

Regular MeetingSeptember 7, 2010

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, September 7<sup>th</sup>, 2010.

Council members in attendance: Mayor Sharon Shepherd, Councillors Kevin Craig, Robert Hobson\*, Charlie Hodge, Graeme James, Angela Reid, Michele Rule and Luke Stack.

Council members absent: Councillor Andre Blanleil.

Staff members in attendance were: City Manager, Ron Mattiussi; City Clerk, Stephen Fleming; Director, Land Use Management, Shelley Gambacort; and Council Recording Secretary, Sandi Horning.

(\* denotes partial attendance)

1. CALL TO ORDER

Mayor Shepherd called the meeting to order at 7:07 p.m.

Mayor Shepherd advised that the meeting is open to the public and all representations to Council form part of the public record. A live audio feed is being broadcast and recorded by CastaNet.

2. PRAYER

A Prayer was offered by Councillor Hodge.

3. CONFIRMATION OF MINUTES

Regular A.M. Meeting - August 23, 2010  
 Regular P.M. Meeting - August 23, 2010  
 Public Hearing - August 24, 2010  
 Regular Meeting - August 24, 2010  
 Special Meeting - August 25, 2010  
 Special Committee-of-the-Whole Meeting - August 26, 2010

Moved by Councillor James/Seconded by Councillor Stack

**R819/10/09/07** THAT the Minutes of the Regular Meeting of August 23, 2010 and August 24, 2010 and the Public Hearing Meeting of August 24, 2010 and the Special Meeting of August 25, 2010 and the Special Committee-of-the-Whole Meeting of August 26, 2010 be confirmed as circulated.

Carried

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

5. BYLAWS CONSIDERED AT PUBLIC HEARING

**(BYLAWS PRESENTED FOR SECOND AND THIRD READINGS)**

5.1 Bylaw No. 10232 (Z10-0049) - Nancy & Stephen Moretti - 1422 Alta Vista Road

Councillor Hobson joined the meeting at 7:09 p.m.

Regular MeetingSeptember 7, 2010Moved by Councillor Craig/Seconded by Councillor JamesR820/10/09/07 THAT Bylaw No. 10232 be read a second and third time.Carried5.2 Bylaw No. 10385 (Z10-0041) - Harjit & Sukhwinder Randhawa - 1321 Tanemura CrescentMoved by Councillor James/Seconded by Councillor CraigR821/10/09/07 THAT Bylaw No. 10385 be read a second and third time.CarriedMoved by Councillor Hobson/Seconded by Councillor StackR822/10/09/07 THAT, prior to issuing the Development Permit for 1321 Tanemura Crescent, Council directs staff to:

- ensure that the new door location for the suite will be the one that was displayed at the September 7, 2010 Public Hearing;
- ensure that a pathway is constructed from the designated suite parking area to the suite entrance; and
- ensure that the "no parking" restriction is of a sufficient length in order to protect the areas beyond the site lines.

Carried5.3 Bylaw No. 10386 (Z10-0047) - Gregory & Dixie Lefebre (Architecturally Distinct Solutions Inc.) - 700 Barnaby RoadMoved by Councillor Hodge/Seconded by Councillor RuleR823/10/09/07 THAT Bylaw No. 10386 be read a second and third time.Carried5.4 Bylaw No. 10393 (Z10-0062) - Gursewak & Ramandeep Bains - 1494 Montenegro DriveMoved by Councillor Rule/Seconded by Councillor HodgeR824/10/09/07 THAT Bylaw No. 10393 be read a second and third time.Carried5.5 Bylaw No. 10394 (Z10-0045) - Gurmit and Naveep Sidhu & Rajnwinder and Harparkash Rajan (Interior BC Holdings Ltd.) - 1750 McKenzie RoadMoved by Councillor Stack/Seconded by Councillor ReidR825/10/09/07 THAT Bylaw No. 10394 be read a second and third time.Carried

Regular Meeting

September 7, 2010

- 5.6 Bylaw No. 10395 (Z10-0053) - Cindy Ferguson (New Town Planning Services) - 195 Swick Road

Moved by Councillor Reid/Seconded by Councillor Stack

R826/10/09/07 THAT Bylaw No. 10395 be read a second and third time.

