

Regular MeetingApril 1, 2003

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 1, 2003.

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, E.A. Horning 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; Special Projects Planning Manager, H.M. Christy\*; and Council Recording Secretary, B.L. Harder.

(\* denotes partial attendance)

1. CALL TO ORDER

Mayor Gray called the meeting to order at 11:30 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, March 17, 2003  
Public Hearing, March 18, 2003  
Regular Meeting, March 18, 2003  
Regular Meeting, March 24, 2003

Moved by Councillor Given/Seconded by Councillor Day

**R295/03/04/01** THAT the Minutes of the Regular Meetings of March 17, March 18 and March 24, 2003 and the Minutes of the Public Hearing of March 18, 2003 be confirmed as circulated.

Carried

4. Councillor Blanleil 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. 8956 – Z02-1051 – Walter and Lidia Baumgart – 952 & 962 Lawson Avenue

Moved by Councillor Day/Seconded by Councillor Blanleil

**R296/03/04/01** THAT Bylaw No. 8956 be read a second and third time.

Carried

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- 5.2 Bylaw No. 8986 (Z02-1060) – Ian & Marguerite Sisett – 518 McKay Avenue

Moved by Councillor Day/Seconded by Councillor Cannan

**R297/03/04/01** THAT Bylaw No. 8986 be read a second and third time.

Carried

- 5.3 Bylaw No. 8987 (OCP02-0013) – Ivanhoe Cambridge Inc. (IBI Group) – 2430 Highway 97 North **requires majority vote of full Council (5)**

Council:

- The initial plan indicated the development in the fairways and the trees being retained; disappointed that the trees are now not being retained.

Moved by Councillor Shepherd/Seconded by Councillor Clark

**R298/03/04/01** THAT Bylaw No. 8987 be read a second and third time.

Carried

Councillor Cannan opposed.

- 5.4 Bylaw No. 8988 (Z02-1045) – Ivanhoe Cambridge Inc. (IBI Group) – 2430 Highway 97 North

Moved by Councillor Clark/Seconded by Councillor Shepherd

**R299/03/02/01** THAT Bylaw No. 8988 be read a second and third time.

Carried

Councillor Cannan opposed.

- 5.5 Bylaw No. 8991 (OCP02-0015) – The Kirschner Family (Allan Kirschner and Dan Middal) – 2045, 2053 and 2061 Garner Road, 1625 Verdure Road and 2980 Gallagher Road **Requires majority vote of full Council (5)**

Moved by Councillor Given/Seconded by Councillor Horning

**R300/03/04/01** THAT Bylaw No. 8991 be read a second and third time.

Carried

- 5.6 Bylaw No. 8992 (Z02-1015) - The Kirschner Family (Allan Kirschner and Dan Middal) – 2045, 2053 and 2061 Garner Road, 1625 Verdure Road and 2980 Gallagher Road

Moved by Councillor Given/Seconded by Councillor Horning

**R301/03/04/01** THAT Bylaw No. 8992 be read a second and third time.

Carried

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- 5.7 Bylaw No. 8989 (Z02-1059) – Mission Shores Developments (David Tyrell Architect) – 3866-3884 Truswell Road

Staff:

- Will follow-up with the applicant with respect to the willingness he expressed at the public hearing to restrict use of the site to what is proposed with this application, preclude a future secondary business such as public nightclub or retail outlets, and restrict the maximum length of stay to 240 days.

Moved by Councillor Horning/Seconded by Councillor Given

**R302/03/04/01** THAT Bylaw No. 8989 be read a second and third time, and be adopted.

Carried

Councillors Clark, Hobson and Shepherd opposed.

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

- 6.1 Planning & Development Services Department, dated February 24, 2003 re: Liquor Licensing Application No. LL03-0001 – 475872 BC Ltd. (Gotcha Nightclub) – 238 Leon Avenue

Staff:

- Gotcha's Nightclub is requesting an increase in the licensed person capacity of the cabaret from 313 to 405.
- The existing club is on Lot 7 and the intent is to expand the cabaret onto the adjacent lot. This is deemed to be a structural change to the premises and therefore Council support is required.
- The RCMP is represented on the Mayor's Entertainment District Task Force and will not support any new applications or extensions until the task force mandate is fulfilled.
- Staff recommend non support because of the uncertain impact of the expanded capacity on the downtown and because of the work being undertaken by the Mayor's task force.

