A G E N D A

1. INTRODUCTION OF NEW MEMBERS
2. ELECTION OF CHAIR AND VICE-CHAIR
3. ANNUAL REVIEW OF BULLYING AND HARRASSMENT POLICY (attached)
4. ADOPTION OF AGENDA
5. ADOPTION OF MINUTES
   December 11, 2018 (attached)
6. NEW BUSINESS
   a) DVP00446 – Development Variance Permit application for 9738 Delcliffe Road
7. INFORMATION ITEMS
   a) An update of APC related items discussed at the January 7th and 21st, 2019 will be provided.
8. NEXT MEETING
   The next meeting is tentatively scheduled for Tuesday, February 12th, 2019.
9. ADJOURNMENT
**Corporate Policy**

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**RELATED POLICIES**

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**APPROVALS**

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POLICY
The policy of the City of Vernon is to provide and maintain a workplace that is free from
discrimination, bullying and harassment, not only in relation to the specific conduct
prohibited by the British Columbia (BC) Human Rights Code, but regarding any form of
personal bullying harassment which may reasonably cause embarrassment, insecurity,
discomfort, offence or humiliation to another person or group.

The City of Vernon is committed to a professional working environment where employees,
contractors, elected officials, committee volunteers, and students working on behalf of the
City or present within the City’s facilities and programs, are treated with respect and
dignity.

This Policy will apply to the resolution of all internal informal or formal complaints brought
forward or filed pursuant to this Policy.

The procedures set out within this Policy will also apply to any and all City of Vernon
investigations conducted in response to external discrimination/harassment/bullying
complaints filed with WorkSafe BC, the Human Rights Tribunal or otherwise.

DEFINITIONS

Parties

Parties are the Complainant(s) and Respondent(s) directly involved in a Complaint and
may include: employees (unionized and excluded), contractors, elected officials,
committee volunteers, and students.

Complainant(s)

Complainant(s) are those individuals making a Complaint and seeking recourse in relation
to this Policy.

Respondent(s)

Respondent(s) are those individuals alleged to have violated this Policy.

Bystanders

Bystanders are third parties who have witnessed behaviour that, in their view, potentially
constitutes a violation of this Policy. Bystanders should report their concerns in
accordance with Step 2 of the informal processes set out below.

Bystanders are not Parties to a Complaint. However, they may be interviewed as
witnesses in the event there is a formal investigation into their concerns.
Witnesses

Witnesses are individuals who have direct knowledge of or involvement in any matter or incident that potentially relates to a Complaint brought forward or filed pursuant to this Policy.

Complaint

A concern or Complaint regarding any of the potential behaviour as defined below that requires a solution that is brought forward for the purposes of obtaining a resolution.

Prohibited Grounds

Conduct or commentary that is based, in whole or part, on any of the following 13 grounds: race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or unrelated criminal conviction.

Respectful Conduct

Respectful workplace conduct incorporates courtesy, civility, consideration, and compassion. It is an approach which actively respects individuals by avoiding unnecessary behaviours which would reasonably be considered to have a negative impact on others. It involves taking responsibility for one’s behaviour/conduct in the workplace.

A workplace disagreement or difference of opinion is not by definition disrespectful. The manner in which a disagreement is described, discussed or resolved will determine whether or not the conduct is respectful.

Examples of Respectful vs. Disrespectful Behavior

Violations of this Policy will be determined on an objective and case-by-case basis, having regard to the overall circumstances of each Complaint, including the particular timing and context of the event(s) in question. This commonly will be determined after receiving information from the Parties and Witnesses. However, for illustrative purposes only, some examples of respectful versus disrespectful behaviour could include the following:

- Quiet and calm communication which focuses on the issues rather than personal characteristics of the individuals involved vs. loud, profane, name-calling, and abusive language that may also focus on personal characteristics.

- Expressing and resolving disagreement in a calm and professional manner vs. insulting or belittling others through personal attacks, sarcasm or through non-verbal behaviour that may include repetitive eye-rolling, loud sighing, disrespectful
• Addressing issues and concerns regarding work performance or misconduct in a confidential, discreet manner through responsible managers vs. engaging in gossip, rumours, speculation or criticism of an individual to others or discussing issues in front of individuals who do not need to be a part of the discussion.

• Sharing information required to deliver services effectively vs. repeatedly ignoring questions or requests for information or deliberately failing to provide necessary/helpful information.

• Responding to on-call pages in a timely fashion vs. not being accessible or responding to pages when on-call.

• Written communication made in a respectful professional manner vs. unprofessional comments made about colleagues or co-workers.

Discrimination

Discrimination is adverse differential treatment of an individual or group, whether intended or not, on the basis of race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or unrelated criminal conviction. Discrimination of this nature imposes burdens or obligations on an individual or group that serves no work-related function. It is important to note that such conduct is not only a breach of this Policy; it may also be a breach of the BC Human Rights Code.

Discriminatory Harassment

Discriminatory harassment is a form of discrimination and is also contrary to the BC Human Rights Code. Discriminatory harassment is abusive, unfair, offensive, or demeaning treatment of or disrespectful/disruptive conduct towards a person or group of persons related to their race, colour, ancestry, place of origin, political belief, religion, marital status, family status, physical or mental disability, sex, sexual orientation, age or unrelated criminal conviction that a reasonable person would know or ought to know or would:

• have the effect of interfering with an individual’s work or participation in work related activities; or
• create an intimidating, hostile or offensive environment for work or participation in a work-related activity.
**Examples of Discriminatory Harassment:**

- Teasing, joking, taunting, insulting or criticizing a person, directly or indirectly, verbally or in writing, based on his or her prohibited grounds (e.g. race, gender, age). This may include commentary regarding their ability to communicate clearly, physical appearance, work style, and level of intelligence.

