

Public HearingAugust 24, 2004

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, August 24, 2004.

Council members in attendance were: Mayor Walter Gray, Councillors R.D. Cannan, B.A. Clark, C.B. Day*, B.D. Given, R.D. Hobson, E.A. Horning and S.A. Shepherd.

Council members absent: Councillor A.F. Blanleil.

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

(* denotes partial attendance)

1. Mayor Gray called the Hearing to order at 7:05 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 Acting Deputy City Clerk advised the Notice of this Public Hearing was advertised by being posted on the Notice Board at City Hall on August 6, 2004, and by being placed in the Kelowna Daily Courier issues of August 16 & 17, 2004, and in the Kelowna Capital News issue of August 15, 2004, and by sending out or otherwise delivering 402 letters to the owners and occupiers of surrounding properties between August 6-10, 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 1703 Lynrick Road

- 3.1 Bylaw No. 9282 (Z04-0042) – Jim Gretzinger (Serko Property Services) – Lynrick Road – THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of part of Lot A, Sec. 18, Twp. 27, ODYD, Plan 25460, Except Plan KAP53392, located on Lynrick Road, Kelowna, B.C., from the A1 – Agriculture 1 zone to the RU1 – Large Lot Housing zone and the RU6 – Two Dwelling Housing zone.

Staff:

- The applicant proposes to subdivide the property into 3 lots. The middle lot and the lot to the north with the existing house would be zoned RU1. The lower lot adjacent to Gopher Creek would be zoned RU6.
- The application is consistent with the future land use designation in the OCP and the Black Mountain Sector Plan.
- The Advisory Planning Commission recommends support.

The Acting 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.

Larry Serko, applicant:

- Briefly outlined the history behind this application and advised that enough land was left as a parcel remainder when the park site was dedicated to accommodate a future subdivision, which is the subdivision that is proposed today.

There were no further comments.

3.2 2901-2975 Abbott Street and 408-416 Groves Avenue

- 3.2 Bylaw No. 9283 (OCP04-0004) and Bylaw No. 9284 (Z04-0010) – James & Lynda Knight Gerald & Delores Dignan, Daryl, Johnny, Danny Lynette McLean, Jamie Davies, David & Charles Ross (Coast Architectural Group) – Abbott Street and Groves Avenue – THAT Map 15.1 of *Kelowna 2020* - Official Community Plan Bylaw No. 7600 be amended by changing the Future Land Use designation of Lots 2 and 3, Block 1, D.L. 14, ODYD Plan 4743, located on Abbott Street, Kelowna, B.C., from the Major Park/Open Space designation to the Multiple Unit Residential – Medium Density designation;

AND THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lots 2, 3, 4 and 5, Block 1, D.L. 14, ODYD Plan 4743 and Lots 1, 2 and 3, D.L. 14, ODYD Plan 3856 located on Abbott Street and Groves Avenue, Kelowna, B.C. from the RU1 – Large Lot Housing zone to the RM5 – Medium Density Multiple Housing zone.

Staff:

- The proposed OCP amendment would change the future land use of two of the properties on Abbott Street from Park to Multiple Unit Residential. The two lots were intended to provide a link to the West Avenue Park site. The park link would still be achieved, but in a somewhat creative manner; the proposed building would be designed to allow for a 2-storey, 10 m wide portal or entranceway that would line up with the West Ave Park. Housing units would be above the portal.
- The Rezoning Application includes seven lots along the east side of Abbott Street adjacent to the West Avenue Park and along West and Groves Avenues.
- The subject application was submitted shortly after the moratorium on development was put in place pending a review of the Cedar Avenue Land Uses.
- The Cedar Avenue Land Use Review generally supported Medium Density Multi-Family Housing, Low Density Multi-Family Housing, Commercial and Parks and Open Space.
- The existing lane along the east side of the park and linking into Abbott Street would be closed and amalgamated with the lots on the east side incrementally as they develop. The lane on the north side would be closed and added to the park. There is no existing lane from West Avenue into the park but there would be pedestrian access to the park. Each side of the building would have its own under-building parking with some surface parking.
- In order to address concerns of the adjacent property owner, the location for the refuse container would be changed from the fence line to up against the proposed building. As a result, the surface parking at that location would be reduced to one stall.
- Displayed plans showing building elevations to show the quality of architecture proposed and how the buildings have been stepped back on the upper floors.

