

Regular MeetingJune 25, 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, June 25, 2002.

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

Council members absent: Councillor B.D. Given.

Staff members in attendance were: City Manager, R.A. Born; Deputy City Clerk, A.M. Flack; Director of Planning & Development Services, R.L. Mattiussi; Current Planning Manager, A.V. Bruce; and Council Recording Secretary, B.L. Harder.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Gray called the meeting to order at 7:13 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, June 10, 2002
Public Hearing, June 11, 2002
Regular Meeting, June 11, 2002

Moved by Councillor Nelson/Seconded by Councillor Day

R568/02/06/25 THAT the Minutes of the Regular Meetings of June 10, 2002 and June 11, 2002 the Minutes of the Public Hearing of June 11, 2002 be confirmed as circulated.

Carried

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

Councillor Clark confirmed that a writ had been filed in the courts by the Privacy Commissioner with respect to the RCMP's continued use of surveillance cameras in Kelowna; the writ was filed on Friday last, as stated.

5. PLANNING BYLAWS CONSIDERED AT PUBLIC HEARING

(BYLAWS PRESENTED FOR SECOND & THIRD READINGS)

5.1 Bylaw No. 8866 (Z01-1059) – City of Kelowna – 5160 Chute Lake Road

Moved by Councillor Nelson/Seconded by Councillor Shepherd

R569/02/06/25 THAT Bylaw No. 8866 be read a second and third time.

Carried

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(BYLAWS PRESENTED FOR SECOND & THIRD READINGS AND ADOPTION)

- 5.2 Bylaw No. 8865 (Z02-1011) – Glenwest Properties Ltd. – 205 Clifton Road North

Moved by Councillor Shepherd/Seconded by Councillor Nelson

R570/02/06/25 THAT Bylaw No. 8865 be read a second and third time, and be adopted.

Carried

Mayor Gray altered the order of business and advised that agenda items 7.1 and 7.2 would be dealt with next.

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

- 6.1 Planning & Development Services Department, dated June 5, 2002 re: Liquor Licencing Application No. LL02-0004 – G and R Holdings Ltd. (Sammy and David Habib) – 274 Lawrence Avenue

Deferred to after agenda item No. 7.2

7. PLANNING

- 7.1 Planning & Development Services Department, dated June 4, 2002 re: Development Variance Permit Application No. DVP02-0028 – West Rutland Development Corp. (Culos Development Inc.) – 1188 Houghton Road

Staff:

- The maximum structural projection was set at 20% at a time when the City had no limit on projections and some developers were using it simply to build a larger house. It may be that a higher percentage is reasonable, particularly for higher density development on smaller lots.
- Should Council support the subject application, staff will use this as a test case and monitor how the development goes and may be back to Council with a text amendment to increase the percentage allowable for projections to 30% in all zones.

The Deputy City Clerk stated for the record that no correspondence had been received.

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

Mike Culos, applicant:

- Indicated he had nothing to add at this time.

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Moved by Councillor Shepherd/Seconded by Councillor Nelson

R571/02/06/25 THAT Council authorize the issuance of Development Variance Permit No. DVP02-0028; Lot 1, Section 27, Township 26, ODYD, Plan KAP70603, located on Houghton Road, Kelowna, B.C.;

AND THAT a variance to the following section of Zoning Bylaw No. 8000 be granted:

Section 6.4.1 – Projections Into Yards, to increase the percentage in which a structural projection(s) can comprise an exterior wall from 20% to 30%;

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

7.2 Planning & Development Services Department, dated June 4, 2002 re: Development Variance Permit Application No. DVP02-0025 – School District No. 23 – (Meiklejohn, Bevanda, Meiklejohn Architects Inc.) – 1079 Raymer Road

Staff:

- The requested variances would address two non-conforming situations that have occurred as part of the construction of the new KSS High School development adjacent to the OUC campus on KLO Road.

The Deputy City Clerk advised that notice of Council's consideration of the Development Variance Permit Applications on tonight's agenda was given by sending out or otherwise delivering 154 letters of the owners and occupiers of surrounding properties between June 7-9, 2002. No correspondence was received on either application.

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

Nick Bevanda, project architect:

- Indicated he had nothing to add at this time.

