Federation of North Vancouver Community Associations

DRAFT FONVCA AGENDA

Wednesday October 21st 2015

Place: DNV Hall 355 W. Queens Rd V7N 2K6
Time: 7:00-9:00pm
Chair: Diana Belhouse – Delbrook C.A.
604-987-1656 Email: dianabelhouse@shaw.ca

1. Order/content of Agenda

a. Chair Pro-Tem Suggests:

2. Adoption of Minutes of Sep 16th

***a.** http://www.fonvca.org/agendas/oct2015/minutes-sep2015.pdf

Note: **(*) items include distributed support material**

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
b. Delbrook CA
c. Blueridge CA
d. Others

4. Old Business

a) Update: OCPIC by Corrie Kost

b) Update on future Community Workshop

Now scheduled for Saturday Nov 7th 11am-3pm at a central location in the DNV.

c) Revision to FONVCA E-mail List – BCA

d) Presentation by NSMBA.

5. Correspondence Issues

***a) Review of correspondence for this period**

Distributed as non-posted addenda to the full package.

6. New Business

7. Any Other Business

a) Public Hearing Input Limiting by Chair

See first bullet item of page 2 at http://app.dnv.org/OpenDocument/Default.aspx?docNum=2744859 which states...

"Any additional presentations will only be allowed at the discretion of the Chair"

Time limits must be "reasonable" – see for example
http://www.bcwatersheds.org/wiki/index.php?title=Local_Government_Structure_and_Procedures
http://www.ubcm.ca/assets/Services/Publications/17_PUBLIC%20HEARINGS.pdf
and especially
http://dspace.library.uvic.ca:8080/bitstream/handle/1828/4140/Williams_Bruce_MA_2012.pdf

8. For Your Information Items
(a) Mostly NON-LEGAL Issues

i) News-Clips of the month of October 2015
http://www.fonvca.org/agendas/oct2015/news-clips/
Summary of titles:
* http://www.fonvca.org/agendas/oct2015/news-clips/summary.doc
Some annotated newspaper clips may be worth a read!

ii) What if Roads Had No Rules?
http://www.cbc.ca/radio/the180/defence-of-political-flip-flops-before-the-courts-contracting-out-the-workplace-1.3224238/taming-traffic-what-if-our-roads-had-no-rules-1.3224448

iii) **Healthy, Resilient, and Sustainable Communities After Disasters**
Free 600 page pdf book available from National Academies Press http://www.nap.edu/read/18996/chapter/1

iv) Rating Municipal Governments
http://www.dbrs.com/research/280843/rating-canadian-municipal-governments.pdf

(b) Mostly LEGAL Issues

i) Jurassic Parliament Newsletters:
* - Call for the question needs a second: Sep 2015
* - Qualities of a good leader / Chairmanship: Oct 2015
Source: https://www.jurassicparliament.com/

ii) Duty to keep trails and pathways safe
http://www.citopbroker.com/special-reports/safe-city-trails-pathways-5789

iii) Extreme-sports not required to report injuries
http://www.ourwindsor.ca/news-story/5733761-extreme-sports-facilities-not-required-to-report-injuries/

9. Chair & Date of next meeting

7pm Wed Nov 18th 2015

FONVCA Received Correspondence/Subject

13 September → 18 October 2015

LINKED or NO-POST	SUBJECT

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

			Notetaker
Oct 2015	**Diana Belhouse**	**Delbrook C.A. & S.O.S.**	**T.B.D.**
Sep 2015	Val Moller	Assoc. of Woodcroft Councils	John Miller
Jun 2015	Eric Andersen	Blueridge C.A.	John Miller
May 2015	Val Moller	Woodcroft rep.	Cathy Adams
Apr 2015	Adrian Chaster	Edgemont & Upper Capilano C.A.	John Miller
Mar 2015	John Miller	Lower Capilano Community Residents Assoc.	Diana Belhouse
Feb 2015	Eric Andersen	Blueridge C.A.	John Miller
Jan 2015	Diana Belhouse	Delbrook CA & S.O.S.	Arlene King (Norgate)
Nov 2014	Val Moller	Woodcroft rep.	Eric Andersen
Oct 2014	Brian Albinson	Edgemont & Upper Capilano C.A.	John Miller
Sep 2014	John Miller	Lower Capilano Community Residents Assoc.	Diana Belhouse
Jun 2014	Diana Belhouse	Delbrook CA & S.O.S	Eric Andersen
May 2014	Eric Andersen	Blueridge C.A.	Dan Ellis
Apr 2014	Val Moller	Woodcroft rep.	John Miller
Mar 2014	Peter Thompson	Edgemont & Upper Capilano C.A.	John Gilmour
Feb 2014	John Miller	Lower Capilano Community Residents Assoc.	Diana Belhouse
Jan 2014	Dan Ellis	Lynn Valley C.A.	John Miller
Nov 2013	Diana Belhouse	Delbrook CA & S.O.S	Eric Andersen
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.	Sharlene 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

