

Wednesday Oct 16th 2013

Place: DNV Hall 355 W. Queens Rd V7N 2K6

Time: 7:00-9:00pm

Chair: Val Moller – Woodcroft representative

Tel: 604-926-8063 Email: vmoller@telus.net

Notetaker: Sharlene Hertz

Regrets:

1. Order/content of Agenda

- a. Chair Pro-Tem Suggests:

2. Adoption of Minutes of Sep 18th

- a. <http://www.fonvca.org/agendas/may2013/minutes-sep2013.pdf>
Emails pertaining to draft minutes will be distributed at meeting.
- b. **Business arising from Minutes.**

3. Roundtable on “Current Affairs”

A period of roughly 30 minutes for association members to exchange information of common concerns.

a. EUCCA

Report on Edgemont Village refresh process

b. Seymour C.A.

John Hunter on poor paint lines on DNV roads

4. Old Business

a) Update: “Process” FONVCA Committee

Report of Sep 24th discussion on BC Economy by FONVCA Discussion Group. For details see ([attached](#))

<http://www.fonvca.org/agendas/oct2013/SFU-PUBLIC-SQUARE/>

b) Update: OCPIIC by Corrie Kost / Dan Ellis

5. Correspondence Issues

- a) **Business arising from 2 regular emails:**
Distributed with full package and posted on web-site
- b) **Non-Posted letters – 0 this period**
Distributed with full package but not currently posted on web-site.

6. New Business

- a) UN Report on Economic Well-being of Seniors
<http://www.helpage.org/global-agewatch/>
- b) Sep 16th COW video recording failure.
Topic: 2013 Transportation Investments & 2014 Transportation Priorities
<http://www.fonvca.org/agendas/oct2013/COW-sep16/>
now also available as
http://www.dnv.org/upload/documents/Council_Presentation/130916.pdf
- c) 1075 Prospect Ave Subdivision ([attached](#)) Council Deliberations: Report by Corrie Kost

7. Any Other Business

- a) **Update: Lions Gate Sewage Plant**
<http://www.metrovancouver.org/lionsgate> for feedback form go to
<http://www.metrovancouver.org/services/wastewater/engagement/LionsGate/Pages/LGWWTPPublicMeetingFeedbackForm.aspx>

8. For Your Information Items

a) Non-Legal Issues

- i. **News-Clips of the month Oct 2013**
<http://www.fonvca.org/agendas/oct2013/news-clips/>
- ii. **LGA may remove anonymous campaign contributions for 2014 Municipal Elections**
<http://www.vancouver.sun.com/business/technology/Metro+Vancouver+politician+turns+crowdfunding/8972216/story.html>
- iii. **CCEL Canadian Centre for Elder Law report on Assisted Living in BC (162 pages)**
http://bccli.org/wordpress/wp-content/uploads/2013/10/report_72_assisted-living-in-BC.pdf

IV. World Population Growth Rate (to 2050)

<http://upload.wikimedia.org/wikipedia/commons/7/75/WorldPopGrowth.png>
([attached](#))

v. National Academies Press (free publications)

Nonresponse in Social Science Surveys (18293)
http://www.nap.edu/catalog.php?record_id=18293
Climate and Social Stress: Implications for Security Analysis (14682)
http://www.nap.edu/catalog.php?record_id=14682

vi) 12 Features of Sustainable Community Development ([attached](#))
<http://www.cardinalgroup.ca/nua/ip/ip01.htm> - also worth reading are *Building Vibrant, Compact Communities* at www.metroplanning.org/uploads/cms/documents/dib.pdf and http://www.infed.org/community/sustainable_communities_and_neighbourhoods.htm and http://web.forestry.ubc.ca/calp/CALP_CommunityEnergyGuide.pdf ****

vii) Integrated Pest Management Regulation Consultation ([attached](#))
<http://www.env.gov.bc.ca/epd/codes/ipmr/index.htm>
http://www.env.gov.bc.ca/epd/codes/ipmr/policy_intentions_paper.pdf
<http://www.hc-sc.gc.ca/cps-spc/pubs/pest/decisions/rev2013-02/index-eng.php>

viii) **Expected Climate Changes by CNV ([attached](#))**
<http://www.cnv.org/Your%20Government/Living%20City/Climate%20Change%20Adaptation/Expected%20Climate%20Changes%20for%20the%20City>
However, some recent bad news: ([distributed at meeting](#))
<http://m.rsta.royalsocietypublishing.org/content/371/2001/20120294.full.pdf>

b) Legal Issues

- i) Stewart McDannold Stuart – 25th Anniversary
<http://www.sms.bc.ca/issue/?issue=84> ([attached](#))
Highly recommended read!

9. Chair & Date of next meeting

Wed. November 20th

FONVCA Received Correspondence/Subject
 16 September 2013 → 13 October 2013

LINK	SUBJECT
http://www.fonvca.org/letters/2013/16sep-to/Doug_Curran_17sep2013.pdf	The Village Centre as a new village / commercial space within the Village Centre / FONVCA minutes of June 20th
http://www.fonvca.org/letters/2013/16sep-to/Doug_Curran_20sep2013.pdf	Clarifying some points on Fullerton Streetscape Improvements Plan

Past Chair Pro/Tem of FONVCA (Jan 2010-present)

Notetaker

Oct 2013	Val Moller	Woodcroft rep.	Sharlene Hertz
Sep 2013	Eric Andersen	Blueridge C.A.	John Gilmour
Jun 2013	Peter Thompson	Edgemont & Upper Capilano C.A.	Cathy Adams
May 2013	John Miller	Lower Capilano Community Residents Assoc.	Dan Ellis
Apr 2013	Paul Tubb	Pemberton Heights C.A.	Sharlene Hertz
Mar 2013	Dan Ellis	Lynn Valley C.A.	Sharlene Hertz
Feb 2013	Diana Belhouse	Delbrook C.A. & SOS	John Miller
Jan 2013	Val Moller	Woodcroft & LGCA	Sharlene Hertz
Nov 2012	Eric Andersen	Blueridge C.A.	Cathy Adams
Oct 2012	Peter Thompson	Edgemont & Upper Capilano C.A.	Charlene Hertz
Sep 2012	John Hunter	Seymour C.A.	Kim Belcher
Jun 2012	Paul Tubb	Pemberton Heights C.A.	Diana Belhouse
May 2012	Diana Belhouse	Delbrook C.A. & SOS	John Miller
Apr 2012	Val Moller	Lions gate C.A.	Dan Ellis
Mar 2012	Eric Andersen	Blueridge C.A.	John Hunter
Feb 2012	Dan Ellis	Lynn Valley C.A.	John Miller
Jan 2012	Brian Platts	Edgemont & Upper Capilano C.A.	Cathy Adams
Nov 2011	Paul Tubb	Pemberton Heights	Eric Andersen
Oct 2011	Diana Belhouse	Delbrook C.A. & SOS	Paul Tubb
Sep 2011	John Hunter	Seymour C.A.	Dan Ellis
Jul 2011	Cathy Adams	Lions Gate C.A.	John Hunter
Jun 2011	Eric Andersen	Blueridge C.A.	Cathy Adams
May 2011	Dan Ellis	Lynn Valley C.A.	Brian Platts/Corrie Kost
Apr 2011	Brian Platts	Edgemont & Upper Capilano C.A.	Diana Belhouse
Mar 2011	Val Moller	Lions Gate C.A.	Eric Andersen
Feb 2011	Paul Tubb	Pemberton Heights ← Special focus on 2011-2015 Financial Plan	
Jan 2011	Diana Belhouse	S.O.S.	Brenda Barrick
Dec 2010	John Hunter	Seymour C.A. ← Meeting with DNV Staff on Draft#1 OCP	None
Nov 2010	Cathy Adams	Lions Gate C.A.	John Hunter
Oct 2010	Eric Andersen	Blueridge C.A.	Paul Tubb
Sep 2010	K'nud Hille	Norgate Park C.A.	Eric Andersen
Jun 2010	Dan Ellis	Lynn Valley C.A.	Cathy Adams
May 2010	Val Moller	Lions Gate C.A.	Cathy Adams
Apr 2010	Paul Tubb	Pemberton Heights	Dan Ellis
Mar 2010	Brian Platts	Edgemont C.A.	Diana Belhouse
Feb 2010	Special		
Jan 2010	Dianna Belhouse	S.O.S	K'nud Hille

FONVCA
Draft Minutes of Regular Meeting, September 18, 2013
At DNV Hall 355 W. Queens Road, North Vancouver

Attendees:

Eric Andersen (Chair pro-tem)	Blueridge C.A.
Corrie Kost	Edgemont & Upper Capilano C.A.
Diana Bellhouse	Delbrook C.A.
John Miller	Lower Capilano Community Res. Assn.
Val Moller	Lionsgate N.A.
John Gilmour (Note taker)	Lynn Valley C.A.

Regrets: Sharlene Hertz

Called to order 7:00pm

1. Order/content of Agenda

No changes

2. Adoption of Minutes of June 20th

- Lower Cap CRA notes of 3. "in Larco" words deleted from paragraph

3. Roundtable on "Current Affairs"

Corrie

-presented a legal opinion (included in package), written by MetroVanWatch where it was indicated that the closure of a public hearing, cannot be used to block communication between council members and the public.

<http://metrovanwatch.wordpress.com/learning-centre/legal-opinionuse-of-public-hearing-to-block-communication/>

-also noted that new DCC regulations come into effect starting November 1st

Val Moller

- Larco will be having a public meeting on October 9th on the Capwest proposed development
- Fullerton residents did not receive a copy of the recent survey that was sent around. Corrie suggested that addressed envelopes could have been used to distribute the survey. John Gilmour suggested that email would be an efficient way to distribute surveys, however Val Moller said that many people in Woodcroft don't have email. Others found that hard to believe in this day and age.

John Gilmour

- John will be facilitating the SFU Public Square 100 Community Conversations event to be held next week at the Capilano Rugby Club. Tuesday, September 24, 2013 at 7PM. There are approximately 15 people registered so far.

- Lynn Valley. Mark Sager hosted a public meeting last week, Sept 11, on behalf of Bosa Development to show off their revised plans for a mixed use development on the former Zellers site. Mark had a power point presentation that included video clips of Hazen Colbert's alleged mis-information as he spoke at the DNV council meeting the prior Monday. Sager stopped the video to address each alleged incorrect point.

- Hazen Colbert issued a press release last week with information from the OCPIC meeting that he attended as an observer. It was briefly discussed that this was not desirable behaviour.

John Miller

Reported that there were street guidelines proposed for the lower cap area that were new and not designed by the DNV, but were designed by a consultant. McGuire Street was of particular concern.

Diana Bellhouse

Diana reported that the Delbrook CA will be having their AGM on September 25th at the DNV hall.

Eric Anderson, Blueridge

- Eric reported that trees were proposed to be planted in the Blueridge area street boulevards. However the residents were quite upset by this because they were not consulted about location and if the trees were wanted. The policy is now changed and Gavin Joyce will be invited to present on the topic to the Blueridge Community Association.

- The Blueridge Community Association has a 3-4hr +lunch plan of action workshop coming up for the BCA to get more residents out and become more active in the community.

4. Old Business

a) Update: "Process" FONVCA Committee

- Sept 24th – Discussion on BC's Economy, to be held at Capilano Rugby Club at 7pm which will be followed up with a SFU free seminar with Robert Reich – October 3rd at the Orpheum (included in package)

5. Correspondence Issues

a) Business arising from 16 emails (included in package)

- Many of the emails were copied to FONVCA by Doug Curran. Some comments were that they were getting tired of Doug's emails as they were poorly written. John Gilmour said he thought Doug's emails were well written and he didn't have a problem with them. Some at the table said that they were actually getting better lately.

b) Non-posted letters – 0 this period

6. New Business

a) BC Stats on 2011 Census. Corrie reported that these have now been released and are pertinent to the south regions and in the DNV.

<http://www.bcstats.gov.bc.ca/StatisticsBySubject/Census/OpenData.aspx>

<http://www.bcstats.gov.bc.ca/Files/dab70780-383a-4c93-919e-fa53ddfb6e67/2011CensusProfile-BritishColumbiaCensusTractsinCMAsandTractedCAs.xlsx>

b) OCP Implementation – Concrete vs Jelly adherence to both OCP and CAC policy.

<http://www.dnv.org/article.asp?a=4904> (see esp. sections 3.6 and 3.7 of attachment)

The issue was discussed and it was agreed that the CAC calculations are not transparent for the public or for developers. They are too difficult to calculate, requiring an outside consultant to be hired by the DNV to negotiate with the developers.

7. Any Other Business

a) **FONVCA web site hosting** – renewal for 3 years at \$411US paid. Corrie has submitted for reimbursement from the Healthy community Fund. Has not heard back yet – expected in October.

b) **Planning for an Aging Population** – déjà vu. A 1961 document was shown that basically says the same thing as is said today about the aging population and the need to prepare for it with housing, etc.

<http://www.planning.org/pas/at60/report148.htm>

c) **Public Participation** – “Reality or Rhetoric?” It was recommended that people watch this video on Youtube.

http://www.youtube.com/watch?v=5Kknz100ldLM&feature=player_embedded

d) **Community engagement Toolkit.** Link to a sparc.bc.ca website was provided.

<http://www.sparc.bc.ca/component/rubberdoc/doc/534-community-engagement-toolkit.pdf>

e) **BC Gov. Analysis of Property Taxation** pamphlet was included with the agenda package.

[http://www.cscd.gov.bc.ca/lgd/library/revenue_source_review/An Analysis of Property Taxation.pdf](http://www.cscd.gov.bc.ca/lgd/library/revenue_source_review/An%20Analysis%20of%20Property%20Taxation.pdf)

see also

<http://www.cscd.gov.bc.ca/lgd/pathfinder-finance.htm#mrsr>

8. For Your Information Items

a) **News clips** of the respective months are on the FONVCA website.

<http://www.fonvca.org/agendas/jul2013/news-clips/>

<http://www.fonvca.org/agendas/aug2013/news-clips/>

<http://www.fonvca.org/agendas/sep2013/news-clips/>

One newclip was attached to the agenda package called “Lynn Valley Gets New Tower Plan”.

- Attached was some email correspondence from Jerry Grootveld of 2679 PopLynn Ave and council (& Mike Little) complaining that “Nobody in this neighbourhood that I talked to remembers seeing this sign”, referring to the current Polygon project on Mtn Highway. He also complained that the recently revised Bosa proposal was too high, taking away the village feel of Lynn Valley.

b) **Legal Issues** –

i) Metro takes Langley to court over rezoning.

<http://www.fonvca.org/agendas/aug2013/news-clips/Metro%20takes%20Langley%20to%20court%20over%20rezoning.pdf>

http://www.vancouversun.com/story_print.html?id=8670186&sponsor=

It’s recommended reading by Corrie.

ii) LoGo Notebook – Summer 2013 Stewart McDannold Stuart.

<http://www.sms.bc.ca/issue/?issue=84>

Note that Local governments cannot withhold bid and contract information

iii) Municipal Law Reference. Introduction to BC Local Government Law.

<http://www.fonvca.org/agendas/sep2013/REECE-HARDING-Introduction-to-BC-Local-Government-Law.pdf>

9. Chair & Date of next meeting

October 16th -John Hunter or Val Moller to be the chair.