Moved by Councillor Nelson/Seconded by Councillor Cannan

R572/02/06/25 THAT Municipal Council authorize the issuance of Development Variance Permit No. DVP02-0025; Meiklejohn Bevanda Meiklejohn Architects Inc.; Lot 1, DL 135, O.D.Y.D., Plan KAP66130 Exc. Plan KAP70167, located on Raymer Avenue, Kelowna, B.C.;

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

- i. **Section 7.6.1.(c) Minimum Landscape Buffers** vary Level 3 requirements from a minimum 3.0 m landscape buffer required to 2.5 m landscape buffer existing;
- ii. **Section 16.2.5.(e) Development Regulations** vary minimum side yard from 4.5 m required to 3.0 m existing.

Carried

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

- 6.1 Planning & Development Services Department, dated June 5, 2002 re: Liquor Licencing Application No. LL02-0004 – G and R Holdings Ltd. (Sammy and David Habib) – 274 Lawrence Avenue

Staff:

- The applicant was before Council not long ago requesting support to transfer his Class “C” liquor licence from 540 Leon Avenue to 274 Lawrence Avenue and the application was denied. The applicant is now reapplying to transfer the licence to the same property but with an amended floor plan that would see the front portion of the building used as a Class ‘B’ licenced restaurant and the rear portion of the building as a Class “C” nightclub. The two would be connected but would operate as separate businesses.
- Recommend non-support because of the close proximity to existing Class “C” licenced establishments that are within about a block of the subject property, and because there is no way to make the Class “C” licence contingent upon the existence of the Class “B” restaurant licence. Therefore, should the restaurant be discontinued the nightclub could continue to operate.
- New Provincial liquor licencing regulations are expected to be introduced this Fall.

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

David Habib, applicant:

- The proposed restaurant would open for lunch to address Council’s concern about creating more “dead space” on the street during daytime hours and would allow people to stay for a coffee or a bite to eat after leaving the nightclub at night.
- Also in response to concerns raised by Council, a new association has been formed called the Downtown Kelowna Nightclub Association to collectively work toward creating a safer and cleaner atmosphere on the streets.
- The lease for the Leon Avenue premises expires July 31, 2002.
- Submitted a copy of a petition bearing 155 signatures in support of the application.
- Showed a map of of the area with green marks where businesses have indicated support for the relocation.
- Submitted letters of support from MCC Thrift Store, 287 Bernard Avenue; Rock on Water, 1520 Water Street; and Original Beach & Body, 213 Bernard Avenue.
- Suggested that the City consider forming an entertainment district to make restaurants, pubs and cabarets handier for tourists and local residents.
- Further suggested that if Council intends to pursue the future residential uses as indicated in the Downtown Plan, an alternate area needs to be identified so that the cabarets can start moving out of the area.

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

- email of opposition from Shirley Hutt, 1585 Abbott Street, stating further expansion of cabarets would add to the existing negative impacts on the neighbourhood.
- letter of opposition from Richard Sharpe, 505-1585 Abbott Street, stating that expanding the number of cabarets would be contrary to the Downtown Plan which strives to improve the downtown and would have a negative impact on the area.
- late package of 32 form letters submitted by the Downtown Kelowna Association just prior to this meeting; 28 in support the DKA’s position in opposing more cabarets in the area, 3 indicating non-support for the DKA’s position, and 1 that did not indicate either way.

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

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

- The area in question is highlighted for future residential development and the DKA would like to see that happen sooner than later.
- The form letters submitted just prior to tonight's meeting are signed by businesses in the immediate vicinity of the proposed cabaret location.
- The DKA is not willing to take the risk that the new location would not end up being a full cabaret without the restaurant component.
- The DKA would not object to the liquor licence remaining at the Leon Avenue location.
- Outside of a few weekends in the summer there is more than enough capacity to handle the crowds in the existing nightclubs.

Wes Rosso, 279 Bernard Avenue:

- The Habib's are already operating at the Lawrence Avenue location as an after-hours club and they have been a welcome addition to the area. The building has been renovated and they have done an excellent job at keeping the streets clean and transients off rooftops, etc.
- Is a business owner and a member of the DKA but has never been surveyed on this issue by the DKA even though he is directly behind the Lawrence Avenue location.
- Supported the subject application and the entertainment district concept.