AGENDA ITEM 2(a)

FONVCA

Draft Minutes of Regular Meeting Wednesday Sept 16th, 2015

Place: DNV Hall 355 W. Queens Rd, North Vancouver
Time: 7:00-9:00pm
Chair: Val Moller, Assoc. of Woodcroft Councils

Attendees:

Ruth Hanson	Blueridge C. A.
Corrie Kost	Edgemont & Upper Capilano C. A.
Diana Belhouse	Delbrook C. A. & Save Our Shores
John Miller (Notes)	Lower Capilano Com. Res. Assn.
Val Moller (chair pro-tem)	Assoc. of Woodcroft Councils

1. Order/content of Agenda

No changes.

2. Adoption of Minutes of June 17th

a) http://www.fonvca.org/agendas/sep2015/minutes-jun2015.pdf

Adopted as circulated.

b) Business Arising: None.

3. Roundtable on "Current Affairs"

Edgemont & Upper Capilano: Watermain project by Metro Van is having its predicted traffic issues. Will hold an Federal all candidates meeting on October 14th, starting at 7:00 pm in Highlands United Church. Lots of construction in the village: 130 senior units, Super Valu site - where there won't be a grocery store in the village for 2 years and townhomes on Ridgewood.

Delbrook: Met with the Planning department regarding the old Delbrook Community Centre. Proposed an engagement process with a facilitator to discuss the future of the old Delbrook site. Their Association feels that public assembly land should not be sold. They requested funding for the proposed meetings and were referred to the Healthy Neighbourhood Fund. No date(s) for the proposed meeting(s) have been set. The engagement process will be presented soon to District Council for approval.

Blueridge: Concern expressed regarding the potential of closing one of two schools and folding it into the other. Berkeley is the only access for one area and there are worries that a large development may be proposed which would negatively affect the already busy traffic. The neighbourhood sharing garden has turned out to be a social success.

Woodcroft: 23 townhouses are proposed in the 'Village' periphery area along the Capilano river. A proposed short trail goes nowhere with no access from the bridge side. 2 properties to the south appear to be abandoned as they aren't large enough to build a similar type of housing on.

4. Old Business

4.a OCP Implementation Committee

The Sept. 17th date has been moved to October (no specific date set).

4.b Update on Community Workshop

The proposed date of the workshop is October 31st at the Mollie Nye house (has good parking). Community associations are to be canvassed to determine the number of attendees once details (eg. food) have been arranged. Ruth to draft agenda as broadly discussed at meeting (and to be reviewed by FONVCA on Oct 21st)

4.c Revision to FONVCA e-mail list (ongoing).

4.d North Shore Mountain Biking Association

Will be attending the October meeting and make a presentation/answer questions.

4.e How DWV Handles Correspondence A motion by Diana, seconded by Ruth and passed unanimously: "That the DNV Council consider posting correspondence similar to the District of West Vancouver." A letter is to be sent to Council by the chair pro-tem. (action item)

5. Correspondence Issues

5.a Review of correspondence for this period: A motion was made by John, seconded by Ruth and past, to post all the emails in the package that was distributed.

6. New Business

6.a Community Building Grant

Form and process available at the referenced site.
http://www.dnv.org/sites/default/files/edocs/community-building-grant-form.pdf
http://www.fonvca.org/agendas/jan2011/Healthy%20Neighbourhoods%20Fund%20and%20CA%20Policy%20under%20review.pdf

6.b How not to rebuild a public web-site

Much of the original website materials has been removed – history is currently gone/unavailable. Some search links on the new website are broken. Many historical user links have been broken. Difficult to find things on the new website.