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- There has been significant consultation with the applicant and City Parks staff feel the entrance to the park could be a real amenity to the park with the correct lighting and signage.
- Landscape plans indicate a significant buffer along the street sides of the property and along the eastern boundary.
- The proposal includes 4 storeys of development above the parkade and so a ½ storey height variance would be required. The site coverage variance that was contemplated is no longer required.

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

Opposition:

- Cathy Richards, 424 Groves Avenue
- Stephen & Cindy Fuller, 441 Groves Avenue
- Barry & Alison McDivitt, 408 West Avenue
- Dawn Mitchell, 447 Groves Avenue
- Robert & Jacqueline Tames, 417 Groves Avenue
- Dawn Mitchell, 447 Groves Avenue
- Judy Kent, 431 Newsom Avenue

Opposed generally because of concerns that traffic would increase; the increased traffic congestion would increase the danger for children in the area; lack of parking; property taxes would increase; the surrounding neighbours would lose their view and midday sun; the water table is too high to accommodate underground parking; the proposed location for the industrial size refuse bins would negatively impact the adjacent neighbour; and the proposed building height is too high and would not provide a smooth transition from the current single family dwellings.

Support:

- Jean Anne Copley, 477 Osprey Avenue
- Dena Anastasi & David Courte, 2970 Pandosy Street
- Christopher J. Osler, 461 West Avenue
- Bill & Carla Irvine, 414 West Avenue
- William A. Jones, 470 Groves Road
- Clara Johnston, 2974 Pandosy Street
- Owners of "Funktional" gift shop, 2942 Pandosy Street
- Candy Wilson, (Hennie's Hair Salon), 3101 Pandosy Street
- Anita Boisver, (Mission Sports), Mission Park Shopping Mall
- Joanne Jacobsen, (Sports Rent), 3000 Pandosy Street
- Lucy Gagnon, 423 West Avenue

In favour generally on the basis that the concept is attractive and conducive to the nature of the neighbourhood; the style of the development is helping to create "the urban centre" that the City of Kelowna has envisioned for the area; the development would improve the quality of the neighbourhood and increase the value of the surrounding properties; West Avenue Park would be opened up and cleaned up, this should discourage the drug use and transients from using the park; this kind of development encourages customers to shop locally; and the development encourages more foot and bicycle traffic.

The Acting Deputy City Clerk further advised that letters of support were submitted just prior to the Public Hearing, from the following:

- Judy Johnson, Tutt Street Square
- Dr. T.A. O'Farrell, 2982 Abbott Street
- Phylis & Henry Tostenson, 3838 Capozzi Road
- Lawrence Salloum, Pine Hill Resources Ltd., 327 Bernard Avenue

In favour generally on the basis that the project would be an asset and would impact the neighbourhood positively.

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, representing the applicant, Coast Architectural Group:

