



City of Kelowna
Regular Council Meeting
Minutes

Date: Tuesday, September 6, 2016
Location: Council Chamber
City Hall, 1435 Water Street

Council Members Present: Mayor Colin Basran and Councillors Maxine DeHart*, Ryan Donn, Gail Given, Tracy Gray, Brad Sieben*, Mohini Singh and Luke Stack

Council Members Absent: Councillor Charlie Hodge

Staff Present: City Manager, Ron Mattiussi; Deputy City Clerk, Karen Needham; Community Planning Department Manager, Ryan Smith; Urban Planning Manager, Terry Barton; and Legislative Systems Coordinator, Sandi Horning

(* denotes partial attendance)

1. Call to Order

Mayor Basran called the meeting to order at 6:23 p.m.

2. Reaffirmation of Oath of Office

The Oath of Office was read by Councillor Gray.

3. Confirmation of Minutes

Moved By Councillor Sieben/Seconded By Councillor DeHart

R646/16/09/06 THAT the Minutes of the Public Hearing and Regular Meeting of August 23, 2016 be confirmed as circulated.

Carried

4. Bylaws Considered at Public Hearing

4.1 2486 Highway 97N, BL11268 (Z16-0001) - Kelowna Hwy 97/33 Holdings Ltd.

Councillor DeHart declared a conflict of interest as she works in the hotel/motel industry and her employer is a direct competitor of the property owner left the meeting at 6:25 p.m.

Moved By Councillor Gray/Seconded By Councillor Donn

R647/16/09/06 THAT Bylaw No. 11268 be read a second and third time.

Carried

Councillor DeHart rejoined the meeting at 6:25 p.m.

4.2 361 Yates Road, BL11271 (Z16-0031) - Cheryl Holmes Medical Services Ltd.

Moved By Councillor Given/Seconded By Councillor Donn

R648/16/09/06 THAT Bylaw No. 11271 be read a second and third time.

Carried

4.3 4491 Stewart Road West, BL11270 (Z16-0034) - Delauralyn Pihl

Moved By Councillor Sieben/Seconded By Councillor Singh

R649/16/09/06 THAT Bylaw No. 11270 be read a second and third time.

Carried

5. Notification of Meeting

The Deputy City Clerk advised that Notice of Council's consideration of the amendments to Liquor Primary Licences were advertised by being posted on the Notice Board at City Hall on August 23, 2016 and by being placed in the Kelowna Capital News issues on Friday, August 26 and Wednesday, August 31, 2016 and by sending out or otherwise delivering 42 statutory notices to the owners and occupiers of the surrounding properties between August 23, 2016 and August 26, 2016.

The Deputy City Clerk advised that Notice of Council's consideration of the Development Variance Permit Applications was given by sending out or otherwise delivering 54 statutory notices to the owners and occupiers of the surrounding properties between August 23, 2016 and August 26, 2016.

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 No. 309.

6. Liquor License Application Reports

6.1 274 Lawrence Avenue, LL16-0005 - 0729076 BC Ltd.

Councillor Sieben declared a conflict of interest as a member of his family owns a liquor primary establishment and left the meeting at 6:29 p.m.

Staff:

- Displayed a PowerPoint presentation summarizing the application and responded to questions from Council.
- Clarified the number of patrons in establishments within 250m.
- Confirmed that the RCMP are not in support.
- Clarified the parking requirements for the C7 zone.
- Reviewed the occupant loads, changes to Provincial regulations.
- Confirmed that the last request from the The Level Nightclub for a patron increase was not supported by staff and that Council supported the increase on the patio area, but not the interior.
- Confirmed that The Habitat for an increase in hours was not supported by staff and that Council supported the change in use of space, but not the numbers.
- Clarified the wording of the 'Alternate Recommendation'.
- Confirmed that the renovations to the building should have occurred after the liquor license application.

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

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

David Habib, Applicant's Representative

- Advised that when the application for the permit was made, the drawings clearly noted the proposed increase in patron capacity.
- Provided the rationale for the alterations to the existing building.
- Advised that he has spent a considerable amount of money in bringing the structure up to code.
- Based on the footprint of the building today, and in accordance with the building code, it could handle an occupancy load of 650 people, however he is not asking for that big of an increase.
- Requesting the additional occupant load so that the upstairs can be utilized as a lounge area with live entertainment.
- The Liquid Zoo is the only nightclub that is open 7 days of week.

