

MINUTES of a regular meeting of COMMITTEE OF THE WHOLE of the Municipal Council of The Corporation of the District of Oak Bay, held in the Council Chambers, Oak Bay Municipal Hall, 2167 Oak Bay Avenue, Oak Bay, B.C., on Monday, February 16, 2009 at 7:30 p.m.

PRESENT: Mayor C. M. Causton, Chairman
Councillor A. R. Cassidy
Councillor P. Copley
Councillor J. D. Herbert
Councillor N. B. Jensen
Councillor T. Ney

STAFF: Municipal Administrator, W. E. Cochrane
Municipal Clerk, L. Hilton
Director of Building and Planning, R. Thomassen
Municipal Treasurer, P. Walker
Director of Engineering Services, D. Marshall

Mayor Causton called the meeting to order at 7:30 p.m.

FINANCE SECTION: (Chairman – Councillor Jensen)

1. 2009-59 MUNICIPAL TREASURER, February 2, 2009
Re January Monthly Financial Report

MOVED by Councillor Herbert
Seconded by Councillor Cassidy , That the January monthly financial reports be received.

CARRIED

EMERGENCY PLANNING SECTION: (Chairman – Councillor Ney)

2. 2009-60 FIRE CHIEF, February 12, 2009
Re Oak Bay Emergency Program Year End Report

(Fire Chief Adam and Deputy Fire Chief Cockle in attendance for this item.)

The Fire Chief provided an overview of the Emergency Program year end report, drawing attention to the new and enhanced workshops that have been developed, and thanking members of Council for their participation at the various workshops held by the Emergency Program.

Chief Adam noted that the Emergency Program, under Deputy Chief Cockle and with the help of Sonja Ruthe, Emergency Program and Emergency Social Services Volunteer Coordinator, has flourished and expanded, and he extended his thanks to those individuals as well for their hard work on behalf of the Program.

Other initiatives being undertaken were discussed, and Chief Adam answered questions from members of the Committee in this regard.

The Committee's appreciation for the work of staff and volunteers in relation to the Oak Bay Emergency Program was expressed, and the Chief, Deputy Chief and Ms. Ruthe were congratulated for their success in raising the profile of the Program and enlisting so many community volunteers.

MOVED by Councillor Copley

Seconded by Councillor Herbert, That the correspondence item no. 2009-60 be received.

CARRIED

RECREATION SECTION: (Acting Chairman – Mayor Causton)

3. 2009-61 OAK BAY PARKS AND RECREATION COMMISSION, February 4, 2009
Re Minutes of the Meeting

(Agnes Szilos, Director of Parks and Recreation, and Monty Holding, Chairman, Oak Bay Parks and Recreation Commission, in attendance for this item.)

MOVED by Councillor Jensen

Seconded by Councillor Herbert, That the minutes of the meeting of the Oak Bay Parks and Recreation Commission held on Wednesday, February 4, 2009, and the recommendations contained therein, be adopted.

Attention was drawn to the successful One-Year Out event held at the Oak Bay Recreation Centre in recognition of the 2010 Olympics, and staff were thanked for their hard work in that regard.

Responding to questions from the Committee, Ms. Szilos noted that the Willows School upgrade will have an effect on the afterschool care program inasmuch as an alternative location for the program will need to be found, and a transportation plan for getting the children to the new location (likely the Oak Bay Recreation Centre) will need to be devised.

With respect to the Salish History Monuments program, the Committee thanked the Manager of Parks Services, Lorne Middleton, for his work on having the first monument installed recently.

The question was then called.

CARRIED

4. 2009-62 DIRECTOR OF PARKS AND RECREATION, February 12, 2009
Re Request for Lease Approval - Fitness Equipment

The Director of Parks and Recreation answered questions from the Committee with respect to the proposed lease to replace a portion of the strength training equipment at the Oak Bay Recreation Centre and Henderson Centre.

Attention was drawn to the recommendation from Ms. Szilos with respect to approving the lease, based upon the information contained in her memorandum.

MOVED by Councillor Jensen

Seconded by Councillor Herbert, That staff be authorized to enter into a five year lease for fitness equipment with Fitness Town Commercial at a cost of \$72,633.

