

Regular Meeting – P.M.

August 30, 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 Monday, August 30, 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, E.A. Horning and S.A. Shepherd.

Council members absent: Councillor R.D. Hobson.

Staff members in attendance were: City Manager, R.A. Born; Acting City Clerk, S.C. Fleming; Director of Financial Services, P.A. Macklem; Investments & Payroll Manager, L. Walter*; Director of Works & Utilities, J. Vos*; Manager of Development Services, A.V. Bruce*; Manager of Policy, Research & Strategic Planning, S.K. Bagh*; Urban Forestry Supervisor, I. Wilson*; and Council Recording Secretary, B.L. Harder.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Gray called the meeting to order at 1:32 p.m.

2. Councillor Clark was requested to check the minutes of the meeting.

3. UNFINISHED BUSINESS

3.1 **Deferred from the Regular Meeting of August 24, 2004** - 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

Mayor Gray advised that in order to ensure that all of the surrounding properties were aware of this deferral, 13 additional notices were hand delivered to the properties within the notification radius of this property.

Councillor Blanleil advised that he was not in attendance at the August 24, 2004 Council meeting nor had he read the minutes of the meeting and therefore would not be participating in the vote for this application. Councillor Blanleil left the Council Chamber at 1:35 p.m.

Staff:

- The subject property is the last of the lots to be built on in this strata development. All of the lots link across the common driveway where the front yard is considered to be located and most of the lots have minimized the setback to the common road.
- Explained that the intent was for all of the lots to be close to the 7.5 m setback from the property line. However, the adjacent lot to the north of the subject property (Lot 5) chose to build further back from the lake and that is what has created the more onerous site line setback for the subject property. The rest of the lots were built relatively close to the 7.5 m setback.

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

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Patti Wright, original developer of this strata development:

- The owner of Lot 5 chose to have more of a yard adjacent to the lake. It was not the intent that everyone would go right to the wall cement but rather that they would have a bit of a yard adjacent to the lake.
- Displayed a photo showing the natural curvature of the shoreline and the concrete wall with yards inside.
- Some of the strata owners are not aware of what is going on because they are out of town.
- Granting the requested variance would impact two houses.
- Council should go have a look at the situation on-site.

The Acting City Clerk advised that Council directed staff to notify the immediate property owners of the deferral of the subject application to this meeting. That was done on Wednesday, August 25, 2004. Notices were mailed to the absentee owners on time to notify them of the last meeting date; there was not enough time to notify them by mail for this meeting.

Ken Corcoran, applicant:

- The marketing packages that the original developer gave out to interested purchasers showed the anticipated building footprint for each of the lots. If everyone had built at the 7.5 m setback that was permitted, no variances would have been needed.
- Had to change the overall design of the building proposed for Lot 6 in order to get the house to fit at the 7.5 m setback.
- Suggest that every two lots between Rotary and Gyro Parks be consolidated and then subdivided into 3 lots for increased density on the lake.
- Cannot allow one neighbour to build so far back that it impacts on the market value and ability to develop the adjacent properties.

Moved by Councillor Given/Seconded by Councillor Day

R833/04/08/30 THAT Council authorize the issuance 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. 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";

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

Section 6.11.1 Okanagan Lake Sight Lines

A variance to allow the proposed single detached dwelling to encroach within the 60° Okanagan Lake Sightline angle of the adjacent property to the north;

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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3.2 **Deferred from the Regular Meeting of August 24, 2004** - 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:

- Council approved a Development Permit for the subject development; however, during construction blasting was required and a lot more of the bedrock fell away than anticipated. As a consequence, the developer installed a series of lock block walls to ensure the site was safe to finish off the approved development. The retaining walls are over-height in some places.
- At the Regular Meeting of August 24, 2004, Council seemed to focus in on mitigating the impact of the walls with landscaping and directed staff to come back with more detail on the landscape plan.
- Displayed the proposed landscape plan and showed photos of similar landscaping in the immediate vicinity of the subject property.
- Reviewed the plant list provided by the applicant's landscape consultant.
- Railing would be installed on the top edge of the wall along the cul-de-sac.

