
City of Kelowna

MEMORANDUM

DATE: April 25, 2007

FILES: 0917-21-039 - Stuart Park
0917-21-004 - Kelowna Sawmill Covenant

TO: City Manager

FROM: Corporate Services

SUBJECT: Preservation of Downtown Waterfront Lands

RECOMMENDATION:

THAT Council adopt the following statement recognizing the spirit and intent of the 1945 and subsequent Councils and the direction of the 2007 Council:

WHEREAS starting in February, 1944 the Council of the City of Kelowna received correspondence and petitions requesting the City establish a Civic Centre as a Post-War project to include a Sports Arena, Auditorium for music and drama and a new City Hall;

AND WHEREAS the Kelowna Sawmill Company experienced a serious fire at their Kelowna Mill site on October 19, 1944 which resulted in the Company offering to sell the lakeshore Sawmill property and the Planing Mill property between Ellis and Water Street to the City of Kelowna with a condition that the properties be used for municipal purposes, any buildings erected be of attractive design and suitably landscaped, that the City not sell the land or use it for commercial or industrial purposes and that the Company be allowed two years to vacate the properties;

AND WHEREAS on December 11, 1944 the Civic Centre Committee, after careful consideration, recommended that the City purchase the Planing Mill property for use as a Civic Centre;

AND WHEREAS Civic Centre Purchase Bylaw 1117, to purchase the Planing Mill property, was approved by public plebiscite, the City adopted the Land Purchase Bylaw in May 1945;

AND WHEREAS a planning consultant's report recommended in September 1945 there is an urgent need for a Civic Centre site and the Planing Mill is the best location but the property is too small, the Council submitted three property purchase Bylaws to the electorate to enlarge the Civic Centre site;

AND WHEREAS Property Purchase Bylaws 1208, 1212 and 1213 to purchase the Sawmill property and nine different properties on Mill Avenue from seven different owners to enlarge the Civic Centre site, was approved by public plebiscite, the City adopted the Land Purchase Bylaws in December 1945;

AND WHEREAS the agreements to purchase the Kelowna Sawmill properties where completed by the City with the conditions contained in the original offer to sell, a Covenant was registered on both properties in 1946 that the properties be used for municipal purposes, any buildings erected be of attractive design and suitably landscaped, that the City not sell the land or use it for commercial or industrial purposes and that the Company be allowed two years to vacate the properties;

AND WHEREAS Memorial Arena built in 1948 and planning for the new City Hall started in 1948 on the Civic Centre Site;

AND WHEREAS the Kelowna Sawmill Company did not object to the City selling the former lakeshore sawmill site to the Provincial Government to construct a new Court House in Kelowna, the City sold the property in 1949 on the conditions that the Province not sell the property or use it for any commercial purposes, the land be kept in order and be landscaped in keeping with the adjacent Civic Centre site, the Province build a new ferry landing and construct a sea wall along the property and Mill Street be widened to 100 feet;

AND WHEREAS the Court House constructed on the old Sawmill site restricted public access to Okanagan Lake, the City purchased the property back from the Province in 1996 for \$2,250,000 and removed the building to create Stuart Park and preserve public access to the lake;

AND WHEREAS City Councils from 1944 to 2007 have supported public access to Okanagan Lake in Kelowna's downtown and have continued to purchase additional properties to guarantee that public access;

AND WHEREAS the Kelowna Sawmill Covenants do not ensure public access to the properties or to the lake;

AND WHEREAS the City of Kelowna has been advised the Kelowna Sawmill Covenants are not enforceable as restrictive covenants running with the lands, do not create a trust on the lands, do not preserve public access to the lands and should be removed;

NOW THEREFORE the Council of the City of Kelowna confirm the goal of preserving continuous public access to Okanagan Lake from City Park to Knox Mountain Park;

THAT Council instruct City Staff to proceed with an Official Community Plan amendment to reflect Council's goal of preserving continuous public access to Okanagan Lake from City Park to Knox Mountain Park;

AND THAT Council instruct City staff to proceed with final design, financing plan and development plan for Stuart Park, rezoning of the land to P3 – Park and Open Space use, removal of the Kelowna Sawmill Covenant from title to the Lands and erection of a plaque acknowledging purchase of the properties from the Kelowna Sawmill Company and other owners for the Kelowna Civic Centre site;

AND THAT Council instruct City Staff to proceed with registration of a Section 219 restrictive covenant against the Stuart Park Lands that would establish the permitted uses in the Park;

AND THAT the primary use of the Stuart Park Lands be for park purposes with any commercial uses as an ancillary secondary use in compliance with the zoning of the property only and that the lands purchased from the Kelowna Saw Mill Company as they exist on title today remain City-owned property and not be sold.

BACKGROUND & COMMENTS:

In the spring of 2003 a proposal to develop private lands plus City-owned lands along Mill Street and Queensway Avenue was presented to the City. The proposal became known as the Lawson's Landing Development and it included a small portion of a City-owned property which had originally been purchased by the City from the Kelowna Sawmill Company. As part of the sale to the City, the company had registered a commercial covenant on the property restricting business or commercial use on the property and limiting use to municipal purposes. The City proceeded to research the covenant because the property had been sold twice despite the fact that a further clause in the covenant restricted sale of the property.

At the time of sale, the Kelowna Sawmill Company was owned by S.M. Simpson whose family still lived in Kelowna. The City therefore contacted Sharon Simpson, the granddaughter of S.M. Simpson, to advise the family of the Lawson's Landing proposal.

Between the spring of 2003 and March of 2007 the City met with and corresponded with the Simpson family and their solicitor on many occasions.

The family has maintained that the purpose of the Kelowna Sawmill Covenant was to preserve the waterfront land for park use and to guarantee unrestricted public access to those lands in perpetuity.

The City has devoted a great many hours researching the history of the lands originally purchased from the Kelowna Sawmill Company and the legal status of the covenant registered on those properties by the Kelowna Sawmill Company.

The City has received legal advice that the Simpson family is not party to the document known as the Kelowna Sawmill Covenant. The successor of that covenant is a holding company which many years ago purchased the shares of the Kelowna Sawmill Company. The City has also been advised that the Kelowna Sawmill Covenant is not enforceable as a restrictive covenant running with the lands, it does not create a trust on the lands, it does not preserve public access to the lands and it should be removed from the land. The holding company which is successor to this covenant has signed a legal instrument to remove the covenant from title to the land.

KELOWNA DOWNTOWN WATERFRONT:

When the Kelowna Sawmill Company lost its sawmill, planing mill and lumber yard to a fire in October, 1944 the community was already searching for property to establish a civic centre as a post-war project. S.M. Simpson of Kelowna Sawmill Company offered both the sawmill property

between Water Street and the lake, and the planing mill and lumber yard property between Water Street and Ellis Street for the civic centre site. A committee of Council negotiated a price for both properties with the company and the City held a plebiscite and purchased the lumber yard and planing mill property in 1945.