Meeting Adjourned ~ 9pm

FONVCA Agenda Item 4(a)

SFU 100 Community Conversations: 24 Sep 2013 at Capilano Rugby Club
Hosted by Federation of North Vancouver Community Associations Task Group
Note taker – Sharlene Hertz

Participants: Sharon Ewan, Sharlene Hertz, Doug Curran, Corrie Kost, Brian Albinson, Kevin Evans, Eric Miura, Adrian Chaster, Kelly Millin, Diana Belhouse, Louise Nagle, Kim Belcher, Irene Davidson, Barry Fenton

Facilitator: John Gilmour

Location: Capilano Rugby Club, West Vancouver

Date / Time: September 24, 2013 at 7:00 pm to 10 pm

Report of discussion filed electronically with SFU September 25, 2013
Participants signed the photo release; Sharlene gave releases to Christopher Grabowski, photographer sent by SFU



AGENDA

10 min	Welcome & Opening Remarks
10 to 20 min	Participants Introductions: Hopes and Concerns for BC's Economy
25 min	BC Economic Background—Quiz Game (in groups)
25 min	Visioning Exercise/Breakout Session
55 min	<ul style="list-style-type: none"> • 3-5 people per group • Brainstorming strategies to : <ol style="list-style-type: none"> 1) create wealth, 2) promote social equity, and 3) protect the environment
30 min	Group Presentation and Discussion
10 min	Closing Remarks and Survey (online)

- 1) **Opening Remarks – Doug Curran and John Gilmour, Facilitator**
 - a) Introduction of Task Group who organized event: Doug Curran, Corrie Kost, Sharlene Hertz, Dan Ellis [out of town]
 - b) Sharlene in contact with SFU informed Task Group of the SFU province wide initiative
 - c) Included FoNVCA team in an effort to demonstrate exemplary methods of dialogue; goal is to galvanize around issues; to foster better discourse in the DNV
 - d) **Introduction of John Gilmour, facilitator**, past president of LVCA and along with his spouse, and active volunteer in the community of longstanding
 - e) John outlined the scope of **SFU Public Square – Charting BC's Economic Future – 100 Community Conversations**, purpose and components
 - f) Discussion this evening is part of a province wide initiative and many communities participating
 - g) How do we chart BC's economy is the guiding question
 - h) Inequality is growing in BC – how to move forward protecting generations to come
 - i) We aim to have a stimulating discussion but also to have fun
 - j) John introduced Christopher Grabowski, photographer sent by SFU to take photos of the discussion; everyone is requested to fill out a release form, thank you

2) Introducing Ourselves (30 sec each)

- a) Name and where you're from
- b) One hope and one concern you have for BC's economic future
 - Louise Nagle [EUCCA]– all young people to get ample education for them to survive well into the future; heavily weighted in the resource industry, light industry – i.e. more dependent on what we sell in our country than exporting
 - Diana Belhouse [DCA] – we are very polarized; she is an environmentalist; cease trophy hunting; make Supernatural BC REAL SUPERNATURAL BC
 - Sharon Ewan [LVCA] – hopes are for the young people; big time housing, big time jobs; economy should go forward where people can have housing and jobs; building on resources
 - Doug Curran – hope at macro level, global financial structure is shaky; concerns are well being of young people going forward and overall vibrancy of Canada
 - Brian Albinson [EUCCA] – oldest person present tonight; something wrong with what we are doing; involved in transfer of knowledge, general professional way; Cap U and SFU would like to know how many find employment In their field of study; look at German ; concern is community associations communicate all kinds of information; main problem how do you bring in the population at large; how do you stimulate interest
 - Eric Miura [LVCA]- long time resident of NV; President of LVCA; polarization is an issue; how do we get very busy people to look at the big picture; how to engage them; we have wealth of resources; responsibility how do we get today's population to actively participate
 - Kevin Evans has been crown corporation leader; now devoting to art and practice of dialogue; breaking out of log jam is essential, complacency is our enemy; sees so much potential; challenges are formidable
 - Irene Davidson [NPRA] – worked education, greatest hope is developing more trades based programs; hope to continue in that direction; concern is polarization and how we can overcome such entrenched positions
 - Barry Fenton [BCA]- from west and north van; skills training and matching with young people; housing is big challenge; lots of opps; best place to be
 - Corrie Kost [EUCCA] – build a resilient economy; happiness is important doesn't mean money ; affordability; climate change
 - Kelly Millin [LVCA] – independent business consultant for 20 years; specialty is shopping centres; economic concern is tourism; we are in the same position as pre expo days; tourism is a resource, needs to be matched with mining, needs respect; concern is for herself, how hard it is to find a job and live at a standard; there are cutbacks; money coming in goes back to their country; gainful employment is difficult; not happening the way she ever dreamed it would happen; 50 plus are being bought out of their jobs with no place to go
 - Adrian Chaster [EUCCA] – hope for BC is that it can change from hewers / drawers [shipping raw]; more focused on tourism; high technology business; education is key; lives in Edgemont; biggest concern is my children will never be able to live here
 - Sharlene Hertz [DCA] – Note taker / Observer

3) BC Economy Quiz game

- a) Form 3 groups
- b) Rules
 - Two rounds
 - Group with most points after 2 rounds wins

ROUND #1 – same question for all groups

First to sound noisemaker can respond: right = +10 points, wrong = -10 points

Q1: Name three industries that make up the service sector in BC?

Q2: What is the industry that contributes the most to BC's GDP (Gross Domestic Product?)

Q3: When looking at BC's economic performance, at what rate is real GDP expected to grow this fiscal year?

Q4: What is the largest goods producing industry in BC in terms of contributing to GDP and employment?

ROUND #2 – Different question to each team

- 5 second limit to respond
- if no response – first other team to sound noisemaker can respond
- +10 point if correct, -10 points if incorrect

Q for team 1: In June 2012 what was the unemployment rate among the Aboriginal population of BC?

Q for team 2: According to the 2011 National Household Survey, what percentage of BC's population is visible minority?

Q for team 3: What is the current rate of the carbon tax in BC?

Q for team 4 (or all): BC ties with Manitoba for the worst child poverty rate in Canada. What is the child poverty rate (i.e. %) on BC?

4) **SWOT** of BC's Economy: **STRENGTHS WEAKNESSES OPPORTUNITIES THREATS**
Objective:

- To increase our understanding about BC's Economy
- To solicit your views on BC's SWOT
- Participants work in groups listing S W O and T

Reference: Pages 20-26 of Discussion Guide

Strengths	<ul style="list-style-type: none"> • Climate is pleasant • Immigration is constant • Water as a resource • Hydro electric power – no CO2 • Value added potential • Diversity • Power is relatively cheap • Infrastructure strategy • Technology advantage • Natural Environment / Tourism • Resources • Education [ESL for foreign students – also a weakness] • Tolerance
Weaknesses	<ul style="list-style-type: none"> • Nimbyism • Haves vs. have-nots is widening

	<ul style="list-style-type: none"> • Education mismatch • Social equity is insufficient • BC geography – lack of northern hub • Disadvantaged, people with mental health issues, disabled – have fewer places to live, get well, work training or life skills • No head offices • Productivity • Insufficient R & D • Primarily exporters • Uncertainty of government policy • Insufficient capital • Risk averse character • Private entrepreneurial spirit • Dependence on US / foreign markets • Education cost – education without available jobs • Environmental legislation • Affordable housing
Opportunities	<ul style="list-style-type: none"> • Service industry workers would have more equity with better living wage • Creative housing options – more gov’t flexibility in home ownership • Add rental housing • Value added manufacturing • Affordable and innovative day care • Immigrant integration • Applied knowledge and education tied to labour market • Leverage western region • Greater investment in R&D • Diversify portfolio • Ecotourism • Branding of ‘BC’ and component parts • Consumer spending and target marketing •
Threats	<ul style="list-style-type: none"> • Unfunded pensions; Government pensions are defined benefit • Lack of retirement funding programs • Non Canadian ownership of BC resources – no federal guidelines in place • Outsourcing labour • Over dependence on real estate for wealth creation • Climate change • Earthquake • Under used and phased out mature workers

	<ul style="list-style-type: none"> • University grads working as baristas • Human capital supply • Social inequality [child poverty] • Insufficient and ineffective public enterprise / erosion • Consequence of globalism • Sovereign debt crisis • Environmental [i.e. run of river projects] • Federal Government actions [gateway, increase in allowable cross border shipping]
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5) Visioning: 3-4 Groups ~ 1 hour

Objective:

- > To develop an initial plan for BC's economic future
- > Identify the top actions participants would take to create wealth, address social equity and protect the environment

1. What are the top actions (up to 5) you would take to create wealth in BC?
 - Will these actions impact employment?
 - Will these actions impact investment?
 - Will these actions contribute to the provincial treasury?
2. What are the top actions you would take to address social equity?
 - What impact will these actions have on decreasing inequality in the province?
 - What impact will your actions have in decreasing poverty?
3. What are the top actions you would take to protect the environment in BC?

Each group captures ideas to above on flip-charts/post-it notes

Group #1	Top Actions for BC's Economic Future
Creating Wealth	<ul style="list-style-type: none"> • Business + Union cooperation in trades programs and apprenticeships • Replace PST with value-added tax • Corporations to pay higher taxes • Ecotourism – push hard / branding • No after tax havens
Social Equity	<ul style="list-style-type: none"> • Increase minimum wage • Prevent employers from creating threshold hours etc so they can avoid paying benefits • Address social needs; services for persons with mental health issues and handicapped; affordable housing; need homelessness strategy • Settle land claims; Rationalize native issues
Environment	<ul style="list-style-type: none"> • Stop run of river power projects • Environmentally safe technologies; fund research • Price or tax incentives for buying hybrid vehicles • Pressure customers of our resources [oil, coal, etc.] to meet higher emission standards • Closed containment fish farms

Group #2	Top Actions for BC's Economic Future
Creating Wealth	<ul style="list-style-type: none"> • Recognition of qualifications / skills of immigrants • Reduce red tape and increase administrative competitiveness; labour mobility • Directed R&D to economic priorities • Security of land tenure
Social Equity	<ul style="list-style-type: none"> • Equitable taxation
Environment	<ul style="list-style-type: none"> • Environmental tariff on projects
Group #3	Top Actions for BC's Economic Future
Creating Wealth	<ul style="list-style-type: none"> • Increased skills training • Speed up accreditation of skilled and professional immigrants • Student internships & coop programs • Incentives for attracting graduates and immigrants to go north • Expand and market LNG • Ability to increase BC tax revenue for oil pipelines to offset environmental risks • Tourism – marketing and incentives for expanding cruise ship industry • Develop IFC companies in Vancouver – tax and legislation • Market plans and programs to attract head offices • Government – less regulation, more certainty in decision making • Encourage entrepreneurs to grow BC companies and NOT sell out to non BC companies
Social Equity	<ul style="list-style-type: none"> • Speed up aboriginal land treaty agreements • Build new [and renovate] Riverview • Retraining and assistance for 55+ to continue working • More P3 incentives • Regional and provincial solutions for people with disabilities; not central DTES • Provincial solutions for housing affordability • Increase transportation options for low income and elderly • Increase minimum wage for service workers
Environment	<ul style="list-style-type: none"> • Act globally • Become a leader in 'green' knowledge • Legislation for follow up / inspect / report for LEED buildings • Tourism at the table with resource industries • Coordinated and paid shoreline clean up

5) Group Presentation and Discussion

- Young people in a bind; ability / skills gap; young people are seen as a liability; no biz wants to train
- Youth can have a sense of entitlement as to what they are willing to do; no congruency of pay when they come out of university; shock for parents as well
- Lack of optimism for young people; will not have continuation of wealth;

- What has changed, we were a local economy; now we are a global economy; sr / jr mgt; companies have a gap
- Education process – not modernized; integrate in other countries much earlier into jobs puts them ahead; our kids are disadvantaged
- System of education has changed; much larger proportion of pop is given degree / diploma, no sufficient connection with industry; need change in attitude / whole structure
- Very dangerous to put a 14 year old into a specific path;
- Educate in life skills – this is where the disconnect is; third world is working harder faster;
- Maybe not channel at an early age, but gender issue; females at university; next generation has a work/balance lifestyle

6) Final Comments

- Like format; Group size is correct size
- Educated community
- Enjoyed it very much
- Need younger voice; Need all age cohorts; Age grouping good idea
- Good dialogue; Ongoing communication is key
- Appreciated hearing about ideas of wealth creation
- Attracted to SFU to engage; great experiment; enjoy different ideas; shift from debate; dialogue; takes some practice
- Appreciate what happened tonight; most here are community minded; how do we get to broader community; have discussion larger; have another meeting to support each other and have broader discussion; start debate with others not as connected to community
- This is what appealed to FoNVCA task group – to increase discourse in the community; this is the reason for tonight;
- Really appreciate opportunity to participate; Enjoyed
- Good education \ information increasing – don't normally think about this
- Lets get into the high schools
- Consensus on issues
- Thank organizers
- Move other members of CAs
- Gained a lot from reading material
- Good place to start; continue conversation
- John would look forward to working on this in the future
- Data base for emails

7) **Thank you / good night** / submit your survey online to SFU
<https://www.surveymonkey.com/s/SFUCommunityConv>

Subject: Fwd: The Village Centre as a new village / commercial space within the Village Centre / FONVCA minutes of June 20th
From: Brian Platts <bplatts@shaw.ca>
Date: 17/09/2013 12:09 PM
To: Corrie Kost <corrie@kost.ca>

----- Original Message -----

Subject: The Village Centre as a new village / commercial space within the Village Centre / FONVCA minutes of June 20th
Date: Tue, 17 Sep 2013 08:59:09 -0700
From: Douglas Curran <dougcurran@shaw.ca>
To: John Miller <jlmmam@shaw.ca>, Val Moller <vmoller@telus.net>
CC: FONVCA <fonvca@fonvca.org>, Dan Ellis <ellis7880@shaw.ca>

from: FONVCA Minutes of Juen 20th meeting:
"Village" proposed in Larco plan no longer has the retail component promised/100,000 sq ft of new commercial not included. Residential density only.
Staff response to question on where shops are in plan was that the retail will primarily be along Cap Road/this is not what was allegedly shown during the OCP process

Hi John and Val,

Throughout the Lower Capilano planning process a number of people have consistently mistaken Larco's 4.3 acre Capwest site for the entire footprint of the proposed Village Centre and held Larco responsible for planning land, buildings and services that Larco does not own. From the outset Larco proposed only limited commercial street level space within their development, following on recommendations from a commercial consultant who examined both the existing commercial space and the future viability of additional space based on a projected buildout of the entire Village Centre.

(A)

- Larco is only one property owner out of 8 (west of Capilano), without counting those east of Cap Rd. Other property owners either have or will have redevelopment plans that include additional commercial space

(B)

- there is presently 50,000 sq. ft of commercial space on existing properties between Curling and Fullerton, as well as potential for an additonal 50,000 under pre-zoned C9 commercial zoning

(C)

- commercial uses generate 10X the traffic volumes of residential use (on a square foot basis). The community overwhelming favoured uses geared to the local population within a walkable, pedestrian-oriented environment.

(D)

- the proposed community facility will become the focal hub of much of the neighbourhood activities for all ages, creating the social interaction and animation of the village.

(E)

- based on a consultants report, Larco limited their own 'street-level' commercial activity to 7,500 sq. ft. The consultant's report took into consideration local needs and the capacity of existing zoning to support appropriate viability of businesses (as above)

(F)

-rather than provide additional commercial space Larco is dedicating the 24,700 sq. ft community facility to DNV, as well as the 8,000 sq. ft public plaza. Both of these significant public amenities are subsidized by the residential units planned for their site.

In addition to the above, the owners of the Grouse Inn redevelopment anticipate the following commercial and office space totaling 36,000 sq. ft.;

- retail & office space of 30,000 sq. ft.
- two storey restaurant of 6,000 sq. ft.

Based on the above it seem clear that there is ample commercial opportunity within the Village Centre, without overwhelming the sites with outside traffic. What needs to be encouraged is the Capilano Road property owners to come forward with viable plans that will meet with community acceptance. I have made this suggestion to the two main owners, Cal Henn and Zack Bhatia, so that the community can begin to contemplate a comprehensive design for the whole of the Village Centre.

Given the many players involved in developing the Village Centre it seems unfair to shift all responsibility for fulfilling the vision of the neighbourhood to one single developer. Larco has declined repeated overtures from planners and DNV Council to purchase and develop any additional properties within the area, including the Capilano Road properties. Given the many roadblocks and lack of community willingness to engage in realistic discussion

of the community's future, one can well understand Larco's reluctance to contemplate the possibility of ever purchasing any additional properties in the area.

My estimation is that once the Capwest site begin to develop other prospective agents will come forward recognizing the potential of the Capilano Road properties.

