

Regular MeetingAugust 24, 2004

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, 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. CALL TO ORDER

Mayor Gray called the meeting to order at 12:20 a.m.

2. PRAYER

The meeting was opened with a Prayer offered by Councillor Given.

3. CONFIRMATION OF MINUTES

Regular Meeting, July 12, 2004
 Public Hearing, July 13, 2004
 Regular Meeting, July 26, 2004
 Public Hearing, July 27, 2004
 Regular Meeting, July 27, 2004
 Regular Meeting, August 9, 2004
 Public Hearing, August 10, 2004
 Regular Meeting, August 10, 2004

Moved by Councillor Given/Seconded by Councillor Day

R816/04/08/24 THAT the Minutes of the Regular Meetings of July 12, July 26, July 27, August 9 and August 10, 2004 and the Minutes of the Public Hearings of July 13, July 27 and August 10, 2004 be confirmed as circulated.

Carried

4. Councillor Given requested to check the minutes of this meeting.

5. BYLAWS CONSIDERED AT PUBLIC HEARING

(BYLAWS PRESENTED FOR SECOND & THIRD READINGS)

5.1 Bylaw No. 9211 (OCP03-0014) – John & Ingrid Paavilainen (Keith Funk/New Town Planning) – 1170 Band Road **requires majority vote of Council (5)**

Councillor Day declared a conflict of interest because he owns property within the notification radius for this application and left the Council Chamber at 12:22 a.m.

Moved by Councillor Clark/Seconded by Councillor Hobson

R817/04/08/24 THAT Bylaw No. 9211 be read a second and third time.

Carried

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- 5.2 Bylaw No. 9212 (Z03-0071) - John & Ingrid Paavilainen (Keith Funk/New Town Planning) – 1170 Band Road

Moved by Councillor Clark/Seconded by Councillor Hobson**R818/04/08/24** THAT Bylaw No. 9212 be read a second and third time.Carried

Council:

- Clarified that Council consideration of final adoption of the OCP and Zone Amending Bylaws for this application is contingent on the property being connected to sanitary sewer, registration of legal access agreements in favour of the adjacent properties, and registration of a Road Reservation Agreement in the Land Title Office.

Councillor Day returned to the Council Chamber at 12:30 a.m.

- 5.3 Bylaw No. 9282 (Z04-0042) – Jim Gretzinger (Serko Property Service) – 1703 Lynrick Road

Moved by Councillor Hobson/Seconded by Councillor Day**R819/04/08/24** THAT Bylaw No. 9282 be read a second and third time.Carried

- 5.4 Bylaw No. 9283 (OCP04-0004) – James & Linda Knight, Gerald & Delores Dignan, Daryl, Johnny, Danny & Lynette McLean, Jamie Davies and David & Charles Ross (Coast Architectural Group/Kevin Ryan) – 2901-2975 Abbott Street and 408-416 Groves Avenue **Requires majority vote of Council (5)**

Moved by Councillor Horning/Seconded by Councillor Given**R820/04/08/24** THAT Bylaw No. 9283 be read a second and third time.Carried

- 5.5 Bylaw No. 9284 (Z04-0010) – James & Linda Knight, Gerald & Delores Dignan, Daryl, Johnny, Danny & Lynette McLean, Jamie Davies and David & Charles Ross (Coast Architectural Group/Kevin Ryan) – 2901-2975 Abbott Street and 408-416 Groves Avenue

Moved by Councillor Given/Seconded by Councillor Horning**R821/04/08/24** THAT Bylaw No. 9284 be read a second and third time.Carried

- 5.6 Bylaw No. 9286 (Z04-0037) – Rob Joyal & Bill Ferguson – 2490 Richter Street

Moved by Councillor Hobson/Seconded by Councillor Day**R822/04/08/24** THAT Bylaw No. 9286 be read a second and third time.Carried

Regular MeetingAugust 24, 20046. DEVELOPMENT PERMIT AND DEVELOPMENT VARIANCE PERMIT REPORTS

- 6.1 Planning & Corporate Services Department, dated July 27, 2004 re: Development Permit Application No. DP04-0068 and Development Variance Permit Application No. DVP04-0069 – 565401 BC Ltd. (Lyle Isenor) – 1015 Richter Street

Staff:

- The applicant is proposing to redevelop the property with a 6-unit, 2-storey industrial building fronting Richter Street, with loading areas and parking accessed off the rear lane.
- The front yard setback is requested in order to bring the building closer to the street.
- A sidewalk will be provided for pedestrian access to the building from the rear parking area.