The City also hired a consultant who confirmed there was an urgent need for a civic centre site and the planing mill site was the best location in town but the property was too small. City Council then held another plebiscite in 1945 and purchased the sawmill property on the lake and 9 additional properties on Mill Avenue (now Queensway Avenue) from 7 different property owners to enlarge the civic centre site. Plans immediately got underway to construct Memorial Arena and City Hall on the new civic centre block.

The economy was strong after the Second World War and the community successfully lobbied Victoria for improvements to the highways/ferry system and for location of a new provincial building and courthouse in Kelowna. The Kelowna Sawmill Company did not object to the City selling the former lakeshore sawmill site to the provincial government to construct the new courthouse. That decision was not a vote against public access to the waterfront. Rather, the opportunity to establish a provincial government office and courthouse in the City was more important to the community in 1949 than the single waterfront property.

Since the City's incorporation in 1905 the connection to Okanagan Lake largely defined what Kelowna was for its citizens. The commercial traffic on the lake was the economic link for growth of the fruit industry in Kelowna. The highway and ferry system across the lake was the growing link for vehicle access in and out of the City. When the community decided to develop a civic centre in 1944 the City owned 5 waterfront properties between City Park and Sutherland Bay at the base of Knox Mountain. The Kelowna Sawmill property on the lake across Water Street from the new civic centre was the sixth waterfront property the City acquired. Successive Councils have continued to acquire waterfront to the point where the City now owns 37 properties between City Park and Sutherland Bay at the base of Knox Mountain.

Working with the provincial government and the previous owner of the Tolko Mill site, the City has secured public access along the waterfront on the mill properties whenever they cease to be used for mill operations. As Kelowna continues to grow and its downtown continues to expand, successive Councils of the City of Kelowna between 1944 and the present Council have positioned the City to achieve continuous public access along Okanagan Lake from City Park to Sutherland Bay Park and on to Knox Mountain. This access is so important to the City that the waterfront property purchased from Kelowna Sawmills in 1945 and sold to the province in 1949 for development of a courthouse was repurchased by the City at a price of \$2,250,000 in 1996.

The Kelowna civic centre block, as it exists today, and the City's opportunity to develop Stuart Park as an integral part of the goal of achieving continuous public access to Okanagan Lake from City Park to Knox Mountain Park at Sutherland Bay would not have been possible without the offer of Kelowna Sawmill Company to sell their properties to the City in 1944. Staff believe it is important for the City to document the history of how the Civic Center Block and public access to the lake in the downtown was secured. The lengthy recommendation before Council in this report is the public statement of that history.

INTERNAL CIRCULATION TO:

City Solicitor – legal opinion and advice.
Current Planning – zoning and other land use advice.
Parks Planning, Design and Construction – plans for Stuart Park.
Policy Research and Strategic Planning – long range waterfront planning.

LEGAL/STATUTORY AUTHORITY:

Community Charter
Local Government Act
Land Title Act

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:

The proposed Official Community Plan amendment and the proposed rezoning would each require a public hearing.

EXTERNAL AGENCY/PUBLIC COMMENTS:

Meetings with Crown Forrest Products and the Provincial Ministry responsible for Crown Lands to secure the future public access along the waterfront on the Tolko Mill properties.

Considerations that were not applicable to this report:

EXISTING POLICY:

FINANCIAL/BUDGET CONSIDERATIONS:

PERSONNEL IMPLICATIONS:

TECHNICAL REQUIREMENTS:

ALTERNATE RECOMMENDATION:

Submitted by:

D.L. Shipclark
Director of Corporate Services

DLS/kag

cc/Director of Recreation, Parks & Cultural Services
Director of Planning & Development Services
Deputy City Clerk

Attachments

Council Direction and Communications with the Simpson Family

Spring 2003: Concept plans for development of the waterfront between the Sails and the Boat Launch indicate a future commercial use on the northerly portion of the site. Sharron Simpson questioned whether this was in keeping with the conditions of the covenant.

June 9, 2003 Closed Meeting: Staff asked to obtain a legal opinion to clarify ownership of the waterfront lands used by the Kelowna Yacht Club and clarify the matter with the Simpson family. Request for legal opinion not acted upon as staff was negotiating with the Kelowna Yacht Club and neither party wanted to pursue the matter legally.

August 3, 2004: Lawson's Landing development application by Westcorp Inc. considered by the Advisory Planning Commission.

August 9, 2004 Closed Meeting: Council requested a copy of the Covenant prior to the Simpson family meeting with Council, scheduled for August 23rd.

August 20, 2004: Simpson Family press conference at the Kelowna Yacht Club: "Land given to Kelowna's citizens at risk in City's latest development scheme" – copy available in Clerk's Office

August 23, 2004 Closed Meeting: Council met with the Simpson family and adopted the following resolution:

 THAT the City work with the Simpson family to hire the necessary professionals to determine the legal and policy status of the covenant, at City expense.

August 25 and August 26, 2004: By email, Sharron Simpson declines City offer to hire any legal or other professionals at City expense.

August 27, 2004: Sharron Simpson meets with Manager of CDRE and Deputy City Clerk to share documents pertaining to Simpson Covenant compiled by the Simpson family.

November 1, 2004 Closed Meeting: Legal opinion from City Solicitor presented to Council.

November 8, 2004 Closed Meeting: Historical documentation presented to Council and staff authorized to release all historical documents pertaining to the Simpson Covenant to the Simpson family. A chronological list of the historical documentation pertaining to the Kelowna Saw Mill Covenant is attached as Appendix "B". Copies of each of the documents listed are available in the City Clerk's Office.

November 9, 2004: Manager CDRE and Deputy City Clerk meet with Sharron Simpson to review historical documentation gathered by the City and to share the City's legal opinion with the Simpson family.

November 29, 2004 Closed meeting: Council's consensus not to authorize registration of the quit claim discharge until after hearing back from the Simpson family lawyer and after a Council workshop on the City's interest on use of the waterfront had been held.

December 6, 2004 Closed Meeting: Council adopted the following resolution:

 THAT Council does not believe there are restrictions on the land (Lots 1, 2 and 3 and Lot B) that would preclude Council's consideration of applications for Commercial development;

 AND THAT the City Solicitor's legal opinion that there is no covenant be released in its entirety as an attachment to a news release after the City manager reports back next week on his meeting with Tom Smithwick. (note: News release never issued and the legal opinion has not been released to the public).

December 13, 2004 Closed Meeting: Report from staff on additional historical information requested by Council.