As always, feel free to share this with any neighbours you happen to be discussing these issues with.

cheers, Doug

Douglas Curran
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North Vancouver, B.C.
Canada V7P 1X4

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www.dougcurranphotos.com

Subject: Fwd: Clarifying some points on Fullerton Streetscape Improvements Plan

From: Brian Platts <bplatts@shaw.ca>

Date: 20/09/2013 12:14 PM

To: Corrie Kost <corrie@kost.ca>

----- Original Message -----

Subject: Clarifying some points on Fullerton Streetscape Improvements Plan

Date: Fri, 20 Sep 2013 10:51:02 -0700

From: Douglas Curran <gatewayupdates@gmail.com>

To: Val Moller <vmoller@telus.net>, Ron McGregor <mcgreg75@telus.net>, Bart Hendriks <bhendriks@wynford.com>, FONVCA <fonvca@fonvca.org>

Hello Val,

From comments made to me at the neighbourhood meeting a few nights ago, it is apparent that a central question regarding the Fullerton streetscape plan is unclear for a number of Woodcroft residents: "Will this cost me more in taxes?"

The answer is "NO". The plan was conceived as an advance on the Development Cost Charges (DCCs) paid by Larco as part of the required street improvements, paid for larco under their rezoning application. This is standard DNV policy that requires developers be responsible for the cost of roadway improvements and upgrades for streets adjoining their properties.

Larco had agreed to increase their contribution beyond their own property borders to Belle Isle, as the improvements were seen as a benefit to their proposed development.

DNV Council has supported other portions of the plan through the 2014 Capital Budget. This support was outlined at the recent Sept 16 Council meeting and by Alan Nixon at the meeting on the 17th.

As you and Woodcroft residents are aware, this area has been neglected by DNV for many years and this would represent the first significant local public improvements conducted in this area for more than 20 years.

We look forward to your continued support for the project and ask you convey the above information to other Woodcroft residents who express concern that they not be asked to contribute to a LIP/Local Improvement Project paid for by local residents. Such an LIP funding basis has never been contemplated for Fullerton Avenue.

regards, Doug



NORTH VANCOUVER
DISTRICT

PUBLIC HEARING

1075 Prospect Avenue

Subdivision of Existing Lot

- What:** Public Hearing on proposed District of North Vancouver Rezoning Bylaw 1299 (Bylaw 8003)
- When:** 7:00p.m., Tuesday, September 24, 2013
- Where:** Council Chambers, District of North Vancouver, 355 West Queens Road

Site Map



Site Map



What is it? The proposed subdivision creates two 10m (33 foot) lots generally consistent with the existing lot pattern along the 1000 Block of Prospect Road.

What Changes? In order to create two 10m (33 foot) lots, the subject site needs to be added to Section 310 Special Minimum Lot Sizes in the Zoning Bylaw.

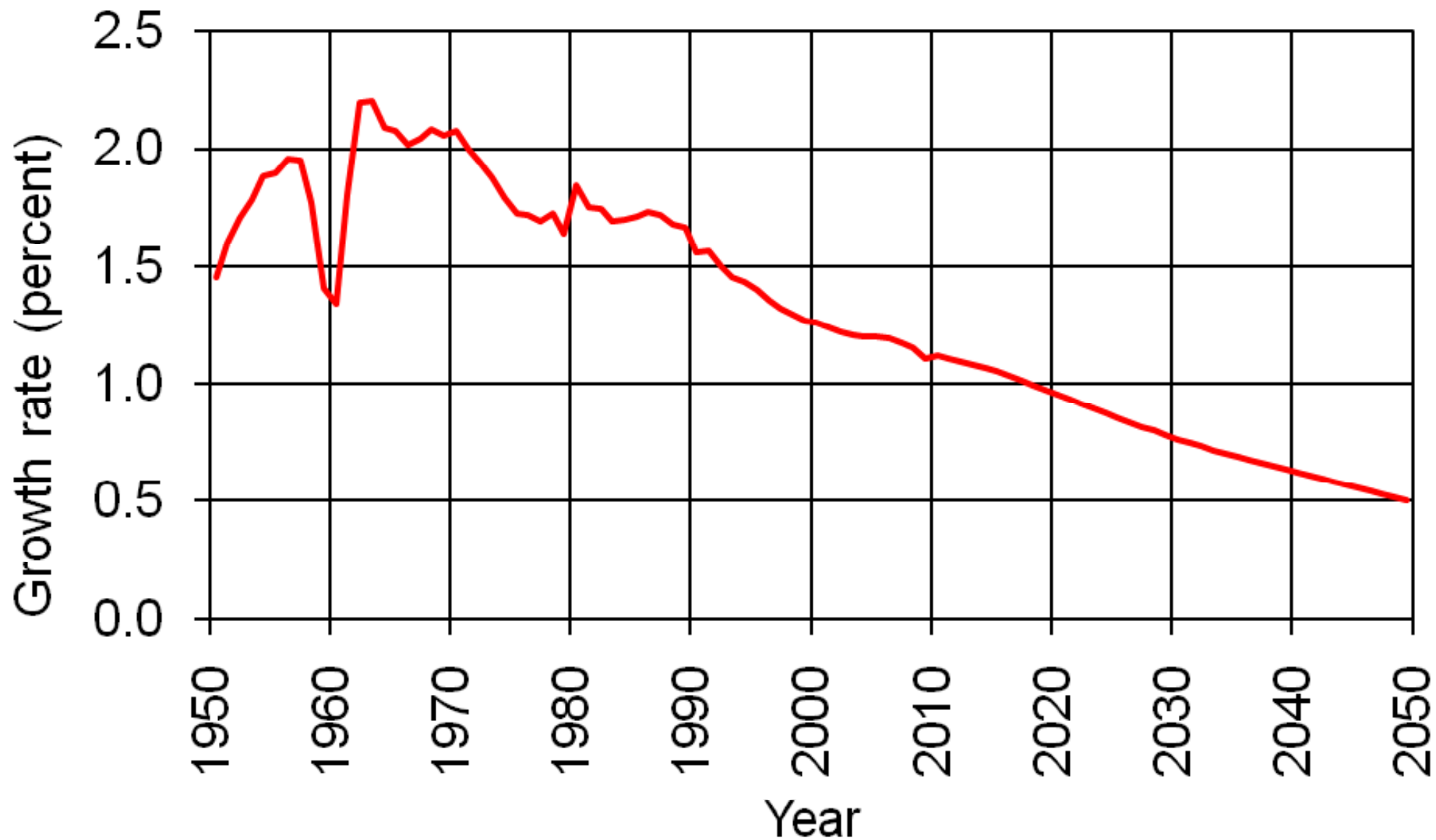
When can I speak? Please join us on Tuesday, September 24, 2013 when Council will be receiving input from the public on this proposal. You can speak in person by signing up at the Hearing or by providing a written submission to the Municipal Clerk at the address below or input@dnv.org before the conclusion of the Hearing.

Need more info? The bylaw, Council resolution, staff report, and other relevant background material are available for review by the public at the Municipal Clerk's Office or online at www.dnv.org/public_hearing. Office hours are Monday to Friday 8:00 am to 4:30 pm.

Who can I speak to? Kathleen Larsen, Community Planner, at 604-990-2369 or larsenk@dnv.org.



World Population Growth Rates: 1950-2050



Source: U.S. Census Bureau, International Data Base, June 2011 Update.

FONVCA AGENDA ITEM 8(a)(vi)



12 Features of Sustainable Community Development: Social, Economic and Environmental Benefits and Two Case Studies

Steven Peck, Peck & Associates
& Guy Dauncey, Sustainable Communities Consultancy

This article contains a description of a framework of twelve major features of sustainable community development. It provides examples of the quantitative and qualitative social, economic and environmental benefits of implementing these features and provides questions that can be used to help determine to what extent they are being incorporated in development plans. Increasingly, the manner in which we develop and redevelop land is being viewed as a key determinant in the social and environmental health and economic well being of Canadians. The framework is used to describe two case studies, one from Davis, California and one from the newly planned Southeast False Creek, Vancouver, British Columbia. The twelve features of sustainable community development were used during research for an upcoming Canada Mortgage and Housing report, entitled, "Sustainable Community Development in Canada & Internationally: Charting a Role for the Federal Government in the 21st Century."

There is no universally acceptable definition of sustainable community development in large measure because each development site has its own characteristics that result in unique opportunities and constraints. For example, a 2,000 hectare greenfield site situated beside a lake clearly presents different opportunities than a 300 acre brownfield redevelopment in the industrial port land area of city. Likewise, an eco-village located fifty miles from an urban centre offers different opportunities for sustainable development than a major condominium development in the core of a city.

There are undoubtedly more approaches to sustainable community development than there are terms used to describe it in the literature, and there are many terms. Sustainable community development is often referred to as 'green development', 'green real estate development', 'green communities', or 'sustainable built environments', 'sustainable communities', 'sustainable real estate development' and 'healthy communities'.

A research project on barriers to sustainable community development and the potential role of the federal government in overcoming them was prepared for Canada Mortgage and Housing Corporation (CMHC). The core research team consisted of Ray Tomalty, Ph.D., Anna Hercz, Ph.D., Guy Dauncey and myself. We divided the many distinct characteristics of sustainable community development into a framework of twelve major features. Our review of the literature and interviews with experts from across Canada also helped us identify three major scales, or levels, at which actions in support of sustainable community development and barriers to implementation take place:

- The building level, where important features include urban design, the use of renewables, improving energy efficiency, facilitating the 3Rs, and using 'green' materials. There is a considerable amount of work being undertaken in this area, the focus of significant government programming domestically and internationally since the 1970's.
- The development site level where important features include the integration of ecological protection, use of alternative sewage and storm water management, and encouraging alternatives to auto use. This level and the subsequent level have only more recently, in the last

decade, become the focus on efforts to develop government programs that support sustainable community development.

The planning and infrastructure level which includes features such as promoting higher density, supporting affordability, supporting livable communities with vibrant local economies and adequate community services, and implementing regional growth management and protection of watersheds and other significant ecological resources.

Successful holistic sustainable community development incorporates multiple features, described below, to achieve the maximum social, economic and environmental benefit. The manner in which we develop and redevelop our communities can have significant and long ranging impacts our economic competitiveness, social and environmental health.

Table 1 lists the major features of sustainable community development, each of which is described in more detail below, along with examples of benefits and questions that can help in the planning and implementation of sustainable communities.

Table I: Major Features of Sustainable Community Development

1. Ecological Protection	7. Affordable Housing
2. Density & Urban Design	8. Livable Community
3. Urban Infill	9. Sewage & Stormwater
4. Village Centres	10. . Water
5. Local Economy	11. . Energy
6. Sustainable Transport	12. . The 3 'R's

While all of the features may not be relevant to every development site, they do form a holistic and integrated framework that can help us to understand the potential for sustainable communities and what needs to be considered in development and redevelopment to implement them.

1. ECOLOGICAL PROTECTION

If the current pattern of development continues, one third of Ontario's remaining farmland will be paved over by the year 2020. It is not only loss of farmland which worries people - it is also loss of habitat, forest cover and recreational green space which can be used for parks, nature reserves or trails. In Charleston, Carolina, a study showed that depending on the way it was designed, for the same number of houses a proposed development could provide either 30 acres or 400 acres of green space. When green space is protected, studies show that nearby property values can increase from 5% - 50%, as homeowners place value on the amenity.

Questions for Sustainable Development Proposals – Ecological Protection

- Has an ecological and habitat inventory of the site been conducted?
- Are plans in place that provide ecological protection for creeks, swamps, nesting sites and groves of trees, on the site?
- Do the plans propose conservation covenants or other protective measures for ecologically sensitive areas?
- Is there a monitoring and enforcement strategy in place for covenants?
- Is there a watershed management plan or regional green space protection plan?

2. DENSITY & URBAN DESIGN

The typical post-war subdivision has 4-7 units of housing per acre, consuming large areas of land, making it hard for the residents to get around on foot, and economically unviable to run a transit service to the houses (because of the distances involved). In large part because of the design of suburban sprawl, the average household trip in North America increased from 7.9 to 9 miles between 1983 and 1990, while the average household car trips per day rose by 29%.¹ Low density development makes it difficult for small businesses to operate successfully within residential areas, requiring instead that they locate on major roadways or in malls to obtain sufficient access to customers to remain viable. The resulting segregation of land uses reinforces the need for and use of cars – without one, access to even local services is severely constrained.

It is this sprawling, low density style of development which is chiefly responsible for the loss of farmland, the weakening of the sense of community, and rising CO₂ emissions from local travel. In response to these problems, a new approach has been developed known as 'the new urbanism', or 'traditional neighbourhood development' (TND). TND features a grid pattern of narrower streets, sidewalks, smaller set-backs, front porches, the clustering of homes (reducing the need for expensive infrastructure), greater protection of green space, the use of urban design codes, town squares and village centres planned as attractive gathering places, and steps to encourage pedestrian and bicycle travel, in addition to cars.

In New Jersey, a study which looked at the years 1990 - 2010 comparing low-density 'sprawl' development to planned green development showed that the green development model would save taxpayers \$9.3 billion in avoided capital costs, while saving 175,000 acres of farmland.² A recent review of North American studies on infrastructure costs and urban form found that on average, publicly borne capital costs for roads is reduced by 25% and 15% for water/sewer infrastructure in compact development compared to current development patterns.³

Sustainable community developments not only impose far less demands on public finance for infrastructure capitalization and maintenance but also help to ensure quality of life by preserving green spaces and reducing pollution. Metropolitan development patterns are increasingly being recognized as key variables in understanding and controlling pollution. Some research has suggested that the indirect environmental impacts associated with the spatial arrangements of businesses and related transportation impacts outweigh the impacts of direct emissions associated with industrial processes and operations.

Turning farmland into housing is also an expensive option for local tax-payers, because of suburban sprawl's high development costs. A study in Virginia showed that an acre of farmland generated \$1 in taxes for every \$0.21 that it cost in municipal services, while rural low density housing cost \$1.20 for every \$1 that it generated in taxes.⁴ At the current rate of urban growth in Ontario, it is estimated that within 25 years, 20% of the remaining arable farmland in the province will be lost to low density urban developments.⁵ This degree of loss in farmland raises concerns regarding long term food security in Ontario, which must increasingly rely on imported food as local production diminishes. In the U.S., from 1996 -7, at the local and county level, more than 100 governments sought voter approval for tax increases or bond referendums to curb suburban sprawl by buying undeveloped land.⁶

3. URBAN INFILL

Greenfield developments always require new land, whereas urban infill initiatives are inherently more sustainable, because they re-use land that has already been urbanized. At its best, urban infill is a celebration of city life, bringing new housing, commercial life and neighbourhood activity to a neglected or abandoned area. Urban infill can make use of existing infrastructure and help to financially support existing public transit systems and commercial activities. Neighbourhood design charrettes are increasingly being used to involve many players in gathering redesign ideas, and building the kind of partnerships necessary to overcome outmoded zoning patterns or the resistance of local landowners.

A study conducted for the Golden Task Force on the Future of the Greater Toronto Area, found that savings of between 22-32%, depending on the amount of infill and compact development achieved, could be realized for hard services (roads, sewers, water and transit). This would represent savings of \$700 to \$1 billion annually for the GTA.⁷

4. VILLAGE CENTRES

The standard modern subdivision is built without any thought of including a small commercial centre within walking distance of most of the homes. This lack of a social gathering place has a subtle negative effect on neighbourhood life, since people have less occasion to meet each other and build up the network of relationships that creates a true community. The lack of a close-by commercial centre is another encouragement to own and use cars: residents must drive somewhere else to buy a paper or a bottle of milk.

5. LOCAL ECONOMY

Conventional suburban development – especially in "bedroom communities" -- pays little attention to the need for "complete" communities, i.e., a balance among residential and employment development. Without a local economy, the residents of a new development are obliged to drive to work somewhere else, leaving the neighbourhood empty of life in the daytime, while filling up the roads and releasing more carbon dioxide emissions.