Carried

- 5.7 Bylaw No. 10396 (OCP10-0010) - Kirschner Mountain Estates Ltd. & Donald and Amy Kirschner (Mission Group Creations Ltd.) - 2061 Garner Road and 2045 Loseth Road - **Requires a majority of all Members of Council (5)**

Moved by Councillor Stack/Seconded by Councillor Hobson

R827/10/09/07 THAT Bylaw No. 10396 be read a second and third time.

Carried

- 5.8 Bylaw No. 10397 (Z10-0057) - Kirschner Mountain Estates Ltd. & Donald and Amy Kirschner (Mission Group Creations Ltd.) - 2061 Garner Road and 2045 Loseth Road

Moved by Councillor Stack/Seconded by Councillor Hobson

R828/10/09/07 THAT Bylaw No. 10397 be read a second and third time.

Carried

6. DEVELOPMENT PERMIT AND DEVELOPMENT VARIANCE PERMIT REPORTS

- 6.1 Community Sustainability Division, Supplement Report dated August 11, 2010 re: Development Variance Permit Application No. DVP07-0100 - Anthony Otto - 1415-1417 Edgewood Drive City Clerk to state for the record any correspondence received. Mayor to invite anyone in the public gallery who deems themselves affected by the required variance(s) to come forward.

Staff:

- The Applicant was able to satisfy staff's concerns regarding the safety and stability of the proposed retaining wall.
- Summarized the geotechnical information that was provided by the Applicant.
- Clarified the location of the retaining wall on the subject property.

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

- o Letters of Opposition:
  - Eileen Andres, 1399 Edgewood Drive; Scott Atkinson, 1381 Orchard Drive; Angela Bertolami, 1406 Highland Drive S; and Frank Harford, 1408 Highland Drive S (2)
  - Christine & Terrence Ward, 1404 Highland Drive S
- o Addition Information:
  - A package of 9 additional photos submitted by Frank Harford, 1408 Highland Drive S

Regular Meeting

September 7, 2010

Mayor Shepherd invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council.

Tony Otto, Applicant

- Believes that the concerns of the neighbours have been addressed through the Geotechnical Report.
- Advised that the representative from the Geotechnical Company was not at tonight's Council Meeting, even though he was requested to be.
- Believes that any liability with respect to the geotechnical report falls directly on the Geotechnical Company rather than the Applicant or the City.
- He would like to seek advice prior to committing to entering into a Covenant to deal with any liability issues with respect to the retaining wall.
- Advised that the he spoke with his neighbours and showed them drawings of the proposed retaining wall. The neighbours signed a petition indicating that they did not have any concerns with the retaining wall being proposed.
- Advised that the retaining wall is required in order to create yard space. Without the retaining wall, there will not be any yard.

Staff:

- Advised that the Land Title Office is restricting the registration of covenants on title to covenants that restrict use, rather than limit liability. Staff are unsure if the Land Title Office would accept a covenant that deals with potential liability for a retaining wall.

Gallery:

Frank Harford, 1408 Highland Drive S

- Believes that the geotechnical review was only conducted on the subject property and not on the adjacent properties.
- The repairs to his property were conducted by the City back in 1999. The cost to the City for the repairs was in excess of \$90,000.00.
- Roto-Rooter has told him that there is only 1 degree of grade which results in the sewer backing up in his basement on a regular basis.
- The City of Kelowna was at his property this morning to check on the status of the drainage in the area.
- Believes that the photos he submitted shows that, contrary to the geotechnical report, the ground is still moving and is affecting the foundation of his residence.
- Believes that there is a possibility for buildings in the area to still shift and move.
- The property located at 1410 Edgewood Drive is currently falling into his property and he has an arrangement with the owner to construct a barrier.
- Would like the Applicant to conduct geotechnical testing on his property before and after the construction of the retaining wall.

Staff:

- Advised that the October 28, 2004 Geotechnical Report addresses the grade fill requirements.

Scott Atkinson, 1381 Orchard Drive

- Did originally sign a Petition in support of the variance being requested, however he has now had time to think about the proposal and has decided that he is opposed to the application.
- Expressed a concern about privacy.
- Expressed a concern about what might happen to his in-ground swimming pool during compaction.