December 20, 2004 Closed Meeting: Sharron Simpson, Margo Simpson and Tom Smithwick appear before Council and present their proposal for resolving the issue:

- Registration of a new covenant on the original lands as identified in the offer letter to the City dated November 1944
- The waterfront lot between the lake and Water Street be dedicated as Park in perpetuity
- The Yacht Club issues be resolved, not necessarily with the building on its exact current location, but with some longevity of tenancy
- The family's costs, including legal fees, to be dealt with by the City of Kelowna

January 10, 2005 Closed Meeting: City Manager updates Council on his discussions with Mr. Smithwick and clarifies family position as follows:

- The original Lot 2 (the property that City Hall is on) – the family would like the City to adopt a bylaw which would spell out the history of the original property deal and respect the original intent of the parties, and include a definition of “Commercial Use” to clarify the position of paid parking on the site.
- On Lot 1 (the waterfront property) – the family would like the City to adopt a bylaw that would cover the land area of the original deal (that goes to the middle of the street as we have it today), spell out the history of it and dedicate the lot as park land.
- The Yacht Club – the family would like the Yacht Club to be provided with ownership or long term tenancy of the existing, or the muster station site or the seniors site. They have indicated that if it is to be the muster station site, they would like some sort of a light house feature that would be a museum for waterfront history. The Yacht Club would have to be part of any kind of MOU.
- Lots 1, 2 and 3 (the Provincial Government properties that were exchanged for the court house building) – they would agree to a release covering the three lots and acknowledge as part of the agreement that there was no intent that these properties would be covered by this deal.
- Legal costs – they expect the City to pay legal costs, estimated to total under \$20,000.

January 14, 2005: List of historical documents considered by Council emailed to Sharron Simpson at her request with an offer to provide copies of any or all documents listed. No response received.

January 17, 2005 Closed Meeting: Council offered individual comments on different aspects of the Simpson family proposal. These ranged from a general acceptance of the terms to refusal to even negotiate.

January 24, 2005 Closed Meeting: Council approves of City Manager's response letter to Tom Smithwick. No response to City Manager's January 27, 2005 letter received.

Spring 2005: City obtains a copy of a September 10, 2004 legal opinion from Porter Ramsay to Kelowna Yacht Club on the subject of the “Position of the Kelowna Yacht Club”: “After reviewing the facts,...it has become clear that a legal/court action is not in anyone's best interest in the situation. Consequently, it is my opinion that the battle to protect the rights of the Yacht Club should be fought on a political and tactical level.” The opinion then goes on to discuss the Simpson Covenant and makes reference to a select group of historical records pertaining to the history of the covenant lands, and states “If we present these documents as part of a press conference, it will likely force the City to recognise and honour the intent behind the transfer of the land whether the intentions were verified in writing or not.” This appears to be the strategy the Simpson family is following. A copy of opinion available from Clerk's Office.

May 10, 2005: Press Conference – Simpson Covenant – hosted by Residents Associations Coalition of Kelowna (RACK) Meeting notes indicated Sharron Simpson stated “lack of

communication with the City led to the family hiring a lawyer to defend the covenant” and “the City has been uncooperative in that there has been no communication from City Council.”

October 20, 2005: Simpson Family Press Release – Where do you stand on the Simpson Covenant? Asked candidates for Mayor and Councillor to state their views on the Simpson Covenant issue.

February 17, 2006: Correspondence to Mayor Shepherd from Sharron Simpson requesting a meeting to work with Mayor Shepherd in reaching a mutually satisfactory resolution of the Simpson covenant issue. Stated the family’s position as:

- Registration of a new covenant on the originally negotiated boundaries of the covenant that would reaffirm the original agreement
- Reactivate planning for Stuart Park, which should include the covenanted lands that are currently being used for parking lots
- The covenanted lands be identified by a plaque noting the boundaries and terms of the covenant
- The Simpson family would likely be prepared to contribute towards the funding of the plaque

March 6, 2006 Closed Meeting: Staff asked to provide Council with an update on the Simpson Covenant issue.

April 3, 2006 Closed Meeting: Staff and City Solicitor provide update to Council. Council adopts the following resolution:

THAT the report dated March 27, 2006 from the Planning & Corporate Services Department updating Council on the Kelowna Saw Mill/Simpson Covenant Lands be received for information;

AND THAT staff report back with a recommendation for establishing and protecting the boundaries of the amount of the originally covenanted land that the City is prepared to protect as park and bring forward a strategy for making the information public.

April 10, 2006 Closed Meeting: Council adopts the following resolution:

THAT staff be directed to bring forward the following recommendations to an Open Council Meeting:

THAT staff be instructed to bring forward a rezoning application to rezone Stuart Park to P3 – Parks and Open Space;

AND THAT staff be instructed to register a Section 219 restrictive covenant against the Stuart Park lands that would establish the permitted uses in the Park;

AND THAT staff be instructed to register a Section 219 restrictive covenant against Lot A District Lot 139, ODYD, Plan 5438 [the City Hall site] that would establish the permitted uses on this site;

THAT the City Solicitor be instructed to file releases of the restrictive covenant for Lot A District Lot 139, ODYD, Plan 5438; Lot A District Lot 139, ODYD, Plan 5027; and Lot B District Lot 139, ODYD, Plan 5027 in order to remove the covenants from title;

AND THAT staff be instructed to bring forward for readings consideration bylaws to repeal Bylaw 1117 Civic Centre Purchase Bylaw and Bylaw 1212 Civic Centre Addition Purchase Bylaw 1945;

AND THAT the above be communicated to the Simpson family;

AND THAT staff be instructed to present at the Open Meeting the legal status and historical documentation of the "Simpson Covenant" lands;

AND THAT Council's direction to staff and communications with the Simpson family considered by Council at Closed Meetings since August 2004 be released to the public as part of the above staff presentation.

May 16, 2006: Mayor Shepherd and City staff meet with representatives of the Simpson family and their legal counsel.

May 17, 2006: Letter from Manager, Community Development and Real Estate to Simpson family confirming details of May 16th meeting

July 6, 2006: Response from Simpson family received by City. Letter subsequently circulated to Council.

September 11, 2006 Closed Meeting: Simpson letter discussed by Council. Council adopted the following resolutions:

THAT the report dated September 5, 2006 from the Corporate Services Department regarding the future of Stuart Park and City Hall properties be received for information

THAT the southern boundary of Stuart Park be adjusted to include additional area at the southwest corner to complete the P3 zoning from City Park to Stuart Park as shown on concept Map B

October 18, 2006 Closed Meeting: Staff respond to questions and issues raised during the September 11, 2006 Closed Meeting. City Manager instructed to meet with Mr. Smithwick and report back to Council.

December 13, 2006: Letter from Sharron Simpson to Mayor Shepherd requesting response to Ms. Simpson's July 6, 2006 letter.

December 19, 2006: Letter from Mayor Shepherd to Sharron Simpson apologizing for delay and stating a meeting will be held between the City Manager and a representative of the family to discuss the matter further.

March 6, 2007: City staff meet with representatives of the Simpson family and their legal counsel. Family will not agree to the removal of the covenant on the lands, and believes that the boundary of Stuart Park should include the south-east corner of the property.

March 8, 2007: Fax sent by staff to Ms. Simpson confirming that DL 1527 Block F (land fill parcel created by the Province after 1949 for use as ferry dock) was not part of lands purchased from the Kelowna Saw Mill Company.

March 12, 2007 Closed Meeting: Staff report to Council on the March 6th, 2007 meeting with the Simpson family. Council adopts the following resolutions:

THAT Council reconsider the south-east property line;

AND THAT the southern boundary for Stuart Park be extended to Queensway Avenue to include the south-east parking lot.

