

Regular MeetingFebruary 7, 2006

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, February 7, 2006.

Council members in attendance: Mayor Sharon Shepherd, Councillors B.A. Clark, C.B. Day, B.D. Given, C.M. Gran, R.D. Hobson, N.J. Letnick and M.J. Rule.

Council members absent: Councillor A.F. Blanleil.

Staff members in attendance were: Acting City Manager/Director of Planning & Corporate Services, R.L. Mattiussi; City Clerk, A.M. Flack; Manager of Development Services, A.V. Bruce; and Council Recording Secretary, B.L. Harder.

1. CALL TO ORDER

Mayor Shepherd called the meeting to order at 7:27pm

2. PRAYER

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

3. CONFIRMATION OF MINUTES

Regular Meeting, January 23, 2006
Public Hearing, January 24, 2006
Regular Meeting, January 24, 2006
Regular Meeting, January 30, 2006

Moved by Councillor Hobson/Seconded by Councillor Day

R124/06/02/07 THAT the Minutes of the Regular Meetings of January 23, January 24 and January 30, 2006 and the Minutes of the Public Hearing of January 24, 2006 be confirmed as circulated.

Carried

4. Councillor Day 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. 9544 (Z05-0052) - Cerco Developments Ltd. and F.J. & L.H. Pells (Cerco Developments Ltd.) – 950, 962, 970, 982, 994, 1004 & 1010 Harvey Avenue and 951, 961, 971, 981, 1001 & 1011 Leon Avenue (BL9544)

Moved by Councillor Letnick/Seconded by Councillor Clark

R125/06/02/07 THAT Bylaw No. 9544 be read a second and third time.

Carried

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6. PUBLIC MEETING TO RECEIVE INPUT ON LIQUOR LICENSE APPLICATIONS

6.1 Planning & Corporate Services Department, dated January 5, 2006, re: Liquor Licensing Application No. LL05-0019 – Lambert Schmalz, Paul Leinemann, Maguerite Milan (Sanj Parmar) – 220 Lawrence Avenue

Staff:

- This is a referral from the Liquor Licensing Branch (LLB) as they require a resolution from local government for applications such as this.
- The current establishment at the subject property is named Cheetah's. The nightclub operates under its previous 'cabaret' liquor license.
- The applicants want to open as early as 9 a.m. with the same 2 a.m. closing time, 7 days a week.
- The Mayor's Entertainment District Task Force recommended that individual establishments take advantage of the more generous hours permitted by the LLB to try to generate day time activity to eliminate dead zones during the day.
- Unless variances are required, the required Development Permit (DP) would be handled as a Direct DP by the Director of Planning & Corporate Services.
- Staff recommend support.

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

- letter from Richard Sharpe, 505-1585 Abbott Street
- Berge Horn Lawyers, 215 Lawrence Avenue
- Ronald Russell, 100-215 Lawrence Avenue
- Robert Richardson, 100-215 Lawrence Avenue
- Liquid Zoo Holdings Ltd., 274 Lawrence Avenue
- Okanagan Metis & Aboriginal Housing Society, 105-251 Lawrence Avenue

All opposed for various reasons including increased noise, loitering, violence, traffic, illegal parking, parking in general, garbage/vandalism, and negative impact on surrounding property values, businesses and the downtown core.

Adam Scorgie, and Sanj Parmar, co-applicants:

- The LLB said they had to apply for 9 a.m. opening but what they actually want is the option of opening at 11 a.m.
- Want to help change the image in the downtown. The early openings would just be for sporting events, fashion shows, reality shows, etc.
- Proposing to do extensive renovations inside and outside which would appreciate rather than depreciate surrounding property values. Displayed sketches to show the type of design they are considering for the front façade of the building, noting the design is not written in stone and they are willing to work with staff on the exterior.
- Intend to install a number of bright lights in the adjacent alley to help deter crime.
- They have already applied for a building permit.
- Most of the problems happen after hours. Cheetah patrons leave by 1 a.m. to 1:15 a.m.
- Would like to move toward the lounge atmosphere and earlier closing but would still need to have dancers.
- Cheetah's does not contribute to the homeless problems.
- Food could be ordered from Rick's Grill or Earl's on Top (would let them put their menus in Cheetah's) or other restaurants in the area.
- Cheetah's follows all LLB standards for serving people and there is always someone watching the door. They are also putting up 16 surveillance cameras inside Cheetahs and another two cameras guarding the front door. People dealing in illegal activities do not want to come into facilities with cameras.
- Cheetah's has a seating capacity for 232.

