
CITY OF KELOWNA
MEMORANDUM

Date: September 1, 2004
File No.: DVP04-0098

To: City Manager

From: Planning and Corporate Services Department

Subject:

APPLICATION NO. DVP004-0098 **OWNER:** Lisa Stewart & Vernon Nielson

AT: 5460 & 5462 Lakeshore Road, Kelowna, BC **APPLICANT:** Vernon Nielson

PURPOSE: TO OBTAIN A DEVELOPMENT VARIANCE PERMIT TO ALLOW RETAINING WALLS THAT ARE 1.6 AND 2.2 METRES IN HEIGHT WHERE ONLY 1.2 METRES IS PERMITTED.

EXISTING ZONE: RR1 – RURAL RESIDENTIAL 1

REPORT PREPARED BY: KEIKO NITTEL

SEE ATTACHED FACT SHEET FOR COMPLETE APPLICATION DETAILS

1.0 RECOMMENDATION

THAT Council not authorize the issuance of Development Permit No. DVP04-0098 for Lots A & B, Section 22, Township 28, SDYD, Plan 16137, located on Lakeshore Drive, Kelowna, B.C. subject to the following:

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

Section 7.5.8

- A variance to allow the maximum permitted height of a retaining wall to be 1.6 and 2.2 metres in height where 1.2 metres is permitted.

2.0 SUMMARY

The applicant requires a development variance permit to legalize retaining walls that were constructed without permits. The applicant also has a concurrent environmental development permit application to address issues with works committed on the property without permits within an environmental/hazardous condition development permit area. Prior to the release of the development permit, the applicant must obtain the development variance permit.

3.0 BACKGROUND

3.1 The Proposal

In July of 2003, the City Bylaw Enforcement was sent to the subject property to issue a stop work order. Prior to this date, the owners of the property had authorized the removal of several large trees and the construction of concrete retaining walls on the west side of the site. As a result, the steeply sloping land, located within Environmental & Hazardous Conditions Development Permit Areas, was significantly altered. Once the infractions were identified by the City, the applicant has been required to obtain a development permit to address the environmental and slope stability concerns as well as a development variance permit to legalize the over height retaining walls.

As part of the development permit application, EBA Engineering Consultant prepared a Riparian and Foreshore Assessment and Landscape Mitigation Plan. The main objective of the mitigation plan is to quickly establish ground cover vegetation to help mitigate erosion potential and ecological function to the slopes and riparian areas. The Mitigation Plan calls for the hydro-seeding and hand seeding of the slopes as well as the planting of native shrubs and trees. The report notes that the subject retaining walls may also help mitigate erosion potential and assist with slope stability. The stability of the slope and retaining walls were addressed

In addition to the environmental consultant's report, the applicant was required to submit a geotechnical review of the retaining walls and the slope stability. The geotechnical review by Geoteknik Consulting Ltd. states that the retaining walls have only made minor changes to the overall configuration of the slopes. The review also assures that the safety factor of the slope stability is acceptable. The review, however, emphasizes the importance of ensuring that water infiltration on the slope in the area adjacent to the crest and toward the residence be kept to a minimum. As part of the building permit application, a condition of issuance of the development and development variance permits, the applicant will be required to submit engineered drawings.

The application compares to the requirements the City of Kelowna Bylaw No. 8000 for A1 zones as follows:

CRITERIA	PROPOSAL	REQUIREMENTS
Retaining wall ❶	1.6 & 2.2 metres in height/ 1.2 metre separation	1.2m in height/ 1.2 metre separation

❶ Two tiered retaining walls, each 25 m in length, were constructed. The retaining walls are 1.2 metres apart, however, are 1.6 metres & 2.2. metres in height where only 1.2 metres in height is permitted. A variance is therefore required to legalize the retaining walls.