Questions for Sustainable Development Proposals

- Do the plans include a practical strategy for local economic development?
- Are local economic plans in sync with land use and transportation planning?
- Has land been zoned for commercial or industrial uses?
- Do they encourage home based businesses?
- Do they include zoning for live-work units?
- Do they encourage eco-industrial networking and shared resource use between facilities?

6. SUSTAINABLE TRANSPORT

In a 1996 US national home-buyers survey, almost three-quarters of the respondents indicated that they would like to live in a community "where I can walk or bicycle everywhere."⁸ In 1995, a Louis Harris poll found that 21 million Americans would be willing to ride a bicycle to work "at least occasionally" if they could do so on a safe bicycle lane or off-road path, and 13% of all Americans said that they would be willing to ride a bicycle to work on "a regular basis" if they had the facilities to do so.⁹ And yet in today's real estate market, this option is very rarely available. A mixture of design strategies including the provision of greenways, traffic calming and attractive pedestrian connections can encourage residents to walk or cycle around, increasing their health and enjoyment, while reducing CO2 emissions. Narrower roads reduce the paved surface area and lower construction costs, and by enabling a family to live with one car instead of two (or without a car), a larger percentage of their income can go towards a home mortgage.

Questions for Sustainable Development Proposals

- Is the development served by public transit and/or light rail transit?
- Does it have narrower, interconnecting streets with sidewalks, as opposed to the typical wider suburban streets?
- Does it have traffic calming at pedestrian crossing & neighbourhood centres?
- Does it have pedestrian trails and cut-throughs, to encourage walking?
- Does it have cycle-lanes on the busier roads?

- Does it have local greenways connections?
- Does it have any car-free residential areas, where you park your car and walk?
- Do the plans include an overall Transport Demand Strategy, to reduce overall trips and parking requirements?

7. AFFORDABLE HOUSING

A sustainable community involves human diversity and variety - but the high cost of housing in many modern subdivisions effectively excludes people of different income levels. More sustainable communities encourage a mix of housing types and income levels by adopting housing policies such as density bonusing, inclusionary zoning or by creating land trusts and encouraging non-profit housing.

Questions for Sustainable Development Proposals

- Does it include a range of housing types and prices?
- Does it include 20% or more of its units for sale at a price that is affordable to people on lower incomes?
- Are secondary suites encouraged?
- Are granny suites, garage conversions and live-above garages encouraged?
- Have units been set aside for 'sweat equity' construction by non-profit housing groups such as Habitat for Humanity?
- If there are no affordable units, has a development cost charge been paid to finance the construction of affordable units elsewhere?
- Does it blend affordable units in with the community as a whole?

8. LIVABLE COMMUNITIES

A sustainable community is one that provides ample opportunity for sociability, personal development, and community participation. The New Urbanism makes a conscious effort to design for community as a whole, including the community facilities that make a place more than a set of roads flanked by houses. Village Homes (Davis, CA, see below) is an excellent example of the way in which something as small and inexpensive as a community barbecue pit on common land can bring people together, and add livability.

New Urbanism differs from conventional development in a wide variety of ways (at least in principle – in practice, many new urbanist developments are not so different from conventional developments. Ellis (1998, p. 46) has identified forty-one different design features, grouped into four different categories: aesthetics, connection, housing cost, and utility (see the table below).

<u>I. AESTHETICS</u>	<u>II. CONNECTION</u>
<p><i>A. Architecture/Urban Design</i></p> <ol style="list-style-type: none"> 1. Architectural code/controls 2. Better landscaped front lawns 3. Canals 4. Designed town centre (e.g. 'Main Street') 5. Heritage features preserved, e.g. houses, trees 6. Older, formal par layouts 7. Paving stones/other designed street furniture 8. Unique street pattern that gives a 'sense of place' 	<p><i>A. Better transit</i></p> <ol style="list-style-type: none"> 15. Incorporated/increased mass transit <p><i>B. Design of parks</i></p> <ol style="list-style-type: none"> 16. Interconnected park system/walkways/bike trails <p><i>C. Design of streets</i></p> <ol style="list-style-type: none"> 17. Alternative culs-de-sac 18. Many streets connect straight to town centre

<p>B. Technical</p> <ol style="list-style-type: none"> 9. Dimmer street lights 10. Garages at back or recessed/rear lanes 11. Hidden/shrunken commercial parking lots 12. Hollywood/limited-size front driveways 13. Increased street trees/tree canopy/tree 'pods' 14. No single home builder 	<ol style="list-style-type: none"> 19. Narrow/one-way streets with tight corner radii 20. No curb/no sidewalks 21. Planting strip between sidewalk and road 22. Traffic calming measures <p>D. Integrated Commerce</p> <ol style="list-style-type: none"> 23. Jobs close to residences 24. Local commercial functions
<p style="text-align: center;"><u>III. HOUSING COST</u></p> <p>25. Borad mix of density and housing types</p> <p>A. Density</p> <ol style="list-style-type: none"> 26. Densely packed houses/reduced lot size/frontage 27. Granny-flats/garden suites 28. Residential uses above commercial ones 29. Shared parking courts/driveways/garages 30. Shorter or zero-lot-line setbacks <p>B. Mix of Housing Types</p> <ol style="list-style-type: none"> 31. New housing concepts 	<p style="text-align: center;"><u>IV. UTILITY</u></p> <p>A. Amenity</p> <ol style="list-style-type: none"> 32. Extra amenities in public spaces 33. Pedestrian-pockets/passive parks/tot lots <p>B. Efficiency</p> <ol style="list-style-type: none"> 34. Conservation areas 35. Ecological energy/water use/waste systems 36. Efficiently designed playing fields 37. On-street parking lanes 38. Reduced infrastructure 39. Wired Houses, e.g. with fiber-optic cable <p>C. Safety</p> <ol style="list-style-type: none"> 40. Porches on all/most houses 41. Special emergency vehicle access designs

Table 4.1 (Ellis, 1998, p. 46)

New urbanism began in the US. The first project identified as new urbanist was Seaside, a new community built on a 32 hectare piece of beachfront along the Florida Panhandle in 1982. The second project was in Kentlands, a 352 acre community located outside of Washington, D.C., From there, new urbanist designs spread to many other locations in the US and in Canada, where over 40 such projects have been or are being built.

Questions for Sustainable Development Proposals

- Do the plans include parks, tot-lots and open green space, beyond the minimum 5% that is sometimes required?
- Do they include community allotment gardens?
- Do they include a community hall?
- Do they include space for a church, or place of worship?
- Do they include the necessary schools?
- Do they include a seniors centre?
- Do they include facilities for teens?
- Do the designs and construction include the arts?
- Is there a strategy in place to finance and build the community facilities?

9. SEWAGE AND STORMWATER

The normal approaches here are (a) to pipe the sewage to whatever treatment plant exists locally or to

plan an individual septic field for every house, and (b) to collect the stormwater run-off in an engineered underground system and pipe it to the nearest river or ocean. From an engineering perspective, this seems efficient.

From nature's perspective, however, things look a little different. That sewage may only receive primary or secondary treatment, allowing all sorts of nutrients to be wasted, and all sorts of chemical pollutants to be entering the ecosystem. Those septic fields take up a lot of space, and make it hard to cluster houses together in order to protect green space. And those underground stormwater drains carry away the rainwater that used to permeate gradually into soil, allowing the root systems of trees and shrubs to feed. Without the moisture, they become stressed, and may die. The greater the paved area within a development, the more stormwater is collected, and the less is returned to the ground.

When a traditional neighbourhood development (TND) was compared to a typical low density suburban subdivision, a study found that the volume of run-off from the subdivision was 43% higher than from the TND, because less land had been hard-topped. In addition, the nitrogen and phosphorus loadings and the chemical oxygen demand were all higher in the subdivision.¹⁰

The sustainable approach to sewage looks in two directions, towards (a) individual composting toilets coupled with miniature constructed wetlands, for greywater treatment, and (b) tertiary sewage treatment systems with source control programmes, or large-scale constructed wetlands to control stormwater run-off. These techniques often bring ancillary benefits. For instance, a 1995 EPA report found that aesthetically landscaped run-off controls such as ponds and wetlands can increase property values by as much as 50% by appealing to buyers who are interested in hiking around wetlands and lakes, or bird watching.¹¹

10. WATER

Water management cuts across many features of sustainable community development. Because of their more compact nature, sustainable developments can use up to 35% less water for lawns than a typical low density subdivision,¹² and up to three times less herbicides and pesticides. There are numerous opportunities to improve water use and management using green roof technology in buildings, and designing parking lots and roadways in a manner that allows for the ground to absorb water rather than removing it. The reestablishment of wetlands in degraded rivers and streams is another approach to improving water quality and quantity management while also providing opportunities for habitat and amenity space.

11. ENERGY

It has recently become accepted by leading scientists that global climate change is probably the most serious global environmental problem facing the world. The primary cause is the burning of fossil fuels in our homes, cars and factories, releasing carbon dioxide into the atmosphere, which traps the sun's heat. The consequences of continued climate change will impact cities, regions and ecosystems all over the world, mostly in a negative manner, whether through the death of the world's coral reef systems, the warming of the oceans which is causing the northward movement of the salmon, or the increased frequency and intensity of floods, droughts and hurricanes.

Canada has made a commitment under the Kyoto Treaty to reduce its CO₂ emissions by 6% below the 1990 level by 2010. In reality, that means a 25% reduction in the level that emissions will rise to under our current patterns of energy use. The average Canadian household produces 4 - 5 tonnes of CO₂ emissions from their home energy use, and a further 3 - 5 tonnes from burning fossil fuels while driving. By designing a community with energy efficient homes, where the residents can walk or cycle to local shops and jobs, this can be reduced by up to 45%¹³, a challenge which the International Council for Local Environmental Initiatives (ICLEI) and the Federation of Canadian Municipalities (FCM) are encouraging municipalities around the world to embrace. Overall, buildings produce 35% of the carbon

dioxide emissions in the US.

In regions that experience hot summers, where asphalt and concrete surfaces absorb heat, tree-planting turns out to be one of the most cost-effective ways of reducing energy use and emissions. A Chicago study found that in one day, 120 acres of canopy cover could absorb up to 5.5 lbs. of carbon monoxide, 127 lbs. of sulfur dioxide, 24 lbs. of nitrogen dioxide and 170 lbs. of particulates.¹⁴

Questions for Sustainable Development Proposals

- Do the plans encourage or require passive or active solar design?
- Do they require a minimum level of energy efficiency?
- Do they include district heating & cooling or a ground source heat system?

12. THE 3 'R's

The environmental impact of buildings and related systems cannot be easily overstated, nor can the contribution that more sustainable design, construction and reconstruction. According to the Athena Institute the construction and operation of buildings account for approximately 40% of the total global energy and resource use on earth. For sustainable community design, the 3 'R's include construction wastes recycling, the use of environmentally sound building materials, and the provision of in-house recycling areas. Buildings take up significant amounts of land, modify natural hydrological cycle, affect biodiversity, have major impacts on water and air quality and are the final resting place of over 90 per cent of all extracted materials from the earth.¹⁵ A typical 1700 sq. ft. house requires the equivalent of an acre of clear-cut forest, and produces 3 - 7 tons of construction wastes. New home construction consumes 2/5ths of all the lumber and plywood used in the U.S.¹⁶

In Texas, the City of Austin has developed a very successful Green Builder Programme which encourages builders to construct and homeowners to buy "Four Star" homes, which have been rated for factors ranging from non-toxicity to energy efficiency and recyclability.¹⁷ When green design approaches were used in a New York City office retrofit, the client paid 27 per cent less than the \$52 per sq. ft normally incurred by the city.¹⁸

Few communities have all of these features fully implemented. Most projects in Canada have only on or two of these features in place, and have not yet been able to realize the multiple and reinforcing benefits that numerous features can provide, such as higher densities which support active transportation which supports the competitiveness of local economies. For one project, the most visible 'green' feature might be energy performance; for another, restoration of prairie ecosystems; for yet another, the fostering of community cohesion and reduced dependence on the automobile. The following two case studies demonstrate how the twelve features of sustainable communities can be realized and provide insight into some of the many challenges related to implementation.

Case Study: Village Homes, Davis, California

When Village Homes was built in the 1970s, the local realtors refused to show anyone round the 70 acre, 240 home development because they didn't think anyone would want to live there. There were no front roads, no storm drains, and the houses all faced the same way - for solar gain. Today, it is one of the most sought-after subdivisions in Davis, and Coldwell Banker Residential identified Village Homes as "Davis's most desirable subdivision". The crime rate is 10th that of Davis as whole, and in 1995 the homes sold for 13% more than the equivalent-sized homes in a traditional post WWII subdivision located across the road.

Design Features

- **ECOLOGICAL PROTECTION:** 12 acres of greenbelt & open space; 12 acres of common agricultural land.
- **DENSITY & URBAN DESIGN:** A whole-systems approach to design. The houses are clustered into groups of 8 and are surrounded by common space. The early residents were responsible for the landscaping and design of the green space in front of their housing clusters. 25% of the acreage is open space (agricultural and recreational).
- **LOCAL ECONOMY:** 4000 square feet of commercial office space. Thanks to the agricultural space, by 1989, much of the Village Homes residents' food was being grown in the neighbourhood. The agricultural areas include commercial fruit and nut orchards, a commercial organic produce farm, home-scale garden plots and edible landscaping along pathways and roads.
- **TRANSPORTATION:** Vehicle access is by the back lanes only, with pedestrian lanes for walking and cycling. The "front streets" are designed by the residents as grassy areas, gardens with shrubs, etc. Pedestrian paths and traffic calming designs with narrow streets encourage a strong sense of community and high property values. The compact design encourages residents to walk rather than drive for their daily needs. The grocery store is 10' walk away, and the largest employer - the university - is nearby.
- **AFFORDABLE HOUSING:** A 'sweat equity' programme allowed several low-income construction workers to buy homes, and some apartment units are part of the development project as well.
- **LIVABLE COMMUNITIES:** The local Homeowners Association owns and manages the household commons, greenbelt commons, agricultural lands and the community center, and handles the revenues from office space and some rental units. There are frequent community events, and 80% of the residents participate in community activities.
- Community barbecue pits encourage spontaneous evening gatherings. The turnover rate is very low, with most residents preferring to remodel and add on, rather than move to a larger home.
- **SEWAGE & STORMWATER:** The narrower streets produce less stormwater run-off, which is handled by simple infiltration swales and on-site detention basins instead of storm drains, saving nearly \$200,000 (1980 dollars). These savings were invested into public parks, walkways, gardens and other amenities.
- **ENERGY:** All the houses are passive solar designed, with natural cooling and solar hot water. The overall design, with reduced pavement and more space for trees, lowers ambient air temperature and reduces the need for air-conditioning. Annual household bills are 1/2 to 1/3rd less than those of surrounding neighbourhoods, because of the locally grown food and the energy savings.

Barriers/Successes: When Village Homes went through the planning process in the 1970s, the plans were opposed by the planning staff, the public works department and the Federal Housing Authority (FHA). The police had concerns about patrolling the narrower streets, and the fire officials worried about maneuvering their fire trucks. The FHA questioned the inclusion of agricultural uses, fearing that it would reduce property values. The engineers opposed the natural drainage system, saying that it wouldn't work, and would harbor "vermin". In order to get approval, Michael Corbett, the developer, had to put up a bond to pay for retrofitting with storm sewers in case the system failed. Soon after, Davis was hit with a 100-year storm, when the Village Homes system worked fine, and also handled some of the run-off from the neighbouring subdivisions, whose storm sewers failed.

