

Memorandum of Understanding
Between
Worman Commercial
and
The City of Kelowna

This agreement is dated for reference October 14, 2016

1. Introduction

This Memorandum of Understanding ("MOU") sets out a general understanding between Worman Commercial or nominee ("Worman") and the City of Kelowna (the "City") with respect to the redevelopment and restoration of two existing heritage structures located at 4629 Lakeshore Road (the "Surtees Property") in Kelowna's Lower Mission area.

2. Goal

The goal of this MOU is to outline how the parties will work towards an adaptive re-use of the Surtees Homestead and the Surtees Barn and the surrounding area (the "Subject Lands") within the Surtees Property by restoring the existing buildings and protecting the site character in a manner that showcases and celebrates its heritage value in a commercially viable manner.


3. Background

The Surtees Property is one of significant historical value for the Okanagan, featuring two historical buildings that visually communicate what Kelowna was like in the early part of the 1900's. The Surtees Barn is said to be one of the most up-to-date barns in the area for its time, and the Surtees Homestead (also known as the Ritz Cafe) is believed to be the City's first 'house of ill repute'. Both buildings are identified on the City's Heritage Register and have been under ownership of the City since July of 2002.

In December 2009, City Council directed staff to proceed with the development of a Heritage Management Strategy. At that time, the Surtees Property was identified as a priority for adaptive re-use. In response to Council's direction, Infrastructure Planning met with community stakeholders to receive input on a proposed re-use approach. Based on the information received at the stakeholder meeting, a Request for Expressions of Interest (RFEOI) was issued in July, 2012. The RFEOI was a high-level public call for ideas with the intent of casting a wide net without requiring proponents to invest the time and energy associated with a detailed proposal. The City received four responses regarding the RFEOI; however, upon staff review of the responses it was determined that none of them met the City's criteria or expectations.

In the fall of 2015, a potential partnership opportunity with Worman with regards to the redevelopment of the Surtees Property in a manner that meets the heritage preservation objectives of the City was brought to the attention of Staff.

The intent of the parties is that this MOU will lead to a formalized agreement between the City and Worman that transfers land interests within in the Surtees Property to



Worman in exchange for restoration of a significant heritage asset that is currently in disrepair.

4. The Surtees Property

The City is the legal owner of 4629 Lakeshore Road, also known as the Surtees Property. In order to facilitate this agreement, the City and Worman will work together to create a reference plan (approximately as shown in the attached Schedule A) encompassing the Surtees Homestead and the Surtees Barn and the surrounding area and fronting onto Lakeshore Road (effectively creating the Subject Lands as a subset of the Surtees Property).

The remainder of the Surtees Property (i.e. that portion of the Surtees Property not included in the Subject Lands) will continue to be owned and operated by the City of Kelowna, and will serve as a staging area for the future Bellevue Creek linear park. The vision for the park is to construct a continuous off-road trail along the creek corridor for approximately 6.1 km starting at Okanagan Lake, continuing to the city limits with connections beyond to Myra-Bellevue Provincial Park. The parking area east of the Subject Lands will act as a trail head access for people wishing to park their vehicles and walk west to Okanagan Lake or east to Woodhaven Regional Park as well as additional parking for both the Surtees Lands and 4619 Lakeshore Road.

5. Lease of Subject Lands

The City and Worman agree to enter into a 75-year lease (the "Lease Agreement") whereby Worman will lease the Subject Lands from the City for a market value sum of \$200,000 (the "Payment"). The lease of the Subject Lands will be subject to the following conditions:

5.a Restoration of the Surtees Homestead and Surtees Barn located on the Subject Lands as per the conditions and requirements outlined in Section 6 of this Agreement;

5.b Council agreeing to a Heritage Revitalization Agreement ("HRA") for the Subject Lands as per Section 6 of this Agreement;

5.c Site improvements to the Subject Lands as described in Section 7 of this Agreement;

5.d The City agreeing to contribute the Payment towards the cost of the construction of a roundabout adjacent to the Subject Lands, as described in Section 12 of this Agreement;

5.e Preservation of the natural site characteristics, as per Section 13 of this Agreement.

5.f Worman's agreement to register on title to the Subject Lands a Statutory Right of Way for public access and a Lease Agreement as described in Section 16 and 19 of this Agreement;

5.g Development constraints as described in Section 17 of this Agreement;

6. Restoration and Building Program

The restoration of the Subject Lands will assure the buildings' adaptive re-use as a community benefit, consistent with the heritage-related policies identified in the City of Kelowna Official Community Plan. The Surtees Property is currently zoned P3 (Parks and Open Space). The Subject Lands will not be re-zoned. All future land uses of the Subject Lands will conform to the Heritage Revitalization Agreement ("HRA") which will allow for a land use consistent with C2/C2rls zoning (Neighbourhood Commercial/Neighbourhood Commercial with Retail Liquor Sales), provided that certain form and character requirements for the buildings located on-site are met. A Heritage Designation in the form of a municipal bylaw will also be required as part of the HRA.

