

Public HearingOctober 30, 2012

A Public Hearing of the Municipal Council of the City of Kelowna was held in the Council Chamber, 1435 Water Street, Kelowna, B.C., on Tuesday, October 30, 2012.

Council members in attendance: Mayor Walter Gray, Councillors Colin Basran, Andre Blanleil, Maxine DeHart, Gail Given, Robert Hobson, Mohini Singh, Luke Stack* and Gerry Zimmermann.

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

(* denotes partial attendance)

1. Mayor Gray called the Hearing to order at 6:03 p.m.
2. Mayor Gray advised that the purpose of the Hearing is to consider certain bylaws which, if adopted, will amend "*Kelowna 2030* - Official Community Plan Bylaw No. 10500" and "Zoning Bylaw No. 8000", and all submissions received, either in writing or verbally, will be taken into consideration when the proposed bylaws are presented for reading at the Regular Council Meeting which follows this Public Hearing.

The Deputy City Clerk advised the Notice of this Public Hearing was advertised by being posted on the Notice Board at City Hall on October 12, 2012 and by being placed in the Kelowna Capital News issues of October 19, 2012 and October 23, 2012, and by sending out or otherwise delivering 322 letters to the owners and occupiers of surrounding properties between October 12, 2012 and October 19, 2012.

The correspondence and/or petitions received in response to advertising for the applications on tonight's agenda were arranged and circulated to Council in accordance with Council Policy 309.

3. INDIVIDUAL BYLAW SUBMISSIONS
 - 3.1 Bylaw No. 10471 - 0775362 BC Ltd. (0775362 BC Ltd. (Gary Tebbutt)) - (W OF) South Perimeter Way - THAT Council receives for information, the Supplemental Report of the Community Sustainability Division dated September 10, 2012;

AND THAT Zone Amending Bylaw No. 10471 be amended at First Reading by removing Map "A" and replacing with a new Map "A", attached to and forming part of the Bylaw;

AND THAT the Zone Amending Bylaw be forwarded back to Public Hearing for further consideration;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the receipt of a subdivision plan in a registerable form by the Approving Officer;

AND THAT final adoption of the Zone Amending Bylaw be considered subsequent to the issuance of a Development Permit (Natural Environment);

AND FURTHER THAT final adoption of the Zone Amending Bylaw be considered subsequent to the requirements of the Development Engineering Branch being completed to their satisfaction.

Mayor Gray advised that the subject application was withdrawn by staff and will be forwarded to a future Public Hearing for consideration.

- 3.2 Bylaw No. 10739 (Z12-0017) - Michael Gaspari - 614-624 Francis Avenue - THAT Rezoning Application No. Z12-0017 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 6, District Lot 14, ODYD, Plan 3438, located on Francis Avenue, Kelowna, BC from the RU6 - Two Dwelling Housing zone to the RM1 - Four-plex Housing zone be considered by Council;

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

AND THAT final adoption of the Zone Amending Bylaw be considered in conjunction with Council's consideration of a Development Permit and a Development Variance Permit for the subject property;

AND THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of Development Engineering Branch being completed to their satisfaction.

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

- Petition of Opposition:
 - A Petition of Opposition signed by 28 owners and occupiers of surrounding properties as submitted by Matthew Barlow, 604 Francis Avenue
- Letters of Opposition:
 - Manon Royant, 597 Birch Avenue
 - Richard Borroughs, President, KLO Central Neighbourhood Association
 - Jennifer Utley, 627 Birch Avenue
 - Ramnik Lal, 646-656 Francis Avenue
 - Jim & Beryl Cooke, 548 Francis Avenue
 - Matthew & Debbie Barlow, 604 Francis Avenue

Councillor Stack joined the meeting at 6:08 p.m.

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

Michael Gaspari, Applicant

- Advised that he obtained Letters of Support from some of the surrounding neighbours and noted their names and addresses.
- Confirmed that he provided copies of the Letters of Support for his application to the Land Use Management Department in August 2012.
- Advised that he has spoken to some of the neighbourhood residents regarding his application.
- Displayed photos of the subject premises.
- Advised that he has recently upgraded the exterior of the premises and that the interior has always been maintained to a good standard.
- Advised that if the rezoning is approved, he will be making additional upgrades to the property such as streetscaping, curbs and gutters.
- Advised that he has never threatened anyone in the neighbourhood.
- Commented that the bylaw infractions are behind him and he would like to leave them in the past.

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- Confirmed that he wants to rezone the property in order to legalize the suites and to avoid any further bylaw infractions.
- Responded to questions from Council regarding his previous bylaw infractions and the actions of his previous tenants.
- Confirmed that all four (4) units in the premises are currently being rented. He proceeded with renting the two (2) illegal units when he applied for the rezoning as he was told by City staff that the proposed use would comply with the City's Official Community Plan for the area.
- Responded to questions from Council.

