

Regular MeetingDecember 14, 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, December 14<sup>th</sup>, 2010.

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

Council members absent: Councillor Angela Reid.

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

(\* denotes partial attendance)

1. CALL TO ORDER

Mayor Shepherd called the meeting to order at 7:55 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

2. A Prayer was offered by Councillor Stack.

3. CONFIRMATION OF MINUTES

Regular A.M. Meeting - November 29, 2010  
 Regular P.M. Meeting - November 29, 2010  
 Public Hearing - November 30, 2010  
 Regular Meeting - November 30, 2010  
 Regular A.M. Meeting - December 6, 2010  
 Regular P.M. Meeting - December 6, 2010

Moved by Councillor Stack/Seconded by Councillor Hobson

R1206/10/12/14 THAT the Regular Meetings of November 29, 2010, November 30, 2010 and December 6, 2010 and the Public Hearing Meeting of November 30, 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. 10450 (Z10-0082) - Steven Lwowski (Kevin Lwowski) - 350 Moyer Road

Regular MeetingDecember 14, 2010Moved by Councillor James/Seconded by Councillor CraigR1207/10/12/14 THAT Bylaw No. 10450 be read a second and third time.Carried5.2 Bylaw No. 10451 (Z10-0075) - Watermark Developments Ltd. - 2960 Appaloosa Road

Staff:

- Advised that both the sewer and water issues pertaining to the development will have to be addressed prior to adoption of the Bylaw.

Moved by Councillor Craig/Seconded by Councillor JamesR1208/10/12/14 THAT Bylaw No. 10451 be read a second and third time.CarriedMoved by Councillor Rule/Seconded by Councillor HodgeR1209/10/12/14 THAT, prior to adoption of Bylaw No. 10451(Z10-0075), staff report back to Council with respect to the sewer and water issues, together with further information regarding the realignment of Arab Road.DEFEATEDCouncillors Blanleil, Craig, Hobson, James and Stack - Opposed.5.3 Bylaw No. 10453 (Z10-0088) - Edwina Flanagan and Gordon Kelly - 735 Hollywood Road SouthMoved by Councillor Hodge/Seconded by Councillor RuleR1210/10/12/14 THAT Bylaw No. 10453 be read a second and third time and be adopted.Carried5.4 Bylaw No. 10455 (Z10-0083) - Denys and Iryna Storozhuk - 1195 Rio Drive SouthMoved by Councillor Rule/Seconded by Councillor HodgeR1211/10/12/14 THAT Bylaw No. 10455 be read a second and third time.CarriedMoved by Councillor Hodge/Seconded by Councillor HobsonR1212/10/12/14 THAT Council directs staff to consider erecting no parking signs along the frontage of the property located at 1195 Rio Drive South and that staff report back to Council prior to final adoption of Bylaw No. 10455 (Z10-0083).Carried

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- 5.5 Bylaw No. 10456 (OCP10-0011) - Various Owners and Addresses - OCP Mapping Housekeeping Amendments - Requires a majority of all Members of Council (5)

Moved by Councillor Rule/Seconded by Councillor Hodge

R1213/10/12/14 THAT Bylaw No. 10456 be read a second and third time.

Carried

- 5.6 Bylaw No. 10457 (Z10-0058) - Various Owners and Addresses - Rezoning Housekeeping Amendments

Moved by Councillor Blanleil/Seconded by Councillor Stack

R1214/10/12/14 THAT Bylaw No. 10457 be read a second and third time.

Carried

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

- 5.7 Bylaw No. 10454 (Z10-0081) - Bruce Saunders - 964 Campus Court

Moved by Councillor Blanleil/Seconded by Councillor Stack

R1215/10/12/14 THAT Bylaw No. 10454 be read a second and third time and be adopted.

Carried  
Councillor Hodge - Opposed.

6. DEVELOPMENT PERMIT AND DEVELOPMENT VARIANCE PERMIT REPORTS

- 6.1 Land Use Management Department, dated November 18, 2010 re: Development Variance Permit Application No. DVP10-0156 - Jeff and Tanis Michaud (Rykon Construction Management) - 950 Manhattan 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.

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

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

James Peters, Applicants' Representative

- Advised that the variance is required in order to construct the proposed carriage house.
- Believes that the carriage house will integrate nicely into the neighbourhood as there are already several carriage houses in the area.
- Confirmed that the proposed design of the carriage house is the final design and that the structure will be built in accordance with the design before Council.

There were no further comments.

