

A Public Hearing of the Municipal Council of the City of Kelowna was held in the Council Chamber, 1435 Water Street, Kelowna, B.C., on Tuesday, May 4, 2004.

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; Deputy City Clerk, S.C. Fleming; Director of Planning & Corporate Services, R.L. Mattiussi; Manager of Development Services, A.V. Bruce; Subdivision Approving Officer, R.G. Shaughnessy; and Council Recording Secretary, B.L. Harder.

(* denotes partial attendance)

1. Mayor Gray called the Hearing to order at 5:05 p.m.
2. Mayor Gray advised that the purpose of the Hearing is to consider certain bylaws which, if adopted, will amend "*Kelowna 2020 - Official Community Plan Bylaw No. 7600*" and "Zoning Bylaw No. 8000", and all submissions received, either in writing or verbally, will be taken into consideration when the proposed bylaws are presented for reading at the Regular Council Meeting which follows this Public Hearing.

The Deputy City Clerk advised the Notice of this Public Hearing was advertised by being posted on the Notice Board at City Hall on April 16, 2004, and by being placed in the Kelowna Daily Courier issues of April 26 and April 27, 2004 and in the Kelowna Capital News issue of April 25, 2004, and by sending out or otherwise delivering 574 letters to the owners and occupiers of surrounding properties between April 16 and April 21, 2004.

The correspondence and/or petitions received in response to advertising for the applications on tonight's agenda were arranged and circulated to Council in accordance with Council Policy 309.

3. INDIVIDUAL BYLAW SUBMISSIONS

3.1 **1441 Springfield Road**

- 3.1 Bylaw No. 9206 (Z04-0005) – Ronald and Sharon Egert – Springfield Road – THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot B, Section 19, Township 26, ODYD Plan 35362, located on Springfield Road, Kelowna, B.C., from the RU2 – Lot Housing zone to the RU2s – Medium Lot Housing with Secondary Suite zone.

Staff:

- The applicant is proposing to develop the lower floor of the existing dwelling for a secondary suite.
- There are RU6 zoned properties to the north in the Five Bridges Neighbourhood area; within the immediate area most properties are zoned either RU2 or RU1 indicating single or two unit housing.
- Staff do not recommend support primarily because of the location of the property on Springfield Road and issues to do with on-site parking. The applicant intends to make the carport a driveway, with 3 parking stalls and a turn-around area in the rear yard so that vehicles do not have to back out onto the street.

Councillor Blanleil entered the Council Chamber at 5:10 p.m. and took his place at the Council Table.

The Deputy City Clerk advised that the following correspondence and or petitions had been received:

- letter of opposition from Fay & Ed Watson, 2100 Kaslo Court
 - letter of opposition from Garry & Pat Grigg, 1400 Springfield Road
 - letter of opposition from Werner & Hildegard Kimmich, 2106 Kaslo Court
- Opposed generally because of lack of parking and negative impact on property values.
- two form letters of support from Rodrigo Cabero, 1431 Springfield Road and Violet Neiser, 1461 Springfield Road.

Mayor Gray invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Ron Egert, applicant:

- The direct neighbours on either side are in support.
- The application is consistent with OCP and Strategic Plan objectives to increase densities in urban areas.
- Parking appears to be the main concern. The complaints from the area residents are about the previous owners.
- The wiring and separate entrance would indicate that there must have been a suite in the dwelling at one time.
- Has made improvements to the home since purchasing the property in August 2003, and will make more if this application is approved.
- Right now, the house is rented out to a tenant who is occupying the entire house.
- The intent would be for the upstairs tenants to approve who would rent the downstairs suite.
- The suite would also serve as a mortgage helper for a prospective new owner.

There were no further comments.

3.2 1832 and 1844 Ambrosi Road

- 3.2 Bylaw No. 9207 (Z04-0009) – Mamre Holdings Inc./Renee Wasylyk – Ambrosi Road – THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lots 4 and 5, Block 1, District Lot 129, ODYD Plan 5109, located on Ambrosi Road, Kelowna, B.C. from the RU1 – Large Lot Housing zone to the C5 – Transition Commercial zone.

