

Regular MeetingJune 28, 2005

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, June 28, 2005.

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

Council members absent: Councillor E.A. Horning.

Staff members in attendance were: City Manager, R.A. Born; Deputy City Clerk, S.C. Fleming; 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 8:24 p.m.

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, June 13, 2005
Public Hearing, June 14, 2005
Regular Meeting, June 14, 2005
Regular Meeting, June 20, 2005

Moved by Councillor Day/Seconded by Councillor Blangleil

R627/05/06/28 THAT the Minutes of the Regular Meetings of June 13, June 14 and June 20, 2005 and the Minutes of the Public Hearing of June 14, 2005 be confirmed as circulated.

Carried

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

5. BYLAWS CONSIDERED AT PUBLIC HEARING

(BYLAWS PRESENTED FOR SECOND & THIRD READINGS)

5.1 Bylaw No. 9428 (Z05-0011) - Astrid Kneipp; John Marshall; Michael Marshall; D.M.J. Construction Ltd.; and 0706682 BC Ltd. (Garry Tomporowski Architects) – 1004, 1012, 1026 Bernard Avenue and 1495 Graham Street

Moved by Councillor Blangleil/Seconded by Councillor Cannan

R628/05/06/28 THAT Bylaw No. 9428 be read a second and third time.

Carried

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- 5.2 Bylaw No. 9431 (TA05-0006) – City of Kelowna – Amendments to Zoning Bylaw No. 8000

Moved by Councillor Shepherd/Seconded by Councillor Given

R629/05/06/28 THAT Bylaw No. 9431 be read a second and third time.

Carried

(BYLAWS PRESENTED FOR SECOND & THIRD READINGS AND ADOPTION)

- 5.3 Bylaw No. 9376 (OCP05-0005) – An amendment to Map 12.1 – 20 Year Major Road Network and Road Classification Plan

Staff:

- The Roads Task Force looked at the elevated road concept in principle.
- The Concerned Citizens for a Better Kelowna community group is saying a 4-lane viaduct that connects to the bridge would meet traffic flow requirements to year 2020 and that provides for the same capacity as what is recommended by the Task Force with Option 19.

A motion to defer for staff to prepare a budget for an engineering analysis of the elevated expressway concept was lost due to lack of a seconder.

Moved by Councillor Given/Seconded by Councillor Blanleil

R630/05/06/28 THAT Bylaw No. 9376 be read a second and third time, and be adopted.

Carried

Councillor Cannan opposed.

- 5.4 Bylaw No. 9434 (Z04-0059) - Sun Holdings Ltd. (Grant Maddock/Protech Consultants Ltd.) – 5030 Frost Road

Moved by Councillor Clark/Seconded by Councillor Shepherd

R631/05/06/28 THAT Bylaw No. 9434 be read a second and third time, and be adopted.

Carried

- 5.5 Bylaw No. 9435 (Z05-0028) - Denver Carrington Developments Inc. (Colin Darrow) - 538-540 Leon Avenue

Moved by Councillor Shepherd/Seconded by Councillor Clark

R632/05/06/28 THAT Bylaw No. 9435 be read a second and third time, and be adopted.

Carried

Councillor Given opposed.

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- 5.6 Bylaw No. 9437 (OCP05-0002) – Pasadena Estates Ltd./Gary Dober (Canwest Design Group/John Schlosser) – 4427, 4431 & 4433 Gordon Drive **Requires majority vote of Council (5)**

Moved by Councillor Day/Seconded by Councillor Cannan

R633/05/06/28 THAT Bylaw No. 9437 be read a second and third time, and be adopted.

Carried

- 5.7 Bylaw No. 9438 (Z05-0008) – Pasadena Estates Ltd./Gary Dober (Canwest Design Group/John Schlosser) – 4427, 4431 & 4433 Gordon Drive

Moved by Councillor Given/Seconded by Councillor Day

R634/05/06/28 THAT Bylaw No. 9438 be read a second and third time, and be adopted.

Carried

6. PUBLIC MEETING TO RECEIVE INPUT ON LIQUOR LICENSE APPLICATIONS

- 6.1 Planning & Corporate Services Department, dated May 4, 2005, re: Liquor Licensing Application No. LL05-0002 – Denver Carrington Developments Inc. (Colin Darrow) – 538-540 Leon Avenue

Staff:

- The location is on the threshold of the 100 m separation distance between liquor primary premises as set by the Mayor's Entertainment Task Force.
- The premises was licensed under former liquor licensing regulations.
- Recommend that the patio hours be restricted to 11 p.m. closing and no outside speaker amplification.
- The applicant has signed a Good Neighbour Agreement with the City.