**Sexual Harassment**

Sexual harassment is disrespectful/disruptive conduct of a sexual nature made by a person who knows or ought to reasonably know that such conduct or comment is unwanted or unwelcome; or an expressed or implied promise of a reward for complying with a request of a sexual nature; or an expressed or implied threat of reprisal for refusal to comply with such a request; or disrespectful/disruptive conduct of a sexual nature which is intended or reasonably would be known to create an intimidating, hostile or offensive environment.

**Examples of Sexual Harassment include:**

- verbal abuse or threats of a sexual nature;
- unwelcome remarks, jokes, innuendoes or taunting of a sexual nature;
- displaying of pornographic or other offensive pictures;
- unwelcome and/or repeated sexual invitations or requests;
- leering or other inappropriate sexually oriented gestures;
- unnecessary physical contact such as: touching, patting or pinching;
- sexual assault (this may also be a criminal matter);
- negative comments that are gender-based, and
- repeated behavior that a person has objections to and is known or should reasonably be known to the offender as being unwelcome.

**Personal Harassment**

Personal harassment is any behavior, including disrespectful/disruptive conduct by a person directed against another person that a reasonable person would know or ought to know would cause offence, humiliation or intimidation, where the conduct is not carried out in good faith and serves no legitimate work-related purpose.

**Examples of Personal Harassment:**

- swearing, yelling, or making derogatory gestures or comments to or about another individual;
- engaging in embarrassing practical jokes, ridicule, or malicious gossip;
- verbal or physical threats or physical assault.
Bullying

Bullying is any repeated or systematic physical, verbal or psychological behaviour including disrespectful/disruptive behavior, which would be seen by a reasonable person as intending to belittle, intimidate, coerce or isolate another person.

Note: Personal harassment and/or bullying does not include social banter in the workplace that is objectively viewed as acceptable in tone and content. Nor does it include actions occasioned through the good faith management of the employment relationship, including decisions related to hiring, selection, performance evaluations, and progressive corrective discipline, provided that such decisions are made and implemented in a manner that is respectful of those involved.


Methods of Communication

Inappropriate communication that may violate this Policy may be transmitted in person, on the phone, and in writing, through email, texts, Facebook, Twitter and other social media messaging, and otherwise. Potential violations may consist of inappropriate communication made to a person and/or communication made about a person to others.

Fairness

Parties, Bystanders, and Witnesses have a right to fair treatment in the consideration and adjudication of complaints and concerns under this policy. Fair treatment includes the right to:

- bring forward their concerns pursuant to processes within the Policy within a timely manner;
- being informed in a timely manner of Complaints made against them;
- an impartial and objective consideration and evaluation of the circumstances, through informal or formal intervention;
- confidentiality to the extent possible in the circumstances, including the avoidance of gossip, rumours and speculation by Party(ies), Witness(es) or others within the City;
- protection to any Party(ies) or Witness(es) from retaliation for participation in processes under this Policy
- being effectively informed of the outcome of any formal intervention;
- union representation for unionized staff; and
- other representation, for excluded staff.
Confidentiality

All Bystanders, Witnesses, and Parties involved in a Complaint or in the informal/formal resolution of a Complaint, are expected to keep matters related to a Complaint confidential. This includes managers and supervisors who are privy to the Complaint or Complaint resolution process.

An established breach of confidentiality regarding a Complaint or Complaint resolution process shall be considered an independent violation of the Policy (regardless of the merits or conclusions regarding the Complaint) and may result in discipline.

Any allegation or Complaint under this Policy will be considered personal information supplied in confidence for the purpose of Section 22(2) (f) of the Freedom of Information and Protection Privacy Act. The names of those involved in the Complaint shall not be disclosed to any person except where necessary for the purpose of fairly investigating and determining the outcome of the complaint.

The substance of investigative reports and the substance of meetings held by those in authority to make decisions in relation to a Complaint, regardless of whether it is substantiated, will be protected from disclosure to third parties in accordance with Section 19 of the Freedom of Information and Protection Privacy Act.

Complaint Resolution

Complainants are encouraged to resolve Complaints/concerns with others as soon as they arise using the informal process set out below, unless it is clearly inappropriate in all of the circumstances.

Without limiting its application, the informal resolution process is commonly used in circumstances where the alleged concern/conduct appears to be: (a) non-repetitive (a ‘one-off’ discussion/interaction); and (b) relatively minor in severity or seriousness, considering its content, potential impact on the individual and/or the safety/health of the overall organization.

Although the Complainant(s) may indicate that he/she prefers the informal process, the City of Vernon may at any time exercise its discretion to initiate a formal process based upon its overall review of the circumstances.
PROCEDURES

Informal Processes

Step 1 – Resolution (Informal Conversation)

Wherever reasonable, the Complainant(s) should address the person with whom he/she is having difficulty (the Respondent(s)) in a direct and discreet (confidential) manner as soon as possible following the incident.

If the Complainant(s) is not comfortable taking this step, or if the Complainant(s) has done so without success, then the Complainant(s) should proceed to the next step.

Step 2 – Resolution (Manager/Designate Involvement)

The Complainant(s) or Bystander(s) should approach his/her manager or director with his/her concerns including particular examples of inappropriate statements or verbal or non-verbal behaviours by the Respondent(s), dates, times, witnesses, and as much detail as possible. This should be done as soon as reasonably possible following the incident/behaviours. The manager or director should contact Human Resources.

If the Complainant(s) or Bystander(s) is uncomfortable approaching any of these individuals, or if the individuals are the Respondent(s) or if the individuals are perceived by the Complainant(s) to be part of the problem, then the Complainant(s) or Bystander(s) can speak to Human Resources.