Staff:

- The applicant is rezoning three lots (one under a separate rezoning application) to facilitate development of a new mixed use building with ground floor commercial uses, and an additional commercial area, amenity space and five residential units on the upper floor.
- Parking would be accessed from the lane at the rear of the property.
- The application is consistent with the OCP future land use designation.
- The Advisory Planning Commission recommends support.

The Deputy City Clerk advised that no correspondence or petitions had been received.

Mayor Gray invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Phil MacDonald, Architect, representing the applicant:

- Circulated artist's renderings of the proposed project, noting the design is intended to integrate a New England townscape idea and be in keeping with developments south of Ambrosi.
- Assured Council that the form and character of the development would be as indicated in the renderings.
- The second floor includes a terrace area and conference space which is intended for use by the residents of the 5 units and the commercial space tenancies.

There were no further comments.

3.3(a) 1170 Band Road

- 3.3(a) Bylaw No. 9211 (OCP03-0014) – John and Ingrid Paavilainen (New Town Planning/Keith Funk) – Band Road – THAT Map 19.1 of Kelowna 2020 - Official Community Plan Bylaw No. 7600 be amended by changing the Future Land Use designation of part of Lot 2, Sec. 13, Twp. 26, ODYD, Plan 13388, located on Band Road, Kelowna, B.C., from the Single/Two Unit Residential designation to the Multiple Unit Residential (Low Density) designation as shown on Map "A" attached to the report of Planning & Corporate Services Department dated March 30, 2004.

Councillor Day declared a conflict of interest because he owns property within the notification area for the subject application and left the Council Chamber at 5:24 p.m.

Staff:

- The OCP amendment and rezoning are required in order to re-activate the congregate care facility on the subject property. The 22-bed facility had been in operation prior to annexation with the City of Kelowna; operation of the facility was considered a legal non-conforming use as the property was zoned A1 – Agriculture.
- The care home has not been operated since January 2002. As the use has been discontinued for longer than six months, it no longer retains the legal non-conforming status. The only way to start up the operation again is to rezone.
- The subject property is 5.15 ha in size and the OCP amendment and rezoning applications only apply to the 0.34 ha portion containing the care home. The balance of the property would remain zoned A1 – Agriculture 1.
- There is no planned subdivision to go along with this rezoning so the property would remain one titled lot.
- Fire Department and Inspection Services Department requirements would have to be met for the care home to be re-opened.
- The Advisory Planning Commission recommends support subject to a housing agreement registered on title to restrict the use to a congregate care facility.

The Deputy City Clerk advised that the following correspondence and or petitions had been received:

- letter from Norman & Linda Monti, 1160 Band Road, stating that they are opposed and will be at tonight's meeting to give their reasons.
- two letters from Tony Balisky, 1240 Band Road, opposed generally on the basis that the application is not keeping within the intent of the OCP.

Mayor Gray invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Keith Funk, applicant:

- The applicants have someone interested in running the facility.
- The Ministry of Transportation is allowing the applicants to continue to use Band Road as primary access to the facility.
- Have initiated design work for installation of a fire hydrant and the width of driveway and other issues would be resolved prior to adoption of the bylaw.
- The Interior Health Authority is sending a letter saying the existing septic facility is adequate. That letter will be in hand prior to adoption of the bylaw.
- Invited everyone within 100 m to attend a public meeting and found that the main concern was that this property was going to be connected to the adjacent subdivision. That is not the case so the concerns were mitigated.
- The owners have no intention to subdivide or develop the property. They only want the RM3 zone for the care home and so have no concerns about entering into a housing agreement.

Tony Balisky, 1240 Band Road:

- His property is immediately adjacent, to the east.
- Is opposed to any zoning changes at this time. The proposed rezoning is not consistent with the R1 zoning of the area and would give the applicants financial gain and leave the surrounding properties with all the roads.
- Purchased his property in 1998 with the understanding that Ray Road would be extended to connect to the properties to the east.
- The applicant stated at the Advisory Planning Commission meeting that he thought the facility is on sewer. Septic systems are of concern in the Black Mountain area. When the care home was in operation, the septic odour was bad in that area. Since the home has been shut down, the smell has returned to normal.
- The applicants have put up fence posts along the property boundary on Band Road. Concerned about potentially hitting the posts in bad weather while travelling on his narrow 10 ft. wide easement lane.