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

- letter of opposition from Michelle Elkins, 2175 Abbott Street, concerned that the neighbourhood would be negatively impacted.
- letter from the owner of Tonics Pub & Grill who believes the location of the subject property is only 98 m away from Tonics.

Mayor Gray invited anyone in the public gallery who deemed themselves affected by the liquor license application to come forward.

Colin Darrow, applicant:

- Would not want a 2 a.m. closing – too many drunks and that is for bars; 1 a.m. is late enough.
- The court yard is totally enclosed by three walls and is fenced off from the street. An 11 p.m. closing time on the patio would not be fair. Is willing to not have speakers on the patio but would not want to have to ask patrons to leave the patio at 11 p.m. when the pub is open until 1 a.m.

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Staff:

- To be consistent, staff recommend the 11 p.m. closing for outdoor patio areas whether there is residential nearby or other businesses. In this case, there are no residential properties nearby and the configuration of the patio mitigates some of the noise concerns.
- Council dealt with a liquor primary application two weeks ago and agreed to allow the same hours on the outdoor patio as the interior seating with the restriction for no outdoor speakers.

There were no further comments.

Moved by Councillor Blanleil/Seconded by Councillor Clark

R635/05/06/28 THAT Council support a liquor primary license (person capacity: 122 interior/28 patio and Hours of Operation: Sunday-Thursday: 10 a.m. to 12 a.m.; Friday-Saturday: 10 a.m. to 1 a.m.) for Miami's Pub on Lot A, District Lot 139, ODYD Plan 16322; proposed by Denver Carrington Developments Inc. for 538-540 Leon Avenue;

AND THAT Council restrict liquor service on the patio from 10 a.m. to 11 p.m. with support for an extension to 1 a.m. for a 12 month trial period from the date of opening;

AND THAT Council restrict the applicant from using speakers in the patio area;

AND FURTHER THAT Council direct staff to forward the appropriate resolution to the Liquor Control and Licensing Branch in Victoria.

Carried

Councillor Given opposed.

6.2 Planning & Corporate Services Department, dated May 12, 2005 re: Liquor Licensing Application No. LL05-0003 – Kelowna Central Park Properties Ltd. (Randall Olafson Consultants Ltd.) – 1575 Banks Road

Staff:

- At the beginning of tonight's Public Hearing, the applicant changed his request for closing times because of the negative recommendation from staff. He is now asking for 11 a.m. to midnight on Sunday to Tuesday and 11 a.m. to 1:30 a.m. on Wednesday to Saturday for hours of operation. His original request was for 11 a.m. to 12:30 a.m. Monday to Wednesday; from 11 a.m. to 2 a.m. Thursday to Saturday; and from 11 a.m. to 12 a.m. on Sundays.
- The new hours are consistent with other franchises within their chain; the new hours are not consistent with the majority of the other food primary establishments which end their liquor service at 1 a.m. or earlier.
- Food primary establishments need Council approval to be open beyond midnight. Cats Meow, which is now closed, was the only liquor primary establishment in Kelowna that applied to be open beyond midnight.

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Mayor Gray invited anyone in the public gallery who deemed themselves affected by the liquor license application to come forward.

Randy Olafson, principle of Kelowna Central Park Properties:

- The company conducted more research and found that 2 a.m. was beyond the norm. The rest of their franchise restaurants are typically open to 1:30 a.m. and the chain is well known for that.
- The staff report says an extension to 2 a.m. would blur the difference between food and liquor primary establishments. Their restaurants are not typical because they serve 75% food and 25% alcoholic beverages.
- The location was chosen in anticipation of the employees of the businesses in the area becoming their main clientele and, given the location, the later hours should not be a problem.
- Building a stand alone establishment in a location like this it is expensive so need to be able to operate the restaurant beyond midnight.
- Have never experienced a problem with the RCMP in any of the municipalities where they have franchises. Their management and staff are trained in diffusing situations and potential problems with people over imbibing.
- Hopes to be open for business in September.

Moved by Councillor Shepherd/Seconded by Councillor Hobson

R636/05/06/28 THAT Council support an extension to the permitted hours of liquor service for the Cactus Club Restaurant from 11 a.m. to 12:00 a.m. Sunday to Tuesday, and from 11 a.m. to 1:30 a.m. Wednesday to Saturday, on Lot B, Plan 75635, for 1575 Banks Road;

AND THAT Council direct staff to forward the appropriate resolution to the Liquor Control and Licensing Branch in Victoria.