Council adopted a second resolution as follows:

THAT no additional encumbrances be placed or registered on the City Hall or Stuart Park properties;

AND THAT staff be directed to provide Council with options for ways to recognize the history of the lands and the spirit and intent of the 1945 Council decisions.

March 14, 2007: Fax sent by staff to Ms. Simpson stating that Council discussed the issue at the March 12th, 2007 Closed Meeting and that staff would pass along any directions staff receive from Council at the appropriate time.

March 19th, 2007 Closed Meeting: Staff reported on ways to recognize the history of the lands. Council adopted the following resolution:

THAT Council adopt the following statement recognizing the spirit and intent of the 1945 Council and the direction of the 2007 Council:

WHEREAS starting in February 1944 the Council of the City of Kelowna received correspondence and petitions requesting the City establish a Civic Centre as a Post-War project to include a Sports Arena, Auditorium for music and drama and a new City Hall;

AND WHEREAS the Kelowna Sawmill Company experienced a serious fire at their Kelowna Mill site on October 19, 1944 which resulted in the Company offering to sell the lakeshore Sawmill property and the Planing Mill property between Ellis and Water Street to the City of Kelowna with conditions that the properties be used for municipal purposes, any buildings erected be of attractive design and suitably landscaped, that the City not sell the land or use it for commercial or industrial purposes and that the Company be allowed two years to vacate the properties;

AND WHEREAS on December 11, 1944 the Civic Centre Committee, after careful consideration, recommended that the City purchase the Planing Mill property for use as a Civic Centre;

AND WHEREAS Civic Centre Purchase Bylaw 1117, to purchase the Planing Mill property, was approved by public plebiscite, the City adopted the Land Purchase Bylaw in May 1945;

AND WHEREAS a consultant's report recommended in September 1945 there is an urgent need for a Civic Centre Site and the Planing Mill is the best location but the property is too small, the Council submitted three property purchase Bylaws to the electorate to enlarge the Civic Centre Site;

AND WHEREAS Property Purchase Bylaws 1208, 1212 and 1213, to purchase the Sawmill property and nine different properties on Mill Avenue from seven different owners to enlarge the Civic Centre Site, was approved by public plebiscite, the City adopted the Land Purchase Bylaws in December 1945;

AND WHEREAS Memorial Arena built in 1948 and planning for the New City Hall started in 1948 On the Civic Centre Site;

AND WHEREAS the Kelowna Sawmill Company did not object to the City selling the former lakeshore Sawmill site to the Provincial Government to construct a new Court

House in Kelowna, the City sold the property in 1949 on the conditions that the Province not sell the property or use it for any commercial purposes, the land be kept in order and be landscaped in keeping with the adjacent Civic Centre Site, the Province build a new ferry landing and construct a sea wall along the property and Mill Street be widened to 100 feet;

AND WHEREAS the Court House constructed on the old Sawmill site restricted Public access to Okanagan Lake, the City purchased the property back from the Province in 1996 for \$2,250,000 and removed the building to create Jim Stuart Park and preserve public access to the lake;

AND WHEREAS City Councils from 1944 to 2007 have supported public access to Okanagan Lake in Kelowna's downtown and have continued to purchase additional properties to guarantee that public access;

AND WHEREAS the Kelowna Sawmill Covenants do not ensure public access to the properties or to the lake;

AND WHEREAS the City of Kelowna has been advised the Kelowna Sawmill Covenants are not enforceable as restrictive covenants running with the lands, do not create a trust on the lands, do not preserve public access to the lands and should be removed;

NOW THEREFORE the Council of the City of Kelowna confirm the goal of preserving continuous public access to Okanagan Lake from City Park to Knox Mountain Park;

AND THAT Council instruct City Staff to proceed with final design, financing plan and construction of Jim Stuart Park, rezoning of the land to P3 – Park and Open Space use, removal the Kelowna Sawmill Covenant from title to the Lands and erection of a plaque acknowledging purchase of the properties from the Kelowna Sawmill Company and other owners for the Kelowna Civic Centre site;

AND THAT Council instruct City Staff to proceed with an Official Community Plan amendment to reflect Council's goal of preserving continuous public access to Okanagan Lake from City Park to Knox Mountain Park.

AND THAT the primary use of the Stuart Park lands be for park purposes with any commercial uses as an ancillary secondary use in compliance with the zoning of the property only and that the lands purchased from the Kelowna Saw Mill Company as they exist on title today remain City-owned property and not be sold.

A resolution to instruct staff to inquire whether the family would agree to have the Simpson Walkway extend from City Park to Know Mountain was defeated.

Council directed staff to bring this matter back to a public meeting once the Council's direction has been communicated to the Simpson Family

April 17th, 2007: Mayor Shepherd, and Councillors Blanleil and Hobson meet with representatives of the family and their legal counsel. Family states they will not agree to the removal of the covenants and threaten a class action legal suit should the City remove the covenants from title.

April 23, 2007 Closed Meeting: Council heard from those members of Council present at the April 17th, 2007 meeting with representatives of the family and adopted the following resolution:

THAT Council receive the Report of Corporate Services dated April 18, 2007 for information purposes;

AND THAT staff be directed to release the current Restrictive Covenant registered against the lands and to register, in its place, a new Restrictive Covenant on the Stuart Park lands only;

AND THAT staff bring forward a Report to Council at the April 30, 2007 open Council Meeting;

AND THAT the Report to Council include a recommendation that Council instruct City staff to proceed with final design, financing plan, construction plan for Stuart Park, together with the additional recommendations as set out in the Report of Corporate Services dated April 18, 2007.

APPENDIX "B"

HISTORICAL DOCUMENTATION

Note: Copies of records and newspaper articles available in City Clerk's Office

Civic Centre Post-War Project

- Correspondence and delegation to Council starting in February 1944 requesting that City consider the establishment of a Civic Centre as a Post-war activity
- Civic Centre Post-War Project to include a Sports Arena, Auditorium for music and drama, and a City Hall

Date of Fire

- According to the *Kelowna Courier*, the date of the fire was Friday, October 13th, 1944 and most of the estimated \$30,000 loss was covered by insurance

Offer Letter from Kelowna Sawmill Company Ltd. – November 25th, 1944

- City offered an option to purchase on two lots:
- Lakeshore (old sawmill site)
 - Lot 1 Plan 2208
 - 4.2 acres
 - \$25,000
- Planing Mill site situated between Ellis and Water Streets
 - Part of Plan B 3550
 - 7.56 acres
 - \$30,000
- four conditions placed on option:
 - (1) City may use parcels for civic or community purposes and any buildings erected shall be of attractive design and landscaped suitably;
 - (2) City may not sell property or use it for commercial or industrial purposes;
 - (3) Purchase shall be made within four months;
 - (4) The Company will be allowed at least two years to vacate the land.
- Letter stated Company has plans to establish a new retail business at the foot of Pendozi Street and requested that Council make their decision as early as possible

