

**MINUTES OF THE
PLANNING & LAND USE COMMITTEE MEETING
HELD THURSDAY, FEBRUARY 20, 2014, 9:00 A.M.**

1. THE CHAIR CALLED THE MEETING TO ORDER AT 9:00 A.M.

Committee Members Present: Mayor Fortin (Chair); Councillors Alto, Coleman, Helps, Gudgeon, Madoff, Thornton-Joe and Young

Absent: Councillor Isitt

Staff Present: J. Johnson – City Manager; D. Day - Director, Department of Sustainable Planning and Community Development; A. Meyer – Assistant Director, Department of Sustainable Planning and Community Development; L. Baryluk – Senior Planner; J. Handy – Planner; D. Schaffer – Manager, Legislative Services; J. Appleby - Recording Secretary

2. APPROVAL OF THE AGENDA

Committee considered the following amendments to the Agenda:

Open Meeting:

- Item # 3.A. – 836 and 838 Broughton Avenue - Additional Correspondence

Action: Councillor Helps moved that the Agenda of the February 20, 2014, Planning & Land Use Committee meeting be approved.

CARRIED UNANIMOUSLY 14/PLUC032

3. ADOPTION OF MINUTES

3.1 Minutes from the meeting held February 6, 2014

Action: Councillor Madoff moved that the Minutes from the Planning & Land Use Committee meeting held February 6, 2014, be approved.

CARRIED UNANIMOUSLY 14/PLUC033

4. CONSENT AGENDA

Mayor Fortin canvassed members of Council, who approved bringing forward the following items for approval:

- Item # 5 - Development Permit with Variance # 000328 for 810 Humbolt
- Item # 6 – Heritage Designation # 000138 for 39 Lewis Street
- Item # 7 – Heritage Designation # 000139 for 43 Lewis Street
- Item # 8 – Heritage Designation # 000140 for 50 Lewis Street

4.1 Development Permit with Variance # 000328 for 810 Humbolt Street

Committee received a report dated January 31, 2014, regarding Development Permit # 000328 with Variance for the property located at 810 Humboldt Street. This application is to repurpose the seventh floor of Building B from office use to assembly use.

While the proposed development does not meet the required parking for the proposed use, staff support the application because the parking data provided with the application confirmed that the additional parking demand would be absorbed by the existing parking surplus.

Action: Councillor Helps moved that Committee recommends that Council advance Development Permit Application with Variance # 000328 for 810 Humbolt Street for consideration at a Public Hearing, in accordance with:

1. Plans stamped “Planning and Development Department, Development Services Division, January 2, 2014”.
2. Development meeting all *Zoning Regulation Bylaw* requirements, except for the following variance from Schedule C:
 - The number of parking spaces relaxed from 158 spaces to 146 spaces

CARRIED UNANIMOUSLY 14/PLUC034

4.2 Heritage Designation # 000138 for 39 Lewis Street

Committee received a report dated January 22, 2014, regarding an owner request to designate an existing one-and-a-half-storey residence, located on Lewis Street in the James Bay neighbourhood, as a Municipal Heritage Site. The house was built in 1908 and contributes to the historic character of Lewis Street.

Action: Councillor Helps moved that Committee recommends that Council authorize that Heritage Designation Application # 000138 for 39 Lewis Street proceed for consideration at a Public Hearing and that City staff prepare the Heritage Designation Bylaw to designate the property as a Municipal Heritage Site.

CARRIED UNANIMOUSLY 14/PLUC035

4.3 Heritage Designation # 000139 for 43 Lewis Street

Committee received a report dated January 22, 2014, regarding an owner request to designate an existing one storey, English Arts and Crafts bungalow located on Lewis Street in the James Bay neighbourhood, as a Municipal Heritage Site. The house was built in 1928 and contributes to the historic character of Lewis Street.

Action: Councillor Helps moved that Committee recommends that Council authorize that Heritage Designation Application # 000139 for 43 Lewis

Street proceed for consideration at a Public Hearing and that City staff prepare the Heritage Designation Bylaw to designate the property as a Municipal Heritage Site.

CARRIED UNANIMOUSLY 14/PLUC036

4.4 Heritage Designation # 00140 for 50 Lewis Street

Committee received a report dated January 22, 2014, regarding an owner request to designate an existing two storey, Edwardian Vernacular Arts and Crafts style residence and garage, located on Lewis Street in the James Bay neighbourhood, as a Municipal Heritage Site.

