

Regular Meeting – P.M.November 7, 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 Monday, November 7, 2005.

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

Staff members in attendance were: City Manager, R.A. Born; City Clerk, A.M. Flack; Director of Planning & Corporate Services, R.L. Mattiussi*; Manager of Development Services, A.V. Bruce*; Subdivision Approving Officer, R.G. Shaughnessy*; Manager of Policy, Research & Strategic Planning, S.K. Bagh*; Planner-Long Range, G.L. Stephen*; Director of Financial Services, P.A. Macklem*; Manager of Community Development & Real Estate, D.L. Shipclark*; Special Projects Planning Manager, H.M. Christy*; Community Planning Manager, T. Eichler*; Superintendent of Roads/Equipment, D. Beaudry*; Water & Drainage Engineer, R. Barnes*; Recreation Manager, R. Oddleifson*; Recreation Supervisor, A. Thiessen*; Property Officer, D. Gilchrist*; 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 Given was requested to check the minutes of the meeting.

3. PUBLIC IN ATTENDANCE

3.1 Andrew Spoeth, Marketing/Programming Manager, Rotary Centre for the Arts re: RE/MAX ArtsCard

Andrew Spoeth, Rotary Centre for the Arts:

- ArtsCard is an initiative by the Arts Group to hopefully increase utilization of the Rotary Centre for the Arts and increase the viability of the performing arts productions that are coming up.
- The card was launched on October 25th. The \$20 cost gives discounts on all performing arts events that are by participating performing groups. The discount applies to as many tickets as are being purchased for the event. At the end of the year the price of the card goes up to \$29.

4. DEVELOPMENT APPLICATIONS

4.1 Planning & Corporate Services report dated November 2, 2005 re: Agricultural Land Reserve Appeal No. A05-0011 – Richard & Marie Dempster – 1325 McKenzie Road

Staff:

- The application before Council is for a subdivision within the Agricultural Land Reserve to subdivide a 3.91 ha parent parcel into two to create a separate lot for the daughter and her family who live in an older secondary home on the property.
- The applicants have owned the property for 12 years and do not meet requirements for a homesite severance.
- The Agricultural Advisory Committee and City Planning staff do not recommend support as the subdivision would be contrary to the Kelowna Agricultural Plan, the Official Community Plan and the Rutland Sector Plan which are the planning documents used for guidance by the City's Approving Officer.

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- Whatever action Council takes today will be forwarded to the Agricultural Land Commission (ALC) and if they support subdivision within the ALR, the next step in the process would be for the applicant to submit a formal subdivision application which would be dealt with by the City's Approving Officer.

Stacey Paquin, solicitor with Benson Edward:

- Represents the applicants for this application and the next two applications on the meeting agenda.
- The City's Approving Officer is rejecting the applications because they do not comply with City policy that does not encourage agricultural land to be divided into smaller parcels unless it is for agricultural benefit.
- Section 946 of the Local Government Act has been used frequently around the province. The purpose of that section is to provide an opportunity for land owners to provide small pieces of land for family members. It is a way to divide the land up for the families. It is not intended to be for agricultural benefit – it is just a way to pass the land on.
- Since Section 946 has been around so long, the BC Supreme Court has decided that keeping the land in the family was in the public's best interest and that the Approving Officer **cannot** use City policy to over-ride Section 946.
- The applications were submitted to the City under Section 946 of the Local Government Act. Asked that Council support the three applications even though they do not comply with City policy.

Staff:

- The applications before Council are for subdivision within the ALR under Section 21(2) of the Land Commission Act. The Approving Officer cannot consider subdivision under Section 946 of the Local Government Act without first receiving Land Commission approval of the land being subdivided within the ALR.
- If the Agricultural Land Commission supports subdivision within the Agricultural Land Reserve, and the applicants apply to subdivide under Section 946, the Approving Officer would have 60 days to either approve or refuse the subdivision. If the application is refused by the Approving Officer, the applicant would have 30 days to file a writ and the matter would go before the Courts.

Council:

- Concern about maintaining the integrity of the Agricultural Land Reserve.

Mayor Gray altered the order of business and advised that agenda item No. 4.4 would be dealt with next to allow the agent time to discuss with the applicants how they wished to proceed.

4.4 Housing Agreement (linked to DP05-0114) – Ziprick Place BC Ltd. (Garry Tomporowski Architects) – 135 Ziprick Road (BL9525)

- (a) Planning & Corporate Services report dated October 26, 2005.