Staff:

- Normally the applicant would be required to service the property with sewer but since the proposed care home is simply a continuation of a use that existed previously, sewer and road reserve requirements have been deferred until such time as a future development application is received for the property.
- If the property was being subdivided, the applicant would be required to dedicate access to lands beyond.
- The Council of the day would have to discharge the housing agreement in order for the property to be used for anything other than a 22 bed care home facility.

Don Wilkins, 1035 Toovey Road:

- Has no problem with the RM3 zoning but concerned that RM3 does not get carried on beyond the parcel under consideration.
- The road map shows Toovey Road carrying on into the new subdivision. However, City staff have agreed Toovey is not wide enough and not of a sufficient width to handle the traffic. The sharp curves on Toovey will not allow access to a fire truck.

Terry Webster, 1150 Band Road:

- Opposed to the reopening of the care home facility.
- The road from Band Road to the subject property is not on the legal easement; it is on his property. The road is narrow and steep and cannot handle the traffic generated by the care home.
- When the care facility was in operation sewer seeped into his back yard and the odour was bad. He complained and the health authorities came out and determined that it was not contaminated enough to require taking action.

- Concerned that reopening the facility would devalue his property.
- At the time the applicant talked to him and asked if he had concerns about reopening the care home, did know that the applicant was going to apply to rezone. Also since then, he has learned that the driveway is on his property and not within the registered easement, and that he would be liable if something happened to someone because the road was not safe.
- The City does not usually get involved in an easement other than having a say in granting or quit claiming it. Whether or not the road is within the registered easement is an issue between the land owners. The existing driveways have been in place for a long time and staff take at face value that the easements are binding. When the property develops, legal and physical access to the property would be looked at as part of the subdivision process.

Linda Monti, 1160 Band Road:

- Displayed a copy of a survey showing the existing easement, property and driveway.
- Opposed to the zoning change and also opposed to any changes to the area concept plan.
- Does not have legal access to her 4.71 acre property; access to her property is currently via the easement road on Mr. Webster's property. Was relieved when the care home closed because it reduced the amount of traffic on the easement lane. The residents using the easement roadway should not have to deal with additional traffic on this dangerous narrow driveway, particularly in inclement conditions.
- In 1990 the owners of the subject property denied legal access to her property via easement. The applicant has told her that he has no intention of subdividing the subject property for 15-20 years. She is unable to sell or redevelop her property without legal access. The applicant should have to provide proper roads and services and is giving no consideration to the growth in the community or to development of the surrounding neighbours' properties.
- The odour from effluent was a problem when the care home was in operation.

Keith Funk, representing the applicant:

- Displayed a copy of an access easement registered in 1962 across the abutting property noting the easement covers the northeast corner of the abutting property and the survey pin does not provide for providing access to Ms. Monti's property.
- The grade of the driveway is adequate, it is the width of the driveway that is an issue and that will be addressed.
- The Ministry of Transportation have determined that traffic on the road would not be excessive.
- Ultimately the subject property will be subdivided and serviced with urban services but not in the foreseeable future. The applicant can have two zones on title with one access to re-grandfather the care home use.
- The sole reason why the care home was decommissioned was because the grant monies were cut but now there are different ways of funding it so now they want to reopen the facility.

Kelly Whitehouse, applicant:

- The easement is substantially wider than the road itself so has the ability to expand the road width. However, the property also has frontage on other properties and so the existing driveway is not their only option for access.
- The Interior Health Authority has said that provided the use of the facility is not changed, they are satisfied with the existing septic system. Has never had any issues with the septic; however, sanitary sewer is within about 150 m of the subject property.
- The road can be expanded to the required 6 m width all within the existing legal easement but may have to bring the road in from somewhere else to meet the requirements of the Fire Department. Will do whatever it takes to satisfy the Fire Marshall.

Keith Funk, representing the applicant:

- The applicant is willing to commit to direct access to a public road, where approved by the Fire Marshall, rather than access over the easement and will leave the easement for the other properties that use the easement today.