3.2 Site Context

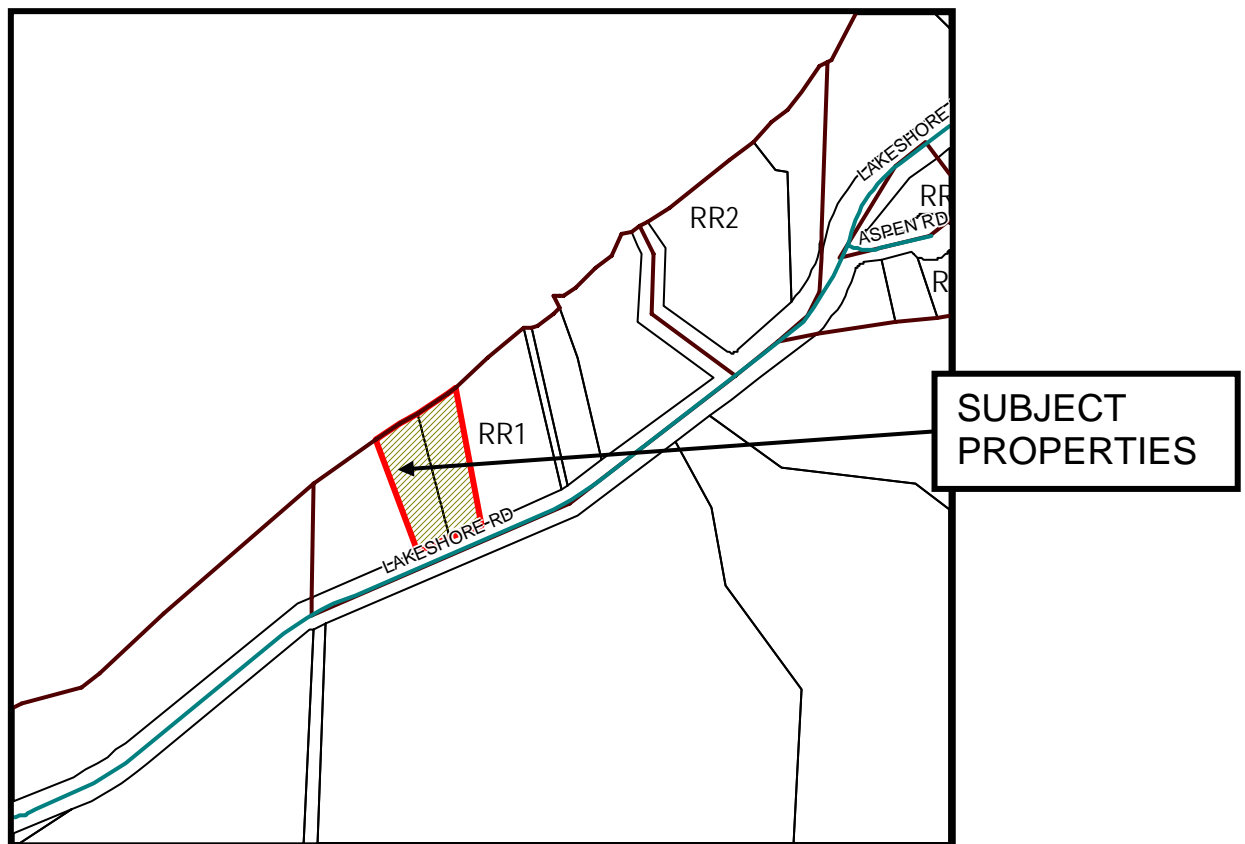
The subject property is located on Lakeshore Road north of Aspen Road.

Adjacent zones and uses are:

- North - RR1- Rural Residential 1
- East - A1 - Agricultural 1
- South - RR1- Rural Residential 1
- West - Okanagan Lake

3.3 Location Map

Subject Property: 5460 & 5462 Lakeshore Road



3.4 Existing Development Potential

The property is zoned RR1 – Rural Residential 1. The purpose of this zone is to provide a zone for country residential development, and complementary uses, on larger lots in areas of high natural amenity and limited urban services.

3.5 Current Development Policy

3.5.1 Kelowna Official Community Plan

Proposed development in a Natural Environment DP area will be sensitively integrated with the natural environment and will present no hazards to person or property, development may be permitted on land with a natural slope that averages greater than

30%. Natural vegetation should be retained on slopes in order to control potential erosion, landslip and rock falls.

Proposed development in a Hazardous Conditions Development Permit area will minimize the effects of development on the natural environment of hillside areas, defined as lands in their natural state that have a slope angle of 10% and greater for a minimum height of 9 m while preserving areas with slopes of 30% and greater. Effects to be minimized may include cuts and fills, tree cutting, regrading and the visual impact of urban development on hillsides.

3.5.2 Lake Okanagan Shore Zone Plan

In order to protect the shore zone, a corridor of land along the lakefront should be left in its natural condition upon redevelopment of the upland parcel, or be landscaped in a manner that either enhances conditions for fish and wildlife or maintains conditions equivalent to those that would have existed had no development occurred.

The rehabilitation of natural areas that have been negatively affected by human activity, even on properties where no development initiatives are being proposed, is also encouraged.

It should be ensured that the natural environment will not be negatively affected. The proposed action or development should have no significant impact on the environment, or which concludes that the land is not considered to be environmentally sensitive to development, nor subject to hazardous conditions.