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

- letter of support from The Webster Group, 205-251 Lawrence Avenue;
- letter of opposition from Richard Sharpe, 505-1585 Abbott Street;
- late letter of opposition from Berge Horn, 215 Lawrence Avenue;
- late letter received just before tonight's meeting from Tom Smithwick of Porter Ramsay, solicitors for Gotcha Nightclub, copying three letters of support from The Webster Group, La Bussola Restaurant (238 Leon Avenue) and Fat Daddy's Pizza (265 Leon Avenue).
- late letter of support submitted at tonight's meeting from Renny Latour, 185 Nickel Road.

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

Tom Smithwick, representing the applicant:

- Correction – the current capacity allowable is 333 and that would be increased to 425.
- Hours of operation are currently 7 p.m. to 2 a.m. The majority of patrons come from 10 p.m. on. Other than during the summer, on most week nights there are only around 100 patrons in the club. Summer is the busy time with the heavy contingent of tourists looking for places to go.
- The local liquor inspector has reviewed and supports the application.
- The additional 92 seats would be on the second floor of the adjacent building and would be designated as more of a sports bar with separate exits and washrooms. The Fire Marshall was pleased with the expansion area because it is completely concrete enclosed.
- The two letter of opposition are from a strata unit and a legal firm, both more than a block away from the subject property.
- The letters of support are from immediate neighbours.
- Just received a letter of support from a business owner who left the downtown.
- Façade improvements are proposed along the full frontage of the nightclub. The building being expanded into is currently vacant on the main floor but would have a full day time use.

Council:

- Considered supporting the alternate recommendation in the staff report but with the capacity increase up to 429 persons, subject to Building Code approvals.
- Concerned this could set a precedent and agreed to wait to consider the report from the Mayor's Entertainment District Task Force which is targeted for early May.

Moved by Councillor Shepherd/Seconded by Cannan

**R303/03/04/01** THAT further consideration of Liquor Licensing Application No. LL03-0001 (Gotcha Nightclub – 238 Leon Avenue) to increase the licensed person capacity of the cabaret be deferred until such time as the Mayor's Entertainment Task Force reports to Council.

Carried

Councillors Day and Horning opposed.

## 7. PLANNING

7.1 Planning & Development Services Department, dated March 10, 2003 re: Development Permit Application No. DP02-0118 and Development Variance Permit Application No. DVP02-0119 – Mission Shores Developments (David Tyrell Architect) – 3866-3884 Truswell Road

Staff:

- Showed the proposed building elevations in the revised plans and the proposed landscape plan indicating significant landscape enhancements along the side and front property lines and appropriate landscaping along the waterfront.
- The requested variance along the north property line is no longer needed.
- Sightline encroachments have been resolved for the Butler property but are a factor for the Truswell property. However, staff will be coming forward in the near future with a request for Council to delete this portion of the bylaw because of difficulties in applying the sight line requirements over the years.
- Staff recommend support for both the DP and the DVP.

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

Vaughn Sinotte, Sinotte & Company, Barristers & Solicitors:

- Representing Bud & Diane Truswell, 3896 Truswell Road.
- Infrastructure requirements should be addressed prior to issuance of the Development Permit to ensure they get done.
- Truswell's do not support granting any of the requested variances.
- The Truswells have owned their property for a long time and have no contemplation of selling it nor would they support a temporary public access along their property line.

Christopher (Kip) Butler, representing his mother, Lois Butler, owner of Lot 9 to immediate north:

- Shocked at the representations of the facts by the applicant's development team. What has been done is just tinkering and tokenism; the changes that have been made are completely motivated by the developer and are not an accommodation of Mrs. Butler's concerns. The impact on her property would be severe, during and after construction.
- The form and character of this development is contrary to the City's Shorezone Plan.
- The shore line has changed dramatically since 1939 as a result of accretion.
- Based on his interpretation, the sight line bylaw has been incorrectly applied by City staff.

Chris Fraser, representing the Daltons, 3848 Capozzi Road:

- The sight line bylaw refers to buildings and structures and that should include the proposed marina.
- A variance should also be required for the marina since some of the boats are likely to be cabin cruises that can be up to 17 ft. high.
- Asked that Council give the same credence to the opinion of the neighbours in this application as they did with the previous liquor licensing application from Gotcha's Night Club.