- The project is called 'Abbott House' and is in compliance with the City of Kelowna Strategic Plan, OCP and area Sector Plan and fits in with the community.
- Outlined neighbourhood communications including two APC meetings - went back a second time because the project was initially considered with a diagonal access to the park however City Parks staff wanted a straight in access which meant that the developer had to buy another lot and adding the land to the project required another APC meeting; neighbourhood information flyers; a residents association presentation; resident and business person interviews; letters and emails; and advocacy meetings with staff.
- The developer is prepared to integrate the Development Permit as outlined tonight with the Rezoning as soon as the property can be consolidated.
- The area has a high water table and so under-structure parking has to be out of the ground somewhat and that pushes the building height to 4.5 storeys. The overall permitted height is 16.5 m and this proposal is 15.8 m from natural elevation.
- Showed the proposed building elevations (west, east, south) and the portal feature through to the park.
- Extensive landscape treatment is proposed.
- The lower floor units would all have sidewalk access in addition to access by internal corridors.
- Showed a photo of the 2-storey house facing onto West Avenue abutting the lots proposed for development and advised that the developer would be providing a walkway for the neighbour. The setback to the building for this neighbour would be 10 m plus the building setback.
- The other single family abutting property is on Groves Avenue; the home has been attractively renovated. To address their concerns, the garbage disposal bin would be relocated from at the property line to an enclosure against the proposed building and visitor stalls in this location have been reduced to one and landscaping enhanced. This neighbour also asked for driveway access to the underground parking to be from West Avenue which is unrealistic. She also was concerned that the security door could be noisy; however, the security door would be 26 ft. inside the building and sound would be well buffered by landscaping and the driveway setting. There would be a retaining wall and 2 m high opaque fence abutting the property. The setback to the building for this neighbour would be 7.9 m for the first floor and going up to 18.5 m for the fourth floor.
- There is existing multi-family to the west (Kelowna Shores) and to the north (Beachwalk). Building mass would be similar to those developments.
- West Park would be accessed by easement. The developer is proposing a link from West Avenue to Abbott Street and is offering the land, maintenance and construction at no cost to the City. The pedestrian access would be 6 m (20 ft.) wide with potential for being closed. The business district from Pandosy would see right through to the lake because the building on a property the City is negotiating to acquire would be removed opening up the view. The developer is working in cooperation with City Parks staff to address security issues.
- The building shadow, using standards set by Vancouver, indicate that on September 21 at 4:30 p.m. shadow impact would not be significant.
- The project would be high quality with integrated landscaping.
- The residences would be owner-occupied.
- The development team is of international standard.
- The community would find the project to be a tremendous benefit.

Public HearingAugust 24, 2004Rebecca Claremont-Polman, 458 Groves Avenue:

- Her home backs onto West Avenue Park.
- The plan shows access to the underground parking through the park where the playground is. It would not be logical to have a driveway for 48 units through a park. Would like each end of the lane to be gated to stop through traffic at the playground end of the park. Ultimately no vehicle access in the park would be appreciated.
- Would like traffic calming speed bumps on Groves and West Avenues and on Abbott Street to help keep the neighbourhood safe and quiet.

Ross Duncan, representing his mother Lucia Gagnon, 423 West Avenue:

- Supports the development but without a walkway along the boundary of her property.
- Would like a fence to be provided to give privacy for tenants entering the legal suite on her property.
- Concerned about litter.
- The drawings indicate that three trees on the development property are to be retained; however, the trees are shabby and possibly a liability and should either be trimmed or replaced with some other greenery.
- The project would add value to the neighbourhood.
- Would want her property to be included in any future developments on West Avenue.

Duncan Morgan, 2784 Bath Street:

- Supports the development. The site in question has been run-down for a long time.
- The two other multi-family developments in the area are attractive, as is the proposed project.
- The project is just the sort of development that people want to live in.
- The proposed park entrance would be dramatic and the park would be more secure because of being overlooked by the residents of the property.

Julie Dickson, 3134 Walnut Street:

- Asked that a covenant be registered to ensure that future strata councils could not put a gate on the portal and deny public access to the park.

Staff:

- The portal park access would be via a right-of-way registered as a priority charge in favour of the City. The City would determine whether the right-of-way is to be gated, the times for opening and closing, maintenance issues, etc.
- The right-of-way would remain in place until such time as the City chooses to remove it.

Gordon Schaeffer, Kelowna Shores, 2900 Abbott Street:

- The residents living in Kelowna Shores, directly across the street from the subject property, are mostly fully supportive of the proposal. They are, however, concerned about opening up additional park land immediately adjacent to Kelowna Shores thereby allowing public access to the beach on both sides of their property when they are already having problems with vandalism. Would like the City to put up a gate to restrict access to the beach and for the area to be policed.

