Public Hearings

SERIES NO. 17

Public Hearings Required

The *Local Government Act* requires councils and boards to conduct public hearings before adopting or amending Official Community Plans, zoning bylaws or rural land use bylaws [LGA s. 890]. Public hearings in many cases are considered a quasi-judicial function and so the elected members are required to act "as if" a judge. Councils and boards must hear all the information and then make a decision. Procedures governing these hearings are subject to:

- statutory requirements;
- rules of natural justice and procedural fairness when the statute is silent or incomplete; and
- other precedent-setting decisions of the courts.

Bylaws considered following public hearings have been successfully attacked in court because procedural requirements have not been followed strictly.

Statutory Requirements

The statutory requirements for public hearings are set out in the *Local Government Act* sections 890 to 894. As a general rule, if a local government embarks on a hearing process in relation to matters such as development permits or development variance permits, which do not statutorily require a hearing, the hearing procedures described in these guidelines should be followed.

Timing

Public hearings must be held after first reading and before third reading of the bylaw [LGA s. 890(2)]. Public hearings must be held again, with new notices, if the local government wishes to alter the bylaw so as to alter the permitted land use, increase the permitted density of use, or without the owner's consent decrease the permitted density of use, or wishes to receive new information before adoption (with minor exceptions).

Waiving the Hearing

A local government may decide not to hold a hearing on a zoning bylaw that is consistent with an Official Community Plan [LGA s. 890(4)], provided two notices are published in a local newspaper; and if use or density of less than 10 owners is being altered a notice is delivered to the owners and tenants of property affected [LGA s. 892 (7)].

Although a public hearing is not required for a zoning bylaw which is consistent with an official community plan, some municipalities have chosen to hold hearings on all zoning bylaws to avoid any suggestion that council might be using the provision in s. 890 (4) to "sneak through" a zoning change that would face significant opposition at a public hearing if one was held. It should also be recognized that many current residents of an area may not have lived there when the Official

Community Plan was adopted, and may therefore not be aware of its provisions or have had an opportunity for input to the plan.

It should also be noted that one of the indicia of bad faith is rushing the bylaw and so waiving the hearing may (in the context of other indicia) give evidence of inordinate speed that may give rise to a claim for bad faith.

Delegation

A council may delegate the holding of a public hearing to one or more council members; and a regional board may delegate the holding of a public hearing to one or more directors and the persons to whom the hearing has been delegated must report back to the board before the bylaw is adopted [LGA s. 891; 890(7)] (also see Fact Sheet #15).

Notice Requirements

Two types of notice requirements are set out in the *Act* [LGA s. 892]. All public hearings must be advertised in a local newspaper in accordance with the *Act's* requirements. In addition, written notice must be sent to all property owners and tenants subject to the proposal and other owners within a distance local government has determined by bylaw if land use or density is being altered. The requirement for written notice does not apply if the bylaw affects 10 or more parcels owned by 10 or more persons. Local governments may enact their own requirements for posting of a site that is the subject of a bylaw amendment.

Disclosure

In addition to the proposed bylaw described in the formal notice, the local government must, prior to and at the hearing, make available to the public for inspection documents pertinent to matters contained in the bylaw, considered by the council or board in its determinations whether to adopt the bylaw, or which materially add to the public understanding of the issues considered by the council or board. There is no obligation to create information about the bylaw that would not otherwise exist.

The hearing must allow proponents of each side to have reasonable access to all relevant reports and materials provided by the parties over the course of consideration of the rezoning application including during the course of the hearing. If the local government has required an applicant to provide impact studies or similar material of a complex nature, the documents must be made available sufficiently in advance of the hearing to provide a reasonable opportunity for members of the public to review the material and prepare submissions on it (*Pitt Polder Preservation Society v. Pitt Meadows, 2000*).

The Hearing

A public hearing provides an opportunity for the public, including individuals who believe their interest in property may be affected by a proposed bylaw, to speak or submit written comments on the bylaw [LGA s. 890(3)]. More than one bylaw may be considered at a hearing [LGA s. 890(5)]. A summary of the representations made at public hearing must be certified as correct by the person preparing the report and, where the hearing was delegated, by the delegated council member or director, and must be maintained as a public record [LGA s. 890 (6) and (7)]. An inadequate report can jeopardize the adoption process: *Pacific Playgrounds Ltd. v. Comox-Strathcona Regional*

District (2005). A public hearing may be adjourned from time to time without publication of notice, provided an announcement is made at the adjournment of when and where the hearing is to be resumed [LGA s. 890 (8)].

Voting after a Hearing

Council or board members absent from a hearing can vote on the bylaw provided they receive an oral or written report [LGA s. 894 (2)]. After the public hearing, council or the board may, without holding another hearing on the bylaw, alter any matter before it finally adopts the bylaw [LGA s. 894 (1)] except it cannot alter the use; increase the density; or decrease the density (without the owner's consent) of any area originally specified in the bylaw.

Conflict of Interest and Bias

There are several situations involving conflict of interest and bias (see also Fact Sheet #14) but the most likely in public hearings are:

- Pecuniary: A financial interest in the outcome of the case. For example, an elected official owns property that would be affected by the zoning bylaw.
- Non-Pecuniary: There is a personal but non-financial interest in the outcome. For example a close friend or a family member may be affected by the outcome.
- Bias: Having a totally closed mind; not being amenable to any persuasion.