Civic Centre Site and Proposed Purchase

- December 11, 1944 Kelowna Civic Centre Committee recommends to Council, after careful consideration, that the City should make arrangements to purchase the 7.52 acre lot for use as a Civic Centre
- December 11, 1944 Council went on record as being in favour of a By-law to authorize the purchase of the above property being submitted to the ratepayers for approval
- No mention is made regarding the Lakeshore site
- January 2, 1945 Inaugural Meeting of Council, "Purchase of Land for Civic Centre Standing Committee" established with Aldermen Ladd, Miller and Jones as members
- January 29, 1945 Company extends Option to purchase to May 1st, 1945
- March 22, 1945 community meeting to discuss purchase of a Civic Centre site – reported to Council on April 3, 1945 that meeting unanimously in favour of a referendum to obtain ratepayers expression of opinion as to whether the property west of Water Street should be purchased
- April 9, 1945 Clerk directed to prepare By-law for purchase of 7.56 acre site [Bylaw 1117]
- Option to purchase extended to May 31st, 1945
- April 16, 1945 draft of Bylaw 1117 presented to Council for the purchase of District Lot 139, Lot 2 for \$30,000 and subject to conditions named in bylaw – ratepayers to vote on bylaw May 10, 1945; plebiscite question regarding purchase of Lakeshore lot will also be on ballot

- May 10, 1945 plebiscite on "Civic Centre Purchase By-law No. 1117" authorizing the purchase of the Planing Mill site, and asking the electorate as to whether to purchase the waterfront lot as well. The results were:
 - Bylaw 1117 – Yes 645 / No 56
 - Purchase Lot 1 Plan 2208 – Yes 633 / No 69
 - Estimated number of electors in 1945: 1,150

Bylaw 1117 Civic Centre Purchase By-law – Purchase of Company's Lakeshore Sawmill Site

- Adopted May 21st, 1945
- City paid \$30,000 cash
- Authorized the purchase of part of DL 139, Lot 2 subdivision plan T 3172 for \$30,000 subject to the following conditions:
 - (1) The City shall use the property for municipal purposes and any buildings erected shall be of attractive design and landscaped suitably;
 - (2) The City will not sell property or use it for commercial or industrial purposes;
 - (3) The Company shall be allowed two years to vacate the property.
 - Note that the first condition states "municipal purposes" rather than the "civic or community purposes" asked for by the Company.

Civic Centre Plan Report – September 1945

- Council commissioned Harland, Bartholomew and Associates in late May 1945 to prepare a Civic Centre Plan Report
- Council first meets with Vancouver representative on May 31st, 1945
- July 7, 1945 Option to purchase Lot 1, Plan 2208 put in abeyance pending report by Harland, Bartholomew
- September 1945 report:
 - Recognizes that there is an urgent need for a civic centre site
 - Examined different options the City had for locating a Civic Centre
 - Ellis-Water Street Planing Mill site best option, but site too small, can't expand to north or east
 - Other Sawmill parcel not suitable for buildings – only good for Park
 - City would need to enlarge the Ellis-Water Street Planing Mill site south to Mill Avenue
- There is no reference in the minutes to Council receiving the Harland, Bartholomew Report nor is there any reference to Council adopting or approving any of the recommendations contained in the Report. Unfortunately, the City does not have any minutes of the Civic Centre Committee.

Expansion of Civic Centre Site

- October 30, 1945 Clerk instructed to prepare bylaws for purchase of properties on Mill Avenue for submission to ratepayers at December 1945 municipal election
- November 1944 bylaws 1208, 1212 and 1213 given first three readings
- The following three bylaws were adopted at the December 17th, 1945 Regular Council Meeting after receiving the assent of the ratepayers
 - Bylaw 1208 Yes 656 / No 111
 - Bylaw 1212 Yes 639 / No 123
 - Bylaw 1213 Yes 652 / No 108
 - Estimated number of electors in 1945: 1,150
- Like Bylaw 1117, Bylaw 1212 contained subjects similar to those requested by the Company
- Bylaws 1208 and 1213 contained no such subjects.

Bylaw 1208 Civic Centre Purchase and Loan By-law, 1945 – Purchase of Additional Lots

- Adopted December 17, 1945
- Authorized the City to purchase nine different parcels on Mill Avenue from seven different owners to enlarge the Civic Centre Plan upon the recommendation of Harland, Bartholomew Report
- No subjects are contained in the bylaw restricting the purposes for which these lands may be used.

Bylaw 1212 – Authorization to Purchase Lot 1, Plan 2208 from Kelowna Sawmill Bylaw 1212

- Adopted December 17th, 1945
- City paid \$25,000 cash and agreed to three conditions:
 - (1) The City shall use the property for municipal purposes and any buildings erected shall be of attractive design and landscaped suitably;
 - (2) The City will not sell property or use it for commercial or industrial purposes;
 - (3) The Company shall be allowed two years to vacate the property.

Bylaw 1213 Civic Centre Exchange By-law, 1945 – Exchange of Lots

- Adopted December 17, 1945
- Authorized the City to exchange City owned parcels for parcels from different owners of lots to enlarge the Civic Centre area upon the recommendation of Harland, Bartholomew Report
- No subjects are contained in the bylaw restricting the purposes for which these lands may be used.

City Correspondence 1946-1947

- Lot 1 Plan 2208 will be used for making into a park
- Lot 1 Plan 2732 reserved for park purposes and is not for sale [letter to Canadian Legion]
- Lot 1527 foreshore lease for public bathing beach and park – 21 year licence signed with Province July 25, 1947

Bylaw 1449 Civic Centre Property Exchange By-law, 1949

- Adopted December 12, 1949 after receiving assent of the electors
 - Yes 682 / No 35 (Number of electors eligible to vote was 2,666)
- Authorised the sale to the Province of Lot B, Lot 1, Lot 139, Plan 2208 in exchange for Lots 2 and 3, Plan 2732
- The bylaw set restrictions on the land being purchased by the Province but did not place any restrictions on the lands purchased by the City
- The restrictions placed on the land purchased by the Province were:
 - (1) The Province will not sell the property or use it for any commercial purposes
 - (2) The land will be kept in order and landscaped in keeping with the adjacent Civic Centre property
- Province also agreed to build a new ferry landing and construct a sea wall along the property it was purchasing
- City agreed to widen the ferry approach along Mill Street to 100'
- Company agreed to release such restrictive covenants and conditions in order to permit this conveyance.

Wording of Bylaw Questions

The format and wording of the ballot for elector assent in 1945 and 1949 was:

Bylaw No. _____ "Name of Bylaw, 194_"
 Shall the Bylaw be confirmed?
 Yes No

Municipal Act Requirements for Elector Assent

It is not clear as to whether bylaws 1117, 1212 and 1213 required elector assent in 1945. Section 59(21) of the *Municipal Act* in force at the time required electoral assent for land purchases over \$2,000. Part VI, Division (1) of the *Municipal Act* required a bylaw receive three-fifths of the votes cast in order to achieve elector assent. Each of these bylaws had purchase prices well exceeding this \$2,000 threshold. However, there was no equivalent to the electoral assent requirement for bylaws for the purpose of purchasing property for municipal purposes. There is no mention in the Council minutes that Council voluntarily placed this requirement upon bylaws 1117, 1212 and 1213. Each bylaw contains sections which state elector assent is required before final adoption.