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Council:

- Windows would make the front of the building more pedestrian friendly for day time activity.
- Staff to provide the applicant's with a Good Neighbour Agreement.
- This part of Leon is a busy business area during the day with a hair salon, tanning salon, CBC radio, CNIB, United Way, law offices, Travelodge, etc. A noon opening would create quite a conflict for these businesses. The parking lot across the street is paid parking that is rented by the businesses during the day until 6 p.m.

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

Heidi Taylor, lawyer at Berge Horn:

- Berge Horn is across the street from Cheetahs.
- Concerned that a nightclub open at 9 a.m. that offers strippers would not mix well with clients of their law office; concerned about safety with inebriated people on the streets.
- There are very few parking stalls on Leon and during the day the stalls are full.
- The applicant's promises to change are helpful but would not be enforceable in the long term.

Staff:

- Clarified that once a permanent change has been made to the hours of operation only the General Manager of the LLB can withdraw the conditions and generally that is only done if there was a breach.
- Council could approve the change for a 6 month or 1 year trial period. If after the trial period the LLB has not heard back from local government, the change is made permanent.
- Once an establishment is licensed, the owners can change without any input from the City and the City would have no control over how they operate as long as it was within the confines of the liquor licensing.
- The Mayor's Entertainment District Task Force never discussed having nightclubs open during the day. The Task Force was looking at having activity on the street and food establishments with windows along the streetscape instead of a blank wall.

Mark Baron, speaking on behalf of Darrow Management Ltd. 215 Lawrence Avenue:

- Darrow Management, Ron Russell and Berge & Company are 1/3 owners of the building at 215 Lawrence Avenue.
- Darrow Management is opposed to the change in hours. The business is completely incongruent with the businesses operating in the area.
- During the 12½ years that he occupied space in the building, he saw an increase in vandalism to the building, problems with intoxication, windows in the building being broken, vandalism to the cars parked under the building, etc. He moved out of the building in 1997 but the problems have continued to increase at a rapid rate.
- The owners he represents cannot see any good coming from the extended hours being sought by the applicant. The hours do not fit with those of the businesses in the area and would have an adverse impact on the businesses and the property values.

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Ken Webster:

- Representing part of the ownership of the buildings at 251, 247 and 239 Lawrence Avenue (Finer Choice Restaurant, CNIB, CBC-Radio, etc.) and also here as a local developer/businessman and member of committees concerned about development downtown.
- The issue is not with the operators of the business – they do a fine job of operating the business they have. But, there is a concentration of that type of business in the area.
- Residents, developers, business people, corporations are looking for ways to achieve the goals that are set out in the Downtown Plan for creating more residential in the downtown. They are looking for direction from the City and see this as an important step. They thought the 'yellow zone' was a solid step in the right direction for the downtown and are looking for that to be supported in every way.
- Concerned about the future planning of the downtown. Does not see how endorsing this application would help to further the goals.
- Cannot see having a mixed use 12 storey residential tower one building away from the subject property as its existing business.
- Does not think the promoting/encouragement of businesses like this would be moving in the direction of the Downtown Plan.
- It would not be practical for the applicants to close at 11 p.m. They are running a good business at this location but approval of this application would be further postponing the objectives of the Downtown Plan; developers would look to other areas of the city.

Rita Milne, downtown business owner:

- The applicant says he has applied for a building permit – concerned that it may be too late to improve or change the plans for the front façade of the building.
- If this application is supported, hope it will be on a trial basis so it can come back to Council to stop the early opening from becoming permanent if there are problems.

Staff:

- To date, the only application the City has received for this property is a request to change the signage on the front of the building.
- Structural changes would require a Development Permit (DP). A DP would not be required if just painting and putting up new signage.