Action: Councillor Helps moved that Committee recommends that Council authorize that Heritage Designation Application # 000140 for 50 Lewis Street proceed for consideration at a Public Hearing and that City staff prepare the Heritage Designation Bylaw to designate the property as a Municipal Heritage Site.

CARRIED UNANIMOUSLY 14/PLUC037

5. DECISION REQUEST

5.1 Rezoning Application # 00438 for 320 and 401 Garbally Road

Committee received a report dated January 23, 2014, regarding Rezoning Application # 00438 for 320 and 401 Garbally Road. The application is to amend the property from the CD-1 Zone, Selkirk Comprehensive District, which permits a range of uses including light industrial activities and warehousing. The application proposes to permit outside storage of vehicles as well as call centres to the list of permitted uses in Development Area 3.

Action: Councillor Thornton-Joe moved that Committee recommends that Council authorize that Rezoning Application # 00438 for 320 and 401 Garbally Road proceed for consideration at a Public Hearing and that City Staff prepare the necessary *Zoning Regulation Bylaw* amendments.

CARRIED UNANIMOUSLY 14/PLUC038

5.2 Rezoning Application # 00425 and Development Permit Application # 000337 for 836 and 838 Broughton Avenue

Committee received a report dated February 7, 2014, regarding Rezoning Application # 00425 and Development Permit Application # 000337 for the properties located at 836 and 838 Broughton Street. The properties are situated in the CHP-CR Zone (Cathedral Hill Precinct Commercial Residential District), which permits a maximum floor space ratio (FSR) of 2.0:1 for a multiple dwelling. The applicant proposes to increase the density to 5:1 FSR and to construct an 84 unit residential mixed-use building with underground parking.

The Official Community Plan (OCP) identifies the site as eligible for bonus density as the land parcels are located in the Urban Core. The Plan envisions a density of 3:1 FSR and notes that a 5:1 FSR is supportable where a proposal significantly

advances the OCP objectives. The method to quantify an increase in density would be through a land lift analysis. Policy states that the City would request a 75% contribution of any value attributed to that land lift. The manner in which a land lift is undertaken is where a third party consultant is engaged to determine the value of the land at 3:1 FSR and also if it was rezoned what the value of the property at 5:1 FSR would be. The 75% contribution is not taken on that gain; it is taken after a number of considerations such as unusual construction costs, remediation or archaeological findings. There is also an assumption that the developer will take a 15% profit. After all of those considerations, the City would then ask for a 75% contribution. The amount received would be used for an amenity that would improve the public realm such as a park or greenway and to enhance the Downtown Heritage Building Seismic Upgrade Fund.

Action:

Councillor Madoff moved that Committee recommends that Council authorize that:

1. Rezoning Application # 00425 for 836 and 838 Broughton Street proceed for consideration at a Public Hearing, subject to:
 - a. Provision of a third-party land lift analysis that justifies any increase in density that exceeds the floor space ratio of 3:1 FSR with a contribution of 75% of the value of any identified land lift being made to the Downtown Core Area Public Realm Improvement Fund (75%) and the Downtown Heritage Building Seismic Upgrade Fund (25%) to be secured to the satisfaction of the City Solicitor and the Director of Sustainable Planning and Community Development;
 - b. Preparation of a *Zoning Regulation Bylaw* amendment to accommodate the proposal;
 - c. Preparation of legal agreements to the satisfaction of the City Solicitor and the Director of Sustainable Planning and Community Development to ensure that future strata bylaws cannot prohibit strata owners from renting residential strata units.
 - d. Preparation of legal agreements to the satisfaction of the City Solicitor and the Director of Engineering and Public Works for sewage attenuation to mitigate the impact of increased density.
2. Review by the Advisory Design Panel of Development Permit Application # 000377 prior to Council considering issuing the permit with special attention to the proposal's street relationship and contextual fit.
3. Following consideration of Rezoning Application # 00425, that Council authorize the issuance of a Development Permit for 836-838 Broughton Street, in accordance with:
 - a. Plans stamped Development Permit # 000377 dated January 28, 2014.
 - b. Development meeting all *Zoning Regulation Bylaw* requirements.
 - c. Final plans to be in accordance with the plans identified above to the satisfaction of the Director of Sustainable Planning and Community Development.
4. Following consideration of Rezoning Application # 00425, that Council authorize staff to prepare and enter into an Encroachment Agreement for a fee of \$750 plus \$25 per m² of exposed shored face during construction, to

the satisfaction of the City Solicitor and the Director of Engineering and Public Works.