In normal circumstances, the opposition from multiple organizations would have killed the project, and Village Homes would never have been built. At the time, however, three of Davis's City Council Members were environmental activists who were willing to read Corbett's point-by-point rebuttal of the objections, made up their own minds and approved the project against the advice of their staff. Obtaining the financing was also a problem. The banks turned him down because he had no track record as a developer, and they didn't approve of the project's many innovative features. Corbett eventually obtained infrastructure financing for the first 10 acres, was able to buy the land over a 5-year period, and raised \$120,000 from 13 investors, who realized a 30% return on their money.¹⁹

Case Study: Southeast False Creek, Vancouver, British Columbia

Project History

In the mid 1990s, in response to regional concerns of air quality and goals of densification and family housing in the downtown, Vancouver City Council gave instructions to its Planning Department and Real Estate Services to begin planning a model sustainable urban neighbourhood with a focus on housing for families for an 80 acre site in the downtown, along False Creek. (between Cambie and Main Streets, north of West 2nd Avenue.) The City owns over half (45 acres) of this site.²⁰

The planning began with economic feasibility studies in 1996. Development planning began in 1997, using a three step process: Developing a Policy Statement, creating an Official Development Plan, and Rezoning the development parcels. Following these stages, development can begin as the market allows

The SEFC Policy Statement was adopted by City Council in October 1999, following over two years of planning work, including the widest public involvement process ever undertaken for the Policy Statement stage of any single development in the city. The Official Development Plan (ODP), which will locate buildings, streets, parks, etc... and ensure the intent and targets set in the Policy Statement will be met, will take about 1 ½ years to complete, and will ultimately be adopted by City Council as a bylaw, giving it legal status. The third and final step in the planning process is the rezoning of the site, into development parcels, with legal rights and responsibilities, permitted land uses, densities, and form of development guidelines attached to each parcel. These parcels can be then sold for development. The zoning and associated guidelines will ensure it is built as planned.

Following consultant studies and much public consultation, the city settled on an approach to sustainability which noted that to be classified as "sustainable", at the neighbourhood scale, SEFC needed to make a significant contribution to the larger goals of global sustainability, as summarized below.

- Promote healthy social community;
- Promote a stable, diverse site & context economy, which assists all in meeting their needs;
- Reduce the consumption of non-renewable energy and resources;
- Reduce the production of waste and pollution; and
- Enhance the health of the environment, both locally and globally.

Bringing these essential goals to the table for every decision, helped give the planning team, stakeholders and the public, clarity on how to proceed in policy and design. These goals, in addition to many other more conventional city-building objectives, formed the basis for the creation of the Policy Statement.

The Policy Statement outlines a vision and detailed policies to achieve one of the first complete, "high-density", sustainable, urban neighbourhoods ever planned.

Design Features

ECOLOGICAL PROTECTION: High density will help preserve farmland and natural areas in the region. Waterfront and parks areas will have designed habitat areas. Surface water management will increase biodiversity and livability. Contaminated soils will be entombed and/or treated over time to help clean groundwater. Native plants and non-native plants used in landscape which support native species of insects, birds and other wildlife.

DENSITY & URBAN DESIGN: High density design, celebrating magnificent views, providing for

extensive open space areas. Street wall podiums with a high degree of pedestrian permeability will make it urban but livable. Some small development parcels will allow smaller development groups to try innovative housing forms, such as cohousing. Live/work promoted. Solar access preserved throughout.

URBAN INFILL: Reuse and rehabilitation of derelict and contaminated industrial land in the downtown, to provide a diversity of high density housing close to the downtown job base. Existing clean industry will be encouraged to stay.

TOWN/VILLAGE CENTRE: Commercial areas will be provided, allowing retail, commercial, office and clean industry (high tech) throughout the neighbourhood, providing some "centres" as well as linear links to the surrounding neighbourhoods. All such uses will be linked closely with transit.

LOCAL ECONOMY: A wide range of commercial and employment opportunities will be offered, including low, medium and high income jobs, to reflect the housing mix. Mixed use zoning will be employed throughout. Jobs/housing mix analysis includes employment base offered in downtown as part of larger strategy. Environmentally and socially responsible business practices promoted. Full cost accounting methodology to be created to understand long term economic analysis of development.

TRANSPORTATION: Fine-grained network of pedestrian and bicycle paths throughout, connecting to nearby neighbourhoods and shopping/employment areas, particularly the downtown. Public transit includes bus, streetcar and elevated rapid transit all provided on or immediately adjacent the site. All residences within a 400m distance of a transit stop, most much closer. Narrow streets, with extensive traffic calming measures. A reduced parking requirement. Extensive live/work development promoted.

AFFORDABLE HOUSING: Housing will be provided for between 4,500 - 7,500 people. 20% of total housing capacity reserved for (publicly funded) social housing. Some small development parcels to allow smaller developers / co-ops to build. 35% of the market housing to meet guidelines for housing families at high-density. Aging-in-place oriented design encouraged.

LIVABLE COMMUNITIES: Full community facilities planned, including community centre, public art, outdoor recreation and performance areas, a neighbourhood office, a demonstration garden, waterfront boating facilities, and probably a school. Heritage conservation of many buildings on site, and heritage qualities to be enhanced through public art and landscape design throughout. A major park (over 26 acres) will be provided to offer a full range of recreational opportunities. The park will also offer areas of urban forest, native species habitat, surface water management systems, and a significant component of community gardens.

SEWAGE & STORMWATER: Surface water management system to be employed, including cleaning road runoff. Alternative sewage management systems promoted, including composting toilets.

WATER: Low flow fixtures required throughout. Rainwater harvesting from building roofs used for irrigation. No/low irrigation landscape design. Surface water management landscape plan. Education for residents. Possibly water metering at the unit. Goal is up to 50% reduction in per capita water use.

ENERGY: 80% of energy to be from renewable sources (including hydroelectric). Alternative, renewable and district energy systems promoted, including ground source and solar. Green building strategy to be created and implemented. Low-energy maintenance landscape design. Goal of 40% per capita reduction in green house gas emissions. Air quality strategy created and implemented for neighbourhood.

THE 3 'R'S: Full recycling systems in every residential and commercial unit. Industrial ecology waste recycling system promoted. Goal of 80% of demolition waste diverted from landfills to recycling depots. Landscape waste composted on or near site. Residential composting systems and education. Green building strategy, including recycled materials.

BARRIERS: Existing government regulations and policies, including the Building Code, that prohibit

innovative work. Added legal liability for innovative on-site systems is a barrier. Financing 'green' buildings has proven to be difficult. Controversy over land use issues and the density for the site has been a challenge. Financial resources to educate all stakeholders and complete needed research and strategic plans are required and hard to come by in an era of local government fiscal constraint. There are also very real limits of what can be accomplished with current technology.

Committed stakeholders and enthusiastic Council and staff are key to success. Vancouver's high land values and a desirable location combined with strong technical and design resources in nearby academic institutions should help to propel Southeast False Creek through the implementation phase.

Conclusion

Sustainable community development requires new ways of thinking about the interrelationship between economy, environment and community and new ways of examining the full costs and benefits of alternatives to conventional approaches to development. There are many barriers to the implementation of sustainable communities that cut across the twelve major features described above. These will be discussed in a subsequent article.

The benefits of implementing sustainable communities can be significant in both the short and long term – for developers, residents and society in general. This framework should help those who are working to implement sustainable community development projects by bringing a more holistic, rather than the current piecemeal approach to these developments in Canada.

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Ministry of Environment

Proposed changes to the Integrated Pest Management Regulation

The Ministry of Environment intends to amend the Integrated Pest Management Regulation (IPMR) to ensure that most pesticides used in landscaped areas are applied by trained people. Amendments to the regulation will also change the way Domestic class pesticides are sold and update the schedule of excluded pesticides.

Public Consultation Process

The ministry has developed a Policy Intentions Paper for Consultation. The purpose of this intentions paper is to describe the ministry's proposed policy direction and invite comments from the public and stakeholders.

You are invited to submit comments on the proposed changes described in the intentions paper below. Comments regarding the proposed changes will be carefully considered in revising the IPMR.

- [Intentions Paper \(PDF\)](#)

http://www.env.gov.bc.ca/epd/codes/ipmr/policy_intentions_paper.pdf

All submissions will be treated with confidentiality by ministry staff and contractors when preparing consultation reports. Please note that comments you provide and information that identifies you as the source of those comments may be publicly available if a Freedom of Information request is made under the Freedom of Information and Protection of Privacy Act.

Comments may be made in the [response form](#) or sent to Cindy Bertram of C. Rankin & Associates, who has been contracted to manage consultation comments, at:

Email: cindybertram@shaw.ca

Mail: PO Box 28159 Westshore RPO, Victoria B.C. V9B 6K8

Please contact Cindy Bertram if you are unable to download a copy of the intentions paper from this website or if you have any questions about the paper.

This comment period is open until December 8, 2013.

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EXPECTED CLIMATE CHANGES FOR THE CITY

Evidence of warming, changes in precipitation, and more frequent extreme weather events have already been observed on the North Shore and throughout the region. Projections predict higher temperatures, changes in precipitation, and more frequent extreme events such as high temperatures and high precipitation.

TEMPERATURE

Average temperatures at YVR Airport have increased by 0.2°C/decade since 1951, while the higher elevation North Shore Mountains warmed twice as fast.

In future, average annual temperatures in the region are projected to increase by 1.7°C by the 2050s. Increases in **summer temperatures are expected to be even greater, increasing by 2.1°C by 2050**. This will result in a summer climate warmer than present day Seattle by the 2050s **and warmer than San Diego by the 2080s**. The more rapid historical warming at high elevation means that these projections may underestimate future changes on the North Shore, resulting in even hotter summers.

PRECIPITATION

Most of the Lower Mainland experienced little change in average annual precipitation in recent decades, except for the high elevation mountains of the North Shore where average annual precipitation decreased by 147mm/decade (likely caused by a few localized droughts in recent years, rather than all years becoming drier).

Projections show a 7% increase in total precipitation for the region by the 2050s. A change in seasonal timing is also expected: less precipitation in spring and summer, and more precipitation in fall and winter. Rainfall intensity is expected to rise, with more precipitation falling on the wettest days each year. The snowfall contribution is also projected to decline substantially, particularly in the spring. The combination of declining precipitation at high elevation, and projections of less snowfall and increasing precipitation for the region make it very difficult to predict how the City's hydrology will be affected by changes in precipitation.

EXTREME WEATHER

Extreme temperature and precipitation events are also expected to be much more common in the future. Rare high temperatures that currently occur only every 5 to 25 years are projected to be 2 to 3 times more frequent by the 2050s. High precipitation days are projected to be about twice as frequent. The most extreme 3 hour precipitation events are projected to become 3 to 6 times more frequent by the 2050s.

SEA LEVEL RISE

During the 20th century global mean sea level rose approximately 1.7 mm/year. Since 1993, however, this rate has increased to around 3 mm/year. The BC Ministry of the Environment released draft guidelines for evaluating long-term land use planning of 0.5m of global mean sea level rise by 2050, 1.0m by 2100, and 2.0m by 2200.

	2050S	2080S
Temperature Projections		
Annual Average	+1.7°C	+2.7°C
Summer Average	+2.1°C	+3.2°C
Winter Average	+1.6°C	+2.3°C
Precipitation Projections		
Annual Average	+7%	+8%
Summer Average	-15%	-14%
Winter Average	+6%	+9%
Snowfall (Winter/Spring)	-36%/-52%	-56%/-75%
Sea Level Rise	0.5m	1.0m
Extreme Weather Events		
Heat (>31.5°C)	2.5 to 3.25x More Often	
Precipitation (>95mm/day)	1.6 to 2.5x More Often	

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STEWART McDANNOLD STUART
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LoGo Notebook

...a newsletter for local governments

FALL 2013

THIS ISSUE

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Stewart McDannold Stuart - 25th Anniversary



On August 1, 2013 Stewart McDannold Stuart celebrated its 25th anniversary as a law firm. There have been many changes over the past 25 years. The law has changed and evolved. Members of this firm have changed, some retiring, others moving on to new adventures, new lawyers and support staff joining us. Our clients have seen many changes in the local government landscape as well, with broader local government powers, an increasingly complex demand for services at the local level, downloading of responsibilities from senior levels of government, difficult fiscal challenges, and looming environmental

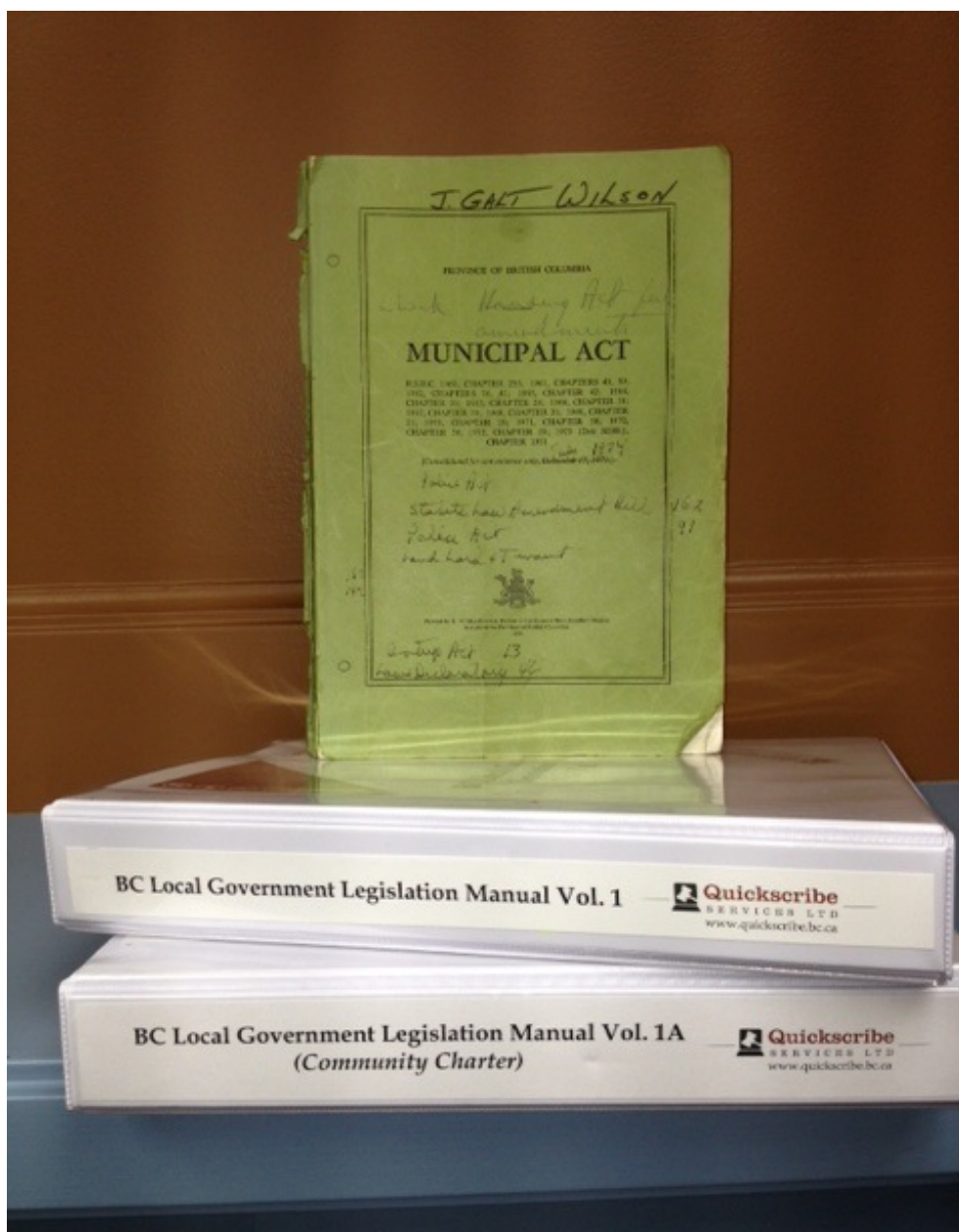
(City) – Consistency Revisited (Again)

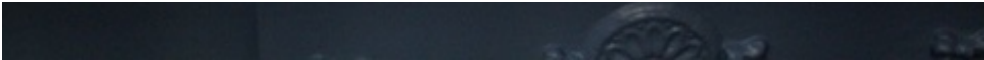
- Putting Your Money Where Your (Dog's) Mouth Is: Recovering Costs in a Dangerous Dog Destruction Order Appeal: Smith v. Central Okanagan (Regional District)
- Case Comment: Bradshaw v. Victoria (City)

issues that most of us gave little thought to 25 years ago. In the face of those changes, however, we like to think that one thing has remained constant, and that is our dedication to providing the highest quality in legal services to our clients. We look forward to facing the challenges ahead with you, our clients and colleagues.

