

Public HearingNovember 17, 2009

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, November 17th, 2009.

Council members in attendance: Mayor Sharon Shepherd, Councillors Andre Blanleil, Charlie Hodge, Graeme James, Angela Reid, Michele Rule and Luke Stack.

Council members absent: Councillor Robert Hobson.

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

Guest: RCMP, Inspector, Rick Flewelling*.

(* denotes partial attendance)

1. Mayor Shepherd called the Hearing to order at 6:07 p.m.
2. Mayor Shepherd advised that the purpose of the Hearing is to consider certain bylaws which, if adopted, will amend "*Kelowna 2020 - Official Community Plan* Bylaw No. 7600" 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 City Clerk advised the Notice of this Public Hearing was advertised by being posted on the Notice Board at City Hall on October 30, 2009, and by being placed in the Kelowna Daily Courier issues of November 9, 2009 and November 10, 2009, and in the Kelowna Capital News issue of November 11, 2009, and by sending out or otherwise delivering 427 letters to the owners and occupiers of surrounding properties between October 30, 2009 and November 4, 2009.

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. 10250 (Z09-0027) - JO Developments /QB Habitat Resources Inc. - 248 Leon Avenue - THAT Rezoning Application No. Z09-0027 to amend the City of Kelowna Zoning Bylaw No. 8000, by changing the zoning classification of Lot 6, Block 10, District Lot 139, ODYD, Plan 462, located at 248 Leon Avenue, Kelowna BC, from the C7 - Central Business Commercial zone to the C7LP - Central Business Commercial (Liquor Primary) zone be supported by Council.

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

AND THAT final adoption of the zone be subject to the registration of a Section 219 Restrictive Covenant on the title of the subject property, to include the following restrictions:

- 1) Hours of Liquor Sale in conjunction with a Liquor Primary license is no later than 1:00am.
- 2) Person Capacity of a Liquor Primary License to not exceed 300 persons.

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AND THAT the “no minor’s endorsement be allowed in conjunction with a Liquor Primary license” restriction be considered by Council after receipt of information from the Liquor Control and Licensing Branch with respect to events centre designation restrictions;

AND THAT staff report back to Council with respect to the “conditions of sale” on file with the Liquor Control and Licensing Branch as they relate to the Liquor License for 248 Leon Avenue;

AND THAT the owner be responsible for all Land Title Office fees and charges resulting from the registration of the Section 219 covenant.

Staff:

- Advised that the “minors endorsement” is not typically a condition that has been used for Liquor License applications and is fairly new to the Liquor Control Branch.
- Advised that the General Manager of the Liquor Control Branch will have the ability to restrict the minors endorsement portion of the proposed license.
- Advised that the applicant will agree to a covenant only if the license being requested is not granted by Council or the Liquor Control Branch.
- It is possible that Bylaw Enforcement could enforce the terms of the covenant, however, all covenant infractions would be on a complaint-basis only.
- Confirmed that any transfer of ownership would not trigger another review by Council.
- Believe that any Liquor Primary License could be restricted to an events centre designation if Council so chooses; however the events centre designation would only be enforced by the Liquor Control Branch.

Guest, RCMP, Inspector Rick Flewelling

- Confirmed that the Entertainment District is a great concern to the RCMP in particularly with respect to the number of patrons in a concentrated area and lack of available public transportation.
- Raised a concern regarding the potential “minors endorsement”.
- Advised that there have been 14 incidents at the The Habitat over the past 2 years. Confirmed that 10 of the 14 incidents occurred outside of the premises.

