

MINUTES of a regular meeting 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, September 14, 2009, at 7:30 p.m.

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

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

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

ADOPTION OF MINUTES:

Council – August 17, 2009

MOVED by Councillor Herbert
Seconded by Councillor Braithwaite, That the minutes of the Council meeting held on Monday, August 17, 2009, be adopted.

CARRIED

Special Council – September 8, 2009

MOVED by Councillor Ney
Seconded by Councillor Herbert, That the minutes of the Special Council meeting held on Tuesday, September 8, 2009, be adopted.

CARRIED

Committee of the Whole – September 8, 2009

MOVED by Councillor Copley
Seconded by Councillor Herbert, That the minutes of the Committee of the Whole meeting held on Tuesday, September 8, 2009, and the recommendations contained therein, be adopted.

Responding to a question from Mayor Causton, the Municipal Administrator noted that the Bylaw will not include a specific location for the proposed liquor retail store at 2187 Oak Bay Avenue as it was not requested by Council. He further advised that notice has been sent to the property owner of the existing liquor store adjacent to the Penny Farthing Pub advising of Council's intent to bring forward a Bylaw to remove liquor retail sales as a permitted use for that property in future.

The question was then called.

CARRIED

COMMUNICATIONS:

1. 2009-293 JEANNE OMNESS, August 31, 2009
2009-275 JEANNE OMNESS, July 20, 2009
Re Request to Write-off Late Tax Payment Penalty

Noting the very unusual circumstances that appeared to be out of Ms. Onmess' control with respect to paying her taxes on time, it was the view of Council that the request to apply to the Minister of Community and Rural Development to write-off the late tax payment penalty was supportable.

MOVED by Councillor Jensen

Seconded by Councillor Herbert, That, pursuant to Section 315.3 of the *Local Government Act*, an application be made to the Minister of Community and Rural Development for the authority to write-off the 10% tax penalty for late payment of 2009 property taxes for 2091 Carrick Street.

CARRIED

2. 2009-294 ROYAL VICTORIA MARATHON, August 11, 2009
Re Request for Approval of Road Closures for Royal Victoria Marathon –
October 11, 2009

MOVED by Councillor Herbert

Seconded by Councillor Copley, That permission be granted for the temporary closures and occupancy of the same streets in Oak Bay used for the Marathon in 2008 and detailed in correspondence item no. 2009-294 for the staging of the 2009 Royal Victoria Marathon on Sunday, October 11, 2009, subject to the event organizer entering into a public property occupancy agreement in which it will among other standard requirements:

- 1) release and indemnify the Municipality from any claims or liability associated with the event and providing evidence of public liability insurance in the amount of not less than \$3,000,000;
- 2) agree to pay all invoices from the Municipality for costs incurred in connection with the event;
- 3) agree to obtain Oak Bay Police approval for a traffic plan and implement the same subject to any field instructions from the Police; and
- 4) deliver written notice to all occupiers of property adjoining any roads to be closed for the event;

with the Municipal Clerk being authorized to execute such agreement on behalf of the District of Oak Bay.

Mayor Causton noted that in light of the race route being the same as last year he asked if the applicant was aware of the upcoming paving planned for a portion of Beach Drive.

At this time, Mayor Causton declared a conflict inasmuch as his house is located within the area on Beach Drive to be repaved, indicating that he would be unable to participate in discussion regarding the roadwork. Mayor Causton left the meeting at 7:41 p.m. Councillor Herbert assumed the Chair.

The Municipal Administrator advised that the repaving of Beach Drive between King George Terrace and Newport Avenue is, depending on weather, anticipated to begin in early October.

The Director of Engineering Services acknowledged that should the work not be completed by the race date, there could be raised castings and grated pavement along that stretch of Beach Drive.

Cathy Noel, Royal Victoria Marathon, said she would have a look at the area to be paved, noting that the race participants would be fairly spread out at this stage of the route so it should not be a problem. Ms. Noel suggested, if necessary, the area could be swept and that the event organizers could place signage to advise runners of the uneven surface in the event the roadwork/paving was only partially completed by race day.

The Director of Engineering Services provided a brief description of the repaving process saying that because the work is done in stages the roadway would have ground edges near the gutters and raised castings for a short period of time.

Ms. Noel said that to date over 10,000 participants have registered for the event with 18 countries being represented at this year's marathon.

The question was then called.

CARRIED

Mayor Causton returned to the meeting at 7:44 p.m.