The HRA will require consideration by the Community Heritage Committee as well as a Public Hearing and adoption by City Council. As the HAR will include any required variances, a Development Permit and a Development Variance Permit will not be required.

As part of the HRA, Worman will be required to prepare a Conservation Plan that demonstrates how the character defining elements of the improvements will be preserved. This work is to be completed by Worman with the assistance of a registered heritage planner. Further to the issuance of the HRA, Worman, with the assistance of a registered heritage planner, will be required to provide regular updates to the City to ensure conformance to the Conservation Plan during construction.

All improvements of the buildings on the Subject Lands will be the responsibility of Worman. The interior layout of the heritage buildings will be determined by Worman, and the exterior heritage restoration of the existing buildings will be consistent with the Statement of Significance as set out in the City of Kelowna Heritage Register, in the municipal Heritage Designation bylaw, and according to best practices as set out in the *Standards and Guidelines for the Conservation of Historic Places in Canada (Parks Canada, Second Edition, 2010)*.

The HRA will allow for the construction of one additional commercial building on the Subject Lands, at Worman's sole discretion. The new building will be limited to a site footprint of no greater than 2,200 square feet, in a location that complements the locations of the Surtees Barn and Homestead as well as the natural landscape.

The building character of any additional building is to contrast with the heritage buildings in a manner that provides a strong juxtaposition between the two forms (new vs. old).

Relocation of the existing Surtees Barn and Homestead within the Subject Lands is acceptable to facilitate the necessary site access and programming of the public realm.

7. Site Plan and Associated Site Improvements:

The Subject Lands are to include the following site components, all costs of which are to be borne solely by Worman:

- Two (2) restored heritage buildings;

- No more than one (1) new commercial building with a foot print of no more than 2,200 square feet and a total gross building area of no more than 4,400 square feet. The building is to conform to provincial building codes and City of Kelowna zoning bylaws;
- An internal road network as required for vehicle circulation and associated parking areas. The road network should be able to accommodate future parking expansion requirements by the City for the Bellevue Creek linear park. A combination of asphalt and concrete or concrete pavers shall be used to create an aesthetically pleasing road network. All pedestrian crossings over the road area shall be combined with traffic calming measures such as raised crossings and signage to ensure pedestrian safety;
- Provides public (pedestrian and vehicular) access from Lakeshore Road to the future trail head for the Bellevue Creek Linear Park shall be constructed through the site in a location that is to be agreed upon by the City and Worman. Trail requirements are to be worked out between Worman and the city; and,
- Hard surface and landscape site improvements, complementary to the heritage and commercial development, are to be installed in accordance with City of Kelowna construction standards and bylaws. Any site improvements shall take into consideration the effect on the existing trees and hillside vegetation

In addition to the site improvements above, Worman will work with the City to provide frontage improvements along the frontage of the Subject Lands consistent with Subdivision, Development and Servicing Bylaw No.7900.

Worman will provide a finalized site plan to the City to confirm the viability of the proposed development within 60 days of this MOU being fully executed. It is expected Worman and the City will work to resolve any site issues or concerns in a timeframe that is reasonable to both parties.

8. Neighboring Property Impacts of Site Plan

The parties agree that the optimal agreed upon site plan may impact the adjacent property (the "Church") located at 4619 Lakeshore Road, particularly with respect to parking and access. The parties agree that any development that impacts the adjacent property with respect to these issues will be subject to approval by this property owner.

Upon signing the Agreement and development of a site plan both the City and Worman will begin working with the Church to ensure all parties' site access and parking needs are met and mutually agreed upon.

9. Permits and Fees

The proposed development is subject to all permits, development cost charges, fees, and approvals required under the processes outlined herein.

10. Feasibility Study

After full execution of the MOU, Worman will require 60 days to assess the structural condition and feasibility of restoring the Surtees Barn and the Surtees Homestead and bringing them up to code. During this time Worman will work with the City to develop a finalized site plan that has the support from the City Planning Department.

11. Site Servicing

The City commits to providing all City utility services to the property line at its cost (water, sanitary and storm drainage). All private utility service hookups will be the responsibility of Worman and should be accessed through City road rights-of-way.

12. Roundabout

The parties agree that the installation of a roundabout at the intersection of Lakeshore Road and Collett Road is critical to the area for the following reasons:

- Transportation safety for people turning left from Collett Road onto Lakeshore Road and turning left from Lakeshore Road into the Surtees Property;
- Pedestrian safety for people crossing Lakeshore Road to either Collett Road or the existing commercial and restaurant areas;
- Financial viability of the proposed redevelopment of the Subject Lands; and,
- Continued viability of the neighbouring commercial and restaurant areas as the roundabout allows much easier access to the existing areas by reducing the need for people to have to turn left from the west side of Lakeshore onto the road.