Carried

Councillor Given opposed.

6.3 Planning & Corporate Services Department, dated May 18, 2005 re: Liquor Licensing Application No. LL05-0005 – Evergreen Lands Ltd., 594919 BC Ltd., Peacock Insurance & Financial Group Inc., Viewcrest Estates Ltd. and Brainwave Management Inc. (Waterfront Wines Bistro) – 1180 Sunset Drive

Staff:

- The applicant indicated prior to this meeting that he wishes to amend his requested hours of operation. He was asking for a midnight closing from Sunday to Thursday and 1 a.m. closing on Friday and Saturday. He is now asking for 11 a.m. to midnight 7 days a week.
- The staff recommendation should have also included a clause to close the patio at 11 a.m. with no exterior speakers.
- The inside seating capacity of Waterfront Bistro is 30, not 98 as indicated in the staff report.
- Is not aware of any complaints being received by the City as a result of this establishment; staff recommend that the amended hours would be appropriate.

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

Opposition:

- Petition bearing 9 signatures of residents of Sunset Drive
- letter from Colin & Madeleine Grain, 1152 Sunset Drive
- letter David Dill, 1151 Sunset Drive
- letter from D.H. Green, 1088 Sunset Drive

Opposed generally on the basis that there would be an increase in noise and irresponsible behaviour, a lack of parking, and a negative impact on the neighbourhood.

Support:

- letter from Trish Power, 1160 Sunset Drive, stating she sees no cause for concern with the requested hours of operation.
- letter from Janice Fingado, resident of The Lagoons, supporting the application but concerned about potential loud music.

Mayor Gray invited anyone in the public gallery who deemed themselves affected by the liquor license application to come forward.

Charles Hurtubise, applicant:

- Waterfront Wines Bistro has seating for 30 inside and 20 on the patio.
- Would like to change the closing time on Sunday to Thursday from 10 p.m. to midnight.
- Does not believe that the rowdy behaviour people complain about in the area comes from Waterfront Wines Bistro.
- Waterfront Bistro is about 50/50 food to liquor sales.
- There is no music on the patio.

There were no further comments.

Moved by Councillor Blanleil/Seconded by Councillor Shepherd

R637/05/06/28 THAT Council support an extension to the permitted hours of liquor service for Waterfront Wines Bistro from 11 a.m. to 12:00 a.m. seven days a week, on Lot B, Plan KAP49982, DL 139, ODYD, except Strata Plan KAS1261 (Phase 1), for 1180 Sunset Drive;

AND THAT Council restrict the applicant from using speakers in the patio area;

AND FURTHER THAT Council direct staff to forward the appropriate resolution to the Liquor Control and Licensing Branch in Victoria.

Carried

Councillors Cannan, Clark and Hobson opposed.

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- 7.1 Planning & Corporate Services Department, dated May 18, 2005 re: Development Variance Permit Application No. DVP05-0074 – AG Appel Enterprises Ltd. (Space Centre Self Storage) – 2850 Acland Road

Staff:

- The subject property is currently vacant. The applicants propose to develop it as a boat and RV storage yard as an interim use until they develop their site west of the highway.
- The request for a reduced front yard setback would allow for a security operator facility to be situated close to the front entrance to the site.

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

Applicant:

- Indicated that he had nothing to add.

There were no further comments.

Moved by Councillor Day/Seconded by Councillor Shepherd

R638/05/06/28 THAT Council authorize the issuance of Development Variance Permit No. DVP05-0074; Lot 4, District Lot 123, ODYD Plan KAP68009, located on Acland Road, Kelowna, B.C.;

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

15.2 – I2 – General Industrial: 15.2.5(d):

- Vary the front yard setback from 7.5 m required to 0.0 m proposed for a residential security/operator unit;

AND FURTHER THAT the applicant be required to register a covenant on title recognizing that the access to the vehicle storage facility as currently planned is temporary and that in 5 years time or with 6 months notice from the City of Kelowna, the applicant will be required either to modify this access to provide an on-site turn-around for vehicles choosing not to access the site or terminate the vehicle storage use.