Gallery:Matthew Barlow, 604 Francis Avenue

- Provided an overview of the history of the subject property and the neighbourhood with respect to previous rezoning applications and bylaw infractions.
- Confirmed that he gathered signatures on the Petition of Opposition.
- Advised that the Applicant is currently using the property as a four-plex and that he has been advertising the units for rent on Castanet.
- Believes that the Applicant got angry with some of the neighbours when he was canvassing the neighbourhood for support.
- Opposed to the rezoning application.
- Believes that there is not enough outdoor open space for all of the tenants, particularly if the Applicant rents the units to families.
- Expressed a concern with privacy and noise issues as a result of the tenants open space and balcony locations.
- Advised that he has not spoken with the Applicant regarding the rezoning application, but that he did speak with someone who said he was acting on behalf of the Applicant.
- Believes that the Applicant's history with the property and the surrounding neighbourhood has negatively impacted his enjoyment of his property.
- Not opposed to densification.
- Would prefer that the property be left as a duplex, the way it was originally intended.
- Confirmed that he purchased his property with the understanding that the subject property was developed as a duplex.
- Responded to questions from Council

Paul Van Gemst, 645-647 Francis Avenue

- Advised that he has lived on Francis Avenue for the past 13 years.
- Advised that the subject property has had a history of bad tenants and he does not want to see the property revert back.
- Advised that he does not have an issue with densification as he has just constructed a carriage house on his property.
- Advised that the neighbourhood has been lodging complaints with Bylaw Enforcement for the past 7 years in an attempt to have the Applicant comply with the zoning regulations.

Jose Corbo, 581 Francis Avenue

- Advised that he moved to Francis Avenue in 2005.
- Advised that the previous tenants of the subject property have caused a lot of problems for the neighbourhood.
- Advised that there is a police file on Mr. Gaspari detailing a complaint against him for harassment of his wife and children.
- Advised that he does not have an issue with densification as he has a carriage house on his property.
- Believes that the proposed rezoning brings no benefit to the neighbourhood.
- Opposed to the rezoning based on the Applicant's approach and the type of tenants that have lived in the premises in the past.
- Believes that the Applicant's past actions show that he has no regard for the neighbourhood.

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- Feels that if the rezoning is approved, the City will be sacrificing a sense of neighbourhood for density.
- Advised that his family is suffering as a result of the Applicant's behaviour.

Joanna Senechal, 612 Birch Avenue

- Advised that she had a vision for her property when she purchased it and had to apply for a Building Permit and Development Variance Permit in order to upgrade the property to her standards. When she applied for her variance, she was told by City staff to obtain the support of her neighbours.
- Believes that there is a lot of neighbourhood opposition to Mr. Gaspari's proposal.
- Believes that the concerns expressed by the neighbourhood residents show that Mr. Gaspari doesn't have any regard for the neighbourhood or City Bylaws.
- Advised that she is not against higher density, just irresponsible landlords and property owners.

Matthew Barlow, 604 Francis Avenue

- Advised that he is not opposed to densification, but is opposed to this rezoning application.
- Believes that the properties in the area were designed under RU6 zone, and therefore the RU6 zoning should be kept intact.

Staff:

- Confirmed that the Official Community Plan indicates that the future land use of the subject area is Low Density - Multi-Family.
- Responded to questions from Council.

Michael Gaspari, Applicant

- Believes that there are several RM1 zoned properties in the area that have similar circumstances to his property and rezoning application.
- Displayed several photos of the subject property.
- Believes that there is sufficient buffering between his property and Mr. Barlow's property.
- Confirmed that he constructed the building in 1992 as a four-plex.

Staff:

- Responded to questions from Council.

There were no further comments.

- 3.3 Bylaw No. 10767 (Z11-0079) - Aaron, Robert, Joshua, and Kathleen Pachal - 925 Montcalm Drive - THAT Rezoning Application No. Z11-0079 to amend the City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot C, Section 30, Township 26, ODYD Plan KAP82877, located on Montcalm Drive, Kelowna, BC from the RU1-Large Lot Housing zone to the RU6- Two Dwelling Housing zone be considered by Council;

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

AND THAT final adoption of the zone amending bylaw be considered subsequent to the requirements of Development Engineering Branch and Fortis BC Electrical being completed to their satisfaction.

Staff:

- Confirmed that the subject property is currently vacant land.
- Responded to questions from Council.

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

- Letters of Opposition:
 - Dave & Gail Henshaw, 849 Wellington Court
 - Nicole Kleemaier-Raijen, 920 Montcalm Drive
- Letter of Concern:
 - Bill & Pauline Fleming, 923 Montcalm Drive (2)

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

Mr. Pachal, Applicant

- Displayed a PowerPoint Presentation regarding the proposed rezoning.
- Displayed photos of the subject property and the neighbouring properties.
- Believes that his proposal will actually enhance and benefit the neighbourhood.
- Believes that the subject property's lot size is larger than the average lot in the area.
- Advised that he has approached the neighbours regarding his proposal.
- Advised that the City's Transportation Services division has approved a change to the private driveway access subject to the Fire Department's requirements and displayed a letter from Greg Daft of the Kelowna Fire Department.
- Advised that maintenance of the laneway is shared between the neighbours.
- To the best of his knowledge, access to the subject property could be off of Churchill Court if that is what City staff recommends.
- Advised that he purchased the subject property in 2007.
- Suggested that part of the laneway access could be decommissioned in order to reduce any traffic or safety concerns.
- Responded to questions from Council.