5.0 TECHNICAL COMMENTS

The application has been submitted to various technical agencies and City departments and the following comments or concerns were expressed:

5.1 Inspection Services

A Building Permit needs to be applied along with submission of sealed drawings, Schedules B1, B2, D and copy of insurance policy from a registered Geotechnical Eng. Also, the owner needs to submit schedule B from Building Bylaw.

5.2 Environment Manager

Mitigation/Restoration Plan is acceptable. Engineer's assessment required for the retaining walls. Building permit is to be submitted in accordance with the requirements of Inspection Services.

5.3 Works and Utilities, Park Department, Ministry of Water, Land, & Air Protection

No comment.

6.0 PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

The subject property is within a Development Permit Area for Environmental and Hazardous Conditions as the site contains areas of steep slope and is located next to Okanagan Lake. The Official Community Plan (OCP) provides guidelines for development within these environmentally sensitive areas. The request to allow for the construction of a retaining wall and to replace vegetation, as per EBA's mitigation report, appears to satisfy these guidelines. As a condition of the associated development permit, bonding will be required to ensure that the proposed remediation works are carried-out. In addition, the geotechnical review of the

retaining wall and slope stability are acceptable. The applicant, however, will be required to obtain a building permit for the retaining walls.

The applicant has also submitted letters of support from the adjacent neighbours. The Planning and Corporate Services Department is satisfied that the applicant and his consultants have addressed safety and environmental mitigation measures adequately to allow the works to remain. The Department, however, cannot recommend for support of the development variance permit as once again, the request for approval occurred once the project was well underway, if not near completion. Staff also recognizes that reducing or removing the retaining walls will likely result in further site disturbance and the need for further mitigation. As such, Staff have provided an alternate recommendation should Council wish to limit any further disturbance on site.

7.0 ALTERNATE RECOMMENDATION

THAT Council authorize the issuance of Development Permit No. DVP04-0098 for Lots A & B, Section 22, Township 28, SDYD, Plan 16137, located on Lakeshore Drive, Kelowna, B.C. subject to the following:

1. The dimensions and siting of the retaining walls are to be constructed on the land be in general accordance with Schedule "A";
2. Restoration & Mitigation Landscaping to be provided on the land in general accordance with Schedule "C" as approved under Development Permit 04-0074;
3. The applicant be required submit a building permit application including sealed drawings, Schedules B1, B2, D, and a copy of insurance policy from a registered Geotechnical Engineer as well as Schedule B from the Building Bylaw.

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

Section 7.5.8

- A variance to allow the maximum permitted height of a retaining wall to be 1.6 and 2.2 metres in height where 1.2 metres is permitted.

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.

Andrew Bruce
Development Services Manager

Approved for inclusion

R.L. (Ron) Mattiussi, ACP, MCIP
Director of Planning & Corporate Services

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Attach.

FACT SHEET

1. **APPLICATION NO.:** DVP04-0098
2. **APPLICATION TYPE:** Development Variance Permit
3. **OWNER:** Vern James Neilson/ Lisa Marie Stewart (formerly Neilson)
 - **ADDRESS** 5468 Lakeshore Road
 - **CITY** Kelowna, BC
 - **POSTAL CODE** V1W 4S5
4. **APPLICANT/CONTACT PERSON:** Vern James Neilson
 - **ADDRESS** 5468 Lakeshore Road
 - **CITY** Kelowna, BC
 - **POSTAL CODE** V1W 4S5
 - **TELEPHONE/FAX NO.:** 762-8202
5. **APPLICATION PROGRESS:**
 - Date of Application:** August 18, 2004
 - Date Application Complete:** September 2, 2004
 - Servicing Agreement Forwarded to Applicant:** n/a
 - Servicing Agreement Concluded:** n/a
 - Staff Report to APC:** n/a
6. **LEGAL DESCRIPTION:** Lots A & B, Section 22, Township 28, SDYD, Plan 16137
7. **SITE LOCATION:** 5460-5462 Lakeshore Rd
8. **CIVIC ADDRESS:** 5460-5462 Lakeshore Rd
9. **AREA OF SUBJECT PROPERTY:** 2258 m²
10. **EXISTING ZONE CATEGORY:** RR1 – Rural Residential 1
11. **PURPOSE OF THE APPLICATION:** n/a
12. **MIN. OF TRANS./HIGHWAYS FILES NO.:** n/a
NOTE: IF LANDS ARE WITHIN 800 m OF A CONTROLLED ACCESS HIGHWAY
13. **DEVELOPMENT PERMIT MAP 13.2 IMPLICATIONS** Environmental/ Hazardous Conditions D.P.

ATTACHMENTS

(not attached to the electronic version of the report)

- Location of subject property
- Letters from Neighbours
- Site Plan
- EBA Report