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**R1216/10/12/14** THAT Council authorize the issuance of Development Variance Permit No. DVP10-0156 for Lot 10, District Lot 9, ODYD, Plan 16501, located at 950 Manhattan Drive, Kelowna, BC;

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

Section 6.5.8(a) Accessory Building Location. To vary the required front yard setback of an accessory building from 12.0 m required to 6.0 m proposed.

Section 9.5.1(d) Accessory Building in Front Yard. To vary the requirement that a dwelling be located between a front yard and an accessory building.

Carried

6.2 (a) **BYLAW PRESENTED FOR ADOPTION**

Bylaw No. 10345 (Z10-0012) - Alfred and Gabriele Geismayr (Fred Geismayr) - 2085 Inkar Road

Moved by Councillor Stack/Seconded by Councillor Hobson

**R1217/10/12/14** THAT Bylaw No. 10345 be adopted.

Carried

- (b) Land Use Management Department, dated November 15, 2010 re: Development Variance Permit Application No. DVP10-0028 - Alfred and Gabriele Geismayr (Fred Geismayr) - 2085 Inkar Road 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.

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

Mayor Shepherd invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. No one came forward.

Moved by Councillor James/Seconded by Councillor Craig

**R1218/10/12/14** THAT Final Adoption of Zone Amending Bylaw No. 10345 be considered by Council,

AND THAT Council authorize the issuance of Development Variance Permit No. DVP10-0028, Lot A, Section 19, Township 26, O.D.Y.D., Plan 23622, located on Inkar Road, Kelowna, BC;

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

Section 13.6.6(e) Development Regulations:

To vary the rear yard setback from 6.0m required to 3.02m proposed, as shown on Schedule "A" attached to the Report of the Land Use Management Department dated November 15, 2010.

Carried

- 6.3 Land Use Management Department, dated November 19, 2010 re: Development Variance Permit Application No. DVP10-0146 - Bruno and Nancy Curatolo - 660 Thorneloe Road 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.

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

- Letter of Conditional Support:
  - Nicholas & Alice Bennett, 678 Thorneloe Road
- Form Letters of No Objection:
  - Rashad Shoranick, 679 Thorneloe Road
  - Heith Martin, West Dee Construction Ltd., 671 Thorneloe Road
  - Heith Martin, P239 Enterprises Ltd., 659 Thorneloe Road
- Additional Information:
  - A package of forty-eight (48) pages of information as submitted by Ed Schnellert of 656 Kincaid Road
  - A package of thirteen (13) pages of additional information as submitted by the Applicants, Bruno and Nancy Curatolo of 660 Thorneloe Road
- Petition of Opposition:
  - A Petition of Opposition signed by twelve (12) owners/occupiers of the surrounding properties as submitted by Ed Schnellert of 656 Kincaid Road.

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

Bruno Curatolo, Applicant

- Believes that the application is quite simple and requests that Council approve the variance based on the fact that a similar variance was granted for the property back in 2009.
- Confirmed that the variance being requested is as a result of a Court case in which the Judge ordered that a second variance be required for the subject property.
- If Council does not grant the variance, the Building Permit that was issued for the structure would have to be set aside.
- Advised that he canvassed the proponents of Mr. Schnellert's Petition and can now advise that some of the proponents are no longer opposed to the requested variance and have since revoked their signatures. Submitted a copy of the Petition with the revoked signatures.
- Believes that, for the most part, he has the support of the surrounding neighbours.
- Expressed a concern with what would happen should the Building Permit be set aside.

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City Clerk:

- Advised that should Council deny the variance, the Building Permit would have to be set aside as per the Judge's Order. The remedy for setting aside the Building Permit would have to be determined by the Court.

Gallery:

Ed Schnellert, 656 Kincaid Road

- Believes that the structure that was constructed on the site is different than was represented at the public meeting in 2009.
- Expressed a concern with the additional dormer on the structure.
- Expressed concerns regarding the information that was provided to him pursuant to his Freedom of Information request.
- Believes that if the building was sited 3m back from where it is now, it would be a better situation for his property and he would then retain more of his view.
- Believes that Mr. Curatolo misrepresented the original variance request.

City Clerk:

- Addressed some of the concerns raised by Mr. Schnellert in relation to his Freedom of Information request.

Bruno Curatolo, Applicant

- Read an excerpt from the Judge's Decision regarding any misrepresentation on his part.
- Explained how the structure could be sited in order to accommodate Mr. Schnellert's request for the restoration of his view.
- Confirmed that the structure is a 2-storey garage that contains office and storage space. There is nothing contained in the structure that would require it to be deemed a carriage house.
- Advised that, before the trial started, he offered to register a Restrictive Covenant on the site in order to ensure that the structure would only be used as a garage with office and storage space.