Committee discussed:

- If the land lift should be based on 25% as the application was made prior to December 3, 2013. The property is also adjacent to lands which require the same percentage and not 75%.
- Why there is a requirement for a sewer attenuation tank.
 - The tank is required to mitigate the impact of increased density. There are several areas in the City where the sewer network is working at capacity. Until the City is able to upgrade the sewer system, attenuation tanks will continue to be a requirement for developments. The requirement is consistent with existing policy and other developments. Should the property remain at a 3:1 FSR, an attenuation tank would still be required

Action: Councillor Helps moved that Committee amend the motion as follows:

That Council authorize:

1. Rezoning Application # 00425 for 836 and 838 Broughton Street proceed for consideration at a Public Hearing, subject to:
 - a. Provision of a third-party land lift analysis that justifies any increase in density that exceeds the floor space ratio of 3:1 FSR with a contribution of ~~25%~~ 75% of the value of any identified land lift being made to the Downtown Core Area Public Realm Improvement Fund (~~25%~~ 75%) and the Downtown Heritage Building Seismic Upgrade Fund (25%) to be secured to the satisfaction of the City Solicitor and the Director of Sustainable Planning and Community Development;
 - b. Preparation of a *Zoning Regulation Bylaw* amendment to accommodate the proposal;
 - c. Preparation of legal agreements to the satisfaction of the City Solicitor and the Director of Sustainable Planning and Community Development to ensure that future strata bylaws cannot prohibit strata owners from renting residential strata units;
 - d. Preparation of legal agreements to the satisfaction of the City Solicitor and the Director of Engineering and Public Works for sewage attenuation to mitigate the impact of increased density.

Committee discussed:

- If Council will have the opportunity to change the percentage at the Public Hearing.
 - Procedurally when the Public Hearing is advertised the public will have an expectation of what Council will be approving. It would be difficult to raise the limit after having discussions with the applicant. Also if Council were to raise the percentage later it would be problematic if not legally but in hammering out details with applicant.
- The process should be clear; so as not to confuse applicants and residents.

Action: Councillor Alto moved that Committee amend the amendment as follows:

That Council authorize:

1. Rezoning Application # 00425 for 836 and 838 Broughton Street proceed for consideration at a Public Hearing, subject to:
 - a. Provision of a third-party land lift analysis that justifies any increase in density that exceeds the floor space ratio of 3:1 FSR **with a return to the Planning and Land Use Committee for Council to determine the percentage of the value of the identified land lift if any that will be requested from the applicant.** ~~Contribution of 25/75% of the value of any identified land lift being made to the Downtown Core Area Public Realm Improvement Fund (75%) and the Downtown Heritage Building Seismic Upgrade Fund (25%) to be secured to the satisfaction of the City Solicitor and the Director of Sustainable Planning and Community Development;~~
 - b. Preparation of a *Zoning Regulation Bylaw* amendment to accommodate the proposal;
 - c. Preparation of legal agreements to the satisfaction of the City Solicitor and the Director of Sustainable Planning and Community Development to ensure that future strata bylaws cannot prohibit strata owners from renting residential strata units.
 - d. Preparation of legal agreements to the satisfaction of the City Solicitor and the Director of Engineering and Public Works for sewage attenuation to mitigate the impact of increased density.
- The method of the land lift should be done on a formula basis and not a study.
- There is a policy in place. Each application should not be done in isolation or on an ad hoc basis.

On the amended amendment
FAILED 14/PLUC039

For: Councillors Gudgeon and Madoff

Against: Mayor Fortin, Councillors Alto, Coleman, Helps, Thornton-Joe and Young

Committee continued discussion of the Amended Motion:

- It seems that Council is dealing with each application in an ad hoc way. These decisions should not be made in isolation. The land lift is seen as an impediment to construction and a cash grab. In reality it provides the City an ability to improve the public realm. The City is in a transition period.
- If the policy is not supported then maybe the policy is wrong. This is something Council needs to consider.

On the amendment
CARRIED 14/PLUC040

For: Mayor Fortin, Councillors Alto, Coleman, Helps, Thornton-Joe and Young

Against: Councillors Gudgeon and Madoff

On the main motion as amended
CARRIED 14/PLUC041

For: Mayor Fortin, Councillors Alto, Coleman, Helps, Thornton-Joe and Young

Against: Councillors Gudgeon and Madoff

5.3 Development Permit with Variance # 000341 for 230 Menzies Street

Committee received a report dated January 27, 2014, regarding Development Permit Application # 000341 with Variance for 230 Menzies Street. The application is to vary the required parking from 26 stalls to 25 and to permit enclosure of the pedestrian breezeway reconfigure doors and windows on the lower floor level.