Human Resources will review the concern and where appropriate should directly or indirectly facilitate a resolution in a manner that it considers most effective and reasonable considering all of the circumstances.

Interventions by managers or directors, Human Resources in Step 2 may include one or more of the following possibilities (or other similar interventions):

- meeting separately with each person involved in the concern to discuss and investigate the situation;
- meeting together with the persons involved to facilitate a discussion aimed at understanding and resolving the issue in a practical, non-punitive manner or mediating a solution that works for all Parties;
- coaching one or more of the Parties (verbally or in writing) on workplace expectations regarding appropriate workplace behavior or performance;
- recommending or applying progressive discipline when warranted i.e. based on the findings and severity of the misconduct found;
- engaging the support of Human Resources to assist with Step 2 processes, or
- engaging an external third party facilitator or mediator to work with the Parties and others involved to achieve a confidential, practical and mutually agreeable
resolution to outstanding concerns without making findings against any Parties (Mediation).

The above noted intervention/preliminary investigation should be completed on or before 30 days after the final interview. The time-lines will be reasonably extended at the request of the lead investigator based on a number of factors, including extenuating circumstances or complexities surrounding a particular investigation/intervention.

If, at the outset of or at any time during the Step 2 process, the individual who receives the reported Complaint/concern concludes that, given the severity of the behaviours alleged in the Complaint, including their potential physical or psychological impact on the Complainant(s) or other employees at the City of Vernon, a formal investigation is warranted, then the matter should be immediately referred to Step 3 of the Policy for investigation and resolution.

**Formal Processes**

**Step 3 – Investigation**

The formal process involves an objective investigation of a written Complaint/concern that has been brought forward to Human Resources, the Complaint.

Once the Complaint has been received by the immediate supervisor, manager, or Human Resources representative; the Complainant(s) will be asked to complete a formal Complaint form. This form seeks the following details:

- Complainant(s) name and position;
- name and position(s) of the Respondent(s);
- address or location where the incident occurred;
- detailed summary of all of the specific incidents or examples of behavior that have led to the filing of the Complaint;
- date(s) and time of each incident;
- names of the individual(s) alleged to have engaged in the unacceptable conduct;
- details of the Complaint(s) – that is, the specifics of what was said or done to the Complainant(s) to have triggered the Complaint;
- identity of any potential witnesses;
- impact of the behaviour on the Complainant(s); and
- steps taken, though Steps 1 or 2 of the Policy, to address the Complaint and the outcome of those processes.

The Complainant(s) must sign and date the Complaint and send to the designated individuals set out above by either:

- envelope marked **Confidential**; or
scanning the signed complaint and sending it via email indicating Confidential.

The filing of a formal Complaint does not mean that a formal investigation will automatically be conducted. The manner in which a Complaint is resolved will be determined by the City, following consultation with the Parties, and will depend on a number of factors, including the nature, extent and severity of allegations brought forward by the Complainant(s) and the history of circumstances leading up to the filing of the formal Complaint.

Following this review, the individual(s) who receives the Complaint may take one of the following steps:

- refer the matter back to Step 2 to resolve the matter through informal processes; or
- assign an internal or external Investigator to conduct a formal investigation of the Complaint.

**Appointment of Investigator**

Factors that the City will consider in determining whether to retain an internal or external investigator may include: the overall complexity of the facts/law related to the Complaint; the Parties to the Complaint, the anticipated length of time necessary to conduct the investigation; the potential severity of the outcome(s) of the investigation in relation to the Respondent(s) should the Complaint be substantiated; and any other relevant circumstances.

Internal investigators shall have sufficient prior experience and/or training in conducting workplace investigations and shall have no previous involvement in the facts/circumstances giving rise to the Complaint.

External investigators shall be appointed by the Director, Human Resources, in consultation with the Chief Administrative Officer (CAO) and at his/her discretion.

**Time Limits**

The time limit for making a formal complaint is within six (6) months from the date of the last incident. This is consistent with the time limits noted in the BC Human Rights Code.

**Interim Measures**

It may be necessary to take interim measures, such as transfers/leaves/restrictions on contact or communication while a Complaint is being investigated. Such measures will be precautionary, not disciplinary.
Mediation during the Formal Process

Where appropriate, mediation is available to Parties to try to resolve the Complaint at any point during the process. Any ongoing investigation will be suspended during mediation and will resume if mediation is unsuccessful.

Unless explicitly agreed to by the Parties in writing, the investigator shall not act as the mediator and shall have no communication with the mediator regarding the Complaint at any time.

Withdrawal of a Formal Complaint

At any time during the course of an investigation of a formal Complaint, the Complainant(s) may choose to withdraw his or her Complaint without penalty so long as the Complaint was filed in good faith. In such circumstances, there should be no indication of the complaint in the personnel files of the Complainant(s) or Respondent(s).

The Investigation Process and Role of the Investigator

The investigator will take a reasonable amount of time to conduct the investigation to interview the Parties and relevant Witnesses and obtain and review any potentially relevant documents.

The investigator will prepare a report of investigation outlining his/her findings and conclusions and submit the report to the relevant Human Resources Representative.

The findings and conclusions may relate to both the conduct at issue and the medical/emotional/financial impact of the conduct on those involved.

The investigator may include recommendations in the report of investigation, where applicable and if requested by the City.

The City will advise both the Complainant(s) and Respondent(s) of the findings and conclusions of the investigation and any recommendations related to their conduct, through a written summary of the report. Other Parties involved in the complaint (Witnesses and others) will be advised that the investigation has been concluded (without being provided any further information).