Moved by Councillor Shepherd/Seconded by Councillor Given

R834/04/08/30 THAT Council hear from the landscape architect for the applicant, and receive new information from members of the public in the gallery.

Carried

Brenda Richardson, Project Estimator, Art Knapp Plantland:

- Responded to questions explaining the type of trees and vines that would be planted and where, noting that it is the vines that would provide the coverage and that in 3 years the wall would be about 75% covered with vines.

Gary Sternig, 2361 Capistrano Drive:

- The developer built the walls without formal approval or input from the City.
- The plain lock blocks are inappropriate in a residential area.
- Covering the walls with landscaping sounds reasonable but the large wall is 17.5 ft. tall and the slopes are well over 30%. All the plants in the photos shown to demonstrate how the landscaping will look are in beds; different than the landscaping that is proposed, in pots with drip irrigation. Also concerned that it would take 3 years to get any coverage. Questioned what remedies there would be if the plants did not survive.
- A condition of approval should be to insist that the walls be faced with a material that is more aesthetically pleasing.
- Agreed that the developer has a good reputation, but concerned that cost has become an issue.
- The development will be completed in about 18 months and turned over to a strata association, well before the landscaping would be matured. Urged the City to take bonding to rectify the problem should the landscaping not achieve the desired effect.

Michael Craigen, Capistrano Drive:

- The developer has indicated a \$40,000 budget for landscaping for this project plus \$10,000 additional to cover the walls. \$200,000 to \$300,000 would be more realistic. Council needs to make absolutely sure that, if this is approved, a bond is taken and held for a period of at least 3-5 years.
- Want assurance that something in addition to the railing would be provided on the cul-de-sac at the top of the 17.5 ft. retaining wall to prevent vehicles from going over.

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Augusto Coello, 145-2455 Quail Rridge Boulevard:

- His townhouse is about 20 ft. away from (below) the 17.5 ft. retaining wall. As a resident and eventual member of the strata council for the Fairway Heights project, is of the opinion that the subdivision will eventually look very beautiful and is in support of granting the variances.
- The two previous speakers do not live in the Fairway Heights project.
- Once covered with Ivy the wall will not be visible from the golf course.
- The developer has integrity.
- He is speaking as a satisfied customer not a friend of the developer.
- If there is a problem with the landscaping at some point in the future, the strata council will take the appropriate steps at that time.

Ed Kennedy, developer:

- The ground terrain for this development is exactly the same as what exists to the south and that bank is completely covered with landscaping.
- Used the lock block because the intention always was to cover the wall with landscaping.
- Clarified that the development notice sign that is posted on-site indicates that the variance for the wall height is 5.29 m which is the finished height of the wall.
- The railing on the cul-de-sac would be similar to what would go on the deck of a 4-storey building, for pedestrian safety. Boulders were placed and dug in to prevent a vehicle from going over.
- Is absolutely confident that the budget will be sufficient to provide the landscaping necessary to beautify and cover the wall.
- Will accept whatever the City decides for how long the bonding for landscaping is retained.
- Putting a face on the wall would create a long term maintenance problem for the strata council.

Moved by Councillor Clark/Seconded by Councillor Given

R835/04/08/30 THAT Council authorize the issuance of Development Permit No. DVP04-0050, Lot 3, Section 22, Township 23, ODYD, Plan KAP52038 located on Quail Ridge Boulevard, Kelowna, B.C. subject to the following:

1. The dimensions and siting of the retaining walls and road to be constructed on the land be in general accordance with Schedule "A";
2. The exterior design and finish of the retaining walls to be constructed on the land be in general accordance with Schedule "B";
3. Landscaping to be provided on the land to 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 adjacent to the over height retaining walls, as determined by a professional landscaper, to be held until the third growing season;

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

Section 7.5.8

- Vary the maximum permitted height of a retaining wall from 1.20 m permitted to allow retaining walls to be a maximum of 5.3 m in height;

Section 8.1.12

- To allow portions of driving lane to be 6.9 m where 7.0 m is required.