Peter Johnson

25 Years of Local Government Statutes: The More Things Change The More They Stay The Same





As Stewart McDannold Stuart celebrates its 25th anniversary this year, we thought it might be interesting to take a look back at the “evolution” of local government legislation. In 1988, our founding partner Galt Wilson had a paper bound version of the *Municipal Act* R.S.B.C. 1979, c. 290 on his desk, published by the Queen’s Printer. It was one slim volume and contained 998 sections. Galt diligently annotated his copy, taping in copies of amendments as they were adopted, underlining important sections, and writing in the names of notable cases. We still have and regularly refer to a number of Galt’s old editions of the *Municipal Act*.

Twenty five years later, there are two main acts: the *Local Government Act*, R.S.B.C. 1996, c. 323, and the *Community Charter*, S.B.C. 2003, c. 26. The *LGA* goes up to section 1040 although this is a bit misleading as a number of sections were repealed in 2004 when the *Community Charter* came into force. The *Community Charter* is 291 sections long with a Schedule of definitions. All in all, we carry heavier briefcases these days.

This is a bit surprising when one of the main ideas of the *Community Charter* was to streamline the legislation through the use of “broad powers”; this was in contrast to the detailed prescriptive powers of the earlier legislation. Despite the broad powers concept, Part 3 of the *Community Charter* sets out additional powers and limits on powers so that the idea of “prescription” is not entirely lost and adds to the weight of the *Community Charter*. Also, the original idea was that eventually the *LGA* would be integrated with the *Community Charter*. Obviously this has yet to happen heading toward ten years later.

A few years ago at the annual UBCM conference, an announcement was made to the effect that at least the Regional District Part of the *LGA* was going to be amended or consolidated. This has yet to materialize. Regional Districts do not have the “natural person powers” given to municipalities under the *Community Charter*.

Anyone who reads this legislation regularly will agree that whether looking at a matter involving a municipality or regional district, both Acts will often come into play. Never leave the office without both Acts in hand!

Twenty-five years ago, there were clerks and treasurers rather than corporate and financial officers. There were grants-in-aid rather than “assistance”. A municipality could regulate the weight of bread and offer

bounties for the destruction of “beasts and birds of a noxious or destructive character”. Today municipalities enjoy “broad powers” (subject to certain limitations!) rather than having a shopping list of limited powers. At the end of the day it is open to debate how far things have actually advanced.

Kathryn Stuart

Regional Districts – Looking Back Over 25 Years (Plus) of Regional Government Services

In 1964, the year the Beatles released “A Hard Day’s Night”, the *Municipal Act* of British Columbia was amended to authorize the incorporation of regional districts to enable a form of local government for persons living outside municipal boundaries who wished to have a mechanism to establish services and to allow for land use control at the local rather than provincial level.

Between 1964 and 1967, 28 regional districts were incorporated covering most of the province, with the exception of the extreme northwest. Municipalities were included as participating members of the regional districts, but maintained their own corporate autonomy. The areas outside municipal boundaries were divided into electoral areas, which were given letter designations although, in some jurisdictions, the letter designations were supplemented by formal names for the electoral areas.

Originally, regional districts were granted authority to operate services through letters patent which would confer on the regional district the essential authority for the service, would typically provide for a mechanism of recovering costs for the service, and then refer by cross-reference to sections of the *Municipal Act* for the purpose of conferring regulatory powers on regional districts.

That model endured for approximately 20 years.

When a regional district wished to undertake a new service, it was obliged to apply to the Lieutenant-Governor in Council for supplementary letters patent setting out “further objects, powers, obligations, duties, limitations and conditions”.

The service powers of regional districts were fundamentally altered in 1989. Regional districts were given a list of services that they could undertake on

behalf of residents of the regional district, with different rules to apply to the establishment of different types of services, and no longer needed to apply to Cabinet for supplementary letters patent to take on new services.

Regional district services at the time were grouped into three categories – general services, local services, and extended services. General services included both general administration and electoral area administration, as well as the service of management of development services (“planning”) under Part 29.

“Local services” encompassed those services that typically involved infrastructure and assets, such as sewer systems, water systems, landfills, community parks, recreation systems, libraries, street lighting and television rebroadcasting or closed circuit television.

“Extended services” were essentially regulatory services such as animal control, nuisance control, soil deposit and removal regulation, building inspection, building numbering and emergency planning. These services did not generally require the regional district to borrow money or acquire assets.

The one exception to this was the service of regional parks, a service that had been carried out at the time under the *Park (Regional) Act*.

In addition to the shopping list of services set out in the *Municipal Act*, the Lieutenant-Governor in Council retained authority to grant additional service powers to regional districts.

With the *Local Government Statutes Amendment Act*, 2000, SBC 2000, c. 7, which came into effect August 30, 2000, the Province again revamped the authority of regional districts, and a new approach for the new millennium allowed regional districts to establish any service considered to be “necessary or desirable for all or part of the regional district”.

The shopping list of “general”, “local” and “extended” services were also replaced by the current model in 2000, providing regional districts with “regulatory services” and services that are not “regulatory services”. If there was a “real” Y2K bug, it may lie in trying to decipher the definition of “regulatory service” that the legislation introduced.

Regional planning vanished in 1982, dying with the last days of disco, to be replaced with authority for regional growth strategies in 1994, a watered down but still sometimes contentious approach to the big picture of coordinating growth between various jurisdictions.

Other significant amendments over the past 25 years include broad powers to enact regulatory bylaws that distinguish between classes of people, places and activities, properties or things (s. 796.2, *Local Government Act*) and significant expansion to the corporate powers to contract and delegate found now in section 176 of the *Local Government Act*. Fax machines and VCRs have come and gone since 1988, but regional districts have come a long way in 25 years and seem to be here to stay.

Colin Stewart

The Shifting Tides of Constitutional Law in British Columbia

The recent decision of the B.C. Supreme Court in *West Kelowna (District) v. Newcombe*, 2013 BCSC 1411 (“*West Kelowna*”), in which the court has upheld a zoning bylaw provision regulating the moorage of boats on Okanagan Lake, provides an occasion to look at the ebb and flow of constitutional law in British Columbia, particularly as it relates to matters of shipping and navigation, and also aeronautics, two areas of the law that raise many of the same issues.

As a matter of constitutional law, the federal government has exclusive authority to regulate these subjects. If a provincial or local law directly attempts to regulate a matter of exclusive federal jurisdiction, or to put it in legal terms, if a provincial or local law is in “pith and substance” aimed at a federal subject matter, then it is invalid. However, the analysis is often not that simple. In reality, there is often overlap between a federal subject matter, such as shipping and navigation, and a provincial subject matter, like property and civil rights in the province, for example. The courts have developed the doctrines of paramountcy and interjurisdictional immunity to deal with such overlaps.

Briefly, the doctrine of paramountcy will render a provincial law subordinate to a federal law where there is a direct conflict between them. The conflict must be such that a person cannot comply with one law without breaching the other, or such that the provincial law frustrates the purpose of the federal law. In such cases, the provincial law will be “inoperative” to the extent of the conflict. The doctrine of interjurisdictional immunity provides that where a valid provincial law of general application would, if applied to a federally-

regulated matter or undertaking, have the effect of impairing the matter or undertaking, the provincial law will be “inapplicable” to that matter or undertaking.

Shipping and navigation and aeronautics are subject matters in which the doctrine of interjurisdictional immunity often comes into play. Over the 25 years since Stewart McDannold Stuart was founded, in 1988, there has been a noticeable shift from court decisions that favour local jurisdiction, to decisions that favour exclusive federal jurisdiction, then, with recent decisions including the *West Kelowna* case, back towards more of a middle ground, at least with respect to shipping and navigation.

Just prior to that auspicious year of 1988, the B.C. Court of Appeal made a decision highly favourable to local government in *British Columbia v. Van Gool*, [1987] B.C.J. No. 714 (“*Van Gool*”). In *Van Gool*, a zoning bylaw permitted the use of land for an airport only if it was used for private purposes. The owner rented out space for others to store their ultra-light aircraft, contrary to the bylaw. The lower courts held the bylaw invalid because it intruded on federal jurisdiction to regulate with respect to aeronautics. The Court of Appeal reversed the lower courts, holding that the regulation of an airstrip for purposes of ultra-light aircraft was essentially “below the radar” of the federal government (having not been specifically regulated), and therefore it was within provincial (and therefore municipal) jurisdiction to enact such regulations.

Bringing the 1980’s to a close was another favourable decision for local governments. In *Windermere Watersport Inc. v. Invermere (District)*, [1989] B.C.J. No. 863 (“*Windermere Watersports*”), the B.C. Court of Appeal upheld a municipal resolution that restricted a business license issued to the rental of water sports equipment and boats other than jet skis. Relying upon similar reasoning as that employed in *Van Gool*, the court found that since the federal government had not bothered to concern itself with regulating small watercraft on Windermere Lake such as jet skis, it was permissible for the municipality to regulate in relation to jet skis.

Taken together, *Van Gool* and *Windermere Watersports* represent the “high water mark” for local government authority to regulate in respect of shipping and navigation and aeronautics. Although *Van Gool*, in particular, would be criticized by courts in other provinces, in British Columbia at least, things would remain largely static in this area of the law throughout the 1990’s.

Things changed in 2002, with the B.C. Court of Appeal’s decision in *R. v. Kupchanko*, [2002] B.C.J. No. 148 (“*Kupchanko*”). In *Kupchanko*, the defendant

was convicted in the lower court on a charge of operating a boat with a motor in excess of ten horsepower on a wetlands wildlife management area, contrary to an order made under the B.C. Wildlife Act. The Court of Appeal overturned the conviction on the basis that the provincial regulation intruded on federal jurisdiction over matters of shipping and navigation. The court in *Kupchanko* referred to a judgment of the Supreme Court of Canada in the case of *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, which stated that “the provinces are constitutionally incapable of enacting legislation authorizing an interference with navigation”, and further that “[e]verything connected with navigation and shipping seems to have been carefully confided to the Dominion Parliament, by the B.N.A. Act.” Based on that reasoning, as well as other cases, Mr. Justice Esson of the Court of Appeal in *Kupchanko* took the unusual step of stating that “In light of these authorities, all of which are binding upon us, I conclude that in *Windermere Watersport* I erred in holding that, on the assumption that the resolution of Council was legislation on a matter of shipping and navigation, it was within the constitutional authority of the province.”

Rather than marking a gradual shift of the tide, *Kupchanko* was a dramatic reversal, an acknowledgment by the B.C. Court of Appeal that the waters had long since receded. The reasoning of the majority of the Court of Appeal in *Windermere Watersports* was discredited (the decision likely still stands, based on the minority reasons of Mr. Justice Lambert), and at that point it looked as though shipping and navigation rights were beyond the reach of provincial and local laws.

A similar reversal would occur in 2005 with respect to aeronautics, in *Comox-Strathcona (Regional District) v. Hansen*, [2005] B.C.J. No. 365 (“*Hansen*”). In *Hansen*, the B.C. Supreme Court would depart from the Court of Appeal’s earlier judgment in *Van Gool*, holding that it was wrongly decided on the basis of existing authorities, including decisions by the Supreme Court of Canada. In *Hansen*, a landowner constructed a landing strip contrary to the regional district zoning bylaw. The landing strip was licensed by Transport Canada. Given the exclusive jurisdiction of the federal government over aeronautics, and given Supreme Court of Canada decisions holding that the regulation of airports, including their location, affects a “vital and essential” part of the federal aeronautics power, the court in *Hansen* held that the regional district did not have jurisdiction to prohibit the location of a landing strip on the owner’s land.

The court’s decision in *Hansen* has since been validated by the Supreme

Court of Canada in *Quebec (Attorney General) v. Lacombe*, 2010 SCC 38, and *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, where the exclusive jurisdiction of the federal government over aeronautics has once again been affirmed at the highest level.

However, in the case of shipping and navigation at least, there are hints in recent years that the law has begun to edge back from the low water mark of *Kupchanko*.

In *Salt Spring Island Local Trust Committee v. B & B Ganges Marina Ltd.*, 2008 BCCA 544 (“*B & B Ganges*”), the B.C. Court of Appeal held that a local government had authority, pursuant to its zoning bylaw, to order the removal of a barge that was being used as a floating office in connection with a marina operation. The barge exceeded the maximum size for structures under the bylaw.

Although the Court of Appeal did engage in some discussion of the constitutional issues raised, it ultimately avoided the issue by characterizing the barge as a “structure” rather than a “ship”, and discounting any relationship of the structure to shipping and navigation.

More significant, perhaps, is the *West Kelowna* case. At issue was a zoning bylaw that permitted temporary moorage of boats only when such moorage was incidental to the use of the upland parcel of land. The defendant moored his houseboat on the lake for long periods of time, without owning an upland parcel, and was told to remove it. The defendant challenged the bylaw on the basis that the municipality had no jurisdiction to regulate a matter of shipping and navigation. The court held that the bylaw could not prohibit temporary moorage of vessels, because temporary moorage falls within the protected “core” of shipping and navigation. Longer-term moorage, however, does not fall within that “core”. In the view of the court, to hold that a right to moor vessels indefinitely exists would be akin to allowing someone to “use the highway to stable his horse”. Since such a right does not exist, the regulation of longer-term moorage cannot fall within the protected “core” of federal jurisdiction over shipping and navigation, and therefore the bylaw was held to be (largely) valid.

In *West Kelowna*, the court distinguished the *Windermere* and *Kupchanko* cases on the basis that they dealt with the regulation of the watercraft themselves, as opposed to their location, so it is important not to stretch the application of *West Kelowna* beyond the context of zoning and land use. Also, *West Kelowna* may yet be subject to appeal. Nonetheless, it may be fair to say that the *B&B Ganges* and *West Kelowna* cases show some willingness on

the part of the courts to avoid an approach that renders any matter related to shipping and navigation untouchable by provincial and local laws.

This would be consistent with the law as expressed by the Supreme Court of Canada in the leading cases of *Canadian Western Bank v. Alberta*, 2007 SCC 22 and *Burrardview Neighbourhood Assn. v. Vancouver (City)*, 2007 SCC 23. In those cases, the Court emphasizes that matters of constitutional authority should be approached in a spirit of “cooperative federalism”, and that a “watertight compartments” approach to jurisdiction should be avoided where possible. Time will tell whether local laws continue to impact upon shipping and navigation, or whether the tide will shift again.

Michael Hargraves

“Regulating” and “Prohibiting” – What’s the Difference?

There are many legal issues that local governments have had to wrestle with in the 25 years since this firm was established. One issue that continues to arise is the difference between the power to prohibit and the power to regulate. A recent decision of the British Columbia Court of Appeal illustrates the difficulties that can result when attempting to differentiate between these two powers, which are treated as being distinct under the *Community Charter* and the *Local Government Act*.

In *Peachland (District) v. Peachland Self Storage Ltd.*, 2013 BCCA 273, the Court of Appeal was asked to determine whether a soil removal bylaw imposed a prohibition or was a “regulation” respecting soil removal. If the bylaw imposed a prohibition, it required approval of the minister responsible, pursuant to section 9(3) of the *Community Charter*. If it was a “regulation”, the minister’s approval was not necessary.

The plaintiff in this case, Peachland Self Storage, had applied for and received a provincial permit under the *Mines Act* for the operation of an aggregate quarry on a parcel of land it owned within the District of Peachland. Its permit allowed for the extraction of up to 100,000m³ of aggregate on its property per year. However, Peachland’s bylaw limited soil removal on a parcel of land to 200m³ per year.

Peachland Self Storage challenged the bylaw on the grounds that the soil

removal restrictions were so severe that they amounted to a prohibition, and that as Peachland had not submitted the bylaw for ministerial approval, the bylaw was invalid.