CARRIED

REGULATORY SECTION: (Chairman – Councillor Jensen)

5. 2009-63 MUNICIPAL ADMINISTRATOR, February 12, 2009
Re Tree Protection Bylaw

Councillor Jensen noted that the memorandum from the Municipal Administrator with respect to reviewing the diameter limits for protected trees under the Tree Protection Bylaw arose from discussion at a recent meeting of Council.

Upon being asked to provide an overview of his memorandum on possible options for amendments to the diameter limits associated with multi-stemmed trees, Mr. Cochrane drew attention to a formula for consideration in that regard. However, he noted, there is a certain amount of consistency throughout the region with respect to this calculation and the rules are generally known by tree service contractors, therefore the Parks Department would prefer not to see an amendment along that line.

The other option that is left if the Committee is inclined to make any changes at all, said Mr. Cochrane, is to look at the 60 cm catch-all diameter limit for protected trees, which under Oak Bay's Bylaw apply to all species. He noted that both Saanich and Victoria have, with exceptions for species of trees deemed most worthy of protection, an 80 cm catch-all limit.

Members of the public were invited to provide their comments, and Mr. Rene de Vos, resident and representative of the Oak Bay Green Committee, indicated that he had some concerns about adjusting the Bylaw, although he recognized that the regulations would need to evolve over time. He suggested that perhaps a broader analysis of the Bylaw should be undertaken, however, he also noted that the changes being discussed would be in line with other neighbouring jurisdictions, which, along with staff input, was a relevant consideration.

Discussion ensued amongst Committee members, and varying views and opinions were noted. One member of the Committee felt that an overview of the Bylaw would be the better option versus individual changes in specific instances where the Bylaw had, perhaps, an unintended consequence. Another member felt that a common sense factor was missing from the Bylaw.

Responding to questions regarding the ability to provide Council with discretion in reconsidering denied permits, Mr. Cochrane advised that it would be improper from a legal point of view, as Council cannot delegate discretion to itself. An objective standard, he said, is required.

The Board of Variance's jurisdiction in respect to hearing requests for tree removal where an application has been denied by staff was also raised, and it was noted that an applicant would have to convince the Board that retaining the tree would result in a hardship.

MOVED by Councillor Herbert

Seconded by Councillor Copley, That, in respect to the protection of trees under the Tree Protection Bylaw, the proposed method for calculating diameter limits for multi-stemmed trees, contained in correspondence item 2009-63, be referred to the Parks and Recreation Commission for a recommendation.

CARRIED

LAND USE SECTION: (Chairman – Councillor Cassidy)

6. 2009-64 DIRECTOR OF BUILDING AND PLANNING, February 3, 2009
Re Uplands Building Permit Application – 2475 Cardigan Road

MOVED by Councillor Copley

Seconded by Councillor Ney, That it be recommended to Council that the proposed plans for construction of a new residential dwelling at 2475 Cardigan Road be approved as to siting and architectural design.

CARRIED

7. 2009-65 DIRECTOR OF BUILDING AND PLANNING, February 9, 2009
Re Uplands Building Permit/Development Variance Permit Application –
3023 Beach Drive

Councillor Cassidy indicated a possible conflict inasmuch as his firm has advised the applicant regarding the project, noting that he would be unable to participate in the discussion or vote on the matter. Councillor Cassidy left the meeting at 8:20 p.m. and Mayor Causton assumed the Chair for this item.

Responding to questions, the Director of Building and Planning noted that the applicant originally wished to renovate/partially rebuild the existing home, and obtained a development variance permit in 2008 for that purpose. Since then, he said, the applicant has decided that because of the cost of the rebuild versus demolishing and building new, he now wishes to build new and has applied for variances in relation to the side lot line setback regulations to allow him to build in essentially the same location. He confirmed that the Advisory Design Panel had recommended approval of siting and architectural design subject to the issuance of a development variance permit.

Concerns were expressed by some members of the Committee about the request for variances in relation to the construction of a new house, and the point was made that there should be a strong rationale for requiring the variances in such a situation.

Mathew Smith, Designer, responded to the concerns raised about requesting variances on what is basically a bare lot, noting that the owner wants to retain the incredible garden and existing view, both of which would be affected if the setback regulations were to be strictly complied with.

The discussion turned to the proposed side lot line setbacks, and a member of the Committee indicated she did not see the need for the house being so wide on the lot, suggesting that it could be redesigned to fit within the parameters of the regulations.