- Advised that he has purchased the assets of Flashback's and is currently the holder of that liquor licence.
- Advised that his liquor license allows him to open at 11:00 am, but he is only going to open at 5:00 pm.
- Advised that he has more security staff than all of the other nightclubs combined and that his is the only downtown nightclub that has company limo and bus to get his patrons home at the end of the night.
- Believes that the safety factor downtown has improved ten-fold.
- Believes that the majority of his patrons are shared with the other establishments in the downtown.
- Advised that he meets with the RCMP on a regular basis.
- Believes that Council Policy No. 359 is the only reason staff are not supporting his application.
- He would like to increase his patron capacity in order to provide a place for people to go rather than just standing around on the street.
- Advised that he does not consider the establishment a 'nightclub', but considers it as an 'entertainment venue'.
- If he is successful with this application, he will not pursue the Flashback's liquor licence.
- Believes that City staff should have known that he would be applying for an increase in patron capacity.
- Responded to questions from Council.
- Confirmed that the Flashback's liquor licence is under his control and cannot be used without his consent.
- Provided an overview of how his limo and busing services operate.
- Provided an overview of his discussions with City staff regarding the proposed increase in patron capacity. The 450 patron capacity would allow everyone into the door and would avoid lineups at nightclubs downtown including his own.
- Clarified the liquor licence application process with the Liquor Branch.
- Confirmed that he is transitioning the venue from a nightclub to an entertainment lounge.

Staff:

- Confirmed Council's policy direction from 2011 that liquor establishments not have any larger patron capacity than 500.
- Provided the rationale for Council Policy No. 359.
- Advised that staff have included a review of the Policy No. 359 in their work plan for 2017.

Gallery:

Robert McDonald, Snowsell Street

- Have seen a lot of changes in the downtown over the years with respect to the bar flush and criminal activity.
- Believes the introduction of serve-all systems has assisted with the removal of the criminal element.
- In favour of the increase in patron capacity.

Chris Nichols, Ritcher Street

- Is current working as the DJ for the Liquid Zoo.
- In favour of the increase in patron capacity.
- Believes that the requested increase will assist in bringing people into the venue and off the street.

David Habib, Applicant's Representative

- Believes that Council Policy No. 359 needs to be reviewed as things have changed and the Policy has not kept up.
- Hoping that his application is not held up pending the potential review of Council Policy No. 359 in 2017.

There were no further comments.

A motion by Councillor Donn not to support an application from David Habib (Liquid Zoo) for liquor primary license amendment for Lot 3, Block 13, DL 139, O.D.Y.D., Plan 462, located at 274 Lawrence Avenue, Kelowna, BC for a change in capacity from the current occupant load of 301 persons to the proposed 450 persons was lost due to a lack of a seconder.

Moved By Councillor Stack/Seconded By Councillor Gray

R650/16/09/06 THAT Council directs Staff to forward the following Recommendation to the Provincial Liquor Control and Licensing Branch (LCLB):

In accordance with Section 53 of the Liquor Control and Licensing Regulation and Council Policy 359, BE IT RESOLVED THAT:

1. Council recommends support of an application from David Habib (Liquid Zoo) for a liquor primary license amendment for Lot 3, Block 13, DL139, O.D.Y.D., Plan 462, located at 274 Lawrence Avenue, Kelowna, BC for a change in capacity from the current occupant load of 301 persons to the proposed 450 persons for the following reasons:

Concern for the potential negative impacts of an increase in Liquor Primary patron capacity in this area by adding to the existing challenges in the area regarding noise, patron behavior, and increase in police enforcement. As well, staff have concerns for the turn-over of the area to a future mixed-use development as envisioned in the Official Community Plan.

2. Council's comments on LCLB's prescribed considerations are as follows:

Criteria for license amendment:

- a) The potential for noise if the application is approved:

There is potential for an increase in noise due to the additional capacity of service. Any increase in noise would likely have a minimal impact on the area currently, but could be a larger issue in the future as there is a transition to more residential uses.

- b) The impact on the community if the application is approved:

There is the potential for significant negative community impacts related to late night noise and inappropriate behaviour which could result in additional policing costs.