Appeals

Within 15 days of receiving a summary of the report of investigation, either Party(ies) may file an appeal with the City.
The appeal shall be based upon and restricted to, specific concerns related to the investigative process. The appeal shall not constitute an avenue in which to re-investigate the Complaint.

The CAO shall review the report of investigation to evaluate the fairness of the process and has sole discretion to take further action based upon his/her review.

The decision of the CAO is final.

Complaints involving City’s Chief Administrative Officer, the Mayor or Members of City Council

External Investigator

Complaints brought under this policy against the Chief Administrative Officer, the Mayor or Members of City Council shall be presented to an external investigator with expertise regarding matters covered under this policy.

The external investigator will be retained by and will report directly to the Mayor and Chief Administrative Officer in cases involving the Members of Council. In cases involving the Mayor, the external investigator will be retained by and will report directly to the Chief Administrative Officer. In cases involving the Chief Administrative Officer, the external investigator will be retained by and will report directly to the Mayor.

Outcomes

General Outcomes

Once the appeal period has expired or the appeal has been concluded, the City will inform the Complainant(s) and Respondent(s) of its final implementation plan based upon the report of investigation.

Part of the implementation plan may include processes similar to those set out in Step 2, in order to help rebuild/repair the relationships.

Outcomes that may be included in the implementation plans include one or more of the following:

- oral and/or written apology from the parties;
- adjustments to the workplace environment;
- coaching of expectations – verbal or in writing;
- medical assessment referrals;
- training;
- transfers to a different department; and/or
• institution of formal discipline and disciplinary processes, up to and including suspension/removal from premises for contractors, visitors and volunteers; and
• mediation.

Discipline in accordance with Corporate Policy may arise if such action is warranted based on the severity of the findings/conclusions of the investigation.

The Complainant(s) and Respondent(s) will only receive information relevant to their role in the final implementation plan; they will not be privy to recommendations related to the other Party(ies).

Outcomes

City management will determine and implement specific consequences and remedies that are reflective of and relevant to the investigative findings/conclusions within a reasonable period of time after receipt of the report of investigation.

Any Party(ies) who disagrees with the nature/extent of action or disciplinary action imposed by the City as a result of the investigation should access the usual grievance/appeal process set out in the relevant collective agreements and City of Vernon policies.

Other Important Points

Malicious/Vexatious/Frivolous Complaints of Misuse of the Policy

In circumstances where a Complaint is found to have been made in bad faith or determined to be vexatious, frivolous or a general misuse of the Policy, the Complainant(s) may face similar outcomes as a Respondent(s) as set out above (ie. Interventions ranging from coaching to formal disciplinary intervention).

This section of the Policy may apply to filed Complaints as well as any circumstances in which individuals repeatedly threaten to file Complaints against others in order to achieve similar ends.

A Complaint, or threatened Complaint, will be deemed to have been made in bad faith when, considering all of the circumstances surrounding the complaint including its timing and context, the Complaint was found to have been made solely in an attempt to:

• influence or overturn decisions related to the Complainant’s employment;
• intimidate, threaten or cause trouble to the Respondent(s);
• create a hostile or intimidating workplace environment for others, including the Respondent(s); or
• create a potential personal benefit or entitlement to the Complainant(s).

Misuse of the Policy may include unreasonable, repetitive filing of Complaints or concerns that are consistently found to be unsubstantiated.

In circumstances where a Complaint has been found to be malicious, vexatious or a misuse of the Policy, the Respondent(s) may be awarded the same remedies as those available to Complainant(s) as set out above (interventions ranging from an apology to compensation for established losses).

**Unsubstantiated Complaints**

If the investigator finds insufficient evidence to support the Complainant’s allegations and finds that there has been no misuse of the Policy or bad faith in filing the Complaint, no action will be taken in relation to the complaint. There will be no record of the Complaint on the Respondent’s file.

**Consequences of Retaliation**

Any established retaliation against any Party(ies), Bystander(s) or Witness(es) involved in an informal or formal resolution process shall be considered an independent violation of the Policy (regardless of the merits or outcome of the initial concern or Complaint) and shall result in discipline commensurate with the severity of the conduct.

**Multiple Proceedings**

This Policy is in addition to and not in substitution for any rights an individual may have to pursue action, whether under collective agreements, policies including any applicable legislation, including human rights legislation.

If at any time a staff member elects to initiate other legal proceedings or if the staff member takes any steps outside of those contemplated in this policy, the City may discontinue any procedures taken under this policy as a result of the Complaint (depending on a consideration of all of the circumstances).

Potentially criminal behaviour such as an assault, significant threats, or attempts at extortion shall be directly referred to the RCMP by the City upon receipt of a Complaint of this nature.
THE CORPORATION OF THE CITY OF VERNON

MINUTES OF ADVISORY PLANNING COMMITTEE MEETING

HELD

TUESDAY, DECEMBER 10, 2018

PRESENT:

VOTING
Mark Longworth, Chair
Joanne Georgeson
Monique Hubbs-Michiel
Ian Murphy
Don Schuster
Jamie Paterson
Doug Neden
Vicki Topping
Mayor Cumming

NON VOTING
Councillor Mund
Corbin Kelley, Youth Member

ABSENT:
Lisa Biggs
Phyllis Kereliuk

STAFF:
Roy Nuriel, Economic Development Planner
Ed Stranks, Manager, Engineering Development Services
Janice Nicol, Legislative Committee Clerk

ORDER
The Chair called the meeting to order at 4:00 p.m.

ADOPTION OF AGENDA
Moved by Jamie Paterson, seconded by Joanne Georgeson;

THAT the agenda of the Advisory Planning Committee meeting for Tuesday, December 10, 2018 be adopted.