Mr. Smith noted that the proposed width is the same as the existing house, and the elongated house would take advantage of the view. The design, reiterated Mr. Smith, is driven by the original footprint.

In response to questions about the proposed heights, Mr. Smith indicated that he now realizes that the existing house might exceed the bylaw requirements, as would the new proposed house, based on the method of calculation prescribed by Oak Bay's bylaw.

MOVED by Councillor Copley

Seconded by Councillor Jensen, That it be recommended to Council that the Uplands Building Permit/Development Variance Permit application for 3023 Beach Drive be denied.

The point was made that some years back the setback regulations for the Uplands were amended for the specific purpose of eliminating the "boundary to boundary" building that was occurring. It was the majority view of the Committee that while the requested height variances were not by themselves troublesome, the side lot line setback variances were not supportable for new construction.

The question was then called.

CARRIED

(Mayor Causton and Councillor Ney against the motion)

Councillor Cassidy returned to the meeting at 9:03 p.m.

8. 2009-66 DIRECTOR OF BUILDING AND PLANNING, February 6, 2009
Re Development Variance Permit Application – 966 Byng Street

Ernie Hansen, Designer, provided an overview of the application, noting that the plans see all the permanent structures being consolidated into one. An attached garage, he said, counts as part of the principal dwelling with respect to floor area, while a detached garage does not. A porch is also proposed.

Mr. Hansen advised that the owners wanted to keep the living space all on one level, above ground, and that there is an Arbutus tree and Garry Oak trees on the property that they wish to retain, resulting in the more spread out house design which avoids the trees. The spread out design which combines the garage and the house, along with the added porch, led to the need for floor area variances, he said.

Concerns were raised regarding the sketches and the point was made that proper elevations would be desirable. Mr. Hansen indicated that he anticipated having the elevations available prior to the next Council meeting when a resolution to issue the variances would be considered, if the application went to the next step.

MOVED by Councillor Jensen

Seconded by Councillor Copley, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 966 Byng Street, as outlined in correspondence item no. 2009-66, be prepared and brought forward to Council for consideration.

CARRIED

9. 2009-67 DIRECTOR OF BUILDING AND PLANNING, February 10, 2009
Re Development Variance Permit Application – 2544 Nottingham Road

The Director of Building and Planning advised that the house has already been built, and that an adjusted survey shifted the property lines, compounding the variances required for the project. In this regard, he said, granting the variances would formalize the existing siting of the dwelling.

MOVED by Councillor Herbert

Seconded by Councillor Jensen, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 2544 Nottingham Road, as outlined in correspondence item no. 2009-67, be prepared and brought forward to Council for consideration.

CARRIED

10. 2009-68 DIRECTOR OF BUILDING AND PLANNING, February 10, 2009
Re Development Variance Permit Application – 831 Newport Avenue

Mr. Thomassen provided an overview of the application before Committee noting that the house has now been constructed. Upon inspection, he said, it was discovered that the maximum paved surface exceeds that permitted, and that a generator has been installed within the required setback for miscellaneous structures in the rear yard. He further noted that an error on the original survey, discovered during construction, was not incorporated into the plans, resulting in the requirement for a rear yard variance.

Peter Schultze, builder and representative of the applicants, answered questions from the Committee regarding the generator, noting that it is for use during power outages only. He advised that the neighbouring house is approximately 36 feet away from the generator, and that the solid wood fence on the applicant's property would deflect any noise upward.

Concerns were expressed by members of the Committee regarding the potential noise from the generator. Responding to questions, the Municipal Administrator noted that there are noise level limits for miscellaneous structures, and that a bylaw enforcement remedy to the generator, should it exceed the acceptable decibel level, would be to require construction of some sort of shield. Members of the Committee expressed the hope that the owner would be proactive in ensuring that the noise level of the generator does not impact any neighbouring properties.

MOVED by Councillor Jensen

Seconded by Councillor Herbert, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 831 Newport Avenue, as outlined in correspondence item no. 2009-68, be prepared and brought forward to Council for consideration.

CARRIED

(Councillor Cassidy against the motion)

11. 2009-69 DIRECTOR OF BUILDING AND PLANNING, February 11, 2009
Re Development Variance Permit Application – 644 Island Road

Chris Denford, applicant, provided an overview of his application, noting that the paved area proposed, together with that on his adjacent property at 644 Island Road, for which a parking variance to remove the covered parking space has been requested, will provide off-street parking for four guests.