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

- Letter of Opposition:
 - Marilyn Stanton, 1585 Abbott Street
- Letters of Support:
 - Jason Drury, 711A Cawston Avenue
 - Steve Huculiak, 5291 Sutherland Avenue
 - Bob D’Eith, Music BC, 530-425 Carrall St (2)
 - Brittany Travis, 5093 Cousins Place,
 - Amanda Reed, 387 Viewcrest Court
 - Ellyn Skinner, 3205 Deer Ridge Court
 - Kaelun Larson, 259 Magic Drive
 - Samantha Blandon, 497 Gramiak Road
 - Landis Pellegrini, 18-316 Whitman Road
 - Connon York, 1744 Feedham Avenue (2)
 - Kurtis Gunn, 1544 Ayre Court
 - Brennan Spear, 11871-Hwy 97N
 - Laura Tozer, 4171 Gellatly Road
 - Rishanne Wolf, 10991 Russell Road
 - Jodie Ethier, 3115 Demontreuil Court
 - Scott Paynton, 360 Raven Drive
 - Mike Marino, 614 Francis Avenue

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- Stephen Rech, 3160 De Montreuil Court
 - Justin Kandola, 2169 Pandosy Road
 - Danny Krisky, 2432 Karli Court
 - Xiao Meng Jai, 3175 De Montreuil Court
 - Moses Orlev, 10875 Quail Road
 - Brianna Gilmore, 111-1640 Ufton Court
 - Emma Jantz, 4270 Gordon Drive
 - Airlie Pinkerton, 475 Cascia Drive
 - Nate Box, 1604, 10045-117 Street NW
 - Jamie Friesen, 6664 Jade Road
 - Brittany Bjorndal, 301-110 Kalamalka Lake Road
 - Katlyn Corak, 6396 Sanford Road
 - Andrew Peterson, Chelsea Lauze and Danielle Wilchewski, Okanagan School of Business, 1000 KLO Road
 - Cameron Corbett, 3274 McMahon Road
 - Chelsea Wickenheiser, 185 Barber Road
 - Jeff Stynchin, 1140 Wilson Avenue
 - Harmony Mesenbrink, 2240 Richter Street
 - Kurt Muratcan, 1630 Pandosy Street
 - Sarah Jones, 2445 O'Reilly Road
 - Dr. Jennifer Gustar, UBCO, 3333 University Way
 - Andrea East, 325 Dalgleish Court
 - Tamara Stanners, 300-1401 West 8th Avenue
 - Raegan Hall, 293 Bernard Avenue
 - Cara DeLong, 214-3735 Casorso Road
 - Renee Hibberd, 640 BX Road
 - Warren Eaton and Jeni MacMillan, 1607 Pandosy Street (2)
 - Michaela Johnson, 2303 Abbott Street
- Petition of Support:
 - A petition signed by 1,463 owners/occupiers of the surrounding area in support of the proposed zoning changes to the subject property.
 - Form Letters of Support:
 - A package of form letters submitted by 141 residents/owners of the surrounding area
 - Additional Information submitted by Applicant:
 - Additional information from applicant including notices from Liquor Control and Licensing Branch regarding contraventions of regulations, Enforcement Statistics, Liquor Control and Licensing Branch Enforcement Summary, LCLB Enforcement Process, Letter of application for Restaurant Lounge Endorsement
 - Letter Requesting Deferral:
 - Rita Milne, Downtown Kelowna Association, 200-287 Bernard Avenue

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

Quinn & Katrina Best, JQ Developments, Applicants

- Advised that the facility will only be open if there is an event taking place.
- Advised that minors would only be permitted in the establishment with adult supervision or until a certain time (ie. Minors are only allowed until 10:00 pm).
- Advised that the proposed license is not a commonly used license and is modelled after the Civic Events Centre in Squamish.
- Provided details regarding the Liquor Licence transfer process from the Liquor Control Branch.

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- Provided details regarding the Terms & Conditions with respect to the "Minors Endorsement" from the Liquor Control Branch.
- Read the process for Liquor Licence transfer applications based on the Liquor
- Confirmed that the requested liquor license did not exist 4 years ago when they originally applied to the Liquor Control Branch for this liquor license.
- Confirmed that the zoning needs to be in place before the Liquor Control Branch will even consider their application and that the timeline for issuing the proposed liquor license could be up to 12 months.
- Agreed that a 12:30 pm closing would be acceptable to them as well as restricting their patrons to a maximum of 300.
- Confirmed that the current license allows the establishment to be open 7 days a week from 9:00 am to 12:00 pm.
- Would be agreeable to entering into a Restrictive Covenant.