The Acting Deputy City Clerk advised that no correspondence was received relevant to this application.

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

Moved by Councillor Given/Seconded by Councillor Clark

R823/04/08/24 THAT Council authorize the issuance of Development Permit No. DP04-0068 for Lot A, Sec. 30, Twp. 26, ODYD Plan 1014, located on Richter Street, Kelowna, B.C. subject to the following:

1. The dimensions and siting of the building to be constructed on the land be in general accordance with Schedule "A";
2. The exterior design and finish of the building to be constructed on the land be in general accordance with Schedule "B";
3. Landscaping to be provided on the land be in general accordance with Schedule "C";
4. The applicant be required to post with the City a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a professional landscaper;

AND THAT Council authorize the issuance of Development Variance Permit No. DVP04-0069, Lot A, Sec. 30, Twp. 26, ODYD Plan 1014, located on Richter Street, Kelowna, B.C.;

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

Section 15.4: I4 – Central Industrial: 15.4.5(c):

Vary the front yard setback from 6.0 m required to 1.5 m proposed;

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

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- 6.2 Planning & Corporate Services Department, dated August 6, 2004 re: Development Variance Permit Application No. DVP04-0048 – The Roman Catholic Bishop of Nelson (Protech Consultants Ltd.) – 1077 Fuller Avenue

Staff:

- The church is on the north side of Fuller Avenue; the church parking lot is on the south side of Fuller Avenue.
- The applicants are proposing to move the balcony seating down to the main floor by constructing an addition at the entrance of the church.
- Staff recommend in support of the requested site coverage variances but are not in support of the reduced front yard setback because the building would be 1.2 m off the property line after the future Gordon Drive road widening takes place.

The Acting Deputy City Clerk advised that no correspondence was received relevant to this application.

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

Grant Maddock, applicant:

- The setback that is proposed is similar to the setback for the United Church downtown.
- The majority of the variances requested are a result of bylaw changes over the years.
- The church is just trying to bring seating down from the balcony and provide a foyer.
- The building would be setback 2 m from the future road widening.
- The road widening of this section of Gordon Drive is part of the City's 20 year servicing plan but is not imminent.

Moved by Councillor Hobson/Seconded by Councillor Cannan

R824/04/08/24 THAT Council authorize the issuance of Development Variance Permit No. DVP04-0048 for Lot A, D.L. 138, O.D.Y.D. Plan 27070, located 1077 Fuller Ave., Kelowna, B.C.,

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

Section 16.2.5 (d) – Development Regulations

- Vary the minimum front yard setback from 6.0 m required to 4.0 m proposed;

Section 16.2.5 (e) – Development Regulations

- Vary the minimum side yard setback from a flanking street from 6.0 m required to 4.5 m proposed;

Section 8.1.2 – Number of Off-Street Vehicle Parking Spaces

- Vary the number of spaces required, from 84 stalls required to 71 stalls proposed;

Section 16.2.5 (b) – Development Regulations

- Vary the site coverage for buildings, parking, and roads from 60% required to 77% proposed;

Section 7.1.1 – Required Landscaping

- Vary the minimum levels of landscaping for portions of the site where it is required within the setback to parking areas, from 1.5 m required to 0.0 m proposed and 2.0 m required to 0.0 m proposed;

Regular MeetingAugust 24, 2004**Section 8.1.10 (d) – Location of Off-Street Parking**

- Vary the minimum setback to parking abutting a residential zone, from 1.5 m required to 0.0 m proposed;

Section 8.1.10 (c) – Location of Off-Street Parking

- Vary the minimum setback to parking abutting a street, from 2.0 m required to 0.0 m proposed.

Carried

6.3 Planning & Corporate Services Department, dated August 6, 2004 re: Development Variance Permit Application No. DVP04-0063 – Shauna Bodnar (Cheryll Gillespie) – 3602 Lakeshore Road

Staff:

- The subject property hooks over Lakeshore Road but there is no development on the other side.
- The applicant is proposing to demolish the existing house and build a new house, generally in the same footprint, along with a garage. The view angle is not that changed from the existing view angle.
- The proposal meets the setback requirements of the Zoning Bylaw.
- The applicant also intends to remediate the foreshore back to its natural elements.