It was noted that the dwelling at 644 Island Road is built over two lots, and has not yet been consolidated. While Mr. Denford indicated that he plans to consolidate the two lots soon, it was the view of the Committee that the lots should be consolidated prior to approving a variance for the paved surface. Otherwise, it was noted, the variance as it applies to the one lot only is very significant, and in the event consolidation did not occur, the amount of paved surface on that lot alone was not supportable.

Responding to questions, the Municipal Administrator suggested that if the Committee wished to move forward with the application, a resolution could be drafted for Council's consideration that is expressed in terms of area versus a percentage of area, with authorization only to issue the permit at such time as the lots are consolidated.

There was agreement that a resolution along the lines of what Mr. Cochrane had suggested would address the concerns expressed about the extent of the paved surface variance requested for 644 Island Road.

MOVED by Councillor Jensen

Seconded by Councillor Ney, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 644 Island Road, as outlined in correspondence item no. 2009-69, be prepared and brought forward to Council for consideration.

CARRIED

12. 2009-70 DIRECTOR OF BUILDING AND PLANNING, February 11, 2009
Re Development Variance Permit Application – 668 Island Road

MOVED by Councillor Jensen

Seconded by Councillor Copley, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 668 Island Road, as outlined in correspondence item no. 2009-70, be prepared and brought forward to Council for consideration.

CARRIED

13. 2009-71 DIRECTOR OF BUILDING AND PLANNING, February 11, 2009
Re Development Variance Permit Application – 2380 Windsor Road

MOVED by Councillor Herbert

Seconded by Councillor Jensen, That a resolution authorizing the Director of Building and Planning to issue a development variance permit with respect to 2380 Windsor Road, as outlined in correspondence item no. 2009-71, be prepared and brought forward to Council for consideration.

CARRIED

PUBLIC WORKS SECTION: (Chairman – Councillor Herbert)

14. 2009-72 DIRECTOR OF ENGINEERING SERVICES, February 11, 2009
Re Proposed Parking Lay-by – Broom Road

MOVED by Councillor Cassidy

Seconded by Councillor Jensen, That it be recommended to Council that a gravel parking pad be created on the north side of Broom Road at Beach Drive, with the cost, estimated at \$1,900, to be charged to Road Maintenance.

Inasmuch as the proposed parking area improvements would be adjacent to a residence, it was suggested that staff ensure that the owner of that property be made aware of the recommendation prior to consideration of its adoption at the next Council meeting.

The question was then called.

CARRIED

15. 2009-73 DIRECTOR OF ENGINEERING SERVICES, February 11, 2009
Re Rock Stabilization Report (Walbran Park)

The Director of Engineering Services drew attention to his report and the accompanying report from C.N. Ryzuk & Associates Ltd. on the slope stability of the embankment behind 195 Sunny Lane following rock material from Walbran Park coming loose in that area. The reports he said, provide recommended possible courses of action to mitigate any further incidents.

Keith Foreshaw, on whose property the loose rock material landed, said that Municipal staff has given good attention to the incident and communicated with him regarding the possible options for remedying the situation. His preferred option for stabilizing the rock face, he said, is that laid out as option "C" in the staff report. However, he noted that he would hope to see plantings installed as well to soften the look of the metal mesh designed to keep materials from falling down the embankment.

MOVED by Councillor Jensen

Seconded by Councillor Copley, That it be recommended to Council that an amount sufficient to cover the estimated cost of the Walbran Park rock face stabilization work, including contingency, be added to the 2009 municipal budget, with offsetting funding from the Capital Works Reserve Fund, and that staff work with the geotechnical consultant and the owner of 195 Sunny Lane to develop and carry out an appropriate stabilization plan.

There was discussion regarding the possible options for stabilizing the rock face, and Mr. Marshall answered questions from the Committee in this regard.

The question was then called.

CARRIED

ADJOURNMENT:

MOVED by Councillor Jensen

Seconded by Councillor Copley, That the meeting of Committee of the Whole be adjourned.

CARRIED

The meeting adjourned at 10:34 p.m.

Certified Correct:

Municipal Clerk

Chairman, Finance Section

Chairman, Emergency Planning
Section

Chairman, Regulatory Section

Chairman, Land Use Section

Chairman, Public Works Section