Carried

Councillors Cannan and Shepherd opposed.

Councillor Blanleil returned to the Council Chamber at 3:18 p.m.

4. DEVELOPMENT APPLICATION REPORTS

- 4.1 (a) Planning & Corporate Services Department, dated August 20, 2004 re: Rezoning Application No. Z04-0043 and LUC04-0001 – K. Kaminski Construction Ltd. (Al Kleinfelder) – 2441-2453 Highway 97 and 2455 Highway 97 North

Staff:

- No development is proposed. The applicant just wants to discharge the Land Use Contract that is registered on one of the two lots and zone the property to C3 which is consistent with the majority of the uses in the building today.

Moved by Councillor Shepherd/Seconded by Councillor Blanleil

R836/04/08/30 THAT Rezoning Application No. Z04-0043 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A, D.L. 125 O.D.Y.D. Plan 30858 and Lot 1, D.L. 125, O.D.Y.D. Plan 31510, located at 2441 – 2453 Hwy 97, Kelowna, B.C. from C10 – Service Commercial to C3 – Community Commercial be considered by Council;

AND THAT the zone amending bylaw be forwarded to a Public Hearing for further consideration;

AND THAT final adoption of the zone amending bylaw be considered in conjunction with Council's consideration of a discharge of Land Use Contract No. 76-1114;

AND FURTHER THAT final adoption of the zone amending bylaw be withheld until the Applicant has addressed the requirements of the Works and Utilities department.

Carried

(b) **BYLAW PRESENTED FOR FIRST READING**

Bylaw No. 9299 (LUC04-0001) – K. Kaminski Construction Ltd. – 2441-2453 Highway 97 North

Moved by Councillor Given/Seconded by Councillor Horning

R837/04/08/30 THAT Bylaw No. 9299 be read a first time.

Carried

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(c) **BYLAW PRESENTED FOR FIRST READING**

Bylaw No. 9300 (Z04-0043) – K. Kaminski Construction Ltd. and City of Kelowna – 2441-2453 Highway 97 North and 2455 Highway 97 North

Moved by Councillor Horning/Seconded by Councillor Given

R838/04/08/30 THAT Bylaw No. 9300 be read a first time.

Carried

4.2 (a) **BYLAW PRESENTED FOR ADOPTION**

Bylaw No. 9278 (Z04-0029) – Robert Bartz/City of Kelowna (Thomas Gaffney Architect Inc.) – 285 & 301 Glenmore Road

Moved by Councillor Clark/Seconded by Councillor Shepherd

R839/04/08/30 THAT Bylaw No. 9278 be adopted.

Carried

- (b) Planning & Corporate Services Department, dated August 19, 2004 re: Development Permit Application No. DP04-0049 – 698858 BC Ltd. and City of Kelowna (Thomas Gaffney Architect Ltd.) – 285 and 301 Glenmore Road

Staff:

- The applicant proposes to consolidate the two properties to accommodate development of 42 two-storey row housing units in 15 separate buildings.
- Main access would be off Glen Park. Pedestrian access would be at the south end of the site and through a gate in the wall along the future Glenmore Bypass.

Moved by Councillor Cannan/Seconded by Councillor Day

R840/04/08/30 THAT Council authorize the issuance of Development Permit No. DP04-0049 for Lot A, Sec. 4, Twp. 23, O.D.Y.D. District Plan 18662 Except Plan KAP48643; and Lot 9, Block 6, Sec. 4, Twp. 23, O.D.Y.D. District Plan 896 Except Plans 13346, 13644, 14579, and 23927 shown as Parcel 3 on Plan H8323, located at Glenmore Road, Kelowna, B.C. subject to the following:

1. The dimensions and siting of the buildings to be constructed on the land be in general accordance with Schedule "A";
2. The exterior design and finish of the buildings 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;
5. The registration of a plan of subdivision consolidating the two lots, and dedicating a portion of land for road to the satisfaction of the Subdivision Approving Officer.