The District argued that as long as a bylaw does not completely forbid an act, the bylaw does not contain a prohibition. **The Court of Appeal disagreed and declared the bylaw invalid.** It examined the purpose of the requirement for ministerial approval of soil removal prohibitions in the *Community Charter*, and found that the purpose of requiring ministerial approval was to protect the provincial interest in mineral extraction industries. Any restriction so severe that it removed the possibility of any industrial scale extraction was in effect a prohibition against soil removal. The Court of Appeal found that the bylaw effectively precluded commercial sand and gravel extraction, and was in fact prohibitory, even though on its face the bylaw permitted some extraction.

In coming to this conclusion, the Court discussed other cases in which the issue was whether a particular provision in a bylaw was prohibitive or merely regulatory. The cases illustrate that there is no clear bright line between these two concepts. The cases state that although legislation may create a distinction between the power to regulate and the power to prohibit, in reality the power to prohibit necessarily implies the power to restrain the doing of that which is contrary to the regulation. As the Court of Appeal noted, while the legislation assumes a clear distinction can be drawn between prohibiting and regulating, in reality it is difficult to draw a clear line, which makes it difficult for local governments to know the limits of their jurisdiction.

The case is an example of how the drafters of local government bylaws must carefully examine the purpose behind a legislative grant of power, and must keep that purpose in mind when determining whether a proposed bylaw imposes a mere restriction and is “regulatory” in effect, or amounts to a prohibition.

Ryan Bortolin

The Disabled Employee - Part 3 - Accommodation to the Point of Undue Hardship

In Part 1 of this 3 part series, we discussed the definition of disability, requesting medical information to determine if there is a disability, and what

accommodation may be required. In Part 2, the focus was on the process of accommodation. In this Part 3, we will discuss when the duty to accommodate ends or, in legal terms, the circumstances when the employer reaches the point of undue hardship.

The main purpose of accommodation bears repeating:

“The duty to accommodate imposes a positive duty upon the employer to accommodate the workplace to provide an employee protected under human rights legislation with an equal opportunity to perform a job for which he or she is otherwise qualified.” [i]

The Supreme Court of Canada [ii] has provided the following guidance:

“The test [for accommodation] is not whether it was impossible for the employer to accommodate the employee’s characteristics. The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee’s workplace or duties to enable the employee to do his or her work.”

Further, the Supreme Court of Canada has stated:

“If the characteristics of an illness are such that the proper operation of the business is hampered excessively or if an employee with such an illness remains unable to work for the reasonably foreseeable future even though the employer has tried to accommodate him or her, the employer will have satisfied the test. In these circumstances, the impact of the standard will be legitimate and the dismissal will be deemed to be non-discriminatory.” [iii]

Where an allegation of discrimination gives rise to a potential duty to accommodate, there are two main streams of defence available to an employer. One is the bona fide occupational requirement (“BFOR”), and the other is that the employer has accommodated to the point of undue hardship.

The employee must first prove a *prima facie* case of discrimination – for a discussion of what constitutes discrimination in the employment context, see the Spring edition of LoGo Notebook.

Once a *prima facie* case of discrimination is proven, the employer may assert that the requirement(s) of the position cannot be met if the employer is

required to accommodate the employee, as a result of a BFOR. If the employer establishes a BFOR, then there is no discrimination.

The Bona Fide Occupational Requirement

The basis for a BFOR is set forth in section 13(4) of the *Human Rights Code* which states:

13 (1) *A person must not*

(a) *refuse to employ or refuse to continue to employ a person, or*

(b) *discriminate against a person regarding employment or any term or condition of employment because of the race ... (as above)...*

(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

Determining whether an employer's actions are discriminatory and therefore in breach of the *Human Rights Code*, or are based on a BFOR, requires the following analysis as set forth by the Supreme Court of Canada in *Meiorin*^[iv]:

1. Whether the employer adopted the standard for a purpose rationally connected to the performance of the job;
2. Whether the employer adopted the particular standard in an honest and good faith belief that it was necessary to the fulfillment of that legitimate work-related purpose; and
3. Whether the standard is reasonably necessary to the accomplishment of that legitimate work-related purpose. To show that the standard is reasonably necessary, the employer must demonstrate that it is impossible to accommodate individual employees sharing the characteristics of the claimant without imposing undue hardship upon the employer.

In *Meiorin*, the Court concluded that unless no further accommodation is possible without imposing undue hardship, the employer's standard is not a BFOR and the *prima facie* case of discrimination stands.^[v]

A BFOR was originally defined in 1982 by the Supreme Court of Canada as follows:

*“To be a bona fide occupational qualification and requirement a limitation...must be **imposed honestly, in good faith** and in the **sincerely held belief that such limitation is imposed in the interests of the adequate performance of the work involved with all reasonable dispatch, safety and economy, and not for ulterior or extraneous reasons** aimed at objectives which could defeat the purpose of the Code. In addition it must be **related in an objective sense to the performance of the employment concerned**, in that it is **reasonably necessary to assure the efficient and economical performance of the job without endangering the employee, his fellow employees and the general public.**”[\[vi\]](#)*

Step One for BFOR: Rational Connection Between Occupational Requirement and Job Performance

The purpose of the BFOR must be identified. What is the occupational requirement, and why is it a BFOR? This part of the employee’s job must be done, or is essential. Novel or complex questions may require an opinion from an expert who conducts an analysis of the job in order to demonstrate how a particular requirement is related to the performance of the job.

Some common standards that are applied include:

(i) **Safety** – Whether a safety standard is a BFOR will depend upon the position and whether the employee’s disability causes serious safety concerns. Individual testing may be needed, if possible and practical, as well as consideration of the nature of the work environment and the duties and skills needed to perform the position. An employer must provide substantive evidence that an “employee’s physical or mental condition is having a negative impact on job performance.” This negative impact can include serious safety concerns and must be assessed in light of the following:

- *There must be a real risk as opposed to speculation. The employer must provide evidence to prove the degree of risk; the more dangerous the position the less risk would be required for a safety standard to qualify as a BFOR.*
- *The employer is not entitled to set standards higher than necessary for work place safety or that are*

irrelevant to the work required, and which arbitrarily exclude certain classes of people.

- *Individual testing is required unless the employer can demonstrate that it would constitute undue hardship.*
- *The employer must prove that there is no reasonable alternative to the occupational requirement.*

Cases Where Safety Accepted as BFOR

In some cases, employers have proved that there is an unacceptable risk to the safety of employees, co-workers or the general public, if the person is unable to perform the BFOR. Examples include:

- *WCB requirement for use of a SCUBA gear in the event of a hydrogen sulphide gas leak. Sikh worker removed from a recast operation as he could not obtain a seal on his facemask with a beard.[\[vii\]](#)*
- *Employees who cannot control or manage a disease. A disease of an unpredictable nature resulting in incapacitating pain in Canadian Air Force employee who was required to at all times be a soldier, despite the fact that he was employed as a cook.[\[viii\]](#)*
- *Uncontrolled Crohn's disease in a wildfire firefighter.*
- *An employee with uncontrolled epilepsy who was moved to a different position; an employer was justified in barring an employee with unpredictable and debilitating effects of panic anxiety disorder from working in an area with log-moving equipment; hearing loss in a firefighter.*
- *Where the disability may affect an employee's performance in an emergency. This is often used with mandatory retirement policies, based on a link between advancing age and decreased physical and mental capacity (fire fighters, police officers)*

Cases Where Safety Rejected as BFOR

- *The disability can and is being controlled. No blanket exclusion is permitted for employees with epilepsy. An employer has to prove that a seizure free policy is reasonably necessary.*
- *Being free from a degree of coronary artery disease and risk of heart attack for chief marine engineer*

officer was not an acceptable standard.

- *A requirement that a miner be free of diabetes.*

(ii) Efficiency

- *If an employee's disability prevents the employee from performing the essential requirements of the job, and thus significantly affects his or her efficiency and that level of efficiency is demonstrated to be a BFOR.*
- *A reasonable standard and not perfection is required. The employer must be able to establish what level of efficiency or productivity was required before accommodation and after. An efficiency standard cannot be raised for the disabled worker alone.*

(iii) Economic Reasons

- *These are very rarely accepted. They have been accepted in a case where an employer was not required to provide expensive training to an employee deemed already not suitable for that position, when she was unable to continue her current position.*
- *An employer would need to prove the particular individual's productivity was so low it was costing an excessive amount to keep the person working generally almost to the point of causing the employer to no longer be viable.*

(iv) Maintain Internal and External Confidence

- *This factor was applied to a police department as it related to the integrity of the police department and its ability to perform the function of law enforcement.*
[\[ix\]](#)
- *This could be applicable in some local government positions in order to maintain internal and external confidence of Council or Board members and the public in upper level management positions such as Chief Administrative Officers.*

(v) Attendance

- *A reasonable record of attendance has been held to be rationally connected to the performance of the job.^[x] However, absentee levels of 30 to 35% have sometimes been considered acceptable.*
- *There must be evidence that the essential requirements of the position are not being performed, due to poor attendance.*

Step Two: Honest and Good Faith Belief that Occupational Requirement Necessary for Legitimate Work-related Purpose

The threshold for the employer at this stage is relatively low. Absent a suggestion that the standard was not adopted with honestly held good faith as to its necessity, this factor is usually presumed. Employers should avoid conduct that suggests bad faith, and should not rely on factors not applicable to the workplace or the performance of the duties of employment. Employers cannot put standards in place in order to prevent certain categories of individuals from working in a position.

Step Three: Occupational Requirement is Reasonably Necessary to Accomplish Legitimate Work-related Purpose

The question here is whether a more reasonable alternative to the discriminatory policy was feasible. The standard must apply some proportionality.

This test at this stage is sometimes equated with the undue hardship test. The case law continues to be divided as to whether there is a duty to accommodate when a BFOR has been established. In the federal human rights legislation, a statutory duty to accommodate with the BFOR has been added. This is not the case in BC.

What is a reasonable BFOR? One example of a really basic BFOR is requiring an employee to provide services for compensation such as pay and vacation pay. The BFOR must be essential to the performance of the position.

Once an employer has established a BFOR, then if they refuse to hire or continue to employ the person or move them to a different position they are not acting in a discriminatory manner as they cannot perform the bona fide occupational requirement(s) of the position.

Undue Hardship: What is it? Are you there yet?

Cases since *Meiorin* have struggled with whether it must be impossible for the employer to accommodate. Some cases now indicate that the employer is required to demonstrate that **further accommodation is not possible short of undue hardship**, rather than that it is impossible to accommodate.

Two Supreme Court of Canada cases have added some depth to the undue hardship test as demonstrated in the following quotes:

“Undue hardship resulting from the employee’s absence must be assessed globally starting from the beginning of the absence, not from the expiry of the three-year period.” [xi]

Former cases set the date the employee was denied the accommodation as the time to assess undue hardship. Now it is the overall period in which the employer has been involved in accommodation:

“The duty to accommodate is neither absolute nor unlimited. The employee has a role to play in the attempt to arrive at a reasonable compromise. If in Ms. Brady’s view the accommodation provided for in the collective agreement in the instant case was insufficient, and if she felt that she would be able to return to work in a reasonable period of time, she had to provide the arbitrator with evidence on the basis of which he could find in her favour.” [xii]

The employee must prove that they were able to return to work in a reasonable period of time or that they attempted to arrive at a reasonable compromise. Failure to accept an offer of reasonable accommodation by an employer has resulted in dismissal of the human rights claim. In some cases the employer has been found to have met the duty to accommodate when the employee was not forthcoming and failed to disclose sufficient details of his or her disability:

“The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee’s workplace or duties to enable the employee to do his or her work.” [xiii]

This suggests that there is a line to be drawn in determining how far the employer must go in order to accommodate:

“If the characteristics of an illness are such that the proper operation of the business is hampered excessively or if an

employee with such an illness remains unable to work for the reasonably foreseeable future even though the employer has tried to accommodate him or her, the employer will have satisfied the test. In these circumstances, the impact of the standard will be legitimate and the dismissal will be deemed to be non-discriminatory.”[\[xiv\]](#)

Application of the Undue Hardship Test

It is important to emphasize that each employee and their situation must be investigated and the employer’s accommodation designed to meet their specific needs. Further, the decision of an employer to terminate the employee also needs to be assessed carefully and individually. The following are some factors to consider when making such a determination, only some of which may apply to the particular situation:

Undue Hardship

- *Financial cost, the assessment of which may be influenced by the size of the employer’s operation.*
- *Costs may need to be so substantial that they would alter the essential nature for the enterprise or be so significant that they affect its viability.*
- *Disruption of a collective agreement.*
- *Problems with the morale of other employees, these would need to be significant.*
- *Interchangeability of the workforce and facilities, the assessment of which may be influenced by the size of the employer’s operation. This may be particularly applicable for senior management/CAOs or other municipal officers when there is a lack of staff to perform the duties of the municipal officer.*
- *Safety risk, including the magnitude of the risk and the identity of those who bear the risk.*

Employee’s Self-Help Obligation – Employees have been required in some cases to:

- *Participate in the recommended treatment programs.*
- *Provide medical information.*
- *Adhere to a program – in one case an employer was permitted to terminate as a result of the employee’s failure to lose significant weight impairing job*

performance after the provision of a weight loss program at no cost.

- *Follow a physician's advice, such as to involve a vocational counselor.*
- *Take medication as prescribed.*
- *Look for appropriate daycare to enable employee to work nights.*
- *Upgrade their skills on their own time.*

Employee's Duty to Act Reasonably and to Compromise

- *Once an employer initiates a reasonable proposal that, if implemented, would fulfill the duty to accommodate, the employee has a duty to facilitate the implementation of the accommodation.[\[xv\]](#)*
- *An employee's failure to implement a program of reasonable accommodation will result in a finding that the employer met their obligation to accommodate.*
- *An employee cannot expect a perfect accommodation and is required to accept a "reasonable accommodation that is reasonable in all the circumstances."[\[xvi\]](#)*
- *An employee may be expected to take various steps on their own and make various sacrifices.[\[xvii\]](#)*
- *When an employee wanted to move locations but no position was available in the new location, the duty to accommodate was suspended until a position available and employer did not have to pay difference in spouse's employment or real estate price differences.[\[xviii\]](#)*
- *An employer was found to have met the onus of accommodation by establishing the employee did not really want to be accommodated, as that would jeopardize their CPP Disability Benefits and WCB retraining program.*
- *There are limits to the accommodation the employee must accept such as those that would exacerbate their medical conditions based upon increased physical requirements.*

Employer's Duty to Investigate and Consider Range of Possible Accommodations

- *Duty is to take reasonable measures to accommodate to the point of undue hardship.*
- *Consider possibilities for accommodation.*
- *Obligation is to investigate accommodation.*
- *Goal is “to provide equal access to the workforce to people who otherwise encounter serious barriers to entry.” [xix]*
- *Goal “to respect the inherent worth and dignity of the individual being accommodated, within the limits of undue hardship.” [xx]*
- *Need to investigate the nature of the disability, the physical or mental demands associated with a given job, the employee’s functional abilities and the possibilities of modifying workplace standards to overcome the disability*

Workplace Standards

- *An employer can terminate a disabled employee if it results in the employee not being able to perform the essential requirement(s) of the job but must first establish that it cannot accommodate the employee to allow him or her to perform job.*
- *Employer not required to hire another person to get the disabled person’s job done but must prove that lesser measures would not have enabled the employee to perform at the level performed before the illness.*

Examples of Accommodation

- Part-time status
- Split shifts
- Scheduling work only at one location
- Frequent breaks
- Allowing the employee to attend medical appointments and treatments
- Accepting medical absences without penalty for seniority or job status
- Lengthy absences on the other hand may also reach a point that is considered undue hardship
- Obtaining medical evidence regarding the complainant’s abilities and modifying her duties based on this information
- Discussing options with employee and/or union

- Shorter shifts
- Considering restructuring of position to change duties

The Following May be Seen as Undue Hardship

- Creating a new position expressly suited for the disabled person with new duties previously non-existent and that do not suit the employer's needs.
- Duty to accommodate allows employees to keep their jobs as long as they are able to perform the duties of those jobs.
- Lengthy absences that result in the employee being unfit to perform the essential duties of their position and no other job can be offered.