CARRIED.

ADOPTION OF MINUTES
Moved by Monique Hubbs-Michiel, seconded by Doug Neden;

THAT the minutes for the Advisory Planning Committee meeting of Wednesday, October 10, 2018 be amended as to reflect that all resolutions are from the Advisory Planning Committee and not Council or Staff;
AND FURTHER, that the minutes be adopted as amended.

CARRIED.

NEW BUSINESS:

The Advisory Planning Committee reviewed the Development Variance Permit application DVP #00444 for 5350 Anderson Way. The Economic Development Planner reviewed the application.

The following points were noted by the Committee:

- Clarification of the attachments that will form the Development Variance Permit;
- Concerns about reducing the on-site loading spaces from four to two;
- Concern that Vernon does not currently have a Conference Centre;
- Clarification of location and length of pedestrian walkway abutting Highway 97;
- It was noted that there isn’t designated tourist bus parking, only a loading area;
- Concern that the vehicle access is located to the north on adjacent property;
- Concern about the location of the handicapped parking spaces – they are currently located at the other end of the parking lot at the access to the hotel and not near the restaurant entry.

Moved by Jamie Paterson, seconded by Vicki Topping;

THAT the Advisory Planning Committee recommends that Council support Development Variance Permit Application #DVP00444 to vary the following sections of Zoning Bylaw #5000 in order to construct a six storey hotel on Lot A, Plan KAP88388, DL 38, ODYD (5350 Anderson Way):

a) to vary the minimum number of required on-site loading spaces from four spaces to two spaces (Section 7, Table 7.2); and

b) to vary the minimum front yard landscape buffer on the north end of Anderson Way from 3.0m to 2.29m for approximately 7.3m, and from 3.0m to 1.3m for the remainder of the front yard (Section 13.1.8);
AND FURTHER, that the Advisory Planning Committee recommends that Council support of DVP00428 is subject to the following:

a) That the site, elevation and landscaping plans generally noted as Attachments 1 to 5 inclusive in the report titled “Development Variance Permit Application for 5350 Anderson Way” and dated December 4, 2018 by the Economic Development Planner be attached to and form part of DVP00444 as Schedule ‘A’.

CARRIED.

INFORMATION ITEMS:
The Economic Development Planner reviewed the information for APC related items discussed at the November 13th, 26th, and December 10th, 2018 Council meeting as follows:

November 13th, 2018

- DVP# 431 for 3904 29th Street for a four-plex with 2 two bedroom, 1 two bedroom and den and 1 three bedroom units – issued once all conditions satisfied.
- DVP# 433 for 5350 Silver Star Road for two duplexes on four bareland strata lots - issued once all conditions satisfied.
- DVP# 435 for 5400 Okanagan Avenue for a 34 unit townhouse development - issued once all conditions satisfied.
- DVP# 441 for 1905 & 2001 15th Avenue for a 48 unit townhouse development - issued once all conditions satisfied.
- DVP# 443 for 6533 Orchard Hill Road for a second floor addition above an existing garage for a secondary suite - issued once all conditions satisfied.
- Public Hearing for chiropractor clinic at 2907 26 Street – third reading granted.

November 26, 2018

December 10, 2018

- 3607 27 Street Rezoning Bylaw #5714 adopted.
- 7250 Hitchcock Road Rezoning Bylaw #5728 – PH held and third reading granted.
- Zoning Text amendment for Cannabis – adopted.

NEXT MEETING

The next regular meeting of the Advisory Planning Committee is tentatively scheduled for Tuesday, January 8, 2019.

ADJOURNMENT

The meeting of the Advisory Planning Committee adjourned at 4:38 p.m.

CERTIFIED CORRECT:

___________________________Chair
SUBMITTED BY: Jing Niu
Environmental Planning Assistant, Long Range Planning & Sustainability

COUNCIL MEETING: REG ☒  COW ☐  I/C ☐
COUNCIL MEETING DATE: February 25, 2019
REPORT DATE: January 16, 2019
FILE: DVP00446

SUBJECT: DEVELOPMENT VARIANCE PERMIT APPLICATION FOR 9738 DELCLIFFE ROAD

PURPOSE:

To review Development Variance Permit application DVP00446 to vary the minimum riparian area setback in order to construct a two storey single family dwelling within the footprint of an existing one storey cabin and patio within 15 meters of Okanagan Lake High Water Mark (HWM).

RECOMMENDATION:

THAT Council not support the Development Variance Permit application submitted by Ryan Molitwenik of Heartwood Homes Ltd. to vary the minimum riparian area setback as set out in Section 4.13.2 of Zoning Bylaw #5000 from 15.0m from the High Water Mark of Okanagan Lake to 0.0m from the High Water Mark of Okanagan Lake in order to construct a two storey single family dwelling on Lot 21, Plan 10667, Sec 4, Tp 13, ODYD (9738 Delcliffe Road).

ALTERNATIVES & IMPLICATIONS:

1. THAT Council support Development Variance Permit application submitted by Ryan Molitwenik of Heartwood Homes Ltd. to vary the minimum riparian area setback as set out in Section 4.13.2 of Zoning Bylaw #5000 from 15.0m from the High Water Mark of Okanagan Lake to 0.0m from the High Water Mark of Okanagan Lake in order to construct a two storey single family dwelling on Lot 21, Plan 10667, Sec 4, Tp 13, ODYD (9738 Delcliffe Road), subject to the following:1) the site and elevation plans, intended to illustrate the general form, character and massing of the proposed residence and noted as Attachment 1 in the report titled “Development Variance Permit Application for 9738 Delcliffe Road” and dated January 16, 2019 by the Environmental Planning Assistant be attached to and form part of DVP00415 as Schedule ‘A”; 2) a Water Sustainability Act application; 3) a legal survey to determine if any works are below the present natural boundary and if found to be so, an approval of a Crown Land Foreshore Tenure including ensuring public access if required by the Province; and 4) Registration of a Section 219 Restrictive Covenant (Flooding Covenant) on the subject property, that would indemnify and save the City harmless in the event of a flood or damage caused by proximity to high water and related wave action.