Don Green, 1402 Highland Drive

- Briefed Council on the history of the subject property and the surrounding properties.
- Expressed a concern that 50% of the property is being filled in order to build a duplex.

Regular Meeting

September 7, 2010

- Expressed a concern that there are ground water issues in the area.
- Expressed a concern that the retaining wall be will constructed on fill.
- Confirmed that his property borders the subject property and advised that he does not like the proposed height of the retaining wall.
- Believes that the Geotechnical Report is inaccurate as it does not address the possibility of the rock pit overflowing and causing water/drainage issues on the subject property and the surrounding properties.
- Advised that he has not spoken with the Applicant regarding the proposed application.
- Opposed to the visual impact of the retaining wall.

Eileen Andres, 1399 Edgewood Drive

- Concerned that water from the natural ravine will be diverted to her property.
- Opposed to the visual impact of the retaining wall.
- Originally signed the Petition in support of the application; however she has since changed her mind.
- Concerned about potential damage to the surrounding properties.
- Advised that she did not understand the proposed application when she signed the Petition and talked with Mr. Otto.

Angela Bertolami, 1406 Highland Drive S

- Advised that her property was the subject of a litigation action with the City. The City was found liable for repairs to the property in 1999 and these issues are still ongoing.
- Advised that there are ongoing issues with sewer and gas lines in the area.
- Did sign the Petition in favour of the proposal; however she has now changed her mind. She was going to move from the area, but has since decided to stay.
- Opposed to the visual impact of the retaining wall.

Scott Atkinson, 1381 Orchard Drive

- Advised that he has spoken to a realtor and the realtor has advised that the ability to sell his residence will be affected by the visual impact of the retaining wall. The realtor could not comment on whether or not his property value would decrease as a result of the retaining wall.

Tony Otto, Applicant

- Advised that he is only trying to create yard space for the proposed dwellings on the site.
- If the Development Variance Permit was not granted, it would create unusable space and would then make it difficult to rent/sell the property.
- Confirmed that there are a couple of sheds and a storage container on the subject property.
- Advised that the original concept for the property was a detached single duplex.
- Advised that without the retaining wall, the occupants of the subject property would be looking directly down at Mr. Atkinson's trampoline and swimming pool.
- Displayed a concept drawing of the site lines for a 5m retaining wall and a 2.4m stepped retaining wall. Advised that he would be willing to construct either retaining wall.
- Displayed a site plan for the proposed structure.
- Advised that he intends on planting an ivy type plant along the retaining wall in order to create more of a "green wall" effect.

Staff:

- Advised that the drawings displayed by the Applicant have not been seen by staff prior to tonight's meeting.
- It is possible that if the drawings that were shown tonight were brought to staff's attention earlier, staff may not have supported the requested variance.
- Staff does not have any information regarding the drainage impacts on the surrounding properties.

Regular MeetingSeptember 7, 2010

City Manager:

- Addressed some of the concerns raised with respect to any potential City liability.

Staff:

- The Building Permit process will need to satisfy any drainage issues as set out in the Geotechnical Report.
- Confirmed that the 2.4m stepped retaining wall will also require a variance.
- The form & character of the building will be considered by way of the direct Development Permit process through the Director, Land Use Management.

Council:

- Unable to support the variance being requested given the visual impact of the retaining wall on the surrounding properties.

Moved by Councillor Stack/Seconded by Councillor Hodge

R829/10/09/07 THAT Council receives for information the Supplemental Report of the Community Sustainability Division dated August 11, 2010 with respect to the information requested from Staff for DVP07-0100;

AND THAT Council **not** authorize the issuance of Development Variance Permit No. DVP07-0100 for Lot 1, District Lot 137, Osoyoos Division Yale District, Plan KAP81211 located at 1415-1417 Edgewood Dr, Kelowna, B.C.;

Carried7. REMINDERS

City Clerk:

- Clarified the procedure in the Council Procedure Bylaw with respect to reconsiderations of applications by Council.

8. TERMINATION

The meeting was declared terminated at 9:06 p.m.

Certified Correct:\_\_\_\_\_  
Mayor\_\_\_\_\_  
City Clerk

SLH/dld