It is understood that the City will use the Acquisition Payment towards the installation of the roundabout. Additionally, Worman agrees to contribute the purchase price of the Road Taking Area from 4624 Lakeshore Road towards the installation of the roundabout. The City will contribute the balance of funds needed to complete the roundabout and associated road improvements.

13. Protection of Trees / Hillside Landscape Areas

It is the goal of the City and Worman to preserve the natural state of the site. The City understands that due to the development and the associated road right of way, some trees will need to be removed. All efforts shall be made by Worman to minimize the site impact in order to protect the trees and hillside vegetation. Worman will provide an appropriate Tree Protection Plan associated with development of the site as part of the submitted drawings to be reviewed and approved by the City. There is a registered covenant (KT71699) on title to protect the existing hillside and associated vegetation. All proposed and approved site plans will be required to take this into account.

14. Parking

Worman must provide adequate parking for the facility on-site in accordance with Zoning Bylaw 8000 or subject to a variance as approved by City Council. Should site access to the Church be required for development of the Subject Lands, the adjacent property will be allowed access to the new parking area (at times to be agreed upon between the City, Worman and the Church).

The City, Worman and the Church will work together to develop a parking plan that accommodates the needs for the commercial space, the Church and for the public looking to access the Bellevue Park Lineal Trail. The City understands and respects the parking needs for the Subject Lands and as such understands a covenant may need to be placed over the new parking plan.

15. Future Changes to Building and/or Subject Lands

Any changes to the building subsequent to the initial changes proposed by Worman will be governed by the municipal Heritage Designation bylaw.

To ensure that the building improvements as proposed by the Worman are realized, the City will register a development covenant on the Subject Lands dictating that the Subject Lands will only be developed and built upon in accordance with the City-approved development plans.

16. Public Access

As part of the land purchase, Worman will be required to guarantee public access from 6:00am - 11:00pm (or as otherwise stipulated in Bylaw No. 10680). Worman acknowledges that the Subject Lands will be encumbered with a Statutory Right of Way guaranteeing public access to the site in a manner agreed upon between the City and Worman.

17. Development Constraints

It is the intent of the MOU that locations and size of buildings will be limited to the locations shown in the approved final site plan. Additionally, public landscape areas (both hard and softscape) shall remain as such and not transition into additional parking in the future. Any future site layout revisions will require the support of City planning staff.

18. Commercial Occupancy

Any commercial occupancy in the building must be approved by the City and comply with the City's C2/C2rls zoning designation. Notwithstanding the approved uses within this zone, the following uses will not be permitted on the Subject Lands: gas bars, recycled materials drop-off centres and supportive housing.

19. Legal, Survey & Registration Costs

Subject to the conditions and provisions of this agreement, the City agrees to bear the costs associated with registering the lease on title for the Subject Lands to Worman. This includes survey and legal fees. Any legal costs associated with reviewing of the lease by Worman will be the responsibility of Worman.

20. Permit Process

All parties will work co-operatively to identify and address issues with the intent that the Subdivision, Heritage Revitalization Agreement, Heritage Designation, and Building Permit applications can be processed in a timely fashion. Subject to Council approval, the aim is for a construction start in 2017. All parties recognize that good communication, prompt responses, and complete documentation will be essential to achieve this schedule.

21. Geotechnical

Any geotechnical improvements required for development of the Subject Lands are the responsibility of Worman and must not negatively impact adjoining publicly or privately-owned buildings or infrastructure.

22. Phase 1 - Site Environmental Assessment (ESA)

The City commits to providing a Phase 1 - ESA to Worman for the Subject Lands. Phase 1 work will be performed by SLR Consulting.

23. Hazardous Goods Assessment

After full execution of the MOU, the City will require 60 days to provide Worman with a hazardous goods assessment of the building.

24. Communications

Worman and the City will jointly be responsible for all aspects of public communications and community engagement for the project.

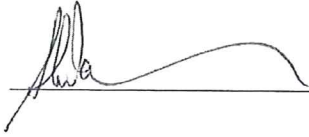
25. Expiry of the MOU

The agreement will expire twelve (12) months after execution of the agreement by both parties.

26. Execution of the MOU

No legal rights or obligations of either party shall be created or shall arise from the execution or approval of this MOU. The parties hereby acknowledge the MOU as an indication of intentions to proceed with the proposed project in good faith and that any binding obligations between the parties will be secured by way of future contracts.

For: Worman



Oct. 14/16.

Date

For: The City of Kelowna

Mayor Colin Basran

City Clerk

Date