Bill Scutt, 291 Bernard Avenue:

- Supported future residential uses in this area of the downtown, as envisaged by the Downtown Plan. Did not see how that could become a reality, however, with yet another cabaret in the area.
- Produced a map showing the location of property owners who do not support this application.
- The constant mess from broken glass, vomit, urine migrates around the neighbourhood and the clean-up and repairs are costly. Supporting this application would add more fuel to the fire and would lead to urban decay in the long term.

Margaret Stewart, 1585 Abbott Street:

- Read excerpts of a letter from Debra Watson, also a resident at 1585 Abbott Street, opposing another cabaret at the proposed location in the interests of public safety and cleanliness and advised that she opposed the application for the same reasons.
- Would like to see Kelowna's downtown core one day resembling Vancouver's Robson Street area but concerned it may end up resembling Granville Street instead.
- Submitted a copy of the letter from Debra Watson along with copies of an opinion poll of Caravelle residents signed by Richard Sharpe, Wilson Barton, Darrell Michaels, Brad Hanley, Margaret Hale, Shirley Hutt, Marg Stewart and a petition of opposition bearing 3 signatures of residents from 1585 Abbott Street and 963 Lawrence Avenue.

Steve Stinson, 1570 Water Street:

- Does not support more nightclubs in the downtown because of the negative impact they have on the downtown. Would like to see more residential but does not see that happening with 4 nightclubs in the downtown core.
- The subject application should not be considered until liquor licencing issues are clear, all stakeholders are satisfied, and the City has developed a strategy for development or non-development of an entertainment district versus a residential district in the downtown.

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Shirley Hutt, 1585 Abbott Street:

- Problems downtown have become worse. Residents in the Caravelle are constantly complaining about the noise, filth and broken beer bottles. The mess is created by the patrons of the clubs across the alley.
- Would like to see more residential in the downtown core.
- Opposed to the subject application.

Gerry Crosby, owner of 237, 243 & 247 Lawrence Avenue:

- Opposed transferring the liquor licence to Lawrence Avenue.
- Supported more residential in the downtown.

Rick Miller, property manager for Victor Projects:

- Victor Projects owns 266 Lawrence Avenue, the vacant parking lot at 252 Lawrence Avenue and the 2 properties at 1561 Water Street.
- Once, approved, Class "C" licenced establishments are there for a long time; the existing nightclubs in the downtown have been there for years.
- Another cabaret in the downtown would exacerbate problems in the area.

Marc Whittemore, 1690 Water Street:

- Is part owner of Lot 5 on the corner of Lawrence/Abbott Street and has a leasehold interest on Lot A at the corner of Harvey/Water Street.
- The mess from needles, human excrement, food, broken glass, damage to windows, etc. all relates directly to the late night cabaret business.
- Need to remedy the problems with the existing nightclub owners before bringing another club with another 230 people who are drinking into the area.
- Many of the restaurants in this area of the downtown are no longer open for lunch so the proposed restaurant may not improve the dead space issue.

David Habib again:

- The streets in the vicinity of his current establishment have never been cleaner since relocating to the Lawrence Avenue location and there have been no broken windows on any of the neighbouring businesses.
- Class "C" establishments have been around forever and not all are a problem.
- Residential is not appropriate for a neighbourhood where there are 4 existing nightclubs and the other types of businesses in the area.
- The restaurant would be part of the nightclub; they go together.
- Would sell his building at appraised value any time the City wanted to develop the area as residential and relocate to wherever the City said.
- The Leon Avenue location was successful and responded to a need in the community.
- Encouraged Council and the DKA to come for a ride in his bus at whatever time in the night and see for themselves what is going on downtown.
- There are no public washrooms available at night for people waiting to get into nightclubs so they have to go in the alleys and on the streets. Suggested to the City or DKA a few months ago that public washrooms be provided in the Chapman Parkade.
- Has dealt with Council's concerns to the best of his ability. The DKNA is working on solutions to the problems.
- Needs Council's help to relocate a business that has already been in the downtown core 2½ blocks away but that the public has already had to do without for the last year.
- His existing establishment is a nightclub without alcohol. Needs a premises for his liquor licence by July 31, 2002.
- Is willing to have the cabaret contingent on the restaurant.