Staff:

- The subject property is also under application for rezoning. Adoption consideration of the zone amending bylaw is to be concurrent with Council's consideration of Development Permit and Development Variance Permit Applications. A condition of the DP is a Housing Agreement to provide for density bonusing.
- A total of about 4,600 sq. ft. of buildable area would be subject to the proposed housing agreement which would result in five units of affordable housing.
- The staff report indicates that if the owner has owned the affordable housing unit for 10 consecutive years, the owner may request that the City discharge this agreement thus allowing for the sale of the unit at market value. This is not correct and should indicate that the housing agreement could be discharged from any of the affordable housing units 10 years after completion of the project.

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- The owner intends to stratify the development and sell the units.
- The housing agreement only deals with the sale price of the affordable units, not whether they are sold or rented.

Council:

- Concern that a non-profit Society could purchase the five affordable housing units for rental purposes and then the Strata Council could decide not to allow rental units. Staff to clarify before adoption, if a covenant could be registered on title to prevent the Strata Council from over-riding the terms of the Housing Agreement.
- Staff to also investigate what the amendments are to the Strata Act that are currently before the Legislature.

Moved by Councillor Shepherd/Seconded by Councillor Given

R1071/05/11/07 THAT Council forward Bylaw No. 9525, authorizing a Housing Agreement between the City of Kelowna and Ziprick Place Ltd. which would require the owners to designate a total of 5 units for affordable ownership on Lot 1, Sec. 22, Twp. 26, ODYD Plan 50112, for reading consideration;

AND THAT final adoption of the housing agreement bylaw be considered in conjunction with Council's consideration of a Development Permit on the subject property.

Carried

(b) **BYLAW PRESENTED FOR FIRST THREE READINGS**

Bylaw No. 9525 – Housing Agreement Authorization Bylaw – Ziprick Place BC Ltd. (Garry Tomporowski Architects) – 135 Ziprick Road

Moved by Councillor Clark/Seconded by Councillor Shepherd

R1072/05/11/07 THAT Bylaw No. 9525 be read a first, second and third time.

Carried

4.1 Planning & Corporate Services report dated November 2, 2005 re: Agricultural Land Reserve Appeal No. A05-0011 – Richard & Marie Dempster – 1325 McKenzie Road

Gordon Ivans, also speaking on behalf of the applicants for agenda items No. 4.2 and 4.3:

- Met with the A.O. before making the application and at that time got the impression that he was not prepared to deal with the applications under Section 946. It is because they were not getting anywhere with the Section 946 applications that they asked to come before Council.
- The A.O. could approve this under the Land Commission Act without coming to Council.
- Kelowna is the last community to consider Section 946 applications. They are being done across the province on a regular basis.
- He was asked by a senior beaurocrat of the Agricultural Land Commission why land owners in Kelowna are not applying to subdivide under Section 946.
- Section 946 of the LGA overrides all the municipal planning documents and there is case law where the Courts have ruled in favour of the land owner. All three applicants want to continue under Section 946 and are prepared to go all the way under that section.

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Staff:

- City Planning documents say not to encourage parcelization of agricultural land unless as a homesite severance and those are the policies the Approving Officer uses as guidance.
- The City of Kelowna has no policy saying the Approving Officer should consider applications under Section 946.

Moved by Councillor Hobson/Seconded by Councillor Shepherd

R1073/05/11/07 THAT Council consideration of Agricultural Land Reserve Appeals No. A05-0011 (Dempster – 1325 McKenzie Road), A05-0014 (Ivans – 1355 McKenzie Road), and A05-0015 (Lee – 1998-2020 Heimlich Road) be deferred for staff to review/update the homesite severance policy, and to consult with the City Solicitor and the Agricultural Land Commission on the question of whether Section 946 of the Local Government Act supersedes City Planning policies.

Carried

4.2 Planning & Corporate Services report dated November 2, 2005 re: Agricultural Land Reserve Appeal No. A05-0014 – Gordon Ivans – 1355 McKenzie Road

See resolution adopted under previous item.

4.3 Planning & Corporate Services report dated November 2, 2005 re: Agricultural Land Reserve Appeal No. A05-0015 – Carolyn and Gillian Lee (Colin Lee) – 1998-2020 Heimlich Road

See resolution adopted under previous item.

4.4 Housing Agreement (linked to DP05-0114) – Ziprick Place BC Ltd. (Garry Tomporowski Architects) – 135 Ziprick Road (BL9525)

Dealt with after agenda item No. 4.1

4.5 Rezoning Application No. Z05-0059 – 448473 BC Ltd. (Gary Tebbutt) – 440 & 460 Hartman Road (BL9528)

(a) Planning & Corporate Services report dated October 14, 2005.