Carried

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5. NON-DEVELOPMENT APPLICATION REPORTS

- 5.1 Audit Committee, dated August 23, 2004 re: City of Kelowna Investment Policy (0540-20)

Moved by Councillor Day/Seconded by Councillor Given

R841/04/08/30 THAT Council approve Council Policy No. 316 in reference to the investment of the City's surplus funds;

AND THAT Council receive the Compliance and Benchmark Report related to City of Kelowna investments for 2003, as attached to the report dated August 23, 2004 from the Audit Committee.

Carried

- 5.2 Director of Financial Services, dated August 17, 2004 re: First Lutheran Church and School – Request for Tax Relief (1970-50)

Moved by Councillor Given/Seconded by Councillor Clark

R842/04/08/30 THAT First Lutheran Church & School be provided a tax refund based on the **improvements only** on the non-exempt municipal portion of 2004 property taxes for OIC 06 (Business & Other) on roll no. 10937.308 – Lutheran Church Canada – Alberta – British Columbia District, located at 4091 Lakeshore Road – in the amount of \$5,040.21;

AND THAT funding be made available from Council Contingency.

Carried

- 5.3 Director of Financial Services, dated August 19, 2004 re: Terasen Gas Inc. Legacy Opportunity – 2003 Additions (2240-20)

Moved by Councillor Cannan/Seconded by Councillor Given

R843/04/08/30 THAT the City exercise its option to lease the Terasen Gas Inc. ("Terasen"), previously called BC Gas Utility Ltd., distribution system 2003 additions contained within the City of Kelowna boundary and having a declared capital cost of \$1,299,876.56 and a net book value at the City's option exercise date of \$1,272,055.46;

AND THAT the Director of Financial Services initiate all processes to obtain necessary approvals prior to October 20, 2004 as extended by agreement with Terasen from the October 10 annual completion of approvals required in the Additions Option portion of the Lease-in, Lease-out documents;

AND THAT Council authorize the Mayor and City Clerk to execute the Additions Capital Lease and Operating Lease Amendment for 2003 additions, and any documents needed to reflect the extension described above, in the form presented to Council, subject to an alternative approval process open to all electors within the City of Kelowna, being initiated concurrently with this report and expiring on or about October 8, 2004 and followed by a determination and certification by the City Clerk that such alternative approval process has passed and elector approval has been obtained in accordance with Section 86 of the Community Charter;

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AND THAT 4:00 p.m., Friday, October 8, 2004 be set as the deadline for receipt of alternative approval process response forms in the form attached to this report as Schedule "A", by the Acting City Clerk in relation to lease-in, lease-out of the Terasen Gas Inc. Gas Distribution System 2003 additions;

AND THAT the elector response form, attached as Schedule "A", be established as the form for this opportunity;

AND THAT Council approve the basis on which the number of electors is determined as a fair determination of the number of electors, that being the number indicated by the most recent census data for Kelowna, completed in 2001 (76,235);

AND FURTHER THAT costs associated with the acquisition of the 2003 additions in the amount of \$1,272,055.46 be financed from the Terasen Legacy Opportunity fund and the 2004 Financial Plan be amended to reflect this expenditure.

Carried

- 5.4 Urban Forestry Supervisor, and Manager of Policy, Research & Strategic Planning, dated August 18, 2004 re: Wildfire Protection Plan Funding (6300-09)

Moved by Councillor Given/Seconded by Councillor Shepherd

R844/04/08/30 THAT staff be instructed to apply for the maximum funding available (\$15,000) under a program administered by the Union of BC Municipalities (UBCM), to help cover the costs of preparing a wildfire protection plan for the City of Kelowna.