Note: Based on concerns identified with the proposed application related to flood risks, geotechnical stability, and riparian impact, support of the subject application could subject the City to additional liability and costs associated with flood protection and known flood risks.
ANALYSIS:

A. Committee Recommendations:

At its meeting of January 22, 2019, the Advisory Planning Committee passed the following resolution:

"THAT Council ......................"

B. Rationale:

1. The subject property, as shown on Figure 1, is an irregular shaped lakeshore property located adjacent to Delcliffe Road. An existing single storey cabin and patio is located within 15 meters of Okanagan Lake High Water Mark (HWM) on the subject property. The site is located adjacent to Lake Access Site #39 - Delcliffe Road, which was upgraded in 2017 to provide riparian enhancements and seven on-street parking stalls.

2. The applicant is proposing to construct a two storey single family dwelling on the footprint of an existing one storey cabin and patio within 15 metres of Okanagan Lake High Water Mark. Attachment 1 illustrates the elevation profile of the proposed two storey dwelling.

3. The subject application is to vary Zoning Bylaw #5000's no-development riparian area setback from the High Water Mark of Okanagan Lake (Section 4.13.2) from 15.0 metres to 0 metres. The Local Government Act allows for existing non-conforming structure to be maintained as long as the proposed works involve no further contravention of bylaws and that use and density conforms to land use. However, as the proposed development would require an extension of the existing single storey building envelope into a two storey structure, the non-conformance would be considered to be worse than the existing situation.

4. The applicant has provided a statement from a Qualified Environmental Professional (QEP), as shown in Attachment 2, identifying exemptions from the Riparian Areas Regulation and additional requirements that may be applicable under the provincial Water Sustainability Act.

5. The applicant has provided a statement from a Professional Engineer outlining general geotechnical considerations for the proposed development, as shown in Attachment 3.

6. As shown in Figures 2 and 3, the site of the existing structure, and consequently the proposed structure, is immediately adjacent to the 343 m elevation Okanagan Lake High Water Mark (Figure 2). Site visit photos from May 2017 shows Okanagan Lake water level touching base of the existing structure (Figure 3).
7. Administration does support the requested riparian setback variance at this time for the following reasons:

a. The proposed structure would be located on an existing retaining wall at or immediately adjacent to 343 m elevation Okanagan Lake High Water Mark (HWM) and may be subject to flooding during full-pool events. The statement provided from Interior Testing Services LTD. noted that erosion protection of the existing concrete retaining wall appears warranted, which would require further disturbance to the surrounding areas.

b. Council provided a conditional variance approval in 2016 to the applicant to remove the existing structure (cabin) and construct a two story single family dwelling away from the High Water Mark and mostly outside of the Streamside Protection and Enhancement Area (DVP00347). The approved layout would have provided separation between the dwelling and High Water Mark, and allows for a reasonable single family dwelling and parking on-site. A site plan as per DVP00347 is provided in Attachment 4.

In addition, Council approval of Development Permit Application DVP00347 had accommodated a new driveway location for the applicant and resulted in a loss of two parking stalls from that proposed in the original Capital Project design for Lake Access #39 in order to accommodate the applicant's original design. In 2015, Council supported funding to upgrade Delcliffe Road in this area as part of the Lake Access #39 development.

c. The project has not demonstrated any riparian improvements and enhancements based on a Qualified Environmental Professional's (QEP's) recommendation.

d. The Provincial Ministry of Forests, Lands, Natural Resource Operations and Rural Development has also provided responses based on the proposed development. The Ministry does not support the application and has raised concerns regarding the establishment of the current Present Natural Boundary, the status of a Water Sustainability Act application, flood concerns regarding water levels as seen 2017 and 2018, and negative riparian impacts (Attachments 5 and 6).
C. **Attachments:**

- Attachment 1 – Elevation Profile of the Proposed Development
- Attachment 2 – Qualified Environmental Professional’s Statement
- Attachment 3 – Professional Engineer’s Statement
- Attachment 4 – DVP00347 Site Plan
- Attachment 5 – Provincial Referral Response 1
- Attachment 6 – Provincial Referral Response 1 - Ecosystems

D. **Council’s Strategic Plan 2015 – 2018 Goals/Deliverables:**

The subject development variance permit application involves the following objectives in Council’s Strategic Plan 2015 – 2018:

> Support sustainable neighbourhoods by implementing the Official Community Plan.

E. **Relevant Policy/Bylaws/Resolutions:**

1. The subject property is designated RLD – Residential Low Density on the land use map in the Official Community Plan (OCP).

2. The subject property is zoned R6 – Lakeshore Residential as per Zoning Bylaw #5000. The location of the proposed house meets the R6 zoning district setbacks. However, it does not meet the minimum 15.0m riparian setback as set out in Section 4.13.2 of Zoning Bylaw #5000. The subject development variance permit application proposes to reduce the riparian area setback to 0.0m.

3. Policies within the Environmental Management Areas Strategy of the Official Community Plan generally encourage riparian areas protection and enhancement where possible.