Bill Irvine, Beachwalk, 414 West Avenue:

- Supports the development which in his view would benefit everyone in the neighbourhood, open up the park which gets only minimal use right now, and open up the waterfront for people in the neighbourhood.

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- Is opposed to both the OCP amendment and the rezoning.
- The area has a wonderful mix of housing forms and population and it is that mix that adds to the security of the neighbourhood. The proposed building could turn the neighbourhood into a street of apartment buildings and ruin that. The building would be too massive for the neighbourhood.
- Density should increase gradually moving away from the lake.
- With the proposed portal, the park would appear to be part of the development and be lost to the neighbourhood. Asked that the portal access be rejected.

Randy LaRue, 3461 Casorso Road:

- Supports the project as being a good fit.
- Security in the neighbourhood would increase as many of the properties that are currently rental would be replaced with owner occupancy.
- As a business person downtown, feels the development would increase the viability of businesses in the area and that the community would benefit.

Al Carter, 2700 Abbott Street:

- Supports the project but concerned about lack of parking for people coming to the park.

Staff:

- Confirmed that West Avenue Park is a neighbourhood park and as such would be designed to serve the needs of residents within a 5-10 minute walk of the park. The park would also serve as a linear access from the town centre to the lake.

Carol Halton, 2820 Pandosy Street:

- Displayed a photo of West Avenue Park and the playground area showing mature trees bordering the area for shade and a large grassed area for games and activities. Expressed concern that for the majority of the year, the 4.5 storey height would inhibit the sun and warmth needed for the trees and park site. Indicated preference for a 3.5 storey building height.
- Concerned that 153 units overlooking the park could be intimidating for users of the park.
- Put forward a number of ideas for preserving the park.

Garth Vickers, 447 Groves Avenue:

- Most of the homes in the neighbourhood are owner-occupied and most of the residents are long term and plan to stay there.
- The applicant's initial proposal for 38 units and a 3 storey duplex on Groves Avenue would have been a better transition for the neighbourhood.
- Concerned about shadowing and building mass.
- Concerned that the properties in the middle of West and Groves Avenues will look like a ghetto because the newly developed sites would all have sidewalks, underground wiring and lovely lighting whereas their properties would still have the old lighting, above ground wiring and no sidewalks.
- Read a letter from Cathy Richards, 424 Groves Avenue, expressing concerns about parking and garbage location.

Valerie Hallford, president of Friends and Residents of the Abbott Street Heritage Conservation Area Society (FRAHCAS):

- Read a letter of support written on behalf of the applicant which the owner of the Tangereen Trading Company at 2042 Pandosy Street refused to sign. Suggested that the other business owners who submitted the letters of support may have been intimidated into signing.
- The Tangereen Trading Company does not support this project.
- The Board of FRAHCAS is concerned about removing park land from the OCP and privatizing public park land. Concurs with the comments in the letter that was read on behalf of Cathy Richards and with Carol Halton's concern that the proximity of the buildings would put the mature trees in the park at risk.

Keith Funk, representing the applicant, Coast Architectural Group:

- There would be no vehicular access from the development to the park.
- It would be simple to provide screening at the northeast corner of the development as requested by that neighbour for his tenant's privacy.
- The developer was required to design four gates for the park access. The gates would be provided at some point in the future should the need arise.
- The project is not designated to any age group; income would be the only limiting factor.
- The results of the Cedar Avenue land use review forced a whole redesign of the project from the 38 units initially proposed to what is now before Council.
- The form letter referred to by the previous speaker was prepared by the development team to assist the businesses and those who had no concerns chose to sign the letters and send them to the City.
- The development is designed to step back the upper floors at the ends to reduce massing and for a transition with the single family homes.
- The park would be protected with fencing during construction.

Staff:

- Gave the City Clerk a letter dated August 23rd from Stephen & Cindy Fuller, 441 Groves Avenue, outlining their concerns with the proposed development and the posting of the development notice signage on the property.

There were no further comments.