Staff:

- The applicant is proposing to develop the site with 32 units of 3-storey row housing in a total of eight 4-plex buildings.

Moved by Councillor Cannan/Seconded by Councillor Given

R1074/05/11/07 THAT Rezoning Application No. Z05-0059 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A, Section 26, Township 26, ODYD, Plan KAP46388, and Lot B, Section 26, Township 26, ODYD, Plan 30380, located on Hartman Road, Kelowna, B.C., from the RR3 - Rural Residential 3 and A1 – Agriculture 1 zones to the RM3 – Low Density Multiple Housing zone be considered by Council;

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

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AND THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of the Works & Utilities Department being completed to their satisfaction;

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

Carried

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

Bylaw No. 9528 (Z05-0059) - 448473 BC Ltd. (Gary Tebbutt) – 440 & 460 Hartman Road

Moved by Councillor Given/Seconded by Councillor Clark

R1075/05/11/07 THAT Bylaw No. 9528 be read a first time.

Carried

4.6 Rezoning Application No. Z05-0040 – Northland Properties Ltd. (Scott Thomson) – 2130 Harvey Avenue (BL9527)

(a) Planning & Corporate Services report dated October 28, 2005.

Staff:

- The C4 zone would give the applicant more latitude with respect to setbacks, building height and parking ratio.
- The applicant's intent is to construct an 11-storey apartment hotel tower on the northwest portion of the Sandman Inn hotel site.
- The Advisory Planning Commission did not support the application because of concern with the design of the tower.

Moved by Councillor Hobson/Seconded by Councillor Day

R1076/05/11/07 THAT Rezoning Application No. Z05-0040 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot A District Lot 127 O.D.Y.D. Plan 23746, located on Harvey Avenue, Kelowna, B.C. from the C9lp – Tourist Commercial (Liquor Primary) zone to the C4lp – Urban Centre Commercial (Liquor Primary) zone, 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 the accompanying Development Permit and Development Variance Permit for the subject property.

Carried

Regular Meeting – P.M.November 7, 2005(b) **BYLAW PRESENTED FOR FIRST READING**Bylaw No. 9527 (Z05-0040) - Northland Properties Ltd. (Scott Thomson) – 2130 Harvey AvenueMoved by Councillor Clark/Seconded by Councillor Given**R1077/05/11/07** THAT Bylaw No. 9527 be read a first time.Carried4.7 Rezoning Application No. Z05-0048 – School District No. 23 (Judy Shoemaker) – 2058 Cross Road and 106 Valley Road (BL9526)

(a) Planning & Corporate Services report dated October 24, 2005.

Staff:

- The School District is proposing to develop the site with a new Dr. Knox middle school. The School District can accommodate what they need within the current boundaries of the subject property. If an agreement is reached for realignment of Drysdale Boulevard to allow for joint use of the school site with adjacent City land, the City would be responsible for the additional costs.

Council:

- Staff to provide for the Public Hearing, an inventory of the existing parks in Glenmore from the Apple Bowl north, identify the type of park (i.e. neighbourhood park), and what the City's plans are for future parks in Glenmore.

Moved by Councillor Hobson/Seconded by Councillor Day

R1078/05/11/07 THAT Rezoning Application No. Z05-0048 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 4, Block 5, Section 4, Township 23 ODYD Plan 896, located on Cross Road, Kelowna, B.C. from the A1 – Agriculture 1 zone to the P2 – Education and Minor Institutional zone and of Lot A, Section 4, Township 23, ODYD Plan KAP53553, ODYD, located on Valley Road, Kelowna, B.C. from the RU2 – Medium Lot Housing zone to the P2 – Education and Minor Institutional zone 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 subsequent to the requirements of the Works & Utilities Department and the Community Planning and Real Estate Division being completed to their satisfaction.

Carried

Regular Meeting – P.M.November 7, 2005(b) **BYLAW PRESENTED FOR FIRST READING**

Bylaw No. 9526 (Z05-0048) – The Board of School Trustees of School District No. 23 (Central Okanagan) – 2058 Cross Road and 106 Valley Road

Moved by Councillor Day/Seconded by Councillor Blanleil**R1079/05/11/07** THAT Bylaw No. 9526 be read a first time.Carried5. **NON-DEVELOPMENT APPLICATION REPORTS**

5.1 Director of Financial Services, dated November 1, 2005 re: Community Works Fund Agreement (0230-20)

Moved by Councillor Hobson/Seconded by Councillor Shepherd

R1080/05/11/07 THAT Council authorize the Mayor and City Clerk to sign the Community Works Fund (CWF) Agreement with the Union of British Columbia Municipalities (UBCM).