Carried

7.2 Planning & Corporate Services Department, dated May 20, 2005 re: Development Permit Application No. DP05-0065 and Development Variance Permit Application No. DVP05-0066 – Rodger & Jody Hazard (Paul Nesbitt) – 208 Poplar Point Drive

Staff:

- When the owner purchased the property, he obtained a permit for the demolition of the house. That permit also had terminology regarding not having any destruction of habitat within the 15 m riparian area. The contractor did not heed those conditions and altered the site by clearing the lot into the non-disturb riparian area and also in one area beyond their property line. The Development Permit is for mitigation work to deal with the impacts created by that disturbance. The applicant had an environmental report prepared to deal with the restoration works and the remediation plan includes landscaping to re-establish the areas that were disturbed and includes trails down to the beach. Environment mitigation works would have to be completed before construction on the house occurs.
- The Development Variance Permit is for a sight line variance for the proposed new residence. The previous house that was on the site also encroached on the Okanagan Lake sight line provisions but not as much.
- The property is serviced by a shared private easement road.

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

Opposition:

- petition bearing 43 signatures of residents of Poplar Point Drive and Herbert Heights
- letter from Diane Doyle, 315 Poplar Point Drive
- letter from Nancy and Murray Ramsden, 220 Poplar Point Drive
- letter from Jean McKenzie, 390 Poplar Point Drive
- letter from Shirley Mitcalfe, 216 Poplar Point Drive
- letter from James Tisdale, 370 Herbert Heights
- letter from Mike Banwell & Jan Fisher, 208 Poplar Point Drive

Opposed generally on the basis that views, property values and the neighbourhood would be negatively impacted.

Paul Nesbitt, applicant:

- Poplar Point Drive is narrow and the easement road is narrow. People drive to use the hiking trails in the area but there is no where to park so they park where there is no legal turnaround and that causes a problem. The owner of the subject property is investing a lot and wants to be able to provide on-site parking for his guests.
- The neighbours to the south have a sloped driveway. Pushing the house closer to the easement road would further impede visibility when backing out of the driveways.
- If the sight line angle was measured logically there would be no need for a variance.
- There is a continuous row of cedars along the neighbour's property to the south that already blocks their view of the lake.
- The portion of the neighbour's property that was damaged will be restored to the way it was.
- The proposed residence is two levels with 4,000 sq. ft. per floor.
- There would be no encroachment into the riparian zone – that was changed after the application was considered by the Advisory Planning Commission.

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

Murray Ramsden, 220 Poplar Point Drive:

- He shares the private easement road and his property is two lots removed from the subject property.
- Objects to the variance because it would set a precedent for how the neighbourhood redevelops over the next 15-20 years, and because there should have been consultation with the neighbourhood.
- The owner should have bought a larger lot for the design of house he is proposing to build.

Valerie Halford, FRAHCAS:

- The residents of the Abbott Street Heritage Conservation Area were recently faced with a similar request for a sight line variance at 2150 Abbott Street, and that issue is still not resolved between the applicant and the neighbours.
- It is the nature of lakeshores to be curved.
- People have to learn to live within bylaw requirements and neighbours need to be able to depend on their Okanagan Lake views being protected.
- Existing neighbours should not have to lose their views to accommodate a new 8,000 sq. ft. house.
- The applicant should have to adhere to the sight line provisions of the bylaw.

Duncan Kippan, 250 Poplar Point Drive:

- Opposes the variance. Council did not support a variance at 2150 Abbott Street and to be consistent should not support a variance here either.
- The applicant bought the subject property in the last couple of years so should have known the sight line provisions of the bylaw.
- It is still possible to get a sizeable building envelope on the subject property while adhering to the sight line requirements.

Mike Banwell, 212 Poplar Point Drive:

- Opposes the variance. He is the owner of the adjacent property to the south and it is his view that would be impacted and the view is the prime value of the property.
- He has lived there for 17 years. If the requested variance is approved he will see the side of a building instead of trees and water. He should not have to compromise his dream home to accommodate a neighbour's dream home.
- There is currently no other sight line obstruction in the neighbourhood other than the one between his property and his neighbour to the south (216 Poplar Point Drive) and the encroachment came about when the neighbour renovated in 1997. The neighbour consulted with him and they came to an agreement.
- The proposed structure is too big for the site and should be designed in accordance with bylaw requirements.
- Would have liked to have been consulted because he may have agreed to compromise and accept a variance to 45 degrees.
- He and the previous owner of the subject property were careful and watched for each other when backing out of their driveways and on-site parking was not an issue for the previous owner.