Questions from the Supreme Court of Canada to Consider

- Has the employer investigated alternative approaches that do not have a discriminatory effect, such as individual testing against a more individually sensitive standard?
- If alternative standards were investigated and found to be capable of fulfilling the employer's purpose, why were they not implemented?
- Is it necessary to have *all* employees meet the single standard for the employer to accomplish its legitimate purpose or could standards reflective of group or individual differences and capabilities be established?
- Is there a way to do the job that is less discriminatory while still accomplishing the employer's legitimate purpose?
- Is the standard properly designed to ensure that the desired qualification is met without placing an undue burden on those to whom the standard applies?
- Have other parties who are obliged to assist in the search for possible accommodation fulfilled their roles?

When Do you Reach Undue Hardship?

How long does an employee have to be off work due to a disability before they can be terminated?

In one case, an employer did not discriminate when terminating an employee who had been off work after three years with supporting medical evidence to establish that they would not be returning to work for an indeterminate time. The key is that there is medical evidence to support the employee's inability to return to work indefinitely and individual assessment and evidence is required. Make no assumptions.

Another employee missed 960 days of work in a seven-year period. There was a determination that she was unable to fulfill the basic obligations of her employment for the foreseeable future.

Some policies force retirement after being off on medical leave in excess of two years. These have primarily been found to be discriminatory. Individual assessments of the employees are required. The period of leave required needs to be “long enough to allow manager to accommodate the needs of employees with special recovery problems, including retraining.”^[xxii]

Essentially, the point of undue hardship is akin to frustration of contract. The terms of the employment contract cannot be fulfilled and therefore the employer is entitled to breach the employment contract and terminate the employee.

Ramifications of Discrimination

If the employee is terminated and the employer is found to have acted in a manner that is discriminatory under the Human Rights Code, the employee will likely recover at a minimum reasonable notice for the loss of their employment, likely more. In addition, they may be awarded damages for loss of dignity, humiliation and hurt feelings that range from \$5,000 to \$200,000. In addition, the employer will be paying their own legal fees, its own internal staff time costs, and the expenses and legal costs of the complainant if the employer is unsuccessful.

Thus, the damages in this context could be significantly more than a wrongful dismissal action where damages are generally limited to the monetary equivalent of the reasonable notice period, legal fees and costs if unsuccessful.

Top Ten Points

1. Identify essential requirements of the employee’s position. Draft your job descriptions and job advertising in the future with this in mind.
2. Assess the employee’s medical condition, limitations and restrictions. Seek medical information.
3. Apply the requirements of the job to the employee’s restrictions. How can their duties be modified or altered in order to allow the employee to keep working? Can they continue with their current position? Is it possible to put them in a different position and is one available?
4. Consult with the employee and the union if applicable to assess options.
5. Set time frames and measurable goals. Reevaluate how the

accommodation is going every 2-3 months, allowing time for the employee to get used to the work they are doing.

6. Be flexible with time frames as this is dependent on how the employee's body/mental state is handling the workload. Readjustments may be needed. Revise and monitor.
7. Keep your eyes open for other positions more suitable.
8. As usual document, document, document.
9. Request updated medical information on a regular basis and monitor.
10. Prior to termination assess the essential requirements of the employee's position and establish the evidence to demonstrate they cannot perform the essential requirements of their position. Document. If terminating based on lengthy absences seek a medical letter advising when they are able to return to work. If the answer indeterminate and the employee has been absent for an extended period, the employer likely can terminate.

Overall caution is required and a methodical approach necessary to the handling of a disabled employee. Of course, you should consult your lawyer for advice. Early legal advice can be the key to reducing the costs associated with handling a disabled employee and avoiding Human Rights complaints, wrongful dismissal and/or constructive dismissal legal actions, grievances and the monetary implications if the employee is successful.

[i] *Lethbridge (Regional) Police Service v. Lethbridge Police Assn. (Lester)*, [2011] A.G.A.A. No. 42 (QL).

[ii] *Keays v. Honda Canada Inc.* (2005), 40 C.C.E.L. (3d) 258 (Ont. S.C.J.), substantially confirmed but damages varied and costs var'd 274 D.L.R. (4th) 107 (Ont. C.A.), appeal allowed in part 294 D.L.R. (4th) 577 (S.C.C.).

[iii] *Syndicat des Employe-e-es de Technique Professionnelles et de Bureau d'Hydro-Quebec, Section Locale 2000 v. Hydro-Quebec* (2008) D.L.R. (4th) S.C.C. at paras. 16 and 18.

[iv] *Meiorin*

[v] *supra*, at para. 54.

[vi] *Etobicoke (Borough) v. Ontario (Human Rights Commission)* [1982] 1 S.C.R. 202 at p. 208.

[vii] *Pannu v. Skeena Cellulose Inc.* (2008)38 C.H.R.R. D/94 (B.C.H.R.T. – Lyer)

[viii] *Bouchard v. Canadian Armed Force* (1992), 15 C.H.R.R. D/362 (C.H.R.T. – Marceau).

[ix] *Re Vancouver Police Board and Teamsters, loc. 31 (James)*, 112 L.A.C. (4th) 193 (B.C. Arb. Bd. – R. Germaine) at p. 234.

[x] *Eyerley v. Seaspan International Ltd. (No. 5)*, 42 C.H.R.R. D/429 (Can. Trib.); *Desormeaux v. Ottawa Carleton Regional Transit Comm. (No. 2)* (2002), 46 C.H.R.R. D/1 (Can. Trib.) revd on other grds 52 C.H.R.R. D/348 (F.C.), revd 2005 C.L.L.C. 230-029 (Fed. C.A.), leave to appeal to SCC ref. March 23, 2006; *Parisien v. Ottawa-Carleton Regional Transit Comm., (200#)*, 46 C.H.R.R. D/34 (Can. Trib.) revd on other grds 52 C.H.R.R. D/348 (F.C.)>

[xi] *McGill University Health Centre v. Syndicat des employes de l'Hopital General de Montreal*, 2007 SCC 4 at para. 33.

[xii] *Hydro-Quebec v. Syndicat des employes de techniques professionnelles et de bureau d'Hydro-Quebec, Section Locale 2000*, 2008 SCC 43 at para. 38.

[xiii] *Ibid*, at para. 16.

[xiv] *Ibid*, at para. 18.

[xv] *Central Okanagan School District No. 23 v. Renaud* cited in *Edgell v. Board of School Trustees, District No. 11* 97 CLLC 230-09 (BCHRC) at p. 145 094

[xvi] *Re Canpar and USWA* Loc. 1976, (2000) 93 L.A.C. (4th) 208 (Can. Lab. Bd.).

[xvii] *Renaud, supra, note 5, Ontario Human Rights Commission v. Simpson-Sears Ltd.* [1985] 2 S.C.R. 536 at 555; *Wilson v. Douglas Care Manor Ltd.* (1992), 21 C.H.R.R. D/74 (BCHRC) at p. d/78.

[xviii] *Re Canadian National Railway Co. and Brotherhood of Locomotive Engineers* (2003), 118 L.A.C. (4th) 228 (Can. Lab. Bd.).

[xix] *Renaud, supra, note 5* at p. 983.

[xx] *BC (PSERC) v. BCGEU* (1999) , 35 C.H.R.R. D/257 (SCC) (“*Meiorin*”).

[xxi] *Sketchley v. Canada (Attorney General)*, (2004), 243 D.L.R. (4th) 679 (F.C.)

Susan Beach

Higgins v. Quesnel (City) – Consistency Revisited (Again)

If anyone thought that the 2012 decision in *Sevin v. Prince George* (see LoGo Notebook, Fall 2012) might signal a return by the courts to greater judicial oversight on the question of consistency between an Official Community Plan and a bylaw subsequently adopted by a Board or Council, the recent decision

in *Higgins v. Quesnel (City)*, 2013 BCSC 1365, should lay that notion to rest.

The facts, briefly, are as follows. The municipality's zoning bylaw permitted a single family dwelling in the "RS1" zone, but not a secondary suite. A property owner in the RS1 zone constructed and rented out a secondary suite. When the bylaw violation was reported to the City, the owner was given the choice of decommissioning the suite, or applying to Council for rezoning. The owner chose the latter course, and following a public hearing Council "spot zoned" the land to allow the secondary suite to remain.

Residents of the neighbourhood who had voiced their opposition at the public hearing were unhappy with this turn of events. The petitioners challenged the zoning amendment bylaw in court on the grounds that it was inconsistent with the OCP.

The petitioners' primary argument was that the OCP spoke to goals such as maintaining the consistency of new buildings with the character of an existing neighbourhood. The lands were in an area designated as "low density single family neighbourhood". The petitioners pointed to the fact that the OCP encouraged residential densification in commercial and multiple family zones. The petitioners also pointed to what they perceived as "flaws" in the rezoning process (including the fact that Council had legitimized a violation of the bylaw, and that the neighbourhood was overwhelmingly opposed), but the court concluded that those arguments really went to the merits of the rezoning application, not the legality of the bylaw.

The municipality pointed to the fact that the OCP expressly permitted secondary suites in single detached dwellings following a rezoning process, which the court pointed out was precisely what had happened. The court also noted that the OCP stated that single family use was the *primary* use for the area, but did not state this was the *exclusive* or only use. The zoning bylaw already allowed bed and breakfast and group home uses that could have much the same impact on a neighbourhood as a secondary suite, and the OCP explicitly contemplated uses other than single family residential in the area as well.

Sevin v. Prince George was distinguished. There the OCP expressly contemplated residential treatment facilities in urban residential zones, but made no mention of this category of use for the rural residential or agricultural zones. *Sevin* was therefore a case where as a matter of interpretation, the explicit mention of a particular use for one area, and its lack of mention for another, led to the conclusion, by implication, that it was not considered an appropriate use for the latter area. In *Sevin*, there were no

other statements or policies in the OCP itself that the City could point to in order to overcome that conclusion.

At the end of the day, this decision yet again confirms that when considering the question of consistency, the OCP must be read as a whole. It is not enough to refer to one or two statements in isolation that appear to be in conflict with the bylaw. Rather, the Council's task is to look at the various (and sometimes competing) policies that are set out in the document and to decide if the bylaw is consistent with the OCP.

Peter Johnson

Putting Your Money Where Your (Dog's) Mouth Is: Recovering Costs in a Dangerous Dog Destruction Order Appeal: *Smith v. Central Okanagan (Regional District)*

There are times when a local government is compelled to commence a court action to protect public safety. Dangerous dog destruction applications, made pursuant to section 49 of the *Community Charter*, often fit into this category. Such applications can be hard fought and drawn out by appeal, the result of which can be expensive for the local government seeking the destruction order. The light at the end of the tunnel is the potential for recovering costs if successful in court, though the authority for a cost award is not well established in the case law.

That has changed somewhat in the recent decision of Mr. Justice Barrow in *Smith v. Central Okanagan (Regional District)* 2013 BCSC 1063. The history of this matter is that the Regional District applied for and was granted a destruction order for the dangerous dog "Diesel" at the Provincial Court level. The dog owner, Mr. Smith, appealed the decision in B.C. Supreme Court and was partially successful. At appeal, Justice Barrow confirmed the dog was a dangerous dog and that the dog should not be returned to the owner, but set aside the destruction order. The parties then made submissions to the court for costs of the appeal.

Cost awards are typically allowed to the successful party in civil cases, but are rarely allowed in criminal or quasi-criminal matters beyond a nominal level. In considering whether to award costs, Justice Barrow first considered how to properly categorize section 49 applications to determine whether such an

application is more akin to a civil or criminal matter. The Court found that unlike a criminal proceeding, section 49 is not aimed at punishment, imprisonment, or a fine, but it does allow for seizure of personal property (i.e. the dog) without compensation and pursuant to a warrant. On the civil side of the spectrum, the standard of proof in a section 49 application is a civil standard and the broad purpose of the legislation is public safety. Based on the above, Justice Barrows held that a section 49 application does not neatly fit into either category, but overall is more akin to a civil proceeding rather than a criminal proceeding.

As a result, the court held that it did have wide discretion to make an order for costs of the appeal, relying upon section 112 of the *Offence Act*, but held that a costs award would not flow as automatically as it would in a purely civil matter. In determining the quantum of costs, the court used the scale of costs set out in the *Supreme Court Civil Rules* and summarily fixed costs payable to the Regional District at 67 percent of the total bill of costs, for a total of \$9,987.82 plus \$2,365.18 in disbursements. The percentage reflected the Regional District's partial success on two of three items at appeal.

The Regional District also sought an award of the pound charges for holding the dangerous dog, in the amount of \$22,216. The court declined to make an order for the pound charges, holding that it was a necessary expense of the Regional District incurred on behalf of its citizens in their protection. The court, however, did suggest that had Mr. Smith been entirely unsuccessful in his appeal instead of only partially unsuccessful, the court may have considered the pound charges for the time between the Provincial Court decision and the appeal decision.

This is a useful decision that provides some needed clarity to the issue of costs surrounding section 49 applications. Though a cost award will typically not compensate a local government for all the legal fees actually expended, the possibility of the court imposing a cost award could deter a dog owner from initiating an appeal and therefore prevent the legal fees from even being incurred in the first instance.

Kristen Morley

Case Comment: Bradshaw v. Victoria (City)

The recent case of ***Bradshaw v. Victoria (City)***, 2013 BCSC 1710 provides a discussion of sections 879 and 929 of the *Local Government Act*.

In Bradshaw, the petitioner wished to avoid the application of the City of Victoria's new OCP (the new "OCP") in respect of a development involving subdivision, the demolition of existing houses, and several building permit applications.

In February 2011, the petitioner applied to subdivide two lots into a total of five. He applied for building permits to develop three of the lots in February 2012. In July 2012, the City adopted a new OCP, which designated the entire City as an intensive residential – small lot development permit area. The petitioner's lands had not previously been in a development permit area.

In January 2013, the subdivision was registered in the Land Title Office. In March 2013 the City refused to approve the petitioner's building permit applications because of the requirement for a development permit pursuant to the new OCP.

Section 943

The petitioner argued that section 943 of the LGA permitted his development to proceed without the application of the new OCP. He argued that the building permits were an integral part of and necessarily incidental to the subdivision, which meant they should be grandfathered by section 943.

Section 943 of the LGA states:

943 *If, after*

...

(b) an application for a subdivision of land within a municipality has been submitted to an [sic] designated municipal officer and the applicable subdivision fee has been paid,

a local government adopts a bylaw under this Part that would otherwise be applicable to that subdivision, the bylaw has no effect with respect to that subdivision for a period of 12 months after it was adopted unless the applicant agrees in writing that it should have effect.

The Court found that the petitioner had not paid all of the applicable fees associated with the subdivision application prior to the adoption of the new OCP, and therefore he could not rely on section 943.

In the alternative, the Court found that the building permits were not necessarily incidental to the subdivision, and therefore these permits were not protected from the requirements of the new OCP by section 943. At the time the petitioner applied for building permits in February 2012, his land had not yet been subdivided; the subdivision application was not approved until after the new OCP was adopted. The building permits could not have been approved until subdivision occurred. The court found that because the subdivided lots did not yet exist at the time the new OCP came into force, section 943 could not apply to the “premature” building permit applications made in respect of these lots.

Further, the court held that the term “subdivision” as used in section 943 is not sufficiently broad to automatically include building permit applications in the 12 month grace period.

Section 879

The petitioner also argued that the City failed to consult him pursuant to section 879 of the LGA, and the result is that the inclusion of his land in the new development permit area under the OCP was unenforceable against him. Section 879 provides that during the development of an OCP, the local government must provide one or more opportunities it considers appropriate for persons, organizations and authorities it considers will be affected.

The court found that a local government has broad discretion with respect to the consultation required by section 879. The section does not confer a right to individual notice or consultation because of an outstanding subdivision or building permit application while an OCP amendment is underway. The City’s general consultation was found to be reasonable in the circumstances.

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