Carried

5.2 Water/Drainage Manager, dated November 2, 2005 re: Award of Construction Contract TE05-10 – Poplar Point Electrical Upgrade (5600-07)

Moved by Councillor Blanleil/Seconded by Councillor Day

R1081/05/11/07 THAT the Contract for the completion of the Poplar Point Electrical Upgrades works be awarded to Graham Construction Ltd. for the amount of \$1,612,033.29, exclusive of GST;

AND THAT the 2005 Financial Plan be amended by \$150,000 to include a contingency component funded from Water Utility revenues (Accumulated Surplus);

AND FURTHER THAT the Mayor and City Clerk be authorized to execute the Contract on behalf of the City.

Carried

5.3 Transportation Manager, dated November 2, 2005 re: Equipment Purchase of Landfill Compactor (1240-01)

Moved by Councillor Day/Seconded by Councillor Cannan

R1082/05/11/07 THAT Council approve awarding the purchase of a landfill compactor to Finning Canada;

AND THAT the 2005 Financial Plan be amended to increase the funding from \$800,000 to \$830,000 with funding from the Landfill Reserve.

Carried

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- 5.4 Recreation Manager, dated October 31, 2005 re: Council Policy 330 – Unclaimed Funds on Recreation Customer Accounts (1840-00)

Moved by Councillor Hobson/Seconded by Councillor Given

R1083/05/11/07 THAT Council approve Council Policy 330, *Unclaimed Funds on Recreation Customer Accounts*, as attached to the report from the Recreation Manager dated October 31, 2005.

Carried

- 5.5 Planning & Corporate Services Department, dated November 2, 2005 re: Rutland Height/Massing Review (0360-20)

Staff:

- The OCP provides for 4 storey building heights in the Rutland Town Centre with potential for up to 6 storeys in the urban centre. The Zoning Bylaw provides for a Rutland commercial area that is generally zoned C4.
- Recommend extending C7 Central Business Commercial zoning to a portion of the Rutland Town Centre to facilitate the redevelopment of a pedestrian friendly town centre area adjacent to a proposed transit centre. The C-7 zone would allow buildings up to 12 storeys in height in the urban centre.
- Mixed use development with ground floor commercial would be a requirements in the transit centre area.

Moved by Councillor Given/Seconded by Councillor Hobson

R1084/05/11/07 THAT Council endorse the direction of the Rutland Height and Massing Study as outlined in the Planning and Corporate Services report of November 2, 2005 for further Council consideration as OCP and Zoning Bylaw amendments;

AND THAT staff be directed to present for public input the concept of extending C7 zoning to Rutland prior to final preparation and formal Council consideration of related OCP and Zoning amendments;

AND FURTHER THAT staff send out letters to the property owners within the boundary established for the Rutland Town Centre notifying them of the November 30th open house.

Carried

Moved by Councillor Day/Seconded by Councillor Hobson

R1085/05/11/07 THAT the Mayor write a letter on behalf of Council to the Provincial Ministry of Transportation asking that negotiations take place to turn the approval process for development applications along Highway 33 over to the City of Kelowna in view of the parking management plan the City has adopted in the Rutland Town Centre.

Carried

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- 5.6 Community Planning Manager, dated October 28, 2005 re: Gospel Mission and City of Kelowna Memorandum of Understanding (0910-20-247; 0550-01)

Staff:

- The City of Kelowna is committed to work with the Gospel Mission to meet the building and land requirements to relocate the facility.
- Want to receive input from the public before making a decision as to the location of the new facility.

Moved by Councillor Shepherd/Seconded by Councillor Given

R1086/05/11/07 THAT Council hear from Mr. Benson.

Carried

Randy Benson, Gospel Mission:

- The new Gospel Mission will provide emergency services, housing and food services, transitional housing, and expanded housing primarily for men.
- The executive is looking at whether it could finance the staff to also house women.
- Raising the necessary funds is key to how soon the facility can be relocated.
- The Gospel Mission's policy is no drugs/no alcohol. Intend to embark on a public education program to make the public aware that Gospel Mission is part of the solution, not the problem.
- The Gospel Mission is having success separating out the criminally transient from the truly needy and is aware that relocation will be a challenge. The education program will be key for the fundraising to succeed.

