

Regular Meeting – P.M.

October 4, 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, October 4, 2004.

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

Council members absent: Councillor B.D. Given.

Staff members in attendance were: City Manager, R.A. Born; Acting City Clerk, S.C. Fleming; Director of Planning & Corporate Services, R.L. Mattiussi*; Director of Financial Services, P.A. Macklem*; Director of Parks & Leisure Services, D.L. Graham*; Subdivision Approving Officer, R.G. Shaughnessy*; Investments & Payroll Manager, L. Walter*; Recreation Manager, R. Oddleifson*; Civic Properties Manager, J. Waugh*; Development Engineering Manager, S. Muenz*; Fire Chief, G. Zimmermann*; Planning & Development Officer, N. Wight*; Planning & Development Officer, M. Koch*; and Council Recording Secretary, B.L. Harder.

(* denotes partial attendance)

1. CALL TO ORDER

Mayor Gray called the meeting to order at 1:33 p.m.

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

3. UNFINISHED BUSINESS

- 3.1 **Deferred from September 28, 2004 Regular Meeting** Planning & Corporate Services Department, dated September 1, 2004 re: Development Variance Permit Application No. DVP04-0098 – Lisa Stewart and Vernon Nielsen (Vernon Nielsen) – 5460 & 5462 Lakeshore Road

Staff:

- The requested variance is required to legalize two existing retaining walls that are about 25 m in length. The maximum height permitted is 1.2 m and the walls are 1.6 m and 2.2 m in height.
- Clarified that Council can deal with this application as the City is not proceeding with the court action that was initiated by Bylaw Enforcement with respect to the retaining walls.

Councillor Blanleil entered the Council Chamber at 1:35 p.m.

Council:

- Staff to follow up and ensure that the contractors who built the retaining walls are informed of the City's permitting requirements.

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Moved by Councillor Cannan/Seconded by Councillor Horning

R942/04/10/04 THAT Council authorize the issuance of Development Variance Permit No. DVP04-0098 for Lots A & B, Section 22, Township 28, SDYD Plan 16137, located on Lakeshore Road, Kelowna, B.C. subject to the following:

1. The dimensions and siting of the retaining walls to be constructed on the land be in general accordance with Schedule "A";
2. Restoration & Mitigation Landscaping to be provided on the land be in general accordance with Schedule "C" as approved under Development Permit DP04-0074;
3. The applicant be required to submit a building permit application including sealed drawings, Schedules B1, B2, D, and a copy of an insurance policy from a registered Geotechnical Engineer as well as Schedule B from the Building Bylaw;

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

Section 7.5.8

- A variance to allow the maximum permitted height of a retaining wall to be 1.6 metres and 2.2 metres in height where 1.2 metres is permitted;

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

Councillor Clark opposed.

Councillor Hobson entered the Council Chamber at 1:41 p.m.

4. **DEVELOPMENT APPLICATION REPORTS**

- 4.1 (a) Planning & Corporate Services Department, dated September 29, 2004 re: Rezoning Application No. Z01-1045 and OCP01-011 – Rychjohn Investments Ltd. (Lawrence Rychjohn) – 3163 Richter Street (B/L 8756 and B/L 8757)

Staff:

- The applicant has elected not to continue with this application.

(b) **BYLAWS PRESENTED TO RESCIND READINGS & CLOSE THE FILE**

- (i) Bylaw No. 8756 (OCP01-011) – Rychjohn Investments Ltd. (Carl Scholl Design) – 3163 Richter Street **requires majority vote of Council (5)**

Moved by Councillor Cannan/Seconded by Councillor Blanleil

R943/04/10/04 THAT first, second and third readings given Bylaw No. 8756 under Resolution Nos. R959/01/11/27 and R1000/01/12/11 be rescinded and the file closed.

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- (ii) Bylaw No. 8757 (Z01-1045) – Rychjohn Investments Ltd.
(Carl Scholl Design) – 3163 Richter Street

Moved by Councillor Blanleil/Seconded by Councillor Cannan

R944/04/10/04 THAT first, second and third readings given Bylaw No. 8757 under Resolution Nos. R960/01/11/27 and R1001/01/12/11 be rescinded and the file closed.