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

Letters of Opposition:

- Evinia Bruce, 3600 Lakeshore Road
 - Stanley Tessmer, 3598 Lakeshore Road
 - Eileen & Eugene Ashley, 3676 Lakeshore Road
- Opposed generally because of the negative impact on their view.

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

Eileen Ashley, 3676 Lakeshore Road:

- She and her husband have lived at this address for 54 years.
- Does not support this application because the height and close proximity of the proposed building would block daylight as well as the site lines from their property.
- Would prefer that the building be setback further from the lake.

Doug Ashley, son of Eileen & Eugene Ashley:

- The proposed new house would be +9 ft. higher than the existing house with a roof structure on top of that. The new house would also be about 3 ft. closer to the property line of his parent's home. The existing sightline from his parent's house is about 30°; the degree of angulation of vision would be drastically reduced.
- The proposed new house should be moved closer to Lakeshore Road; there is plenty of room to do that and it would meet bylaw requirements.

Brian Ashley, son of Eileen & Eugene Ashley:

- Concerned about the impact on his parent's property as a result of the restoration work that the applicant is proposing on the foreshore. His parent's have a sandy beach in front of their property but properties on either side have rock barriers, cement retaining walls. If they are to be removed, then similar restoration would have to be carried out along the whole area.

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Staff:

- Advised that the applicant has revised his plans and they now meet the 60° view line for the property to the south. The only variance that is needed is for the 10° sightline for the property to the north.

Moved by Councillor Clark/Seconded by Councillor Shepherd

R825/04/08/24 THAT Council authorize the issuance of Development Variance Permit No. DVP04-0063 for Lot S, D.L. 134, O.D.Y.D. Plan 13698, located at 3602 Lakeshore Road, Kelowna, B.C.,

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

Section 6.11.1 – Okanagan Lake Sight Lines

Vary the Okanagan Sight Lines from 60 degrees required to 10 degrees proposed.

Carried

- 6.4 Planning & Corporate Services Department, dated August 4, 2004 re: Development Variance Permit Application No. DVP04-0062 – 634562 BC Ltd. (Ken Corcoran) - #6 – 4190 Lakeshore Road

Staff:

- The subject property is part of a bareland strata development.
- An initial application was to develop the site with three duplex units but that was dissolved through the courts and 6 narrow single detached dwellings ended up being built.
- The setback of the house on the property to the north is creating problems for developing the subject property.

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

Letters of Opposition

- Ralph Watzke, lawyer representing Jarome Iginla, owner of Lot 3.
- Patti Wright, Marigold Developments, representing Jarome Iginla owner of Lot 3, and Robbie Roberts, owner of Lot 5.

Opposed generally on the basis that property values of the adjacent lots and the ability of the occupants to enjoy their property would be negatively impacted.

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

Ken Corcoran, applicant:

- Purchased Lot 6 in January 2002 based on the selling document for Lot 5. Construction started about 6 months later on Lot 5. The house was improperly located on Lot 5 and that drastically affects the ability to build on Lot 6.
- If everyone would have built at the setback initially envisaged for these lots there would have been no problem.

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Council:

- Concerned that not everyone who is affected by the requested variance is here to represent their interests.
- Staff to notify the adjacent properties of this deferral.

Moved by Councillor Hobson/Seconded by Councillor Clark

R826/04/08/24 THAT further consideration of Development Variance Permit No. DVP04-0062 for Strata Lot 6, Sec. 1, Twp. 25, Sec. 6, Twp. 26 and DL 5040, ODYD, Strata Plan KAS2157 located on Lakeshore Road, Kelowna, B.C. be deferred to the Regular Meeting of Monday, August 30, 2004.

Carried

6.5 Planning & Corporate Services Department, dated August 3, 2004 re: Development Variance Permit Application No. DVP04-0050 – R 370 Enterprises Ltd. (Kennedy Construction Ltd. and Kennedy Homes Ltd.) – 2455 Quail Ridge Boulevard

Staff:

- Staff recommended against the Development Permit for this development but Council approved the DP application and now the applicant requires a Development Variance Permit to rectify conditions that occurred on-site during construction.
- The applicant has proven through engineers and records kept during construction that the walls are safe. Showed photos of the retaining walls.
- The applicant proposes to plant landscaping along the walls with creeping vines from the bottom and trailing vines from the top. Showed an artist's rendering of how that will look.
- The problems that occurred were inevitable given the conditions on-site, and for that reason staff recommend support for the variances.