Staff:

- Displayed a copy of the Right-of-Way Plan for the area from 1977.
- Displayed a copy of the "Highpointe Subdivision Plan".
- Confirmed that the only legal road frontage the Applicant has is off of Montcalm Drive.

Gallery:

Pauline Fleming, 923 Montcalm Drive

- Advised that she has lived in the neighbourhood for 32 years.
- Provided an overview of the history of the right-of-way access and the Highpointe Subdivision.
- Opposed to the rezoning based on road safety concerns.
- Advised that the width of the laneway is not uniform.
- Advised that she is not opposed to a home being constructed on the subject property, she is opposed to two (2) homes being constructed.
- Would prefer to see access to the subject property off of Churchill Court.
- Would not be comfortable with part of the laneway access being decommissioned.
- Responded to questions from Council.

Wendy Knapp, 845 Churchill Court

- Believes that the Report to Council has some inconsistent, or misleading, information.
- Advised that, historically, the easement was created for the properties on the lower portion of the laneway so that the property owners could have access through the back of their properties.
- Advised that when the Highpointe Subdivision was created, it resulted in two (2) panhandled lots (924 Montcalm Drive and 845 Churchill Court).

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- Advised that there is no reciprocal easement between her property and the subject property.
- Believes that the proposed RU6 zone does not fit into the neighbourhood.
- Advised that she and her husband would not agree to allow access to the subject property through their private laneway access.
- Responded to questions from Council.

Nicole Kleemaier-Raaijen, 925 Montcalm Drive

- Advised that she is a lawyer specializing in real estate law.
- Advised that she spoke with the Fire Department regarding the laneway access and believes that the information that was provided to her is different than the information that was provided to the Applicant.
- Believes that the inconsistent width of the laneway is a fire concern.
- Advised that she is not opposed to one (1) home being constructed on the subject property and that she is opposed to two (2) homes being constructed.
- Believes that the value of her property will go down if the rezoning is approved as the proposal will change the look of the neighbourhood.

Staff:

- Confirmed that the current zoning of the subject property allows for a group home-minor to be constructed on the site.

Gail Henshaw, 849 Wellington Court

- Opposed to the rezoning.
- Believes that the Applicant wants to rezone the property to RU6 in order to make it easier for him to market the property to potential purchasers.

Mary Hamilton, 857 Wellington Court

- Opposed to the rezoning application.
- Expressed a concern with the potential for extra traffic on the laneway should the Applicant be allowed to construct two (2) dwellings on the site.

Rick Potter, 927 Montcalm Drive

- Believes that two (2) dwellings on the site would create extra traffic in the area.
- Advised that he is one of the property owners who are responsible for maintaining the laneway.
- Advised that if the City would take over responsibility of the laneway, he would not have any problem with the requested rezoning.
- Believes that extra traffic would add to any maintenance issues for the laneway.

Catherine Frechette, 865 Wellington Court

- Advised that she has lived in the neighbourhood since 1985.
- Believes that the requested rezoning does not fit into the neighbourhood.
- Expressed a concern that the requested rezoning will negatively impact the neighbourhood.
- Advised that the Applicant never approached her regarding his proposal.
- Believes that this applicant does not meet "smart growth" criteria.

Staff:

- Provided an overview of the development signage process and criteria.

Dave Henshaw, 849 Wellington Court

- Provided comment regarding the Advisory Planning Commission meeting in November of 2011 and advised that the Advisory Planning Commission opposed the rezoning application.
- Advised that he likes the RU1 zone, not the RU6 zone.
- Advised that he would like to keep the character of the neighbourhood.

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- Advised that if Churchill Court is used as the access the subject property, it would negatively affect his property as the Churchill Court laneway is directly beside his property.

Dave Murphy, 919 Montcalm Drive

- Opposed to the rezoning.
- Believes that the Highpointe Subdivision encroached on the laneway and that is why the width is not uniform.

Derek Frechette, 865 Wellington Court

- Expressed a concern with the type of structure that can be constructed under the RU6 zone.

Roger Soar, 889 Wellington Court

- Likes the park-like atmosphere of the neighbourhood.
- Advised that his property has a direct site line to the subject property and therefore he would prefer that one (1) home be constructed on the property rather than two (2) homes.
- Believes that large homes are not out of place in the neighbourhood, but small homes would be.

Mr. Pachal, Applicant

- Advised that he never addressed the Advisory Planning Commission during its consideration of his application, which he now regrets.
- Advised that he does not have an active listing to sell the property.
- Advised that he wants to construct two (2) dwellings on the property so that eventually his two (2) sons and their families can reside on the property.
- Responded to questions from Council.

There were no further comments.

4. TERMINATION:

The Hearing was declared terminated at 9:32 p.m.

Certified Correct:

Mayor

Deputy City Clerk

SLH/dld