Carried

- 4.2 (a) Planning & Corporate Services Department, dated September 22, 2004 re: Rezoning Application No. Z95-1015 – Canyon Creek Joint Venture (Grant Maddock/Protech Consultants Ltd.) – 5050 McCulloch Road

Staff:

- The applicant has submitted a new application for development of the subject property.

- (b) **BYLAW PRESENTED TO RESCIND READINGS & CLOSE THE FILE**

Bylaw No. 8517 (Z95-1015) – Canyon Creek Joint Venture (John Steil/Stantec Consulting Group Ltd.) – 5050 McCulloch Road

Moved by Councillor Day/Seconded by Councillor Cannan

R945/04/10/04 THAT first, second and third readings given Bylaw No. 8517 under Resolution Nos. R198/00/03/07 and R247/00/03/21 be rescinded and the file closed.

Carried

- 4.3 (a) Planning & Corporate Services Department, dated September 22, 2004 re: Rezoning Application No. Z04-0020 – 417860 Alberta Ltd., et al (Grant Maddock/Protech Consultants Ltd.) – 5050 McCulloch Road (B/L 9313)

Staff:

- The previous application was quashed when the minimum parcel size requirement for lots not serviced by a community sewer system was changed to 1.0 ha in size.
- The subject property is 320 acres in size of which 125 acres would be dedicated as park land to the City at no cost. The park land would form part of the Scenic Canyon park development. The P3 component could be considered like giving a density transfer in exchange for the dedication for civic use. The balance of the property is proposed for a 110 lot bareland strata development, with 1 and 2 ha lot sizes but on a private sewage treatment plant. The 1 ha size lots would be north of McCulloch Road and the lots 2 ha and greater would be south of McCulloch.
- Staff cannot recommend support because the application is contrary to the direction of the Official Community Plan. The 1 ha minimum lot size for the creation of a property without sewer service was established in order to not promote urban development in a rural area by installing private satellite sanitary sewage treatment systems.
- The Advisory Planning Commission recommends support provided that the off-site road improvements are provided.

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- Outlined the road improvements that would be a requirement of this application.
- The City would have to be a co-permittee for the private sewage treatment plant.
- If the City did not approve the required private sewage treatment plant, the development would not be economically feasible to proceed as a conventional rural residential subdivision.

Council:

- Staff to check with the Regional District to see if there are any park connection opportunities on a regional basis.
- Supported advancing the application to Public Hearing but with concerns about the proposed density, urban sprawl, and private sewage treatment plant.

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R946/04/10/04 THAT Rezoning Application No. Z04-0020 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of East ½ of Sec. 1, Twp. 26, ODYD except Plan KAP48126; and Lot 2A, Sec. 1, Twp. 26, ODYD, Plan 1247, located on McCulloch Road, Kelowna, B.C., from the A1 - Agriculture 1 zone to the P3 - Parks & Open Space, RR1 – Rural Residential 1 and RR2 – Rural Residential 2 zones as shown on Map "A" attached to the report dated September 22, 2004 from the Planning & Corporate Services Department, be considered by Council;

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

AND FURTHER THAT final adoption of the zone amending bylaw be considered in conjunction with Council's consideration of a Development Variance Permit on the subject property.

Carried

Councillors Clark and Shepherd opposed.

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

Bylaw No. 9313 (Z04-0020) - 417860 Alberta Ltd., et al (Grant Maddock/ Protech Consultants Ltd.) – 5050 McCulloch Road

Moved by Councillor Day/Seconded by Councillor Cannan

R947/04/10/04 THAT Bylaw No. 9313 be read a first time.

Carried

Councillors Clark and Shepherd opposed.

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

Bylaw No. 9252 (Z04-0016) – Gary Grant & Joyce Decock (Emeral Developments Inc.) – 993 & 1003 Harvey Avenue

Moved by Councillor Horning/Seconded by Councillor Clark

R948/04/10/04 THAT Bylaw No. 9252 be adopted.

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- (b) Planning & Corporate Services Department, dated September 28, 2004 re: Development Permit Application No. DP04-0033 – RSSD Ventures Ltd. and LOF Holdings Ltd. (Emerald Developments Inc., and RSSD Ventures) – 1007 Harvey Avenue

Staff:

- The proposal comprises two properties that subsequent to initial consideration of the rezoning application have been consolidated resulting in a new street address.
- The development permit is to address the form and character of the proposed 4-storey, 47-unit apartment building that would be constructed above one level of underground parking.
- An additional five parking stalls would be provided at grade, and there are also stalls designated in the underground for visitor parking.
- Vehicular access would be from the lane only.
- The landscaping plan indicates primarily perimeter screening.