4. At its Regular Meeting of April 25, 2016, Council passed the following resolution:

> “THAT Council support the development variance permit application submitted by Ryan Molitwenik of Heartwood Homes Ltd. to vary the minimum riparian area setback as set out in Section 4.13.2 of Zoning Bylaw #5000 from 15.0m from the High Water Mark of Okanagan Lake to 11.0m from the High Water Mark of Okanagan Lake in order to construct a single family dwelling on Lot 21, Plan 10667, Sec 4, Tp 13, ODYD (9738 Delcliffe Road), subject to the following:

   a) That the Riparian Areas Regulation (RAR) assessment report dated January 12, 2016 by Valhalla Environmental Consulting Inc. be attached to and form part of DVP00347 as Schedule ‘A’.

AND FURTHER, that Council support the development variance permit application submitted by Ryan Molitwenik of Heartwood Homes Ltd. to vary Section 5.02 of Subdivision and Development Servicing Bylaw #3843 by reducing the offsite works required adjacent to Lot 21, Plan 10667, Sec 4, Tp 13, ODYD (9738 Delcliffe Road) to that consistent with the design completed by the City for the road works in this area and the applicant entering into a Works Contribution Agreement for the cost of those works.”

**BUDGET/RESOURCE IMPLICATIONS:**

N/A
Prepared by: Jing Niu
Environmental Planning Assistant

Approved for submission to Council:

Will Pearce, CAO
Date: ________________

X
SIgn er 1

Kim Flick
Director, Community Infrastructure & Development

X
Signer 2

REVIEWED WITH

☐ Corporate Services
  ☐ Bylaw Compliance
  ☐ Real Estate
  ☐ RCMP
  ☐ Fire & Rescue Services
  ☐ Human Resources
  ☐ Financial Services
  ☑ COMMITTEE: APC (Jan 22/19)
  ☐ OTHER:

☐ Operations
  ☐ Public Works/Airport
  ☐ Facilities
  ☐ Utilities
  ☐ Recreation Services
  ☐ Parks

☐ Current Planning
  ☐ Long Range Planning & Sustainability
  ☐ Building & Licensing
  ☐ Engineering Development Services
  ☐ Infrastructure Management
  ☐ Transportation
  ☐ Economic Development & Tourism

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October 22, 2018

Rob Smith
9738 Decliffe Rd.
Vernon BC, V1H 1K9

RE: Review of applicable environmental regulations for a proposed renovation project at 9738 Decliffe Rd. Vernon BC

Dear Mr. Smith,

At the request of Mr. Ryan Molitwenik of Heartwood Homes Ltd., Sage Environmental Consulting Ltd. (Sage) has carried out a review of applicable environmental regulation for a proposed renovation project at 9738 Decliffe Rd. in Vernon BC.

It is Sage’s understanding that the project is a renovation of a building on an existing foundation. The City of Vernon, Environmental Management Areas Strategy (EMA) specifies the following exemption to EMA requirements:

C. Exemptions

Applications for the following shall be exempt from the Permitting Requirements by District, above:

1. Renovations, repairs and maintenance to existing buildings and structures that are determined to be legally non-conforming under section 911 of the Local Government Act.

The Riparian Area Regulation (RAR) provides a similar exemption for reconstruction and repair of a building on an existing foundation with the following:

(2) This regulation does not apply to a development permit or development variance permit issued only for the purpose of enabling reconstruction or repair of a permanent structure described in section 911 (8) of the Local Government Act if the structure remains on its existing foundation.

We expect for this reason that the proposed building renovations will be exempted from assessment, mitigation and enhancement measures under the EMA, including the RAR and further, assessment for Environmentally Sensitive Areas.

The site of the existing structure for renovation is directly adjacent to the High-Water Mark (HWM) of Okanagan Lake. Works in and about a stream (lake), which includes works adjacent, are subject to the Water Sustainability Act (WSA). Notification of the works under the WSA should be made to the Province of British Columbia. The project is not expected to directly intersect the lake or HWM but should be carried out with due care and best management practices (BMPs). BMPs for work in and about a stream are published by the province and site-

1 City of Vernon, 2012, Environmental Management Areas Strategy
https://www.vernon.ca/sites/default/files/docs/bylaws/OCP/environmental_mgmt_strategy.pdf


Specific measures can be developed by a Qualified Environmental Professional (QEP) for submission with a notification. The Province requires 45 days for review and response to any notification of works in and about a stream. A link to provincial BMP measures published online is provided below.

I trust this letter meets your needs.

Sincerely,
Matthew Davidson,

[Signature]
Sage Environmental
Heartwood Homes  
128 Ravine Drive  
Coldstream, B.C. V1B 4C9

Attention: Mr. Ryan Molitwenik

Dear Sir:

Re: Proposed Renovation  
9738 Delcliffe Road  
Vernon, B.C.

As requested, Interior Testing Services Ltd. (ITSL) has reviewed the attached site plan for the above noted property and provides the following comments. Please find attached a copy of our two page “Terms of Engagement”, which has been previously signed and accepted.

We understand a renovation to the house is proposed which will effectively add a second storey to the existing building footprint. The existing foundation walls as well as retaining walls are to remain in place. The soils beneath the house are expected to consist of natural granular materials as observed within nearby shoreline areas of Okanagan Lake.

We further understand that the current house has performed well with no signs of distress or movement as a result of flooding conditions during seasonal high-water levels of Okanagan Lake. Based on the survey plan attached, it appears that the existing foundations are set higher than Geodetic Elevation 342.8 m, which we understand is typical full pool of Okanagan Lake. The main floor is set at least 1 m above, so that flooding of the house is expected to be of low risk.

While we understand the house is performing well, and the risk of flooding appears to be low, erosion protection of the existing concrete retaining wall appears warranted. ITSL can provide additional comment on rip rap/boulder sizes if necessary or required by your QEP.