3. 2009-295 PEARL SCHMITZ, September 2, 2009
2009-295-1 MUNICIPAL CLERK, September 8, 2009
Re Request for Reconsideration of Tree Removal Permit Refusal – 1268 St. David Street

Pearl Schmitz, applicant, advised that although the tree she wishes to have removed has been well maintained over the past 24 years and is healthy, she is concerned that because it is situated just one inch from the roof of the house it will soon cause damage to her home. There is concern that the foundation could be affected by the tree as well, she said, drawing attention to the report she submitted from Davey Tree Experts in that regard.

MOVED by Councillor Jensen

Seconded by Councillor Ney, That the issuance of a permit for the removal of the 71 centimetre diameter at breast height, Incense Cedar (*Calocedrus decurrens*) tree, located on the private property adjacent to the house at 1268 St. David Street, be ordered pursuant to Section 21.1(1) of the Tree Protection Bylaw.

Councillor Braithwaite expressed her concern with what seems to be an increasing number of approvals by Council to order tree removal permits. She noted that at its recent meeting the Parks and Recreation Commission expressed concern about the recent changes to the Tree Protection Bylaw to broaden Council's authority to make orders to issue tree removal permits and that Commission wished to bring forward a report to Council with its recommendations in that regard. Councillor Braithwaite said that in light of the Commission discussions she would not support the request to remove the tree.

Councillor Herbert said that he respects the Parks and Recreation Commission's advice, however, in this situation it would be difficult for the applicant to wait for a future report when it is inevitable that the house will be damaged by the tree.

The question was then called.

CARRIED
(Councillor Braithwaite against the motion)

4. 2009-296 CAPITAL REGIONAL DISTRICT, August 28, 2009
Re Regional Housing Trust Fund Service Establishment Bylaw
Amendment Bylaw

MOVED by Councillor Jensen

Seconded by Councillor Herbert, That consent be given for the adoption of Bylaw No. 3635, Capital Regional District Regional Housing Trust Fund Service Establishment Bylaw No. 1, 2005, Amendment Bylaw No. 5, 2009 in accordance with Section 801.4 of the *Local Government Act*.

CARRIED

5. 2009-297 MUNICIPAL CLERK, September 10, 2009
Re Council Meeting – September 28, 2009

With the Union of British Columbia Municipalities annual conference scheduled for September 28 to October 2, 2009, Mayor Causton asked if Council members would be available for the regularly scheduled Council meeting of September 28, 2009.

It was determined that there would not be quorum and therefore cancellation of the meeting would be required.

MOVED by Councillor Jensen

Seconded by Councillor Braithwaite, That the regular meeting of Council scheduled for Monday, September 28, 2009 be cancelled.

Drawing attention to the request for a Special Council meeting to consider awarding the tender for the Beach Drive paving, Mayor Causton declared a conflict inasmuch as his house is located within the area on Beach Drive to be repaved, indicating that he would be unable to participate in discussion or vote on the matter. Mayor Causton left the meeting at 7:51 p.m. Councillor Herbert assumed the Chair.

The Municipal Administrator noted that the Municipality has posted a tender that will close Wednesday, September 23, 2009 for the repaving of Beach Drive between King George Terrace and Newport Avenue. Given the weather requirements for paving, it would be preferable to hold a Special Council meeting Friday, September 25, 2009 to award the tender to ensure the roadwork can get underway as soon as possible, he said.

Council members were in agreement that staff arrange to hold a Special Council meeting on September 25, 2009.

The question was then called.

CARRIED

Mayor Causton returned to the meeting at 7:55 p.m.

6. 2009-298 OAK BAY COMMUNITY HERITAGE REGISTER SUBCOMMITTEE,
August 26, 2009
Re Recommendation to Add 1936 Hampshire Road to the Oak Bay
Community Heritage Register

MOVED by Councillor Herbert

Seconded by Councillor Braithwaite, That the Oak Bay Community Heritage Register be augmented by the addition of the real property at 1936 Hampshire Road, as more particularly described in the heritage significance statements attached to correspondence item no. 2009-298.

CARRIED

NEW BUSINESS:

Secondary Suites Review Committee - Update

Councillor Jensen advised that the Secondary Suites Review Committee has received an overwhelming number of questionnaire responses and it is anticipated that once the Committee has organized and reviewed the questionnaires a report would be forthcoming to Council, perhaps some time in October.