Carried

- 5.5 Director of Works & Utilities, dated August 24, 2004 re: Funds to Address Drainage Issues in North Rutland – North Rutland Local Sewer Service Area No. 20 (5340-09-20)

Staff:

- The intent is not to bring the entire area up to modern drainage standards but was proposed would eliminate the problems that staff are aware of.

Moved by Councillor Horning/Seconded by Councillor Shepherd

R845/04/08/30 THAT the 2004 Financial Plan be amended by adding \$493,000 to address drainage issues in the North Rutland area with funding from the Downstream Storm Drain Reserve.

Carried

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- 5.6 Acting City Clerk, dated August 24, 2004 re: Alternative Approval Process – Watson Road Community School Agreement with School District No. 23 (2280-20-853)

Moved by Councillor Cannan/Seconded by Councillor Horning

R846/04/08/30 THAT Council receive the Certificate of Sufficiency dated August 24th, 2004 pertaining to a Joint Use Agreement for a term of five (5) years with the option to renew for three (3) consecutive five (5) year terms, with School District No. 23 for Watson Road Community School for the purpose of incorporating additional space in the school facility and provide for community use and recreation programming in several areas of the facility and playfields.

Carried

6. BYLAWS (OTHER THAN ZONING & DEVELOPMENT)

(BYLAWS PRESENTED FOR FIRST THREE READINGS)

- 6.1 Bylaw No. 9296 – Amendment No. 14 to Sewer Connection Bylaw No. 8469

Moved by Councillor Horning/Seconded by Councillor Blanleil

R847/04/08/30 THAT Bylaw No. 9296 be read a first, second and third time.

Carried

7. COUNCILLOR ITEMS

- (a) Letter of Congratulations to Chief of Westbank First Nation

Mayor Gray agreed to send a letter of congratulations on behalf of Council to Chief Robert Louie of Westbank First Nation for winning the election as Chief for a further three year term.

- (b) Dark Stretch of Road Along Highway 97 Between Leathead Road and the Airport

Councillor Horning requested an update on what is being done to address the lack of lighting on Highway 97 between Leathead Road and the Airport. The City Manager advised that staff contacted the Ministry of Transportation and the cost was significant – more than what could be authorized without having to go through budget discussions. Will have the information forwarded to Councillor Horning.

- (c) Meeting with Prime Minister and His Cabinet

A motion moved by Councillor Horning for the \$50 cost for members of Council to attend a function with the Prime Minister and his Cabinet in Kelowna on September 7, 2004 using funds from Council Contingency was lost for lack of a seconder.

Council agreed that if the event is a fundraiser for the Liberal Party, it would be inappropriate to use funds from taxation to attend. If the event turns out not to be a fundraiser then members of Council who so wish can request after the fact to be reimbursed by the City.

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(d) Extending Council Meetings Past 11:00 P.M.

Councillor Cannan asked what Council's options are when considering whether to extend Council meetings beyond 11:00 p.m. The Acting City Clerk advised that the City of Kelowna's Council Procedure Bylaw requires a majority vote of Councillors present at the meeting and that some communities require unanimous consent of all members present.

Council briefly discussed adjourning meetings to the next evening when the meeting extends beyond 11:00 p.m. but recognized that doing that could put one member of Council in the perhaps unpopular position of ending the evening and delaying a decision when the rest of Council may be willing to conclude the applications that night.

Council noted that a 5:00 p.m. start time and holding people to the maximum 5 minute limit on presentation times could help control the meeting length. A timing device that counts down the 5 minutes and is visible to everyone would take the onus off the Mayor for telling people when they are nearing or at the end of their 5 minutes.

Staff to check with other B.C. communities to see how they handle length of meetings in their Council Procedure Bylaw.

8. TERMINATION

The meeting was declared terminated at 4:34 p.m.

Certified Correct:

Mayor

Acting City Clerk

BLH/am