Mervi Toijonen, 254 Poplar Point Drive:

- Opposes the variance.
- Submitted and read a letter on behalf of the Metcalfs at 216 Poplar Point Drive also opposing the variance and asking that the sight line provisions of the bylaw be enforced.

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Jim Tisdale, 370 Herbert Heights:

- Opposes the variance.
- The excavation work was done by the applicant without any consultation with the Banwells. This is not the way business has been done in that neighbourhood. A compromise could have been negotiated on a friendly basis.
- The applicant should be required to adhere to the sight line provisions of the bylaw; otherwise a precedent would be set.

Mike Ertel, 330 Poplar Point Drive:

- Opposes the variance.
- Sounds like the Banwells are being asked to sacrifice their view for parking. Nobody buys property on Poplar Point for parking.
- He consulted with his neighbours and as a result changed the configuration of his house before building.

Martin Doyle, 315 Poplar Point Drive:

- Opposes the variance.
- Several houses have been built and modified in the neighbourhood in the last few years without any problems because there was consultation.
- The area is going to be rebuilt but the residents want to preserve the character of the neighbourhood.

Nancy Spelliscy, 344 Poplar Point Drive:

- Building right to the front of the property line impedes sight lines and is an eyesore. An 8,000 sq. ft. home on the subject property would stand out and have a negative impact.
- Once the site is developed there is nothing that can be done. Need to consider the long term impact in this neighbourhood.

EXTENSION OF MEETING

Moved by Councillor Shepherd/Seconded by Councillor Given

R639/05/06/28 THAT the meeting be continued past 11 p.m. in accordance with Section 5.5 of Council Procedure Bylaw No. 9200.

Carried

Councillors Clark and Hobson opposed.

Mary McCulloch, 309 Poplar Point Drive:

- Opposes the variance.
- The proposed design would impact the neighbour's view. The need for a variance should have been discussed with the neighbour.
- The sight line provisions of the bylaw should be respected.

Paul Nesbitt, applicant – continued

- City staff advised him to approach only the property owner who would be impacted, that being Mr. Banwell.
- The property owner obtained a demolition permit before doing any work on the site.
- Neighbourhood property values would increase because the proposed house would drive up the tax base and set a new trend.
- It is not unusual for people in the Okanagan to be buying homes and tearing them down to re-build.

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- The size of the proposed house is not contrary to bylaws.
- The 60 degree sight line requirement does not address all situations; the bylaw needs to address situations where lot lines are not perpendicular or else the bylaw should be rescinded.
- Mr. Banwell went to his lawyer instead of talking to the owner of the subject property to resolve concerns about the excavation work that had been done.
- There would be parking for 4 vehicles in front of the two proposed garages, allowing for guest parking on-site.
- The proposed house could be redesigned to accommodate a 45 degree sight line; however, would prefer that Council approve a variance to 30 degrees as requested.

Council:

- A motion to defer further consideration of the variance request to allow the applicant more time to attempt to reach a compromise with the neighbour was moved and seconded. After discussion, the following motion was adopted.

Moved by Councillor Given/Seconded by Councillor Clark

R640/05/06/28 THAT Council ***not*** authorize the issuance of Development Variance Permit No. DVP05-0066; Lot 2, District Lot 219 ODYD Plan 4561 located on Poplar Point Drive, Kelowna, B.C.;

AND THAT Council ***not*** grant a variance to Section 6.11.1 of Zoning Bylaw No. 8000 regarding Okanagan Lake Sightline requirements.

Carried

8.0 RESOLUTIONS

8.0.1 Draft Resolution to UBCM re: Strategy to Eliminate Residential Grow-Ops

Moved by Councillor Hobson/Seconded by Councillor Shepherd

R641/05/06/28 THAT the following resolution be forwarded for debate at the 2005 Union of British Columbia Municipalities Convention:

“WHEREAS residential marijuana grow operations pose a significant risk to the occupants, immediate neighbours and first response personnel;

AND WHEREAS the Province has recognized this risk and funded two pilot projects in Surrey and Abbotsford offering an alternative approach to eliminating residential marijuana grow operations;

THEREFORE BE IT RESOLVED that the Union of British Columbia Municipalities be requested to support developing a provincial strategy based on the pilot projects in Abbotsford and Surrey in consultation with local government, the Ministry of Public Safety and Solicitor General, the Ministry of Community Affairs, and the RCMP.”

Carried

8. REMINDERS – Nil.

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9. TERMINATION

The meeting was declared terminated at 11:25 p.m.

Certified Correct:

Mayor

Deputy City Clerk

BLH/am