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

Letters of Opposition

- Dennis & Patricia Duggan, 2360 Capistrano Drive
- Dennis Tindall, 2524 Quail Lane
- Wilson Nyhus, 2545 Quail Place
- Gary Sternig, 2361 Capistrano Drive
- Michael Craigen, 2353 Capistrano Drive
- David & Jackie Hales, 2344 Capistrano Drive
- Mike McBurney, Resident of Quail Ridge
- Hans & Ina Wendt, 3005 Quail Crescent
- Cindy Youell, 3118 Capistrano Court
- Shirley Maranda, 2352 Capistrano Drive
- Mary Horvatincic, 2564 Quail Lane
- W.M. Campbell, President Quail Ridge Residents' Association
- Marnie Bryks, 2564 Quail Lane
- Mr. & Mrs. W.C. Wallace, 2120 Capistrano Drive

Opposed generally on the basis that the retaining walls are unattractive and ruin the atmosphere of the neighbourhood; the aesthetics of the development will have a negative affect on property values; the landscaping will not provide a year-round solution to covering up this "eyesore"; the top turn-around is so high that there is a severe decline into the garage; and concern that in a few years of exposure to the weather the sandstone will start to deteriorate.

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Letter of Support

- Augusto Coello, 145-2455 Quail Ridge Boulevard
Supporting the variances generally on the basis that the proposed landscape plans indicate that the retaining walls will end up being an attractive asset to the neighbourhood.

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

Mac Campbell, president, Quail Ridge Residents' Association:

- The retaining walls are a blight on the landscape and a safety concern in the community. The residents all pass by the walls and wonder why and how they happened. Now the developer is asking for permission for what has already been done.
- The slope exceeded 30% and was denuded entirely of trees by the applicant.
- The retaining walls should have been visible to City staff at some point during the early stages of construction and the hillside policy applied. The City could be liable with respect to the dangers created by the height of the retaining wall. Showed photos of the retaining walls.
- The current mix of colours/tones does not blend.
- Asked that the variety of colours be subdued, that the City ensure the landscaping achieves what is intended, and that a fence be required at the top (discrete with a colour tone that will blend with the existing area).

Dennis Tindall, 2524 Quail Lane:

- Advised he was representing himself and about 30 neighbours.
- The developer asked the residents for approval but what is being built is completely different. There should have been further consultation with the residents regarding the changes.
- Concerned that the sandstone will deteriorate in a few years and create a major problem for the strata council to resolve.
- The developer should be made to reduce the height of the retaining wall to conform with bylaw requirements.

Gary Sternig, 2361 Capistrano Drive:

- His concerns are more regarding aesthetics than the height of the retaining wall.
- The height variance needs to be clarified. The staff recommendation indicates a 4.5 m variance yet the retaining wall is already over 4.5 m in height.
- Lock blocks are cheap and are normally not used in this type of area. Retaining walls do not have to be ugly.
- Landscaping will take ± 3 years to cover the walls and then would not be year-round.
- Asked that the developer be required to face the walls with bricks or rocks so they fit in and are not unsightly.

Michael Craigen, 2353 Capistrano Drive:

- Urged Council to defer their decision until they can see the impact of the wall on the neighbourhood, to instruct staff and the developer to examine all alternative treatments to mitigate the impact of the retaining walls, and for the City to not issue any more Occupancy Permits until the matter is resolved.

Wolf Penz, 2287 Capistrano Drive:

- Supports what was done by the developer under the circumstances.
- Believes that the finished product will complement the neighbourhood.
- Is a professional engineer with years as a project manager and the project looks good to him.

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Gordon Douglas, 2259 Capistrano Drive:

- Supports the project and believes it will look good when finished.
- The silent majority who support the application do not sit here all night to say so.

Ron Windrem, 2291 Capistrano Drive:

- Supports the developer and his reputation as a builder. Mr. Kennedy is a perfectionist to the ninth degree.
- The majority of the residents in the area are not that upset.
- The existing wall is not attractive yet but it will be once the job is finished.

Mel Berlinski, 2218 Country Club Drive:

- The developer has built two houses for him and he has confidence in the developer and is confident that the walls will look better when done.