Mr. Tostenson, representing his parents who live at 3838 Capozzi Road:

- Disappointed that the zoning was approved even though the entire neighbourhood was opposed and would be impacted.
- The development is oversized for the amount of beach area that is available.
- Concerned about parking.
- Some of the beach that is on the subject property now was created by pulling sand from the creek and not from natural accretion.

Mr. Hulbert, representing the applicant:

- The changes to the application were made as a result of the public input at the Advisory Planning Commission meeting.
- There is a significant amount of beach.
- A geotechnical assessment was done to make sure they could build on the accreted land.
- The boardwalk is being provided at the request of City staff. Will work with Planning to ensure that the privacy of the neighbours is protected if the boardwalk proceeds.
- The porte-cochere is being provided at the request of City staff and is not critical to the success of the development.

Staff:

- City Parks Division staff post signs everywhere that the City takes a foreshore dedication to show the delineation between the public land and private land.
- The Ministry of Air Water and Land Protection specifies sediment and erosion control measures to protect the lake frontage during the development phase.

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Council:

- Agreed to deal with the DP and DVP separately.
- Agreed to a friendly amendment to the staff recommendation to eliminate the variance for a projection into the north side yard.

Moved by Councillor Cannan/Seconded by Councillor Hobson

**R304/03/04/01** THAT Council authorize the issuance of Development Variance Permit No. DVP02-0018; Lots A, B, C, D and E; Sec. 1, Twp. 25, ODYD Plan KAP637760, located on Truswell Road, Kelowna, B.C.;

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

**Section 6.4: Projections into Yards:**

- Vary the maximum projection length for projections into a required front yard from 0.6 m permitted to 6.0 m proposed;
- Vary the maximum projection length for projections into required south side yard from 0.6 m permitted to 1.8 m proposed;

**Section 6.11: Okanagan Lake Sight Lines:**

- Vary the Okanagan Lake Sight Line requirement for the south side of the proposed development to 15°.

Carried

Councillors Cannan, Clark, Hobson and Shepherd opposed.

Moved by Councillor Blanleil/Seconded by Councillor Cannan

**R305/03/04/01** THAT Council authorize the issuance of Development Permit No. DP02-01119 for Lots A, B, C, D and E; Sec. 1, Twp. 25, ODYD Plan KAP637760, located on Truswell Road, Kelowna, B.C. subject to the following:

1. The dimensions and siting of the buildings 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;

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.

Carried

Councillors Cannan, Clark and Shepherd opposed.

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8. BYLAWS

**(BYLAWS PRESENTED FOR FIRST READING)**

8.1 Bylaw No. 8990 (Z03-0001) – Darrell Helfrich – 240 Sadler Road

Moved by Councillor Blanleil/Seconded by Councillor Cannan

**R306/03/04/01** THAT Bylaw No. 8990, 8996, 8999 and 9000 be read a first time.

Carried

8.2 Bylaw No. 8996 (Z03-0005) – Jean-Anne Copley and Joseph Popoff – 477 Osprey Avenue

See resolution adopted under agenda item No. 8.1.

8.3 Bylaw No. 8999 (TA03-0003) - Al Stober Construction (Mark Stober) – 1620/1632 Dickson Avenue

See resolution adopted under agenda item No. 8.1.

8.4 Bylaw No. 9000 (Z03-0006) – Bob Volk – 795 Hollywood Road  
*To rezone the property from RU1 – Large Lot Housing to RU1s – Large Lot Housing with Secondary Suite to legalize an existing secondary suite in an accessory building.*

See resolution adopted under agenda item No. 8.1.

9. REMINDERS

(a) Ability to Receive Public Input on Development Permit Applications

Staff to review the *Local Government Act* to clarify whether it provides municipalities with the ability to receive public input at the Development Permit stage and report back to Council.

(b) Travel Authorization

Moved by Councillor Shepherd/Seconded by Councillor Horning

**R307/03/04/01** THAT the Mayor Gray be authorized to travel to Ottawa on April 6, 2003 and returning on April 8, 2003 to discuss the Beaver Aircraft proposal, with expenses paid in accordance with Council Remuneration and Expense Bylaw No. 7547, using funds from Account No. 351-10-011-0-001.

Carried

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10. TERMINATION

The meeting was declared terminated at 2:04 a.m.

Certified Correct:

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Mayor

City Clerk

BLH/am