A reading of the newspaper articles from 1945 indicates that elector assent was seen to be a requirement.

Bylaw 1208 (purchase of lots on Mill Street and Loan Authorization) required elector assent.

According to the *Municipal Act* in force in 1949, Bylaw 1449 required elector approval prior to adoption. At that time, electoral assent was required for any purchase over \$5,118 (one dollar per resident according to last decennial census [1941]).

Letter from City to S.M. Simpson March 2, 1950

- Council Minutes February 27, 1950:
 - Copy of proposed letter circulated to Council, advising Company that land acquired by the City, due to an exchange with the Provincial Government, will not be used for commercial purposes and that a portion of the Civic Centre property is being reserved for the Kelowna Yacht Club
 - Alderman Parkinson suggests that the Company be advised that the lot will be given to the Kelowna Yacht Club, provided that they do not obtain alternative quarters
 - Alderman Parkinson was requested to instruct the City Clerk as to the wording of this clause
- Clerk writes to Kelowna Sawmill Company to inform them that the Council agrees and understands that –
 - (1) The land known and described as Lots 2 and 3, Map 2732, save and except that portion of the said lot 2 shown on Reference Plan B4780 will not be used for commercial purposes;
 - (2) That Lot A shown on Plan of Subdivision of lot 1, Plan 2208 DL 139 containing 0.25 acres more or less, is being reserved for the use of the Kelowna Yacht Club. Should the Kelowna Yacht Club find other satisfactory premises the City would cancel this reservation
- October 16, 1950 City Clerk instructed to advise the Kelowna Yacht Club that the portion of the Civic Centre known as Lot A, Plan 5027 is to be leased to the Yacht Club for Club Headquarters and that the design of any building to be erected thereon must be approved by the Council
- October 30, 1950 City Clerk instructed to advise the Kelowna Yacht Club that the City is unable to sell this property but will be pleased to lease it for a period of twenty years at \$1.00 a year

Letter from S.M. Simpson to H.B. Simpson September 10, 1955

- S.M. Simpson wrote to his son on September 20, 1955
- States that the "price received [for two Kelowna Sawmill parcels] was much less than could have been realized if held as an investment and sold in blocks or in lots"
- Rather surprised that Council would consider selling Lots 1, 2 and 3 Plan 2732 for a hotel as City agreed to use these lots for community or park purposes

Letter from Mayor Ladd to S.M. Simpson September 24, 1955

- Mayor Jack Ladd's response to S.M. Simpson
- Recalls there were discussions "several years ago" regarding restrictions on lots 1, 2 and 3 Plan 2732
- Above lots had been optioned to a company for \$40,000 to build a hotel
- Mayor Ladd: "I would like to leave it to them [the taxpayers] to decide whether the property should be used for a hotel or not."
- Land sale would require elector approval prior to adoption. At that time, electoral assent was required for any purchase over \$8,517 (one dollar per resident according to last decennial census [1951]).

1972 Affidavits

- During negotiations with the City over the renewal of the KYC lease in 1972, five affidavits were submitted to the City to support the Yacht Club's position
- These affidavits make the following references to the Simpson covenants:

Affidavit of R.F. Parkinson

- City Alderman 1951 when KYC lease signed
- Had discussions with S.M. Simpson and others involved in the transfer of the property of S.M. Simpson to the City
- S.M. Simpson transferred the property at a greatly reduced price so that a Civic Centre could be established

Affidavit of Horace Simpson

- Son of S.M. Simpson
- Property transferred to the City at a greatly reduced price
- Intended that the property should be for the benefit of the citizens of the City for all time and was not to be used as a commercial venture

Affidavit of Jack Treadgold

- City Alderman 1951 when KYC lease signed
- Makes no statements concerning the lands sold to the City by the Kelowna Sawmill Co.

Affidavit of W.B. Hughes-Games

- Alderman 1944, 1945; City Mayor 1951 when KYC lease signed
- Familiar with the circumstances and intentions of the parties concerned in the transfer of the property of S.M. Simpson to the City
- Property transferred to the City for a nominal amount
- Intended that the property should be used for the benefit of the citizens of the City for all time and was not to be used as a commercial venture

Affidavit of Dr. Gordon Wilson

- Executive member of KYC 1951 when lease signed
- Familiar with the circumstances and intentions of the parties concerned in the transfer of the property of S.M. Simpson to the City
- States that one of the conditions of sale was that the Yacht Club be granted 75 feet of lake frontage as long as they should have the need for it tax free

Correspondence to Alderman Simpson September 3, 1991

- Director of Corporate Services in a cover memorandum to Alderman Sharron Simpson dated September 3, 1991 encloses a copy of the covenant, legal plans for the two properties and a copy of an article on Kelowna's civic centre project that had appeared in *Civic Administration* magazine circa. 1961

Letter to Horace Simpson February 25, 1994

- Director of Corporate Services in a cover letter to Horace Simpson encloses copies of Bylaw 1212, Bylaw 1449 and a copy of the covenant

- Correspondence arose out of City's plans to re-acquire the old Court House site
- City's plans for the site, if acquired, was to "convert it to green space and public-use space"

Letter to City from Horace Simpson March 7, 1994

- Horace Simpson in a cover letter to the Director of Corporate Services encloses copies of the 1950 and 1955 correspondence regarding the location of the Yacht Club and the proposed hotel development [see above for details of correspondence]
- Stated that it would have been "most embarrassing" if hotel development had proceeded

Sale of Old Court House Property 1996

- Land had been sold to the province in 1949 for the erection of a provincial court house [see above Bylaw 1449]
- Council accepts BCBC's final offer for sale of the old Court House property to the City of Kelowna for a total purchase price of \$2,250,000 on June 26, 1996
- Sale Agreement executed December 23rd, 1996

Courier Newspaper Articles 1944-1945; 1949; 1955 (date and subject of article or editorial)

- October 19, 1944 – Saw Mill Fire
- December 14, 1944 – Saw Mill Property Considered for Civic Site
- April 26, 1945 – Bylaw 1117 and Lakeshore site – articles and editorials
- May 3, 1945 – Bylaw 1117 and Lakeshore site
- May 10, 1945 - Bylaw 1117 and Lakeshore site; Appeal to Ratepayers
- May 17, 1945 – Bylaw 1117 and Lakeshore site – articles and editorials
- May 31, 1945 – Lakeshore site
- November 29, 1945 – Bylaws 1208, 1212, 1213
- December 6, 1945 – Bylaws 1208, 1212, 1213 and editorial
- December 13, 1945 – Bylaws 1208, 1212, 1213 and Appeal to Ratepayers
- December 20, 1945 - Bylaws 1208, 1212, 1213 and editorial
- December 5, 1949 – Bylaw 1449
- December 12, 1949 – Bylaw 1449
- September 15, 1955 – Okanagan Investments Ltd. Hotel option.

BL8960 amends the title to include P3lp

16.3 P3 – Parks and Open Space
P3lp – Parks and Open Space (Liquor Primary)

16.3.1 Purpose

The purpose is to provide a **zone** for the preservation and enhancement of **open space** and limited public facilities.