The Right to a Hearing

The *Local Government Act* requires that all persons who believe their interest in property is affected by the bylaw shall be given an opportunity to be heard. The rules of natural justice expand on the statute. Interested parties must not only be given the opportunity to be heard but also to present their case, subject to reasonable procedural rules such as the right of others attending the hearing to witness the presentation. They must also be able to comment on all material considered by the elected officials who are acting in the nature of judges. This means the council or board members must not communicate privately with any party in the hearing or consider material not available to the proponent or an interested party.

Before the Hearing

Clearly, in court if the judge was interviewed by the press before the case and stated that his or her mind was already made up, no plaintiff or defendant in the case would feel the hearing was fair.

A case where this point was tested was in *Save Richmond Farmland Society v. Richmond*, where a councillor was alleged to have a closed mind and claimed before the public hearing that "council had made up its mind". However, the court held that a politician does not have to enter the hearing with "an empty mind". Elected officials are entitled, if not expected, to hold strong views on the issues to be legislated. Clearly, local elected officials are entitled before the hearing to individually listen to their constituents and their concerns.

At the Hearing

At the hearing, the elected official's primary duty is to hear what all interested persons have to say about the bylaw (as defined in the *Act* as "all persons who believe that their interest in property is affected"). The hearing is not a forum in which elected officials should be debating among themselves or with the proponents or opponents; they should hear and (if necessary for clarification of a speaker's point) ask questions – council or board debate takes place after the hearing has closed. Elected officials should be reasonably attentive and considerate of the public; attention to non-relevant written material, mobile phones, personal digital assistants, pagers, and private discussions between officials, should be deferred until after the hearing or breaks called by the Chair.

When in doubt as to whether a person has sufficient interest to be heard, hear them – it saves problems later and elected officials can decide how much weight in its deliberations it will give to someone who lives outside the municipality or as between someone who lives beside the site affected by a minor rezoning and someone who lives 3 miles away.

The meeting must be run in an evenhanded and fair way – for example in *Ross v. Oak Bay* (1965) the Mayor asked the people not to speak unless they had something new to say that hadn't been said by previous speakers. This intimidated some members of the public and they didn't speak. The bylaw was struck down. Rhetorical or confrontational questions from members of council should also be avoided, as they can intimidate others who might wish to avoid the same treatment.

But if the hearing is rowdy and emotional, the Chairperson has considerable leeway to keep order, make reasonable rules governing the hearing and put speakers, interrupters and hecklers in their seats, again to ensure that others are not intimidated from participating [LGA s. 890(3.1)]. Speakers' lists and speaking time limits are commonly used in British Columbia, and have not been successfully challenged.

If the hearing has to be adjourned, it is sufficient to choose a time, place and date at the hearing before adjournment and announce it to those present; otherwise advertisement and written notice must be sent out again [LGA s. 890].

After the Hearing

After the hearing, the council/board, the council or board members, or committees may not hear from or receive correspondence from interested parties relating to the rezoning proposal. They can hear from their own staff, lawyers and consultants (*Hubbard v. West Vancouver, 2005*) but if they receive a delegation or correspondence they will be, in effect, reopening the hearing and will run the risk of having the bylaw quashed. Although a council or board is often tempted to pursue an outstanding or new issue after the hearing, the local government generally should not entertain new information or hear a party affected unless at a new hearing. The exceptions to this general rule should be considered carefully in the context of the circumstances of each case.

The Public Hearing in the Official Community Plan Adoption Process	**Municipalities**	**Regional Districts**
	Each reading of an OCP bylaw must receive affirmative vote of majority of all members.	*Each reading of an OCP bylaw must receive affirmative vote of majority of all members entitled to vote.*
	CONSIDERATION OF CONSULTATION PROCESS	CONSIDERATION OF CONSULTATION PROCESS
	• Council (or its authorized delegate) must consider what consultation opportunities (in addition to the hearing) are appropriate in relation to the bylaw, and in particular whether certain named parties ought to be consulted and if so, how early and how often [s. 879 LGA].	• Same
	IMPLEMENTATION OF SELECTED CONSULTATION PROCESS	IMPLEMENTATION OF SELECTED CONSULTATION PROCESS
	CONSULTATION WITH SCHOOL BOARD [S. 880 LGA]	CONSULTATION WITH SCHOOL BOARD [S. 880 LGA]
	FIRST READING (AND/OR SECOND)	FIRST READING (AND/OR SECOND)
	"Examine" OCP in conjunction with financial plan; any waste management plan; refer regional context statement for Board; refer to Land Commission if ALR.	Same
	NOTICE OF PUBLIC HEARING	NOTICE OF PUBLIC HEARING
	• 2 newspaper notices, the last appearing a minimum 3 days and a maximum of 10 days before the hearing. • If use, density or less than 10 parcels owned by 10 persons are affected, written notice to be delivered 10 days before the hearing to affected properties.	Same
		Advise the Minister of the results of above.

	HOLD HEARING	HOLD HEARING
	(report to full council after if members absent) or if delegated	(report to full board after if members absent) or if delegated
	(SECOND AND/OR) THIRD READING (OR DEFEAT)	(SECOND AND/OR) THIRD READING (OR DEFEAT)
		To Minister for approval unless exemption under B.C. Reg 279/2008 applies (30 parcel rule).
	FINAL ADOPTION	FINAL ADOPTION

Caution

The subject of public hearings is a complex one subject to ever-evolving case law and the elected official with a particular concern is advised to consult a solicitor for specific advice.

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