3.3 2490 Richter Street

- 3.3 Bylaw No. 9286 (Z04-0037) – Rob Joyal/Bill Ferguson – Richter Street – THAT City of Kelowna Zoning Bylaw No. 8000 be amended by changing the zoning classification of Lot 33, District Lot 14, ODYD, Plan 1141, and Parcel A (KV157498), District 14, ODYD, Plan 5291 located on Richter Street, Kelowna, B.C. from the P4 - Utilities zone to the RU6 - Two Dwelling Housing zone.

Staff:

- The subject properties were previously owned by the City of Kelowna. Proposal calls issued by the City for affordable housing were unsuccessful and so the property was sold for development purposes and revenue from the land sale was put in the Housing Reserve Fund.
- The requested zoning would facilitate a subdivision to create 2 lots, one of a size for a house with a suite and the internal lot would be for a duplex.
- The eastern most lot would require a minor variance in lot width.
- Most of the surrounding area is zoned RU6.

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

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

Bill Romanow, 657 Francis Avenue:

- There is already a lack of parking and adding a duplex and a house with a suite could introduce another 8 cars and then visitors would also need a place to park. Concerned that people would be parking on Morrison and Francis Avenues.
- Concerned that three existing trees along Morrison Avenue could be lost.

There were no further comments.

3.4 1170 Band Road

- 3.4 Bylaw No. 9211 (OCP03-0014) and Bylaw No. 9212 (Z03-0071) – John & Ingrid Paavilainen (Keith Funk/New Town Planning) – Band Road – THAT Map 19.1 of the 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;

AND 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.

Councillor Day declared a conflict of interest because he owns property within the notification radius for this application and left the Council Chamber at 9:48 p.m.

Staff:

- The subject application is brought back for reconsideration as directed by Council.
- The rezoning is to allow the previous care home use to re-establish on the property under the current zoning bylaws. The initial application was defeated but a resolution was subsequently adopted rescinding the resolution of defeat and staff were directed to readvertise the application to a new Public Hearing.
- Staff have added conditions for the rezoning: (1) that sanitary sewer be extended from Ray Road to service the facility; (2) that the applicant enter into the necessary easement agreements to address the existing driveway situation for the adjacent properties; and (3) registration of a road reservation agreement to determine required future road links that are necessary for development of the adjacent properties.
- Building the roads through the subject property and dealing with the park needs identified in the OCP would be addressed at such time as the subject property redevelops.

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

Opposition:

- A.B. Scothorne, 1322 Ray Road
 - Margo McMahan, 1302 Toovey Road (2 letters)
- Opposed generally on the basis that property values would diminish; a precedent would be set for changing the “country” atmosphere of the area; and concerns about road access, traffic congestion, and lack of park land.

The Acting Deputy City Clerk further advised that just before the public hearing started, a letter was submitted from Catharine Goheen, 1210 Toovey Road, agreeing with the submission from Margo McMahan concerning Toovey’s road safety and lack of park space.

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

Kelly Whitehouse, applicant's son-in-law:

- When the defeated bylaw was rescinded and new conditions were introduced, the family decided to withdraw their application. But, out of respect for Council for bringing the application back for reconsideration, they decided to state their case.
- Had never intended for this application to become the monster that it has become.
- His in-laws purchased the property in 1960 and there are now three generations living on the property which is still actively being farmed (grapes) by the owners. Does not see how people in their 80's can be forced to move so that a property can be developed.
- The property is about 12.5 acres in size.
- The three adjoining properties do not share the family position to not redevelop at this time.
- People have been trespassing and creating trails across the subject property to access Mine Hill and lands beyond. The trespassers on ATVs, motorcycles and 4x4s and have caused damage and become a nuisance to the neighbourhood. The family became concerned about liability and took steps to close off the access to eliminate the trespassing.
- Showed a photo of the care home. The care home was in operation before annexation of the City but the license expired in January 2002 due to cuts in government funding. The in-laws wanted to retire from the care home business anyway and so let it go.
- They just missed the 6-month grandfathering provision for renewal of the license. The OCP only specifies 'child care' and were told that an amendment was in the works to change the generalized designation in the OCP to just 'care centre'. When finally it came forward, the text amendment did not do that.
- Initially applied for P2 zoning but staff recommended RM3 as a more appropriate zone to meet their goal to provide low-cost assisted living for seniors. Staff also suggested split zoning so that the application would not trigger the improvements that are required with a subdivision. That was going to be contingent on a housing agreement restricting the facility to 22 beds as defined in the agreement.
- The family did not envision any sort of development when they submitted the application but staff asked them to provide how the building could fit into a theoretical future road network in the area. That was provided by the family.
- Surprised at all the opposition given the 40 years of history. Major issues of concern have been as follows:
 - Easement Issues – Lot 2 and 3 have access by way of a legal easement over Lot 1. But Lot 3 (Monti) does not touch the easement as defined by the subdivision plan and Land Title information. The applicant's cannot give them legal access because the road is not on the subject property (it is on Kerry Webster's property) other than an insignificant small triangle that runs along the edge of the road. The easement area from Band Road is not required as the family can put in an access from somewhere else if need be. The family has never threatened to prevent access to anyone.
 - Septic Issues – Interior Health has no record of a septic failure and has agreed to allow the existing septic system to continue. In response to a recent complaint they came out and tested the septic and the care home and provided a letter saying there are no problems with the septic. They also suggested that the sheep farm uphill from Kerry Webster's may be the problem.
 - Road Access Issues – The family has rough graded a new access road that is entirely on the subject property that they intend to use. The new access road will be 20 ft. wide as required by the Fire Marshall, if this rezoning succeeds, otherwise it will be narrower. Mr. Balisky has an easement across the subject property to access his home.

- Preventing Development in the Area – The family is not opposed to development; however, the timing of redevelopment of the subject property is based on the lives of the inlaws and when they are ready to go, the family will develop the property but not before. The care home building likely only has 5-15 years left before it requires major renovations that would not make sense.
- Potential Abuse of the RM3 Zone – A petition in the neighbourhood says the family is going to put in a drug-rehab centre or youth detention centre both of which would be permitted under “Congregate Housing” but, the family would not do that – they have children and a use other than what is proposed would not be an option anyway without coming to Council for a change to the Housing Agreement. The family cannot sell only the congregate home site because it is not being subdivided off.
- Financial Gain to the Owners – The family feels they should have the opportunity to use the asset that they have invested in over the years.
- The complaints from the neighbourhood have not been directed at the past operations of the care home.
- There can be 6 people living on the property or 22 people – it is up to Council.
- A future park and school site were shown on the Tanamura property until March 2004 when the school site was removed and future park moved to the subject property. At that time, Council was told that if the park site remains on the subject property it could be some time before the park gets realized. The family has no problem with having the park being designated on their property but it would seem that the park will be needed before the family is ready to provide the park.

Kelly Whitehouse, responding to questions of Council regarding the 3 conditions for approval being recommended by staff:

- Connection to Sanitary Sewer - Now that Interior Health has determined that there is no leakage from the septic system, the family objects to having to connect to sewer because that would require a subdivision plan to determine where the future roads would go and they do not want to do that just so that the sewer main would line up with the future roads or houses, particularly when the subdivision plan could change in 5-15 years if the needs of the neighbourhood changed. Hopefully based on that new information from the health authority, Council will defer the request to connect to sewer until such time as the septic fails or the property develops on sanitary sewer.
- Easement Agreements – The easement agreements have nothing to do with the proposed facility and would be strictly to benefit adjacent land owners’ development needs. The adjacent owners should be asking to purchase access across the subject property but instead they are asking the City to force the family to give it to them at no cost. After the bylaw was defeated in May, the adjacent owners offered to pave the driveway and connect the care home to sanitary sewer in exchange for access across the subject property.
- When Council agreed to reconsider the application, the only condition for approval was the sewer connection. Had the family known staff were going to add the other two conditions (easements and road reservation agreement) they never would have gone beyond that point and asked for the resolution defeating the bylaw to be reconsidered.