If required, when construction commences, ITSL should be called out to visually assess the bearing conditions of any new foundation excavations and/or test holes. This is to give ITSL the opportunity to confirm the appropriateness of the design and to provide
recommendations for remedial measures, if necessary, as well as input for construction methodology.

We trust this is sufficient for your present needs. Please call if you have any questions.

Yours truly,

Interior Testing Services Ltd.

[Stamp]

Peter Hanenburg, P. Eng.
Attachment 4

LOT 21
PLAN 10667

DELCLIFFE ROAD

max driveway width of 7.5m

LAKE

OKANAGAN

DVP00347

HIGH WATER MARK
SPEA/LWD & Stability Zos
RAA/Shade Zos
Restoration Area
223 sq meter of Restoration
Proposed Development Area
65 sq meter of SPEA Encroachment
1:300 (distances in meters)

9738 Delcliffe Rd., Vernon BC
RAR - Development - Site Plan
Valhalla Environmental Consulting Inc
January 2016
Hello,
RE: DVP00446
As stated by Sage Environmental, “Works in and about a stream” (now called Changes in and About a Stream) require a Water Sustainability Act (WSA) application either a “Notification” or “Approval”.

Sage Environmental mentions work adjacent to High-water Mark (HWM) – this is no longer accurate. The WSA requires application for work below the surveyed “Present Natural Boundary” (PNB).

If the retaining wall falls below the PNB, they will require a Crown Land Foreshore Tenure. The retaining wall would also be required to be designed by a Qualified Professional (QP).

The proponent will require:
1) A Legal survey of the PNB to determine if their work falls below
2) A WSA application

The proponent also has a Crown Land Tenure for Specific Permission Private Moorage File 3406919 with a Disposition 901365 in good standing. If the retaining wall design includes access to the dock walkway, the proponent must ensure public access over the walkway is provided.

NOTE: I did not see Ministry of Forests, Lands, Natural Resource Operations and Rural Development “Ecosystems” listed in your referral list. I recommend you contact them.
Regards,
Mary Ellen

Mary Ellen Grant, BSc
Natural Resource Specialist
Okanagan Shuswap Resource District
Ministry of Forests, Lands, Natural Resource Operations and Rural Development
2501 14th Ave | Vernon, BC V1T 8Z1
Tel: 250-260-4621 | Fax: 250-549-5485
MaryEllen.Grant@gov.bc.ca

FrontCounter BC Website | Toll-Free Contact Centre: 1-877-855-3222
Tell us about your experience with FrontCounter BC: Complete an Online Comment Card

From: Liz Hanley
Sent: November 19, 2018 4:10 PM
To: 'info@socialplanning.ca'; BC Hydro Referral (design.ok@bchydro.com); 'arif.bhatia@canadapost.ca'; 'Referrals'; 'peter.hill@fortisbc.com'; 'Project Manager - BC Interior'; '911addressing@telus.com'; 'kelowna.engineering@telus.com'; FLNR DOS Referrals CSNR:EX; 'utilities@rdno.ca'
Subject: DVP00446 Referral Package (9738 Delcliffe Road)

Please find attached a Referral Package for the above referenced property.

Regards,

Liz Hanley
Secretary, Community Infrastructure and Development Services
Community Services Building, 3001 – 32 Avenue, Vernon, B.C., V1T 2L8
Office: 250.550.3582 | Fax: 250.545.5309 | www.vernon.ca

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December 11, 2018

City of Vernon
3400 30th Street
Vernon BC V1T 5E6

Attention: Jing Niu, Long Range Planning and Sustainability

Re: Development variance permit for 9738 Delcliffe Road, Vernon, B.C.

The Ecosystems Section of the Ministry of Forests, Lands, Natural Resource Operations & Rural Development has reviewed the above noted referral. We understand that the application is for a development variance permit to allow reconstruction of a home on an existing foundation at the high water mark of Okanagan Lake.

According to the Riparian Areas Regulation, this building scenario is not exempt from the RAR. The exemption reads:

>This regulation does not apply to a development permit or development variance permit issued only for the purpose of enabling reconstruction or repair of a permanent structure described in Section 911(8) [now Part 14, Division 14] of the Local Government Act if the structure remains on its existing foundation.

Part 14, Division 14 of the LGA states that:

> If a building or other structure, the use of which does not conform to the provisions of a bylaw under this Division is damaged or destroyed to the extent of 75% or more of its value above its foundations, as determined by the building inspector, it must not be repaired or reconstructed except for a conforming use in accordance with the bylaw."

Therefore, complete removal of the existing structure down to the foundation does not result in grand-parenting of existing siting.

Furthermore, and perhaps most importantly, the existing structure’s proximity to the high water mark makes re-building in the same location unsupportable. For the past two years water levels have exceeded 342.5 masl (342.686 masl in 2018, 343.251 masl in 2017),
and forecasters predict more such high water events in coming years\(^1\). As the report from Interior Testing Services Ltd. dated October 29, 2018 states, the existing foundation/retaining wall will likely require additional erosion protection. This means the rebuild would result in a larger footprint and more SPEA/lake encroachment than currently exists.

For the above reasons we are unable to support this development variance permit application and strongly recommend against it.

Thank you for the opportunity to contribute to this application. Please contact the undersigned if you cannot follow the recommendations provided in this referral response. It is the proponent’s responsibility to ensure his/her activities are in compliance with all relevant legislation, including the Water Sustainability Act and the Wildlife Act. The undersigned may be reached at Jamie.Leathem@gov.bc.ca or 250-490-8294 if you have further questions or require additional information.

Sincerely,

Jamie Leathem, M.Sc.
Ecosystems Biologist
For the Referral Committee

JL/cl