Ed Kennedy, applicant:

- Brought in a blasting expert from Abbotsford. Got a rude awakening of what can happen to a rock face with blasting. The rock face fell off and created a safety concern. Decided to move forward and carry on with the retaining walls. Was fully aware that the work was being done in advance of necessary approvals but was in a hurry to address the safety issues.
- Applied for a Development Variance Permit on May 5, 2004. Had contracts to meet and the retaining walls ended up getting finished before the DVP came forward.
- Have never asked for approval from Council after the fact before.
- Landscaping is the best treatment for the wall. The landscape plan has been substantially upgraded from what was originally proposed. It will take a year or more for the landscaping to cover the walls. Will use Oregon Grape Vine to give year-round green cover.
- Chose the particular block that was used because of the nature of the slope.

Albert Losch, geotechnical engineer:

- Was the on-site engineer during construction.
- It was necessary to reduce the height by about 5 ft. to get to bedrock.

Ed Kennedy, applicant:

- Is spending an additional \$10,000 on landscaping enhancements for the retaining walls, in addition to the \$40,000 for the landscaping that was proposed, and will spend more if the \$10,000 additional is not sufficient.
- Will be densely planted along the walls. Can only do vines along the cul-de-sac edge because there is no edge to plant more.
- It would be devastating to himself and to the owner if Council held up completion of the home and issuance of the Occupancy Permit.
- A powder coated picket railing will be installed around the cul-de-sac wall.
- The application is for a 5.29 m height variance rather than 4.5 m as indicated in the staff report.

Moved by Councillor Cannan/Seconded by Councillor Hobson

R827/04/08/24 THAT further consideration of Development Variance Permit No. DVP04-0050, Lot 3, Section 22, Township 23, ODYD, Plan KAP52038 located on Quail Ridge Boulevard, Kelowna, B.C. be deferred to the Regular Meeting of Monday, August 30, 2004.

Carried

Regular MeetingAugust 24, 20047. BYLAWS**(BYLAWS PRESENTED FOR FIRST READING)**7.1 Bylaw No. 9291 (Z04-0044) – Charlene Madden – 335 Hardie RoadMoved by Councillor Shepherd/Seconded by Councillor Given**R828/04/08/24** THAT Bylaws No. 9291, 9292, 9293, 9294 and 9295 be read a first time.Carried7.2 Bylaw No. 9292 (TA03-0008) – Amendment to City of Kelowna Zoning Bylaw No. 8000.

See resolution adopted under agenda item No. 7.1 above.

7.3 Bylaw No. 9293 (Z03-0043) – City of Kelowna – 260 Franklyn Road

See resolution adopted under agenda item No. 7.1 above.

7.4 Bylaw No. 9294 (Z04-0040) – Merbil Investments Ltd. (Harold Kullman) – 464 Trumpeter Road and North of Trumpeter Road

See resolution adopted under agenda item No. 7.1 above.

7.5 Bylaw No. 9295 (Z04-0034) – Don Wilkinson & Brenda Gorrie – 5267 Chute Lake Road and 5267 Trumpeter Road

See resolution adopted under agenda item No. 7.1 above.

(BYLAWS PRESENTED FOR ADOPTION)7.6 Bylaw No. 9255 – Road Closure Bylaw – 3200 Block Appaloosa Road

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

Moved by Councillor Hobson/Seconded by Councillor Day**R829/04/08/24** THAT Bylaw No. 9255 be adopted.Carried7.7 Bylaw No. 9265 – Road Closure Bylaw – Loeth Road

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

Moved by Councillor Hobson/Seconded by Councillor Day**R830/04/08/24** THAT Bylaw No. 9265 be adopted.Carried

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7.8 Bylaw No. 9281 – Road Closure Bylaw – Haug Road

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

Moved by Councillor Day/Seconded by Councillor Cannan

R831/04/08/24 THAT Bylaw No. 9281 be adopted.

Carried

7.9 Bylaw No. 9285 – Amendment No. 5 to Disbursement of City Funds
Bylaw No. 6090-87

Moved by Councillor Day/Seconded by Councillor Cannan

R832/04/08/24 THAT Bylaw No. 9285 be adopted.

Carried

8. REMINDERS – Nil.

9. TERMINATION

The meeting was declared terminated at 3:01 a.m.

Certified Correct:

Mayor

BLH/am

Acting Deputy City Clerk