TABLED:

Development Variance Permit – 2027 Runnymede Avenue

MOVED by Councillor Jensen

Seconded by Councillor Herbert, That the following motion be lifted from the table:

That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 2027 Runnymede Avenue (Lot 3, Section 47, Victoria District, Plan 32613) varying the following provisions of Bylaw No. 3531 (*Zoning Bylaw, 1986*, as amended):

<u>Zoning Bylaw Section</u>	<u>Permitted</u>	<u>Requested</u>	<u>Variance</u>
6.4.4(6)(b) Maximum Gross Floor Area	480 m ²	767.5 m ²	287.5 m ²
6.4.4(6)(b) Maximum Gross Floor Area above 0.8 metres below grade	360 m ²	685.4 m ²	325.4 m ²

to accommodate the proposed additions as shown on the plans dated July 2, 2009 and appended to Committee of the Whole agenda item #2009-263, being a memorandum from the Director of Building and Planning dated July 22, 2009.

CARRIED

With no members of the public wishing to speak to the application, the question on the main motion was then called.

CARRIED

Development Variance Permit – 123 Barkley Terrace

MOVED by Councillor Copley

Seconded by Councillor Jensen, That the following motion be lifted from the table:

That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 123 Barkley Terrace (Lot C, Section 19, Victoria District, Plan 14311) varying the following provisions of Bylaw No. 3531 (*Zoning Bylaw, 1986*, as amended):

<u>Bylaw Section</u>	<u>Required</u>	<u>Requested</u>	<u>Variance</u>
6.4.4(2)(a) Minimum Front Lot Line Setback	7.62 m	1.2 m	6.42 m
4.1 & Schedule 'A', A.1.(a) Minimum Number of Parking Spaces	2 spaces including one in building	1 space in building	1 uncovered space

to accommodate renovations to the dwelling, including the provision of only one covered parking stall, as shown on the plans attached to Committee of the Whole agenda item #2009-264, being a memorandum from the Director of Building and Planning dated July 22, 2009.

CARRIED

With no members of the public wishing to speak to the application, the question on the main motion was then called.

CARRIED

(Councillor Cassidy against the motion)

RESOLUTIONS:

Development Variance Permit– 661 Newport Avenue

MOVED by Councillor Jensen

Seconded by Councillor Herbert, That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 661 Newport Avenue (Amended Lot 2, (DD 221318-I), Block 4, Section 73, Victoria District, Plan 992) varying the following provision of Bylaw No. 3531 (*Zoning Bylaw, 1986*, as amended):

<u>Zoning Bylaw Section</u>	<u>Required</u>	<u>Requested</u>	<u>Variance</u>
6.2.4(2)(a) Minimum Front Lot Line Setback, accessory structure	10.66 m	1.83 m	8.83 m

to accommodate the proposed construction of a pergola as shown on the plans appended to Committee of the Whole agenda item #2009-287, being a memorandum from the Director of Building and Planning dated August 31, 2009.

MOVED by Councillor Jensen
Seconded by Councillor Cassidy, That the motion in respect of the development variance permit for 661 Newport Avenue be tabled to allow notice to be given in accordance with the *Local Government Act*.

CARRIED

Development Variance Permit– 1641 Wilmot Place

MOVED by Councillor Jensen
Seconded by Councillor Herbert, That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 1641 Wilmot Place (Lot 8, Section 69, Victoria District, Plan 922) varying the following provision of Bylaw No. 3531 (*Zoning Bylaw, 1986*, as amended):

<u>Zoning Bylaw Section</u>	<u>Permitted</u>	<u>Requested</u>	<u>Variance</u>
4.15.1 Maximum Paved Surface of the Front Yard	31.5 sq m 25%	47.1 sq m 37%	15.6 sq m 12.2 percentage points

to accommodate the proposed driveway as shown on the plans appended to Committee of the Whole agenda item #2009-288, being a memorandum from the Director of Building and Planning dated August 31, 2009.

MOVED by Councillor Jensen
Seconded by Councillor Cassidy, That the motion in respect of the development variance permit for 1641 Wilmot Place be tabled to allow notice to be given in accordance with the *Local Government Act*.