Moved by Councillor Hobson/Seconded by Councillor Day

R949/04/10/04 THAT Council authorize the issuance of Development Permit No. DP04-0033 for Lot A, D.L. 138, O.D.Y.D. Plan KAP76073 (formerly Lots 1 & 2, District Lot 138, O.D.Y.D. Plan 2769), located on Harvey Avenue, 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.

Carried

- 4.5 Planning & Corporate Services Department, dated September 28, 2004 re: Agricultural Land Reserve Appeal No. A04-0010 – Amberwood Investments Ltd. (George Lensen) – 4210 Swamp Road

Staff:

- The property is 10 ha in size and is currently being used to grow hay and graze cattle. The applicant is seeking to subdivide the property into two parcels to allow for a division of assets as a result of a divorce. The intent would then be to build a new home to the north of the existing home that is located at the bottom of the slope.
- Staff cannot recommend support because the proposed lot does not meet the frontage requirements of the City of Kelowna Zoning Bylaw and relevant planning documents do not support parcelization unless for purposes of a homesite severance.
- The Agricultural Advisory Committee does not recommend support.

Moved by Councillor Shepherd/Seconded by Councillor Blanleil

R950/04/10/04 THAT Council hear from the applicant.

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George Lensen, applicant:

- Advised that the owners were in attendance to present their case to Council.

Don Gerein, co-owner:

- The property was 42 acres when they took ownership in 1989 and was one of three parcels that were created at that time from the original 78 acre property.
- In 1996, the subject property was reduced to the approximate 26 acre size that exists today when 15 acres were consolidated with an adjoining agricultural parcel to the north and west.
- If the requested subdivision is approved, he would own the proposed 5 acre parcel and remain in the existing home. His former wife would occupy the balance of the property in a new home proposed for construction.
- There is a lot of perimeter on the property because of its shape and that distorts the frontage requirements. The narrow frontage on the 5 acres is about 50 ft. and it is the current main driveway for the property. There are also two farm access roads. The agricultural use takes place on the 21 acre portion of the property.
- There are also three picker's cabins that are rented out; all were built with the appropriate permits and occupancy permits. The assessment authority has classified that component of the land as a commercial multi-family component not eligible for farm status. The balance of the property is eligible for farm status.

Lorna Dumaresq, co-owner:

- She and her former husband have remained friends and neither of them have any intention of selling the property. The proposed subdivision would allow the children to continue to live on the property and to not have to pick and chose between their parents.

Staff:

- The applicant has been advised by the City's Approving Officer that he is not prepared to approve a subdivision of the property.

Moved by Councillor Shepherd/Seconded by Councillor Cannan

R951/04/10/04 THAT the applicants be permitted to address Council for a second time.

Carried

Don Gering:

- The property has never been subject of a homesite severance.
- He and his former wife have been severing the family assets since 1994.

Moved by Councillor Clark/Seconded by Councillor Shepherd

R952/04/10/04 THAT Agricultural Land Reserve Appeal No. A04-0010, Lot B, Sec. 6, Twp. 26 and Sec. 31, Twp. 29, ODYD, Plan KAP56611, located on Swamp Road, Kelowna, B.C. for subdivision within the Agricultural Land Reserve pursuant to Section 21(1) of the Agricultural Land Commission Act, **not** be supported by Municipal Council;

AND THAT Municipal Council forward the subject application to the Agricultural Land Reserve Commission.

Carried

Mayor Gray and Councillors Cannan and Horning opposed.

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5. BYLAWS (ZONING & DEVELOPMENT)

(BYLAWS PRESENTED FOR ADOPTION)

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

Moved by Councillor Shepherd/Seconded by Councillor Horning

R953/04/10/04 THAT Bylaw No. 9282 be adopted.

Carried

6. NON-DEVELOPMENT APPLICATION REPORTS

- 6.1 Civic Properties Manager, dated September 17, 2004 re: “Old Surtees Property” Request for Proposals/Expressions of Interest (0890-20)

Staff:

- At the time the City purchased the property in 2002, there were five buildings on the site. All but the barn and café building have been removed from the site and the remaining buildings are on the Kelowna Heritage Register.
- Do not recommend spending any funds to retain the remaining buildings.
- If a private proposal does not come forward that meets the City's park needs, will be back to Council asking to have the buildings removed.