Gallery:Randy Benson, Executive Director, Kelowna's Gospel Mission

- Advised that The Habitat has made a significant contribution to the revitalization of Leon Avenue.
- Supportive of the rezoning.

Olivia Sullivan, Woman's Resource Centre

- Advised that The Habitat has made a significant contribution to the revitalization of Leon Avenue.
- Supportive of the rezoning.

Nicholas Morin, 1947 Knox Crescent

- Works for the Centre of Arts & Technology, which is located on Leon Avenue.
- Supportive of the rezoning.

Andrew, 5291 Sutherland Road, Peachland, BC

- Supportive of the rezoning.

Rita Milne, President, Downtown Kelowna Association

- Requested that this application be deferred pending receipt of the recommendations from the Liquor Control Review Committee.

John Parrot, Executive Director, Downtown Kelowna Association

- Requested that this application be deferred pending receipt of the recommendations from the Liquor Control Review Committee.

Jason, 2938 Lyon Road, West Kelowna, BC

- Is currently employed at as the Food & Beverage Manager at The Habitat.
- Supportive of the rezoning.

Karen Leung, 3735 Casorso Road

- Supportive of the rezoning.

Emmanuel Lavoie, Area Resident

- Supportive of the rezoning.

Philip Brinn, 457 West Avenue

- Works on Leon Avenue.
- Supportive of the rezoning.

Julia, 1550 Griffiths Place, West Kelowna, BC

- Supportive of the rezoning.

Public HearingNovember 17, 2009Jim Mayne, 402 - 2365 Stillingfleet Road

- Provided a character reference for Quinn & Katrina Best.
- Supportive of the rezoning.

Jenni McMillan, 976 Manhattan Drive

- Supportive of the rezoning.

Brandon Fletcher, 1058 Aldon Road

- Works at The Habitat.
- Supportive of the rezoning.

Kelly Shepherd, Kelowna Resident

- Works at The Habitat.
- Supportive of the rezoning.

Stuart, 785 Barnaby Road

- Supportive of the rezoning.

Nick Lusha

- Is employed as a bartender at Doc Willoughby's.
- Supportive of the rezoning.

Virginia, Resident of West Kelowna, BC

- Supportive of the rezoning.

Angelo, 627 Denali Drive

- Host "open mic" at The Habitat.
- Supportive of the rezoning.

Irene Meyer, 1997 Sunnyside Road

- Spoke in favour of the minors endorsement.
- Supportive of the rezoning.

Jason Lane, 1660 Upton Court

- Supportive of the rezoning.

David Lane, Okanagan Film Festival Society

- Supportive of the rezoning.

Stacy Bechlack, 1592 Sutherland Road, Peachland, BC

- Supportive of the rezoning.

Darnell Toth

- Supportive of the rezoning.

Kevin Craig, 655 Del Monte Court

- Supportive of the rezoning.

Joe Gates

- Supportive of the rezoning.

Shannon, 2219 Aberdeen Street

- Supportive of the rezoning.

Resident of 1321 Monterey Crescent

- Supportive of the rezoning.

Public HearingNovember 17, 2009Kyle Zsombor, 870 Jones Street

- Supportive of the rezoning.

Carmel, 737 Leon Avenue

- Works at The Habitat.
- Supportive of the rezoning.

Randy LeRue, Owner of 256 Lawrence Avenue

- Supportive of The Habitat, but wants assurances from Council on how to ensure that the liquor license being applied for is actually what get issued for the establishment.
- Expressed a concern about granting a full liquor license for the establishment.

Lee Bailey, Executive Coordinator, UBC-O

- Resides at 774 Fuller Avenue.
- Supportive of the rezoning.

Quinn & Katrina Best, JQ Developments, Applicants

- Believes that the "minors endorsement" is attached to the Liquor License process.