CARRIED

Development Variance Permit – 651 Falkland Road

MOVED by Councillor Jensen
Seconded by Councillor Herbert, That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 651 Falkland Road (Lot 2, Section 22, Victoria District, Plan 4314 Except Parcel A (DD 110990I)) varying the following provisions of Bylaw No. 3531 (*Zoning Bylaw, 1986*, as amended):

<u>Zoning Bylaw Section</u>	<u>Required</u>	<u>Requested</u>	<u>Variance</u>
6.5.4 (6)(a) Maximum Gross Floor Area Above 0.8 metre Below Grade	240 sq m	351.3 sq m	111.3 sq m
6.5.4 (11) Minimum Side Lot Line Setback of the Second Storey	3.0 m	2.4 m	0.6 m

to accommodate the proposed rear sun deck as shown on the plans appended to Committee of the Whole agenda item #2009-290, being a memorandum from the Director of Building and Planning dated September 1, 2009.

MOVED by Councillor Jensen
Seconded by Councillor Cassidy, That the motion in respect of the development variance permit for 651 Falkland Road be tabled to allow notice to be given in accordance with the *Local Government Act*.

CARRIED

Development Variance Permit – 2535 Cranmore Road

MOVED by Councillor Jensen
Seconded by Councillor Copley, That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 2535 Cranmore Road (Lot 4, Block 2, Section 61, Victoria District, Plan 1029A) varying the following provisions of Bylaw No. 3531 (*Zoning Bylaw, 1986*, as amended):

<u>Zoning Bylaw Section</u>	<u>Permitted</u>	<u>Requested</u>	<u>Variance</u>
6.5.4 (3)(b) & Schedule B Maximum Occupiable Height	4.27 m	4.42 m	0.15 m
6.5.4 (6)(a) Maximum Gross Floor Area Above 0.8 metres Below Grade	240 sq m	296.4 sq m	56.4 sq m

to accommodate the proposed addition as shown on the plans appended to Committee of the Whole agenda item #2009-289, being a memorandum from the Director of Building and Planning dated August 31, 2009.

MOVED by Councillor Jensen
Seconded by Councillor Cassidy, That the motion in respect of the development variance permit for 2535 Cranmore Road be tabled to allow notice to be given in accordance with the *Local Government Act*.

CARRIED

Development Variance Permit – 2579 Bowker Avenue

MOVED by Councillor Jensen
Seconded by Councillor Copley, That the Director of Building and Planning be authorized to issue a Development Variance Permit with respect to 2579 Bowker Avenue (Amended Lot 25, (DD 138036-I) Block 2, Section 61, Victoria District, Plan 1361) varying the following provisions of Bylaw No. 3540 (*Parking Facilities Bylaw, 1986* as amended):

<u>Zoning Bylaw Section</u>	<u>Required</u>	<u>Requested</u>	<u>Variance</u>
4.1 and Schedule ‘A’ A.1. (a) Minimum Number of Parking Spaces	2	1	1 Covered parking stall

to accommodate the basement development precluding the provision of the required covered parking stall as shown on the plan appended to Committee of the Whole agenda item #2009-291, being a memorandum from the Director of Building and Planning dated September 1, 2009.

MOVED by Councillor Jensen

Seconded by Councillor Cassidy, That the motion in respect of the development variance permit for 2579 Bowker Avenue be tabled to allow notice to be given in accordance with the *Local Government Act*.

CARRIED

Authorization for Disposition of Property by Way of a Lease for 2564 Heron Street (Tod House)

MOVED by Councillor Herbert

Seconded by Councillor Braithwaite, That authorization be given for the disposition of property located at **2564 Heron Street (Tod House)**, legally described as Amended Lot 26 (DD 225937D), Block 9, Section 2, Victoria District, Plan 379 and Lot 27, Block 9, Section 2, Victoria District, Plan 379 by way of a lease (fixed term tenancy) for a period of two years from October 1, 2009 to September 30, 2011 to Julia and Howard Herzog for a base rent of \$1,595 per month., plus a further consideration in the form of the provision of yard and garden maintenance valued at \$200 per month.

CARRIED

BYLAWS:

For Adoption

MOVED by Councillor Herbert

Seconded by Councillor Braithwaite, That Bylaw, No. 4485, *Capital Works and Equipment Reserve Fund Appropriation Authorization Bylaw, 2009, Amendment Bylaw No. 1, 2009*, be adopted.

CARRIED

For First, Second and Third Reading

MOVED by Councillor Braithwaite

Seconded by Councillor Herbert, That Bylaw No. 4483, *Oak Bay Business Improvement Area Bylaw, 2010*, be introduced and read a first time.