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Council:

- Directed staff to ensure that the wording of the resolution they forward to the LCLB does not preclude an extension of the existing licence if Mr. Habib can make a case that there are extenuating circumstances associated with his application.

There were no further comments.

Moved by Councillor Shepherd/Seconded by Councillor Nelson

R573/02/06/25 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;

AND THAT Council direct staff to forward the appropriate resolution to the Liquor Control and Licensing Board in Victoria.

Carried

Councillor Blanleil opposed.

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R574/02/06/25 THAT Council instruct staff to contact the Liquor Control and Licencing Branch to determine whether there is potential for keeping Mr. Habib's licence open beyond July 31, 2002 to allow additional time for Mr. Habib to locate a suitable premises for the licence and report back to Council on July 15, 2002.

Carried

Councillors Clark and Shepherd opposed.

Council:

- Agreed by consensus for staff to bring back draft Terms of Reference for dealing with the dead space that Class 'C' licenced establishments create during the daytime in the downtown, existing problems on downtown streets (i.e. vandalism, broken glass, used needles, people vomiting and urinating on the street, etc.), whether to pursue an entertainment district in the downtown, where in the downtown residential should continue to be encouraged, and the impact of pending provincial changes in liquor licencing legislation.

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- 7.3 Planning & Development Services Department, dated June 11, 2002 re: Development Permit Application No. DP02-0018 – Gallaghers Canyon Land Development Ltd. (Tom Weisbeck) – 3980 Field Road

Staff:

- The application is for phase 2 of the Gallaghers Lookout project which would consist of 16 semi-detached units within 8 buildings overlooking the driving range area.

Moved by Councillor Shepherd/Seconded by Councillor Hobson

R575/02/06/25 THAT Municipal Council authorize the issuance of Development Permit No. DP02-0018, Gallaghers Canyon Land Development Ltd. (Tom Weisbeck), on lands described as Part of Lot B, Sec. 1, Twp. 26, ODYD, Plan 28022 except Plan 43748, as shown on Map "A" attached to the report of the Planning & Development Services Department dated June 11, 2002, located off Field Road, Kelowna, B.C., subject to the following terms and conditions:

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.

Carried

8. BYLAWS

(BYLAWS PRESENTED FOR FIRST READING)

- 8.1 Bylaw No. 8869 (Z02-1014) – Hernani & Willa-Mae Silva – 308 Uplands Drive

Moved by Councillor Hobson/Seconded by Councillor Nelson

R576/02/06/25 THAT Bylaw No. 8869 be read a first time.

Carried

- 8.2 Bylaw No. 8870 (Z02-1016) – Gordon Zarr – 1045 Elwyn Road

Moved by Councillor Hobson/Seconded by Councillor Nelson

R577/02/06/25 THAT Bylaw No. 8870 be read a first time.

Carried

Regular MeetingJune 25, 2002**(BYLAWS PRESENTED FOR FIRST THREE READINGS)**8.3 Bylaw No. 8807 – Kelowna Memorial Park Cemetery BylawMoved by Councillor Day/Seconded by Councillor Blanleil**R578/02/06/25** THAT Bylaw No. 8807 be read a first, second and third time.Carried**(BYLAWS PRESENTED FOR ADOPTION)**8.4 Bylaw No. 8867 - Amendment No. 8 to Airport Fees Bylaw No. 7982Moved by Councillor Blanleil/Seconded by Councillor Cannan**R579/02/06/25** THAT Bylaw No. 8867 be adopted.Carried9. REMINDERSProvincial Proposal to Sell Coquihalla HighwayMoved by Councillor Hobson/Seconded by Councillor Cannan**R580/02/06/25** THAT a resolution be forwarded to the 2002 Union of British Columbia Municipalities Convention opposing the Provincial Government's proposal to sell the Coquihalla Highway.Carried10. TERMINATION

The meeting was declared terminated at 10:40 p.m.

Certified Correct:_____
Mayor

BLH/pp

Deputy City Clerk