven Keeley – 142 Kathler Road

Moved by Councillor Nelson/Seconded by Councillor Given

R356/02/04/16 THAT Bylaw No. 8835 be read a first time.

Carried

(BYLAWS PRESENTED FOR FIRST THREE READINGS)

- 8.6 Bylaw No. 8823 – Road Exchange Bylaw – 474 Okaview Road

Moved by Councillor Shepherd/Seconded by Councillor Clark

R357/02/04/16 THAT Bylaw No. 8823 be read a first, second and third time.

Carried

- 8.7 Bylaw No. 8838 – Road Exchange Bylaw – 3980 Field Road

Moved by Councillor Shepherd/Seconded by Councillor Clark

R358/02/04/16 THAT Bylaw No. 8838 be read a first, second and third time.

Carried

9. REMINDERS – Nil.

10. TERMINATION

The meeting was declared terminated at 10:39 p.m.

Certified Correct:

Mayor

BLH/am

City Clerk