Moved by Councillor Blanleil/Seconded by Councillor James

R1219/10/12/14 THAT Council authorize the issuance of Development Variance Permit No. DVP10-0146 for Lot A, District Lot 357, SDYD, Plan KAP74667, located at 660 Thorneloe Road, Kelowna, BC;

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

**Section 6.5.9 Accessory Development**

To vary the distance between an accessory building and the side lot line abutting a flanking street (1.0m proposed) to be less than the side yard abutting a flanking street required for the principal building (6.0m required).

Carried

- 6.4 Land Use Management Department, dated November 15, 2010, re: Development Variance Permit Application No. DVP10-0078 - John Arnold (Tyler Bollhorn) - 4896 Lakeshore Road 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.

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

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Mayor Shepherd invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. No one came forward.

Moved by Councillor Blanleil/Seconded by Councillor James

R1220/10/12/14 THAT Council authorize the issuance of Development Variance Permit No. DVP10-0078 for Lot A, Sections 25 and 26, Township 28, SDYD, Plan KAP77528 located at 4896 Lakeshore Road, Kelowna, BC;

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

**Section 6.11.1 Okanagan Lake Sight Lines**

Vary the required Okanagan Lake 120° Panoramic Sight Line from 120° required to 84° proposed.

Carried

- 6.5 Land Use Management Department, dated November 17, 2010, re: Development Variance Permit Application No. DVP10-0141 - Laura-Lee Haight and Dean Regnier - 4340 Turner Road 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.

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

Mayor Shepherd invited the applicant or anyone in the public gallery who deemed themselves affected to come forward, followed by comments of Council. No one came forward.

Moved by Councillor Craig/Seconded by Councillor Blanleil

R1221/10/12/14 THAT Council authorize the issuance of Development Variance Permit No. DVP10-0141, Lot C, District Lot 358, ODYD Plan 18499, located on Turner Road, Kelowna, BC;

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

**Section 6.5.7 Accessory buildings in residential zones**

To vary the permitted lot coverage of an accessory building or structure from 90m<sup>2</sup> permitted to 130 m<sup>2</sup> proposed.

Carried

- 6.6 (a) **BYLAW PRESENTED FOR ADOPTION**

Bylaw No. 10404 (Z10-0051) - Kane #2 Resources Ltd. (Protech Consultants Ltd.) - 335 Gerstmar Road

Moved by Councillor Stack/Seconded by Councillor Hobson

R1222/10/12/14 THAT Bylaw No. 10404 be adopted.

Carried

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- (b) Land Use Management Department, dated November 5, 2010, re: Development Permit Application No. DP10-0082 and Development Variance Permit Application No. DVP10-0075 - Kane #2 Resources Ltd. (Protech Consultants Ltd.) - 335 Gerstmar Road 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.

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

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

Representative of Kane #2 Resources, Applicant

- Advised that he did not have anything further to add to staff's comments.

There were no further comments.

Moved by Councillor James/Seconded by Councillor Stack

**R1223/10/12/14** THAT Final Adoption of Zone Amending Bylaw No. 10404 be considered by Council;

AND THAT Council authorize the issuance of Development Permit No. DP10-0082 for Lot 1, Section 22, Township 26, ODYD, Plan 12346, located at 335 Gerstmar Road, Kelowna BC, subject to the following:

1. The dimensions of and siting of the building to be constructed on the land be in general accordance with Schedule "A";
2. The exterior design and finish of the building to be constructed on the land be in general accordance with Schedule "B";
3. Landscaping to be provided on the land be in general accordance with Schedule "C";
4. The applicant be required to post with the City, a Landscape Performance Security deposit in the form of a "Letter of Credit" in the amount of 125% of the estimated value of the landscaping, as determined by a professional landscaper;

AND THAT Council authorize the issuance of Development Variance Permit No. DVP10-0075 for Lot 1, Section 22, Township 26, ODYD, Plan 12346, located at 335 Gerstmar Road, Kelowna BC;

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

**Section 13.9.6 - RM3 Development Regulations**

To vary required maximum site coverage (including buildings, driveways, and parking areas) from 50% permitted to 54% proposed.

AND THAT the issuance of the Development Variance Permit be subject to Permeable paving treatment being incorporated into the site plan, as per Schedule "D" (Drawing #10014-00 from Protech Consultants Ltd.)



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AND FURTHER THAT the applicant be required to complete the above noted conditions within 180 days of Council approval of the Development Permit application, in order for the permit to be issued.

Carried

- 6.7 Land Use Management Department, Supplemental Report dated December 2, 2010, re: Development Variance Permit Application No. DVP10-0129 - Bruce Saunders - 964 Campus Court 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.