3. Council's comments on the views of residents are as contained within the minutes of the meeting at which the application was considered by Council. The methods used to gather views of residents were as per Council Policy #359 "Liquor Licensing Policy and Procedures."

Carried

Mayor Basran and Councillor Donn - Opposed.

Councillor Sieben rejoined the meeting at 7:52 p.m.

7. Development Permit and Development Variance Permit Reports

- 7.1 **5080 Lakeshore Road, BL11255 (Z16-0009) - James Sharko & Maureen Atrens-Sharko**

Moved By Councillor Stack/Seconded By Councillor DeHart

R651/16/09/06 THAT Bylaw No. 11255 be adopted.

Carried

- 7.2 **5080 Lakeshore Road, DP16-0046 & DVP16-0047 - James Sharko**

Staff:

- Displayed a PowerPoint presentation summarizing the application and responded to questions from Council.

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

Letters of Opposition

Gord Nykiforuk, Lakeshore Road
Judy Sutherland, Braeloch Road North
Scott Barnard, Uplands Drive

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

The Applicant was present, but did not have anything to add to staff's comments. No one from the gallery came forward and there were no further comments.

Moved By Councillor Sieben/Seconded By Councillor Stack

R652/16/09/06 THAT Final Adoption of Zoning Amending Bylaw and Land Use Contract Discharge Bylaw No. 11255 be considered by Council;

AND THAT Council authorize the issuance of Development Permit DP16-0046 for Lot C, Section 23, Township 28, SDYD, Plan 30063, located on 5080 Lakeshore Road, Kelowna, BC, subject to the following:

1. The dimensions 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";

AND THAT Council authorize the issuance of Development Variance Permit DVP16-0047 for Lot C, Section 23, Township 28, SDYD, Plan 30063, located on 5080 Lakeshore Road, Kelowna, BC.;

AND THAT the variances to the following sections of Zoning Bylaw No. 8000 be granted only in accordance with Schedules 'A' & 'B' attached to DP16-0046 / DVP16-0047:

Section 9.5b.1(c) Carriage House Regulations

Eliminate the rule that the "principal dwelling units shall be located between the front yard and the carriage house";

Section 9.5b.1(e) Carriage House Regulations

Increase the upper storey floor area relative to the carriage house footprint from 75% to 107%.

Section 12.2.6 Development Regulations

Increase the maximum height from 4.8m to 5.89m;

Section 6.1.11 Okanagan Lake Sight Lines

Increase the maximum percentage of buildings that is permitted to be sited within 60 from the corner of the neighbouring house from 0% to 100%.

AND THAT the applicant be required to complete the above noted conditions of Council's approval of the Development Permit/Development Variance Permit Applications in order for the permit to be issued;

AND FURTHER THAT this Development Permit and Development Variance Permit be valid for two (2) years from the date of Council approval, with no opportunity to extend.

Carried

7.3 2296 Dewdney Road, DVP16-0147 - David & Joan Richter

Staff:

- Displayed a PowerPoint Presentation summarizing the application.

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

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

The Applicant was present but did not have anything to add to staff's comments. No one from the gallery came forward. There were no further comments.

Moved By Councillor Stack/Seconded By Councillor Gray

R653/16/09/06 THAT Council authorizes the issuance of Development Variance Permit No. DVP16-0147 for Lot 1 Section 20 Township 23 ODYD Plan EPP32546, located at 2296 Dewdney Road, Kelowna, BC;

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

Section 12.3.6(b): RR3 - Rural Residential 3

To vary the maximum height of an accessory building from 4.5m required to 7.5m proposed;

Section 6.5.8(a): Accessory Development

To vary the minimum front yard setback from 18.0m required to 0.32m proposed for an accessory building;

AND THAT a variance to the following schedule of the Subdivision, Development, and Servicing Bylaw No. 7900 be granted:

Schedule 4: Design Standards - Highways: Section 4.6 Curb and Gutter, Sidewalks and Bike Lanes

To vary the maximum driveway width from 6.0m required to 13.0m proposed;

AND FURTHER THAT this Development Variance Permit is valid for two (2) years from the date of Council approval, with no opportunity to extend.

Carried

8. Reminders - Nil.

9. Termination

The meeting was declared terminated at 8:08 p.m.

Mayor

/slh

Deputy City Clerk