Moved by Councillor Hobson/Seconded by Councillor Day

R1087/05/11/07 THAT Council authorize the Manager of Community Development and Real Estate to execute the Memorandum of Understanding between the Gospel Mission and the City as attached to the report dated October 28, 2005 from the Community Planning Manager;

AND THAT staff be directed to undertake a development plan and public process to carry out the building of a new Gospel Mission and address any issues related to the design and location of the building.

Carried

- 5.7 Special Projects Planning Manager, dated October 28, 2005 re: Kelowna Yacht Club Moorage and Breakwater Lease Extensions (0917-20-026; 0550-01)

Moved by Councillor Blanleil/Seconded by Councillor Hobson

R1088/05/11/07 THAT staff be directed to prepare a lease agreement between the City and Kelowna Yacht Club, for the Floating Breakwater, the Moorage Basin and Pensioner's Wharf located on lands described as Blocks C, D, and E of Lot 1527, Lot 1313 O.D.Y.D., Lot 2 D.L. 4083 O.D.Y.D. Plan 8654 and part of Lot A, D.L. 139 O.D.Y.D. Plan 16592, at the west end of Doyle Avenue, Kelowna, B.C., that contains substantially the same terms as the current lease and extends the termination date to the 31st day of July 2017;

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AND THAT the lease agreement between the City and Kelowna Yacht Club for the Floating Breakwater, the Moorage Basin and Pensioner's Wharf make provision for the removal of the moorage nearest the shore to accommodate Stuart Park, if required by the final park plan, and replacement moorage elsewhere within the Moorage Basin;

AND FURTHER THAT staff be directed to prepare a lease agreement between the City and Kelowna Yacht Club for the lands described as Lot A D.L. 139 O.D.Y.D. Plan 5027 and part of Lot A D.L. 139 O.D.Y.D. Plan 16592 (YACHT CLUB BUILDINGS) that contains substantially the same terms as the current lease and extends the termination date to December 31, 2010.

Carried

6. BYLAWS (OTHER THAN ZONING & DEVELOPMENT)

(BYLAWS PRESENTED FOR FIRST THREE READINGS)

- 6.1 Bylaw No. 9521 – Road Closure Bylaw – Crowley Avenue at Richter Street

Moved by Councillor Clark/Seconded by Councillor Shepherd

R1089/05/11/07 THAT Bylaw No. 9521 be read a first, second and third time.

Carried

(BYLAWS PRESENTED FOR ADOPTION)

- 6.2 Bylaw No. 9452 – Road Closure Bylaw – 2530 Enterprise Way

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 Blanleil/Seconded by Councillor Day

R1090/05/11/07 THAT Bylaw No. 9452 be adopted.

Carried

- 6.3 Bylaw No. 9508 – Road Closure Bylaw – Kensington Drive

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 Blanleil

R1091/05/11/07 THAT Bylaw No. 9508 be adopted.

Carried

- 6.4 Bylaw No. 9520 – Amendment No. 1 to Five Year Financial Plan 2005-2009 Bylaw No. 9414

Moved by Councillor Hobson/Seconded by Councillor Day

R1092/05/11/07 THAT Bylaw No. 9520 be adopted.

Carried

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- 6.5 Bylaw No. 9523 – Amendment No. 12 to Fire Prevention Regulations
Bylaw No. 6110-88

Moved by Councillor Hobson/Seconded by Councillor Day

R1093/05/11/07 THAT Bylaw No. 9523 be adopted.

Carried

7. COUNCILLOR ITEMS

- (a) Reserve Officer Program (RCMP)

Councillor Cannan advised that Council adopted a resolution at the October 31, 2005 Regular Meeting, for the Mayor to write a letter to the appropriate ministry asking that the cap be increased on the number of hours a Reserve Officer can work. Councillor Cannan advised that he has since clarified with Supt. McKinnon that what he would like is to lobby the Treasury Board to expand the working opportunity for the reserve officers to 6 months, and this is what should be reflected in the letter from the Mayor.

- (b) Free Saturday Downtown Parking (5480-08)

Moved by Councillor Day/Seconded by Councillor Given

R1094/05/11/07 THAT Council approve free on-street parking in the downtown area on the following Saturdays: November 26, December 3, 10, 17 and 24, 2005.

Carried

8. TERMINATION

The meeting was declared terminated at 4:54 p.m.

Certified Correct:

Mayor

City Clerk

BLH/am