Quinn Best, owner of Habitat Banquet/Entertainment facility, Leon Avenue:

- Owns the building on Leon Avenue directly across from Gospel Mission (Habitat).
- Page 8 of the Mayor's Entertainment District Task Force document states that anything that counteracts the dead zones is positive.
- Does not necessarily agree with what the applicant's do in terms of adult entertainment but adjusting their hours is good. If they enter into a Good Neighbour Agreement that should help.
- If Council does not allow these changes to start, when will the area ever change?
- It would be good to have one more club in the area that is not open until 2 a.m.
- If they are willing to commit to an earlier closing time, then an earlier opening would seem appropriate.

Adam Scorgie, applicant:

- The adult entertainment (dancers) would not start any earlier than 9 p.m. which is when it starts now.
- Is working with Rick's and Earl's to sell their food at Cheetahs.
- Wants to protect Cheetah's from vandalism too.
- The majority of problems with littering and broken bottles are not coming from Cheetah's.
- They have to deal with having their cars being vandalized too.
- Need the earlier open time to enhance their opportunity to make a profit and cover the cost of the extensive renovations proposed. Without the change in hours they would still renovate but not as extensively.

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Moved by Councillor Gran/Seconded by Councillor Given

R126/06/02/07 THAT Council ***not*** support an extension to the permitted hours of liquor service for Cheetah's from 7 p.m. to 2 a.m. 7 days per week; to 9 a.m. to 2 a.m. 7 days per week, on Lot 9, Block 13, District Lot 139, ODYD Plan 462, for 220 Lawrence Avenue;

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

Carried

7. DEVELOPMENT PERMIT AND DEVELOPMENT VARIANCE PERMIT REPORTS

7.1 Planning & Corporate Services Department, dated January 11, 2006 re: Development Variance Permit Application No. DVP05-0217 – 470342 BC Ltd. (Dean Huggins, MQN Architects) – 194 Adams Road

Staff:

- The subject property has been used for storage and historically the area right up to the dedication line has been used.

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

- letter from Wasa Developments, owner of 215, 217 & 221 Adams Road, stating opposition but giving no reason why.

Dean Huggins, applicant:

- The owner of the subject property is also owner/operator of Conroy Exteriors and would also occupy one of the buildings.

Council:

- Staff to clarify what if any opportunity there would be to correct the damage that has been done to the stream banks, and whose responsibility it would be to require the improvements.

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

Moved by Councillor Hobson/Seconded by Councillor Given

R127/06/02/07 THAT Council authorize the issuance of Development Variance Permit No. DVP05-0217; Lot 11, Section 2, Township 23, ODYD, Plan 28845, located on Adams Road, Kelowna, B.C.;

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

Section 6.14: Riparian Management Area (RMA) Setbacks: 6.14.1:

Vary the riparian management area setback from 30 m required to a minimum of 12.5 m proposed as shown on Schedule "A" attached to the report dated January 11, 2006 from the Planning & Corporate Services Department;

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AND THAT a statutory right-of-way be established by the applicant at the land-side toe of the dyke and registered with BC Lands as a registered plan by legal survey;

AND FURTHER THAT the applicant be required to construct a 2 m high chain link fence at the land-side toe boundary of the dyke to delineate the property line.

Carried

- 7.2 Planning & Corporate Services Department, dated January 11, 2006 re: Development Variance Permit Application No. DVP05-0179 – Tarcisio & Angelina Niccoli – 3920 Bluebird Road

The City Clerk advised that no correspondence and/or petitions had been received.

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

Tarcisio Niccoli, applicant:

- Indicated he had nothing to add at this time.

Moved by Councillor Hobson/Seconded by Councillor Clark

R128/06/02/07 THAT Council authorize the issuance of Development Variance Permit No. DVP05-0179 for Lot 2, Section 1, Township 25, ODYD, Plan 3107 located on Bluebird 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";

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

Section 13.1.6 (d) RU1s – Large Lot Housing with Secondary Suite

To vary the required side yard setback from 2.0 m to 1.6 m for a 1 or 1½ storey portion of a building, and from 2.3 m to 1.9 m for a 2 or 2½ storey portion of a building.

Carried

8. REMINDERS – Nil.

9. TERMINATION

The meeting was declared terminated at 9:04 p.m.

Certified Correct:

Mayor

City Clerk

BLH/am