City Clerk:

- Advised that the following motion is on the floor from the November 16, 2010 Regular Meeting:

Moved by Councillor James/Seconded by Councillor Hodge

THAT Council not authorize the issuance of Development Variance Permit No. DVP10-0129, Lot 37, District Lot 135, ODYD Plan 26296, located on Campus Court, Kelowna, BC;

AND THAT variances to the following section of Zoning Bylaw No. 8000 not be granted:

**Section 13.2.6(b) - Development Regulations**

To vary the maximum height permitted from 2.5 storeys permitted to 3 storeys proposed.

- Confirmed that prior to considering the motion not to authorize the Development Variance Permit, Council passed a resolution to defer consideration of the matter pending a meeting between staff and the Applicant with respect to the potential additional variance that may be required for the structure.

Staff:

- Advised that the Applicant has offered to do some landscaping in order to mitigate the height of the building.

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

- o Letters of Opposition:
  - Gavin Bailey, 2622 Grenfell Road
  - Bill Kolodychuk, 2615 Grenfell Road

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

Bruce Saunders, Applicant

- Provided an synopsis of the Development Variance Permit process and the Building Permit process.
- Advised that he has every intention of meeting the 9.5m height restriction.
- Believes that with the completed landscaping, the development will be integrated nicely into the neighbourhood.
- Expressed frustration with the height/storey definition provided by City staff.
- Advised that his neighbour to the immediate right supports the building and proposed landscaping, but would not be supportive of a retaining wall.

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Gallery:

Trevor Butler, 984 Campus Court

- Advised that the correspondence he submitted to the Office of the City Clerk did not meet the deadline. Read from his December 13, 2010 letter.
- Expressed a concern that City staff are now supporting the variance and that the staff report did not clearly state the reason for the change in support.
- Believes that the large home will negatively impact the surrounding neighbourhood and will not integrate into the area very well.
- Would prefer that the Applicant lower the basement ceiling height so that the variance would not be required.

Bill Kolodychuk, 2615 Grenfell Road

- Is opposed to the requested variance.
- Believes that if the structure is built as presented, it will be intrusive to the surrounding neighbourhood.
- Believes that either the height of the basement or the second floor should be reduced so that the variance is not required.
- Believes that construction of a retaining wall could result in drainage issues for the surrounding properties.

Staff:

- Advised that 2m is considered a half storey. Height over 2m is considered one storey.
- Based on the remedies agreed to by the Applicant, staff changed their support from negative to positive.

Bruce Saunders, Applicant

- Feels that a retaining wall would negatively impact the neighbourhood.
- Confirmed that he is committed to the landscaping plan.

There were no further comments.

Moved by Councillor Craig/Seconded by Councillor Blanleil

**R1224/10/12/14** THAT Council receives for information the Supplemental Report of the Community Sustainability Division dated December 2, 2010 with respect to the information requested from Staff for DVP10-0129;

AND THAT Council authorize the issuance of Development Variance Permit No. DVP10-0129, Lot 37, District Lot 135, ODYD Plan 26296, located on Campus Court, Kelowna, BC;

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

**Section 13.2.6(b) - Development Regulations**

To vary the maximum height permitted from 2.5 storeys permitted to 3 storeys proposed.

AND THAT the vegetation plan proposed for the front yard be planted in accordance with Schedule A1.

Carried  
Mayor Shepherd and Councillor Hodge - Opposed.

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Councillor Hobson:

- Expressed a concern with the fact that there is not a set grade determined by the City.

Moved by Councillor Hobson/Seconded by Councillor Hodge

R1225/10/12/14 THAT staff report back to Council with respect to the various options available for determining grade.

Carried7.2 Councillor Stack, re: Use of Illustrations/Drawings

Councillor Stack:

- Expressed a concern that Council and the public are under the impression that the drawings/sketches shown during a Council Meeting indicate exactly what is being constructed.

Staff:

- Advised that if the property is not within a Development Permit Area, staff cannot require drawings.

City Manager:

- Suggested that a workshop be conducted with staff in order to discuss the options regarding including illustrations/drawings for development applications.

Moved by Councillor Stack/Seconded by Councillor Hodge

R1226/10/12/14 THAT Council directs staff to hold a workshop regarding the use of illustrations/drawings related to Rezoning, Development Permit and Development Variance Permit applications.

Carried7. REMINDERS

Mayor Shepherd reminded Council and the public that the Budget deliberations are scheduled for Thursday, December 16, 2010 at 8:00 a.m. in the Council Chamber.

8. TERMINATION

The meeting was declared terminated at 10:11 p.m.

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

SLH/dld