Action: Councillor Coleman moved that Committee recommends that Council advance Development Permit Application with Variance # 000341 for consideration at a Public Hearing in accordance with:

1. Revised plans date stamped January 28, 2014.
2. Development meeting all Zoning Regulation Bylaw requirements, except for a variance from Schedule C to have the number of parking spaces relaxed from 26 to 25.

CARRIED UNANIMOUSLY 14/PLUC042

6. CLOSED MEETING at 10:20 a.m.

Action: Councillor Coleman moved that Planning and Land Use Committee convene a Closed meeting that excludes the public under Section 12(6) of the *Council Bylaw* for the reason that the following agenda items deal with matters specified in the following sections of the *Council Bylaw*:
Section 12 (3)(e) – the acquisition, disposition or expropriation of land or improvements, if the Council considers that disclosure might reasonably be expected to harm the interests of the City.

6.1 ADOPTION OF CLOSED MINUTES

Action: Councillor Coleman moved that the Minutes from the closed meeting held February 6, 2014, Planning & Land Use Committee be approved.

CARRIED UNANIMOUSLY 14/PLUC043

Committee reconvened at 10:30 a.m.

Mayor Fortin left the meeting at 10:30 a.m. and Councillor Young assumed the Chair

7. PROPERTY MAINTENANCE BYLAW HEARING at 10:30 a.m.

7.1 Illegal Use and Work Without Permit – 252 Richmond Avenue

Committee received a report dated January 16, 2014, regarding work that has been done without permit to construct the addition of a carport. The property owner was directed to either remove the structure or to obtain approval for a zoning variance, to successfully comply with the building permit process for the work completed without a permit. The owner obtained approval from the Board of Variance on May 23, 2013, but has not submitted a building permit application.

Recommendation: The Manager, Bylaw & Licensing (Building Inspector) recommends that the Planning and Land Use Committee direct the Corporate Administrator to file a Notice on title in the Land Title Office in relation to the property located at 252 Richmond Avenue, legally described as Lot 13, Plan 2114, Section 19, Victoria, indicating that a resolution relating to this property has been made under the authority delegated pursuant to Section 57(3) of the *Community Charter* and the provisions of the *Property Maintenance Delegation Bylaw*, and advise that further information regarding this resolution may be inspected at the Legislative & Regulatory Services Department in Victoria City Hall.

The Chair opened the hearing at 10:30 a.m.

The Chair explained the recommendation that was before Committee.

The Chair asked if the property owner was present and if they had received notification of this hearing.

Mark Hayden (Manager, Bylaw & Licensing): The owner was in attendance but has elected not to stay for the hearing.

The Chair asked the City representative to provide an opening statement and to present evidence.

Mark Hayden (Manager, Bylaw & Licensing): After receiving a complaint, a Bylaw Officer attended the property and noted that a carport had been constructed. With further investigation it was found that no building permit for the construction was obtained and the property was against the *Zoning Bylaw* in regard to siting. The officer spoke to the owner and who was given two options; to either remove the roof or to get approval from the Board of Variance and to complete the building permit process.

The owner obtained approval from the Board of Variance on May 23, 2013 but a building permit and has not been applied for. Filing a Notice on Title is part of a graduated enforcement strategy intended to bring a property into compliance with the applicable bylaws and regulations. A Notice on Title provides incentive to the property owner to resolve the outstanding issues as it serves to warn lenders or prospective purchasers that work has been done without a permit. The notice can be easily removed once the property has been brought into compliance.

The Chair asked if Committee members had any questions.

The Chair asked if there were any further comments.

The Chair closed the hearing at 10:34 a.m.

Action: Councillor Alto moved that Committee direct the Corporate Administrator to file a Notice on Title in the Land Title Office in relation to the property located at 252 Richmond Avenue, legally described as Lot 13, Plan 2114, Section 19, Victoria, indicating that a resolution relating to this property has been made under the authority delegated pursuant to Section 57(3) of the *Community Charter* and the provisions of the *Property Maintenance Delegation Bylaw*, and advise that further information regarding this resolution may be inspected at the Legislative & Regulatory Services Department in Victoria City Hall.

CARRIED UNANIMOUSLY 14/PLUC044

Action: Councillor Madoff moved that the Planning & Land Use Committee meeting of February 20, 2014, be adjourned at 10:36 a.m.

CARRIED UNANIMOUSLY 14/PLUC045

Mayor Fortin, Chair