Council:

- The RFP/REFI document needs be clear about where access would be permitted to the site.

Moved by Councillor Shepherd/Seconded by Councillor Hobson

R954/04/10/04 THAT staff be directed to issue a ‘Request for Proposals/Expressions of Interest’ for use of the “old Surtees” property located at 4629 Lakeshore Road.

Carried

- 6.2 Development Manager, dated September 28, 2004 re: Latecomer Charges – No. 21 Great Projects Ltd. – East of South Ridge Drive (2250-70-68)

Moved by Councillor Hobson/Seconded by Councillor Day

R955/04/10/04 THAT the Municipal Council requires the owner of Lot 1 D.L. 579, Similkameen Division Yale District, Plan 23033, Lot 5, D.L. 579, SDYD, Plan 26238, Lot 6, D.L. 579, SDYD, Plan 26238, Lot A, D.L. 579, SDYD, Plan KAP68860 and Lot N ½, D.L. 579, SDYD, Except Plan 5648, 9458, 9459 Ex. MH Occupier (See 217-13067.001) which is to be subdivided or developed, to provide the excess or extended services shown in Schedule D of the Latecomer Agreement No. 2250-70-68, attached to the report of the Director of Works & Utilities, dated September 28, 2004;

AND THAT the Municipal Council consider the cost to provide the excess or extended services shown in Schedule D of the Latecomer Agreement No. 2250-70-68, in whole or in part, to be excessive;

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AND THAT the Latecomer charges be imposed for excess or extended services, as shown in Schedules A and B of Latecomer Agreement No. 2250-70-68, which are required to be installed as part of the referenced Development Project;

AND THAT Latecomer charges be imposed on the benefiting lands outlined in Schedule D of Latecomer Agreement No. 2250-70-68;

AND THAT the City enter into Latecomer Agreement No. 2250-70-68 with the owner to be effective upon Substantial Performance of the Excess or Extended Services, and the Mayor and City Clerk be authorized to execute and affix the corporate seal to this Latecomer Agreement;

AND FURTHER THAT the owners of the benefiting lands be advised in writing of the Latecomer charge to be imposed on their land.

Carried

6.3 Development Manager, dated September 28, 2004 re: Latecomer Charges – Markui Contracting Ltd./John & Sarina Weisbeck – Highway 33 (2250-70-71)

Councillor Day declared a conflict of interest because he owns nearby property the value of which may be impacted by this agreement and left the Council Chamber at 2:59 p.m.

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R956/04/10/04 THAT the Municipal Council requires the owner of Lot 1, Sec 13, Twp 26 ODYD Plan 17448 and Lot 2, Sec 13, Twp 26 ODYD Plan 14039 which is to be subdivided or developed, to provide the excess or extended services shown in Appendix E of the Latecomer Agreement No. 2250-70-71, attached to the report of the Director of Works & Utilities, dated September 28, 2004;

AND THAT the Municipal Council consider the cost to provide the excess or extended services shown in Appendix E of the Latecomer Agreement No. 2250-70-71, in whole or in part, to be excessive;

AND THAT the Latecomer charges be imposed for excess or extended services, as shown in Appendix E of Latecomer Agreement No. 2250-70-71, which are required to be installed as part of the referenced Development Project;

AND THAT Latecomer charges be imposed on the benefiting lands listed in Appendix D of Latecomer Agreement No. 2250-70-71;

AND THAT the City enter into Latecomer Agreement No. 2250-70-71 with the owner to be effective upon Substantial Performance of the Excess or Extended Services, and the Mayor and City Clerk be authorized to execute and affix the corporate seal to this Latecomer Agreement;

AND FURTHER THAT the owners of the benefiting lands be advised in writing of the Latecomer charge to be imposed on their land.

Carried

Councillor Day returned to the Council Chamber at 3:00 p.m.

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- 6.4 Director of Financial Services, dated September 29, 2004 re: Utility Billing Penalty (1820-20)

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R957/04/10/04 THAT the City of Kelowna reduce the penalty charged on unpaid prior month's utility charges from the current 10% to 3.75%.