Staff:

- A letter from the applicants saying they are not prepared to provide legal access agreements or road reservation agreements but that they were prepared to connect to sanitary sewer was attached to the reconsideration report. In that report, staff were clear that the conditions they added were not part of the reconsideration and that it was staff’s initiative to put them in to try to resolve the issues of concern.

Iris Morden, 1285 Toovey Road:

- Has serious concerns about the requested rezoning.
- She was the person who circulated the petition mentioned by the applicant. The petition did not say that the facility 'would' be a drug rehab centre but it did state that such a use was a possibility in the future. However, that was not what the people who signed the petition from Toovey were concerned about – they were concerned about a March 2004 memo between City staff saying that the extension of Toovey Road is preferable from a transportation and topographical point of view; and MOT comments that all access would be via Toovey and Ray Roads once the subject property develops.
- The residents of Toovey were promised by Council in December 1991 when Councillor Day wanted to develop Lone Pine Estates that if the road could be used for that development, Toovey would forever become a cul-de-sac and not be a connector road. The Toovey residents remember that and it is confirmed in the Council meeting minutes.
- The applicant's son-in-law has stated that the existing care home building will only last another 5-15 years. The Toovey residents are concerned about the potential uses for the site when the care home use ends, and the residents do not want Toovey opened.
- The applicant's son-in-law says he is concerned about trespass liability yet he has put pipes and old farm machinery to block off access at the edge of his property rather than fencing it.

Staff:

- Clarified that neither Toovey Road nor Ray Road would be extended as part of this application and the park issue is not being dealt with now. The housing agreement limits use of the property to a 22 bed care facility. If this facility gets closed the applicant has the option of applying to discharge the housing agreement or rezoning for some other land use.
- The road reserves would be at Ray Road to provide access to the adjacent property and at the Band Road cul-de-sac to provide access to the adjacent property there.

Leonard Huber, 1353 Toovey Road:

- Has no concerns with the care home as it exists.
- Suggest Council bend the rules and give the applicants the license since they only missed the grandfathering by 6 months.

Kerry Webster, 1150 Band Road:

- In 1993 about nine of the property owners were successful in getting their land removed from the ALR. At that time, there was an agreement between those property owners that easements would be abolished and future roads would be determined so that all the properties could be redeveloped. The subject property was one of the 9 properties.
- Until this last summer, the subject property had not been farmed for the last 10-11 years.
- There are two bodies of water on his property; one is runoff and one is sewer and the sewer has dried up.
- Unless the applicants address the issues surrounding road access for redevelopment and the sewer issue, would not want to see this application be approved.
- The two road reserves are integral to the redevelopment of abutting properties.

Staff:

- Clarified that MOT will not allow any redevelopment to have access from Band Road or directly from the highway. Therefore, without road dedications for the connecting links, abutting problems would have to wait for the subject property to develop.

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- Showed the Concept Development Plan that was developed between the nine property owners for the ALR exclusion and development of a road network plan. Only a small amount of road dedication is needed to allow the Webster property to be developed.
- Showed a modified version of the plan showing an extension of Ray Road to connect to the top of the Balisky property noting all that is needed is a small amount (62 m) of road dedication for Linda Monti's property to be developed.
- Without the road reserves Kerry Webster and Linda Monti will not be able to develop their properties.

Moved by Councillor Horning/Seconded by Councillor Shepherd

P815/04/08/30 THAT the Rules of Procedure be waived and the Public Hearing be permitted to continue beyond 11 p.m.

CarriedRob Webster:

- If the congregate care facility is going to be in existence for 5-15 years, the design life for a septic field is 11-15 years so some capital outlay would be required.
- With the two road reserves recommended by staff, the other property owners could develop without waiting for the subject property to develop. At whatever future time development of the subject property was to proceed, development would occur based on the roads in the concept development plan.