Moved by Councillor Blanleil/Seconded by Councillor Shepherd

P426/04/05/04 THAT the portion of this Public Hearing dealing with Bylaw No. 9211 (OCP03-0014) and Bylaw No. 9212 (Z03-0071 – Paavilainen – 1170 Band Road) be adjourned to the Regular Meeting of Tuesday, May 18, 2004 in order to receive specifics regarding the proposed primary access road to the property and the feasibility of the property connecting to sanitary sewer.

Carried

3.3(b) 1170 Band Road

- 3.3(b) Bylaw No. 9212 (Z03-0071) – John and Ingrid Paavilainen (New Town Planning/Keith Funk) – Band Road – THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of part of Lot 2, Sec. 13, Twp. 26, ODYD, Plan 13388, located on Band Road, Kelowna, B.C., from the A1 – Agriculture 1 zone to the RM3 – Low Density Multiple Housing zone as shown on Map "B" attached to the report of the Planning & Corporate Services Department dated March 30, 2004.

See discussion under 3.3(a).

Councillor Day returned to the Council Chamber at 7:10 p.m. and took his place at the Council Table.

3.4 5570 Lakeshore Road

- 3.4 Bylaw No. 9213 (Z04-0017) – Edgar Fenwick and Corneil Therrien – Lakeshore Road – THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot B, Sec. 15, Twp. 28, SDYD, Plan KAP59239, located on Lakeshore Road, Kelowna, B.C. from the A1 - Agriculture 1 zone to the A1s – Agriculture 1 with Secondary Suite zone.

Staff:

- The house burned in the Okanagan Mountain Park forest fire and a new principle residence has been built in a new location. The applicant is now proposing to construct an accessory building with secondary suite.
- The applicant has received approval in principle from the public health authority for the location of the septic field.

The Deputy City Clerk advised that the following correspondence and or petitions had been received:

- letter of support from Jennifer Hindle, 5560 Lakeshore Road.

Mayor Gray invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. There was no response.

3.5 Near Swainson Road, Swainson Road, North of Joe Riche Road, and 2350 Joe Riche Road

- 3.5 Bylaw No. 9208 (Z03-0066) – Bell Mountain Estates Ltd. / Black Mountain Irrigation District (Marlin Weninger) – Swainson Road, Swainson Road N of Joe Riche Road and Joe Riche Road – THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of part of Lot D1, Secs. 3 & 19, Twp. 27, ODYD Plan 1760, Except Plan 33849; part of Lot A, Secs. 18 & 19, Twp. 27, ODYD Plan 16599; part of Lot A, Secs. 19, Twp. 27, ODYD Plan 31717; part of Lot B, Sec. 19, Twp. 27, ODYD Plan 31717; and part of Lot 8, Secs. 18 & 19, Twp. 27, ODYD Plan 1991, located on Swainson Road, Kelowna, B.C., from the A1 – Agriculture 1 zone to the RU1h – Large Lot Housing (Hillside); RU1hs – Large Lot Housing (Hillside/Suite); RU4 – Low Density Cluster Housing; RM3 – Low Density Multiple Housing; and P3 – Parks and Open Space zones as shown on Map "A" attached to the report of Planning & Corporate Services Department dated March 22, 2004.

Councillor Day declared a conflict of interest as owner of adjoining property, for this application and the next application under Item No. 3.6 on the agenda, and left the Council Chamber at 7:13 p.m.

Staff:

- The applicant is proposing to rezone a 58 ha portion of the subject properties which comprise 115 ha to facilitate a residential golf resort development.
- The proposed rezoning and the associated 35 lot subdivision forms part of phase 2 of the Bell Mountain Estate Area Structure Plan development which was approved by Council in October 2003. Phase 1 was approved in February 2004 for a 17 lot subdivision at the southwest corner of the property.
- The concept plan for Phase 2 of the development includes an 18-hole championship golf course, 20 units of low density multi-family at the entrance to the site, 35 single family fairway lots with the larger lots having the ability to have a caretaker suite, and 14 units of single and semi-detached residential villas in a cluster format. A total of 98 units would be allowed to develop in this phase, along with the golf course.
- Bell Mountain development roads would be built to hillside development standards.
- The building theme would be Tuscany style to blend in with the existing landscape. Design guidelines would be in place to enforce the building theme and to encourage planting of local plant species to reduce water consumption.
- Covenants would be registered for all steep slopes and environmentally sensitive areas.
- Final adoption of the subject bylaw would be withheld pending Ministry of Transportation (MOT) approval of the bylaw and they will only approve the bylaw once the new intersection at Gallagher and Highway 33 is designed and bonded for. Ultimately Begley will be closed and realigned west into Gallagher Road and then that intersection will be signalized. It is up to MOT when the realignment and signalization of this intersection is done.
- Staff are working with the developer and the Duncan Crescent residents who want the road realigned around an existing wetland on the City-owned (former Kopetski) property that the applicant is negotiating to buy. The applicant has agreed to preserve the wetland.
- Staff are also negotiating with MOT regarding signalization at Highway 33 and Loseth Road.
- The Advisory Planning Commission recommends support with no conditions.
- The application is in keeping with the Bell Mountain Area Structure Plan and the OCP.