Staff:

- Confirmed that the only outstanding condition of the rezoning is Highway's approval.
- Advised that the Liquor License Inspector could be requested to be present during the Liquor License application debate if available.

- 3.2 Bylaw No. 12053 (Z09-0018) - R 547 Enterprises Ltd. - 1292 Findlay Road - THAT Rezoning Application No. Z09-0018 to amend City of Kelowna Zoning Bylaw No. 8000 by changing the zoning classification of Lot 1, Section 34, Township 26, O.D.Y.D., Plan 11084, located on Findlay Road, Kelowna, B.C. from the RU1 - Large Lot Housing zone to the I1 - Business Industrial 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 Department and Black Mountain Irrigation District, being completed to their satisfaction;

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 on the subject property.

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

- Letters of Opposition:
 - Bob Thiessen, 1287 Findlay Road
 - Curt Ballsrud, 124-1355 Findlay Road
 - Brooks and Kristy Towson, 123-1355 Findlay Road
 - Todd and Lisa Franke, 1269 Findlay Road
 - Stu and Launa Markle, 1281 Findlay Road
 - Barbara Young, 789 Cassiar Court
 - Shana Valente and Corey Bishop, 103-1355 Findlay Road
- Letter of Support:
 - Josh Goode, 1-730 Stremel Road

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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.

Steve & Angie Krauser, R547 Enterprises Ltd., Applicants

- Need to expand their growing business and want to stay in the Rutland area.
- Purchased the site in February of 2008.
- Have been consulting with City staff with respect to the rezoning process.
- Have planted cedars around their property fence in order to provide greenery to the site.
- Will be designing the site so that it will fit into the neighbourhood.
- Have met with the neighbours and have changed their design based on the concerns expressed.
- The entire site will be paved and kept clean to minimize any dust.
- There will not be any outside manufacturing on the site.
- Have consulted both interior and exterior designers with respect to the design of the site and the building.
- Will guarantee that the only noise at 7:00 am will be the voices of the employees or the occasional start of a vehicle as manufacturing will not be done on site until at least 9:00 am and will not go past 5:00 pm.

Staff:

- Confirmed that Findlay Road is the actual boundary between the industrial zone the residential zone in the area.

Gallery:Rose Shawlee, 133-1533 Findlay Road

- Objects to the rezoning.
- Feels that there is a direct conflict between residential and industrial zones in the area.
- Believes that there are more suitable properties for the location of this type of business.
- Does not believe that Findlay and Fitzpatrick Roads were designed to sustain this type of industrial business.

Terry Krauser

- Supportive of the rezoning.

Burke, 1355 Findlay Road

- Concerned about speeding trucks in the area as he has almost been hit a couple of times.
- Concerned about the safety of the children in the area.
- Believes that there are other properties in the Rutland area that would be more suitable for this type of business.
- Believes that the size of the property is too small to warrant an I1 zoning.
- Advised that he was not aware of the future land use designations for the neighbourhood.

Tim Goode, 6494 Chase Road, Winfield, BC

- Owns the property located at 730 Stremel Road, which he purchased in April of 2007.
- Supportive of the rezoning as he believes that it moves forward with what is contemplated in the OCP.

Barb Young, 789 Cassiar Court

- Owner of Unit 101 - 1355 Findlay Road.
- Shocked to find out that an industrial zone is be contemplated for the property across the street.
- Advised that she was not aware of the future land use designations for the neighbourhood.

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- Opposed to the proposed rezoning.

Wayne from Advance Recast

- Supports the rezoning application, but is concerned that the site is too small to be zoned I1.
- Sympathizes with the residential people in the area; however the OCP does designate the subject property as industrial.

Staff:

- Confirmed that the lot size of I1 lots are determined through the subdivision process, not the rezoning process.

Rose Shawlee, 133-1533 Findlay Road

- Believes that the OCP is outdated and that Council should take the lead on this area and see past the OCP.

Steve & Angie Krauser, R547 Enterprises Ltd., Applicants

- Confirmed that they hold site meetings every morning to explain proper etiquette.
- Advised that all of the vehicles have unit numbers and to date, they have not received any complaints regarding the conduct of their staff.