16.3.2 Principal Uses

The **principal uses** in this **zone** are:

- (a) **cemeteries**
- (b) **participant recreation services, outdoor**
- (c) **public parks**

16.3.3 Secondary Uses

The **secondary uses** in this **zone** are:

BL8654 deleted paragraph (a) and renumbered the subsequent paragraphs:

- (a) **care centre, major**
- (b) **community recreation services**

BL8960 deleted eating establishments, minor

BL8960 added the following 3 food and liquor primary uses:

- (c) **food primary establishment**
- (d) **liquor primary establishment, major (P3lp only)**
- (e) **liquor primary establishment, minor**

BL8528 added a new paragraph (d):

- (d) **participant recreation services, indoor**
- (e) **residential security/operator units**
- (f) **retail stores, general**
- (g) **utility services, minor impact**

16.3.4 Subdivision Regulations

- (a) The minimum **lot width** is **N/A**.
- (b) The minimum **lot area** is **N/A**.

16.3.5 Development Regulations

- (a) The maximum **floor area ratio** is 0.1.
- (b) The maximum **height** is 10.0 m.
- (c) The minimum **front yard** is 6.0 m.
- (d) The minimum **side yard** is 3.0 m, except it is 4.5 m from a **flanking street** or a residential or agricultural **zone**.
- (e) The minimum **rear yard** is 3.0 m, except it is 4.5 m from a **flanking street** or a residential or agricultural **zone**.

16.3.6 Other Regulations

- (a) Only one **residential security/operator unit** is permitted on a **site**.
- (b) In addition to the regulations listed above, other regulations may apply. These include the general **development** regulations of Section 6 (accessory **development**, **yards**, projections into **yards**, accessory **development**, lighting, stream protection, etc.), the **landscaping** and fencing provisions of Section 7, the parking and loading regulations of Section 8, and the specific **use** regulations of Section 9.

BL9530 added a new paragraph (c):

- (c) Drive-in food services are not a permitted form of development in this zone.

TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT – PARK

THIS COVENANT made pursuant to S. 219 of the *Land Title Act* R.S.B.C. 1996 c. 250, the _____ day of _____, 2006.

BETWEEN:

CITY OF KELOWNA , a municipal corporation
1435 Water Street, Kelowna, British Columbia, V1Y 1J4
(the “Covenantor”)

AND:

CITY OF KELOWNA , a municipal corporation
1435 Water Street, Kelowna, British Columbia, V1Y 1J4
(the “Covenantee”)

WHEREAS:

- A. The Covenantor is the registered owner in fee simple of those certain lands and premises situate in the City of Kelowna, legally described as:

KAP 83363

(the “Lands”)

- B. The Covenantor wishes to limit the use of the Lands to certain uses.
- C. The Covenantor has agreed to grant this Covenant to the Covenantee to charge the Lands with restrictions as to use.
- D. The Covenantee is entitled to accept a covenant restricting the use of lands and their alienation under S. 219 of the *Land Title Act*.

NOW THEREFORE:

1. The Covenantor must not transfer the fee simple in the Lands but this restriction shall not preclude the Covenantor from granting leases, licences or entering into partnering agreements of and for the Lands or part of them.

2. The use of the Lands shall be restricted to parks and open space and other uses ancillary thereto.
3. Nothing contained or implied herein shall impair, limit, or affect the Covenantee's rights and powers in the exercise of its functions pursuant to any public or private statute, bylaws, orders or regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Covenant had not been executed and delivered by the Covenantor.
4. No condoning, excusing or overlooking by the Covenantee on previous occasions of failure of the Covenantor to honour and be bound by the restrictions herein, shall be taken to operate as a waiver of the Covenantee's entitlement to enforce this covenant.
5. The covenants set forth herein shall charge the Lands pursuant to Section 219 of the Land Title Act, and shall be covenants the burden of which shall run with the land.
6. Whenever the singular is used herein, the same shall be construed as meaning the plural, or body corporate or politic where the context or the parties so require.
7. The Covenantor hereto shall do and cause to be done all things and shall execute and cause to be executed all documents and plans which may be necessary to give proper effect to the intention of this Covenant.
8. The Covenantor shall, after execution hereof by it, do or cause to be done all acts necessary to cause to be subordinated all charges and encumbrances registered against the Lands, except those as have been approved by the Covenantee.

END OF DOCUMENT

W1

W2



Downtown Waterfront Current Zoning

Rev. Mar. 19/07



Legend

Agricultural Zones

A1 Agricultural 1 (S)

Rural Residential Zones

RR1 Rural Residential 1 (S)

RR2 Rural Residential 2 (S)

RR3 Rural Residential 3 (S)

Urban Residential Zones

RU1 Large Lot Housing (S) (H)

RU2 Medium Lot Housing (S) (H) (HS)

RU3 Small Lot Housing (HS)

RU4 Low Density Cluster Housing

RU5 Bareland Strata Housing

RU6 Two Dwelling Housing

RU6b Two Dwelling Housing w/Boarding & Lodging

Urban Residential (multi-family) Zones

RM1 Four-Plex Housing

RM2 Low Density Row Housing (H)

RM3 Low Density Multiple Housing

RM4 Transitional Low Density Housing

RM5 Medium Density Multiple Housing

RM6 High Rise Apartment Housing

RM7 Mobile Home Park

W1

Commercial Zones

C1 Local Commercial

C2 Neighbourhood Commercial (R)

C3 Community Commercial (L,R)

C4 Town Centre Commercial (L,R)

C5 Transition Commercial

C6 Regional Commercial (L,R)

C7 Central Business Commercial (L,R)

C8 Convention Hotel Commercial (L,R)

C9 Tourist Commercial (L,R)

C10 Service Commercial (R)

Industrial Zones

I1 Business Industrial

I2 General Industrial

I3 Heavy Industrial

I4 Central Industrial

I5 Extraction

Public & Institutional Zones

P1 Major Institutional (L)

P2 Education & Minor Institutional (L)