AND THAT the City of Kelowna implement this change on the November 16, 2004 billing of Cycle 1 accounts via a corresponding amendment to section 8.4 of the City's Utility Billing and Customer Care Bylaw.

Carried

- 6.5 Assistant Airport General Manager, dated September 28, 2004 re: Air Terminal Building Space Sub-Lease and Airport Use Agreement for Regional 1 Airlines Ltd. (2380-20-8127)

Moved by Councillor Hobson/Seconded by Councillor Day

R958/04/10/04 THAT Council authorize the Mayor and City Clerk to sign the Air Terminal Building Space Sub-Lease and the Air Carrier Airport Use Agreement allowing Regional 1 Airlines Ltd. to operate at the Kelowna International Airport.

Carried

- 6.6 Airport General Manager, dated September 29, 2004 re: Economy Parking Lot Expansion – Phase 2 – Kelowna International Airport (6640-20; 0550-05)

Moved by Councillor Hobson/Seconded by Councillor Blanleil

R959/04/10/04 THAT Council approve an increase in the Hayter Construction Ltd. unit price construction contract in the amount of \$136,500.00 to include Phase 2 of the parking lot expansion in the current fiscal year.

Carried

- 6.7 Recreation Manager, dated September 28, 2004 re: BC Games Bid Preparation (8100-20)

Council:

- Staff to take into consideration the demand on volunteer support.
- Staff to also contact the Chamber of Commerce and the Hotel/Motel Association for input.

Moved by Councillor Shepherd/Seconded by Councillor Hobson

R960/04/10/04 THAT the City of Kelowna initiate a bid proposal for the BC Games in 2008 or 2010;

AND THAT the preparations include public input to determine the level of community support and the priority of the possible events for Kelowna.

Carried

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- 6.8 Fire Chief, dated September 28, 2004 re: 1250 GPM 4 x 4 Pumper Fire Truck (1715-01)

Moved by Councillor Shepherd/Seconded by Councillor Cannan

R961/04/10/04 THAT Council approve the purchase of a 1250 GPM 4x4 Pumper Fire Truck from Profire Emergency Equipment – Abbotsford, (to be built by Superior Emergency Vehicles, Red Deer) for the price of \$510,953 (taxes included).

Carried

7. BYLAWS (OTHER THAN ZONING & DEVELOPMENT)

(BYLAWS PRESENTED FOR ADOPTION)

- 7.1 Bylaw No. 9311 – Amendment No. 17 to Solid Waste Management Bylaw No. 7173

Moved by Councillor Horning/Seconded by Councillor Clark

R962/04/10/04 THAT Bylaw No. 9311 be adopted.

Carried

- 7.2 Bylaw No. 9312 – Amendment No. 11 to Fire Prevention Regulations Bylaw No. 6110-88

Staff:

- Have no idea the type of requests that will be received. Would like the ability to assess each request without being confined to definitions and will report back to Council next Spring.
- The Regional District of Central Okanagan does not have definitions in their bylaw either.

Moved by Councillor Horning/Seconded by Councillor Blanleil

R963/04/10/04 THAT Bylaw No. 9312 be adopted.

Carried

Councillor Clark opposed.

8. COUNCILLOR ITEMS

(a) Parking Tickets

Councillor Shepherd commented that the City of Kelowna needs to make it easier for people to see on the parking tickets that there is a discount if the ticket is paid quickly. She said the print is tiny and the colour red is difficult to read on a white background, especially for people who are visually impaired. Councillor Shepherd suggested that staff take a look at redoing the ticket to address these concerns.

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(b) Former CNR Train Station Building – Clement Avenue/Ellis Street

Councillor Clark asked for a report on the status of the plans Canada Lands had for this important heritage building.

Councillor Horning left the meeting at 3:34 p.m.

(c) Skyline/Clifton Road Connection at High Road

Councillor Cannan recalled that the first phase of the Central Okanagan Bypass from Clement to Spall was to be constructed in 2005 and expressed concern that construction is now being delayed until 2006. Councillor Cannan asked that Council be brought up to speed on what the delay is and what the actual timing is for the first phase to proceed.

9. TERMINATION

The meeting was declared terminated at 3:50 p.m.

Certified Correct:

Mayor

Acting City Clerk

BLH/am