CARRIED

MOVED by Councillor Braithwaite

Seconded by Councillor Herbert, That Bylaw No. 4483, *Oak Bay Business Improvement Area Bylaw, 2010*, be read a second time.

The Municipal Administrator explained that the *Local Government Act* requires that approval must be secured from the affected property owners before the Oak Bay Business Improvement Area bylaw can be adopted. Mr. Cochrane said that notification advising that Council will enact the Bylaw unless a majority of the property owners representing at least 50 percent of the value of properties petition Council, within one month of notice, not to proceed.

The question was then called.

CARRIED

MOVED by Councillor Braithwaite
Seconded by Councillor Herbert, That Bylaw No. 4483, *Oak Bay Business Improvement Area Bylaw, 2010*, be read a third time.

CARRIED

MOVED by Councillor Jensen
Seconded by Councillor Herbert, That Bylaw No. 4484, *Property Tax Exemption Bylaw, 2009*, be introduced and read a first time.

CARRIED

MOVED by Councillor Jensen
Seconded by Councillor Herbert, That Bylaw No. 4484, *Property Tax Exemption Bylaw, 2009*, be read a second time.

The issue was raised with respect to the agreements for use of municipally owned property by private clubs, such as the Lawn Bowling Club, and it was the view of some Council members that when the agreements come up for renewal further discussion in that regard should be considered inasmuch as there are other community groups who have to pay for using municipal property.

The question was then called.

CARRIED

MOVED by Councillor Jensen
Seconded by Councillor Herbert, That Bylaw No. 4484, *Property Tax Exemption Bylaw, 2009*, be read a third time.

CARRIED

For First and Second Reading and Setting of a Public Hearing Date

MOVED by Councillor Copley
Seconded by Councillor Jensen, That Bylaw No. 4481, *1936 Hampshire Road Heritage Designation Bylaw, 2009*, be introduced and read a first time.

CARRIED

MOVED by Councillor Copley
Seconded by Councillor Jensen, That Bylaw No. 4481, *1936 Hampshire Road Heritage Designation Bylaw, 2009*, be read a second time.

CARRIED

MOVED by Councillor Copley
Seconded by Councillor Jensen, That a public hearing on Bylaw No. 4481 be held at the Oak Bay Municipal Hall, on October 13, 2009, at 7:30 p.m., and that notice be given in accordance with the Local Government Act.

CARRIED

MOVED by Councillor Braithwaite
Seconded by Councillor Copley, That Bylaw No. 4482, *929 Island Road Heritage Designation Bylaw, 2009*, be introduced and read a first time.

CARRIED

MOVED by Councillor Braithwaite
Seconded by Councillor Copley, That Bylaw No. 4482, *929 Island Road Heritage Designation Bylaw, 2009*, be read a second time.

CARRIED

MOVED by Councillor Braithwaite
Seconded by Councillor Ney, That a public hearing on Bylaw No. 4482 be held at the Oak Bay Municipal Hall, on October 13, 2009, at 7:30 p.m., and that notice be given in accordance with the Local Government Act.

CARRIED

With respect to Bylaw No. 4486, Councillor Ney stated that inasmuch as she has office space in Athlone Court, she would be unable to participate in the discussion or vote on any decisions on the matter. Councillor Ney left the meeting at 8:16 p.m.

MOVED by Councillor Braithwaite
Seconded by Councillor Herbert, That Bylaw No. 4486, *Eighty-Fourth Zoning Bylaw Amendment Bylaw, 2009*, be introduced and read a first time.

CARRIED

MOVED by Councillor Braithwaite
Seconded by Councillor Herbert, That Bylaw No. 4486, *Eighty-Fourth Zoning Bylaw Amendment Bylaw, 2009*, be read a second time.

CARRIED

MOVED by Councillor Braithwaite

Seconded by Councillor Herbert, That a public hearing on Bylaw No. 4486 be held at the Oak Bay Municipal Hall, on October 13, 2009, at 7:30 p.m., and that notice be given in accordance with the Local Government Act.

CARRIED

Councillor Ney returned to the meeting at 8:17 p.m.

ADJOURNMENT:

MOVED by Councillor Braithwaite

Seconded by Councillor Copley, That the open portion of the meeting of Council be adjourned and that a closed session be convened to discuss personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the Municipality or another position appointed by the Municipality, and labour relations or employee negotiations.

CARRIED

The meeting adjourned at 8:18 p.m.

Certified Correct:

Municipal Clerk

Mayor