P3 Parks & Open Space

P5 Municipal District Park

P4 Utilities

Water Zones

W1 Recreation Water Use**

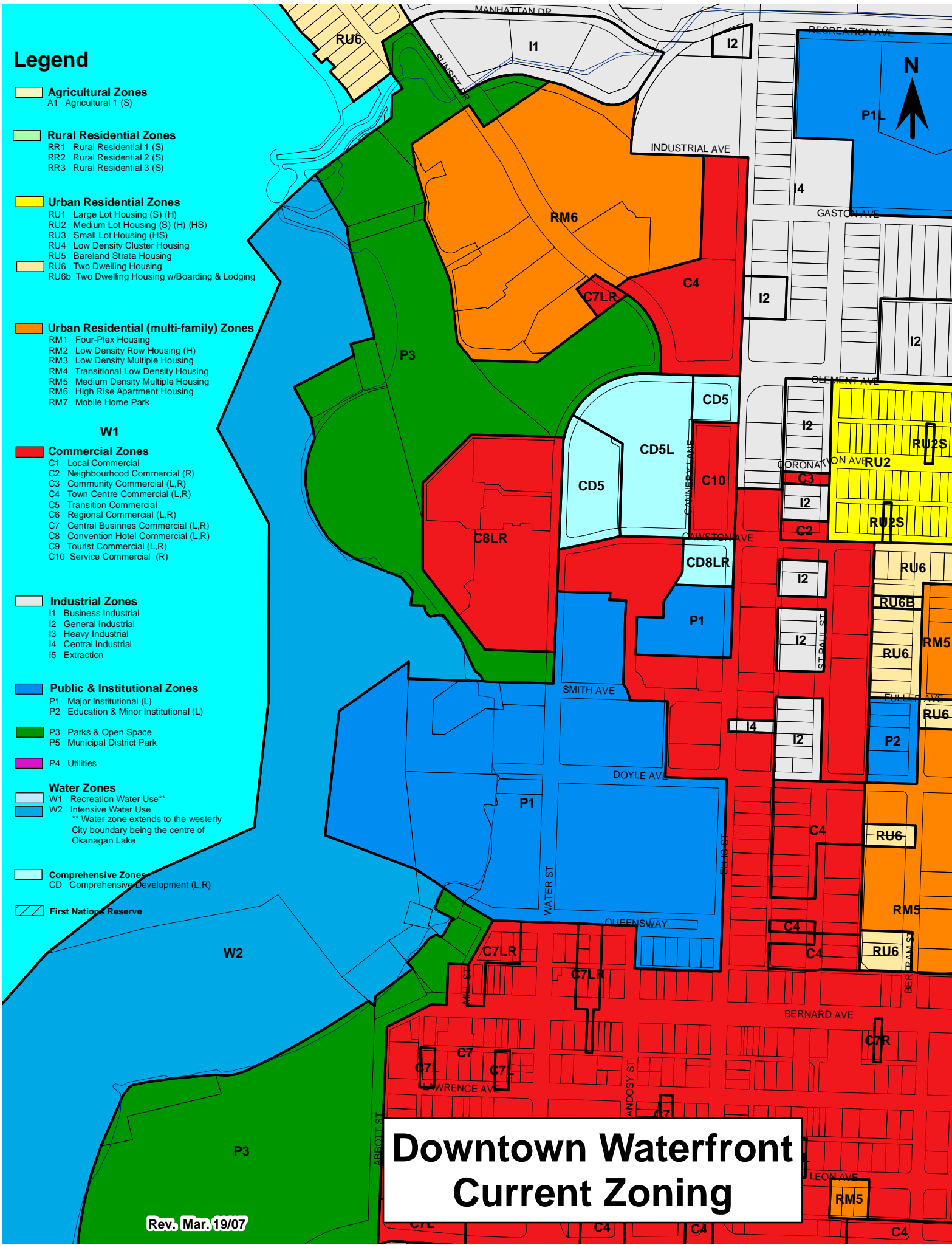
W2 Intensive Water Use

** Water zone extends to the westerly City boundary being the centre of Okanagan Lake

Comprehensive Zones

CD Comprehensive Development (L,R)

First Nations Reserve



Downtown Waterfront Current Zoning

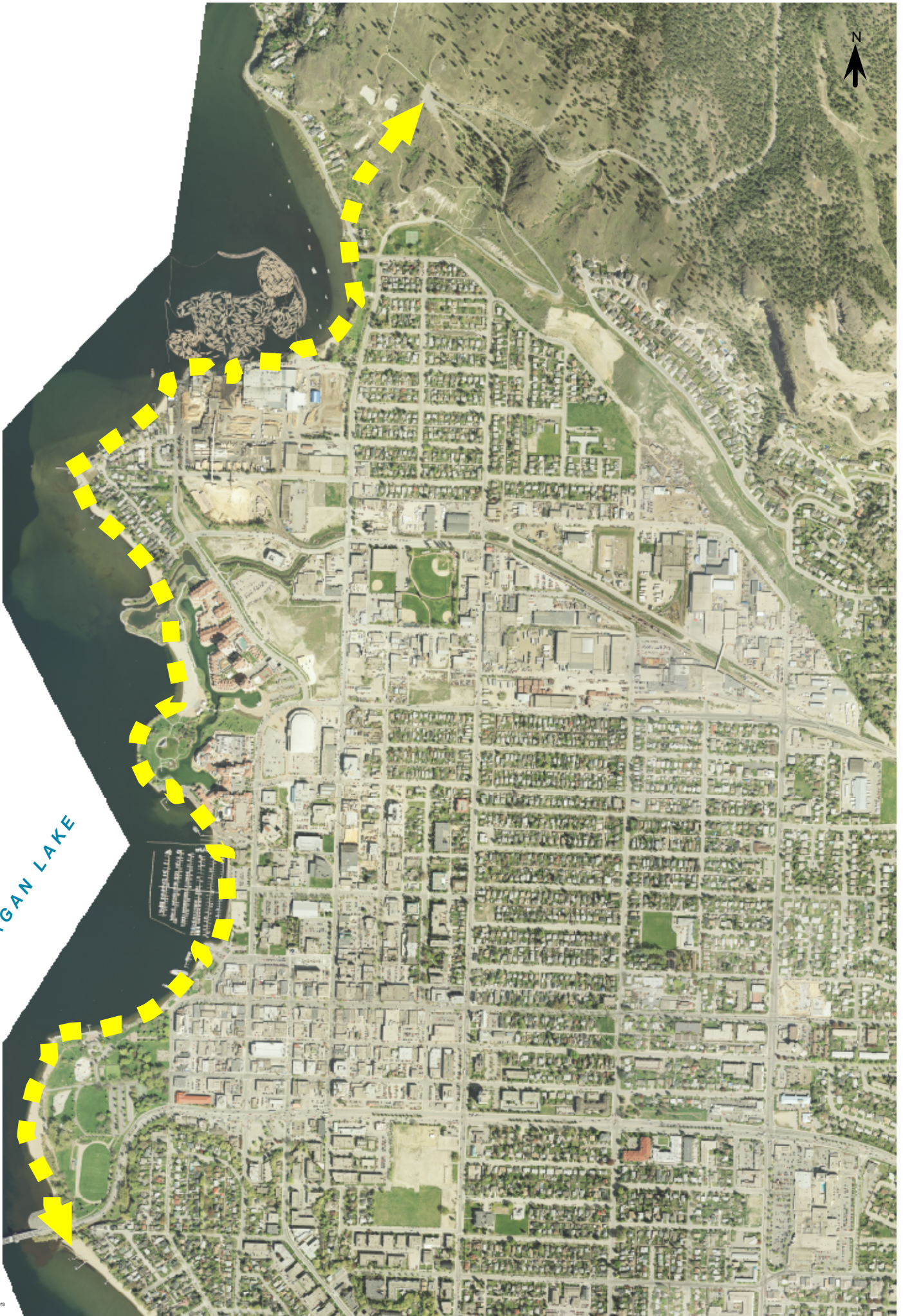
Rev. Mar. 19/07



W1

Downtown Waterfront Proposed Zoning

Rev. Mar. 19/07



OKANAGAN LAKE