The Deputy City Clerk advised that the following correspondence and or petitions had been received:

- letter of opposition from Gary & Anita Scott, 1309 Begley Road
 - two letters of opposition from Duncan & Marilee Goheen, 1269 Begley Road
- opposed generally on the basis that the development would add more traffic to the already dangerous intersection of Begley Road and Highway 33, concerns about pesticides being used on the golf course, the amount of water resources needed for a housing and golf course when water supply is already low, location of the new access road would "sandwich" the homes on Duncan Drive, cause concerns about the safety of the children on Duncan Drive, and be noisy and disturb the existing character of the neighbourhood.
- letter of conditional support from Fred Behrner, 1870 Treetop Road, provided that before the development is approved, a second lane is added on the long hill going up Highway 33 at least to Begley Road.

Mayor Gray invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Marlin Weninger, applicant:

- The major concern was the wetlands on the City-owned (Kopetski) property and he has already agreed that the road will be re-aligned to go around the wetlands.
- The Ministry of Transportation is requiring that the Begley Road/Highway 33 intersection be closed off and the traffic redirected onto Bell Mountain Drive hopefully, rather than Gallagher Road. Full signalization of that intersection would not be required until the first 100 units which would be at phase 3.
- Assured Council that drainage would be retained on the golf course and that environmentally friendly fertilizers, etc. would be used.
- There is a pond around the 5th hole that is now a dust bowl but that will be made into a 1½ to 2 acre lake and the intent is to introduce plant life and turtles into the pond.
- The proposed village centre concept has a commercial area and resort as phase 3. This would be the obvious spot for transit and the trail network would provide for pedestrian access to the town centre.
- The Black Mountain Irrigation District has provided assurance that there is ample water for the subject development and for the Kirschner Mountain and Tower Ranch developments.

There were no further comments.

3.6 1374, 1495 Highway 33 East and 1177 Oswell Drive

- 3.6 Bylaw No. 9214 (Z03-0033) – John, Patricia, Walter, Henk Verwoerd; Romesha Ventures Inc.; John and Sarina Weisbeck (David Pauls/D.E. Pilling & Associates Ltd.) – Highway 33 East and Oswell Drive – THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Part of Lot 2, Sec. 13, Twp. 26, ODYD, Plan 14039 except Plans H8433 and KAP72297; Part of Lot 3, Sec. 13, Twp. 26, ODYD, Plan 14039; and Lot 14, Sec. 13, Twp. 26, ODYD, Plan KAP72297, located at Highway 33 & Oswell Drive, Kelowna, B.C., from the A1 – Agriculture 1; RR3 – Rural Residential 3; RU1 – Large Lot Housing zone to the RU1h – Large Lot Housing (Hillside Area) zone as shown on Map "A" attached to the report of Planning & Corporate Services Department dated February 24, 2004.

Staff:

- The hillside area designation has been requested due to the topography of the subject properties which are at a 17% grade.
- The rezoning would facilitate a 65 lot subdivision that would be accessed via an extension of Loseth Drive, which will continue north to serve future development.
- The Advisory Planning Commission recommends support with no conditions.

Public Hearing

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The Deputy City Clerk advised that no correspondence or petitions had been received.

Mayor Gray invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. There was no response.

4. TERMINATION:

The Hearing was declared terminated at 7:40 p.m.

Certified Correct:

Mayor

Deputy City Clerk

BLH/am