Tony Balisky, 1240 Band Road:

- The applicant's driveway would need to be moved over another 20 ft. in order to not be over his easement.
- A week ago there was another big sewer back-up coming from above the applicant's house, onto the road and over the bank (showed a photo).
- Is opposed unless the facility is connected to sewer. There were problems with the sewer when the care home was in operation – he could smell the septic at his place but did not complain because he wanted to be a good neighbour. Regrets that now because now there is nothing on record with the health authorities.

Linda Monti, 1160 Band Road:

- Did not know when she purchased her property that there was no easement for legal access to her property. That was not disclosed to her by the seller at the time.
- Her property was already out of the ALR when the concept development plan was done but she participated in that process.
- Has a buyer for her property who wishes to subdivide. The agents for the purchaser discussed the need for the 62 m road reserve in order to allow development of the property; in exchange, the purchaser was willing to connect the subject property to sewer.
- Understood that this application was being reconsidered on the basis that the applicant had agreed to connect to sewer and would enter into the road reserves that would allow the neighbours to get on with their lives.
- Her husband is in ill health and they are finding it difficult to maintain the farm status on their property – would just like to sell the property.
- It is not right that one property can hold up the rest of the properties that want to develop.

- Margo McMahan, 1302 Toovey Road:
- Is opposed to the proposed OCP amendment. The Toovey Residents Association has been defunct for the last few years but many are long time residents (over 30 years) in the area and they are losing faith in these public processes and will not come to the meetings even though have long standing concerns.
 - Their major concerns are need for a more strategic approach to planning in the neighbourhood versus the piecemeal application process the neighbourhood has been subjected to. Infrastructure is not in place to update the substandard roads in the neighbourhood. Roads that were promised have never been built. Toovey area residents were promised that the Toovey cul-de-sac would remain yet plans indicate a possible extension of Toovey. The residents want it written in stone that Toovey road will remain a cul-de-sac. Many of the residents purchased their properties on the assurance that it would remain a cul-de-sac. The residents are also asking for a sign to be posted to say Toovey is a cul-de-sac.
 - Walking trail access is another big concern as is the lack of park land for the Toovey Heights community. For decades the residents have trespassed on the subject property and that has now been denied. The residents want an access trail off the north part of the subject property to access the Day property above Mine Hill (designated for future development). Would like the issue of the park land resolved now, once and for all. The neighbourhood cannot wait another 15-20 years for the park site on the subject property to be developed. Would like the City to buy the park site from the applicant now.
 - Is not opposed to reopening the care facility on the subject property but is concerned about the RM3 zoning and the broad uses the zone allows. Wants the Housing Agreement to eliminate the other uses.
 - Is concerned that a precedent is being set with the proposed split zoning which is conferring a benefit on the applicant only.

Kerry Webster, 1150 Band Road:

- There was a general understanding in 1990 that it would be 1-3 years at the most before the landowners would start developing.
- The City could put the park on his property but there is no access.

Rob Webster, Kerry Webster's son:

- Read a letter from Jeff McNeice, 1351 Bentien Road, also signed by several others, saying they were told that Ray Road would be extended for a second safe exit from the subdivision and that there would be a park; that they had no negative comments re the RM3 zoning or the congregate care facility re-opening; expressing concerns regarding the road networking in the area that should be addressed; and supporting the recommendations from staff regarding road dedications and easements.

Kelly Whitehouse, applicant's son-in-law:

- There was never a document saying when his in-laws would develop their property.
- The irrigation pipes, etc., that are at the end of Toovey and on the trails were placed there by his father-in-law.
- The 'back-up' that Mr. Baliski showed photos of was from a burst hose.
- Suggest the City buy the Monti property for park if a park is needed so bad.
- With the additional two conditions recommended by staff, the subject application will lapse because the family will not agree to those conditions. The 60 m road reserve to Ray Road would go through their hay field and 60-70 year old grape vines. Any subdivision of any size would trigger improvements that would include the road dedication and so subdividing is not an option for the family at this time.

Public Hearing

August 24, 2004

4. TERMINATION:

The Hearing was declared terminated at 12:10 a.m.

Certified Correct:

Mayor

BLH/am

Acting Deputy City Clerk