There were no further comments.

3.1 Bylaw No. 10250 (Z09-0027) - JQ Developments /QB Habitat Resources Inc. - 248 Leon Avenue

Mayor Shepherd asked that Council return to Item 3.1.

Staff:

- Advised that the Applicants are aware of, and is in agreement with, keeping the Public Hearing open as per the following resolution.

Moved by Councillor Hodge/Seconded by Councillor Stack

R1088/09/11/17 THAT final adoption of Zone Amending Bylaw No. 10250 be subject to the registration of a Section 219 Restrictive Covenant on the title of the subject property, to include the following restrictions:

1. Any liquor license must limit total person capacity to a maximum of 300 persons;
2. Any liquor license must limit hours of liquor sale between 11:00am and 12:30am;
3. Any liquor primary license must be an "event centre" and may not be classified as a "cabaret", "nightclub", "public house" or "neighbourhood pub" as defined by the governing body of liquor licensing in British Columbia.

AND THAT the Public Hearing with respect to Bylaw No. 10250 be kept open pending confirmation from the Land Title Office and the Liquor Control & Licensing Branch that the proposed wording for the Section 219 Covenant is acceptable;

AND THAT staff clarify the "minor's endorsement" with the Liquor Control & Licensing Branch and report back to Council;

AND FURTHER THAT if the Section 219 Covenant wording is not acceptable to the Land Title Office and/or the Liquor Control & Licensing Branch, staff provide Council with other zoning and licensing options for consideration.

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- 3.3 Bylaw No. 10254 (Z09-0050) - Bryan St. George - 647 Royal Pine Drive - THAT Rezoning Application No. Z09-0050 to amend the City of Kelowna Zoning Bylaw No. 8000, by changing the zoning classification of Lot 32, Section 31, Township 26, ODYD, Plan 43005, located at Royal Pine Drive, Kelowna, BC, from the RU1 - Large Lot Housing zone to the RU1(s) - Large Lot Housing with a secondary suite 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 subject to registration of a no-disturb covenant to preserve the steep slopes area.

Staff:

- Advised that this is the first property in the area that has come forward for a rezoning.
- Advised that as the properties are rezoned in the area, staff are recommending the registration of a no-disturb restrictive covenant.

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

- Additional Information from Applicant:
 - Letter from Applicant detailing his concerns regarding the No-Disturb Restrictive Covenant.
- Package of 6 form letters of no objection submitted and signed by the owners/occupiers of the surrounding properties.

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

Bryan St. George, Applicant

- Does not agree with the no disturb covenant.
- Displayed pictures of the site so that Council could see the area of the property in question.
- Believes that there is sufficient parking on the site to accommodate tenants and guests.
- Expressed a concern that the City is not maintaining the public park in the area.
- Believes that the no disturb covenant will devalue his property and does not believe that the slope behind his property is steep enough to warrant a no-disturb covenant.
- Does not feel that the no-disturb covenant should be placed on the property given the fact that the secondary suite being proposed is within the principal residence.

Staff:

- Advised that the covenant being registered on title just gives the City another opportunity to ensure that any future property owner understands that they cannot disturb the slope on the site.

Bryan St. George, Applicant

- Does not agree that the slope in question should be considered "sensitive".

There were no further comments.

- 3.4 Bylaw No. 10255 (Z09-0046) - Giovanni and Sandra Gasparetto - 1050 Graham Road - THAT Rezoning Application No. Z09-0046 to amend the City of Kelowna

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Zoning Bylaw No. 8000, by changing the zoning classification of Lot A, Section 22, Township 26, ODYD, Plan KAP55044, located at Graham Road, Kelowna, BC, from the RU2 - Medium Lot Housing zone to the RU2(s)- Medium Lot Housing with a secondary suite zone be considered by Council;

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

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.

4. TERMINATION:

The Hearing was declared terminated at 10:41 p.m.

Certified Correct:

Mayor

SLH/dld

City Clerk