7. Any Other Business

The following items were briefly outlined and discussed.

a) Spending Limits on Municipal Elections

http://www.leg.bc.ca/cmt/leel/ May impact next municipal election.

b) Sustainable Development?

http://www.researchgate.net/post/What_is_the_best_definition_for_sustainable_development
"development which meets the needs of the present without compromising the ability of future generations to meet their own needs"

c) Building Strong Communities

– see full package for details

d) Rental Replacement Policies in BC

http://housingjustice.ca/wp-content/uploads/2014/01/CITYDOCS-1252497-v1-Case_studies_-_rental_replacement.pdf

e) Section 12.1 of the DNV OCP states

"To ensure the ongoing validity of this plan, an OCP review will occur every 5 years."
Thus the OCP review must occur in 2016

8. For Your information Items

Very little discussion took place on these informational items.

i) News-Clips of the months Jul/Aug/Sep 2015
http://www.fonvca.org/agendas/jul/2015/news-clips/
http://www.fonvca.org/agendas/aug2015/news-clips/
http://www.fonvca.org/agendas/sep2015/news-clips/

Summary of titles:
http://www.fonvca.org/agendas/sep2015/news-clips/summary.doc
Some annotated newspaper clips may be worth a read!

ii) The E-Bikes are coming!

http://www.ebikes.ca/learn/intro-to-ebikes.html
http://www.skiisandbiikes.com/blog/e-bikes-can-change-your-life/

iii) Worlds Oceans could rise more quickly

http://www.commondreams.org/news/2015/07/21/worlds-oceans-could-rise-higher-sooner-faster-most-thought-possible

(b) Mostly LEGAL Issues

i) Public Input suffers a set-back in CNV

http://www.cnv.org/~/media/F5FE8DFCE8EE4884BC5C748D54621111.ashx
Pages 20-30

ii) Transfer of Air Space Parcels of "land"

lidstone.info/wp-content/uploads/2012/05/LGMA-2012-Newsletter.pdf

iii) Ethical Conduct of Current and Former Council Members

http://www.cscd.gov.bc.ca/lgd/gov_structure/community_charter/governance/ethical_conduct.htm
http://www.fonvca.org/agendas/sep/2015/Ex-Council-Members.pdf

9. Chair & Date of next meeting:

October 21st, 2015. 7 p.m. Diana Belhouse – Delbrook C.A..

Meeting Adjourned. 9:00 p.m.

As per action item 4(e) of above minutes

October 7, 2015

District of North Vancouver
Attn: Mayor and Council
355 W. Queens Rd.
North Vancouver, BC
V7N 4N5

Dear Mayor and Council:

Subject: Posting of Correspondence by the DNV

At the September 16th meeting of FONVCA, the following motion was made and passed unanimously: “That the DNV Council considers posting correspondence similar to the District of West Vancouver.’’ (see http://westvancouver.ca/sites/default/files/dwv/council-correspndence/2015/may/15may01.pdf)

Your attention to this matter would be appreciated.

Regards,

Val Moller
Chair Pro-tem
FONVCA

1210-2008 Fullerton Ave.

North Vancouver, BC, V7P 3G7

AGENDA ITEM 7(a)

http://www.ubcm.ca/assets/Services/Publications/17_PUBLIC%20HEARINGS.pdf

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.

Updated December 2014

Communication and the Public Hearing Process:

A critique of the land-use public hearing communication process

Bruce C. Williams

Admin 598 - Management Report

University of Victoria

Executive Summary

A public hearing is a legal requirement, mandated by Section 890 of the *Local Government Act*, (*LGA*) that makes provision for the public's right to have input to Municipal Councils and Regional District Boards on land-use issues. The purpose of the public hearing is for the public to make representations to the local government on land use issues respecting matters in community plan or zoning bylaws (Section 890(1) *Local Government Act, RSBC 290)*. The public hearing is preceded by a lengthy process, involves the submission an application, working with local government staff, staff submitting reports to Council, receiving input from Council's Advisory Committees, and the preparation of a bylaw, to which Council has granted first and second readings.

The Court has determined that the public hearing is quasi-judicial in nature (Attorney General, Ministry of, 1989). This means that the public hearing must operate according to administrative fairness, which protects the rights of the property owner and the public's right to make representation. A decision from the public hearing is open to challenge by means of a judicial review (Rogers, 1988; Kemsley, 1997).

The dynamics and characteristics of a public hearing and the regulation of how to communicate at a public hearing, are regulated by the *LGA* and procedural rules, similar to a Court, which dictate when, how and what can be said. Section 890 *LGA* and procedural rules are based on the Rules of Natural Justice. A central premise of the public hearing is that fair treatment be applied (Rogers, 1998; Smart Growth, 2003; Kemsley, 1997).

However, some researchers have noted the limitations of the public hearing. For example, if misleading information arises during the public hearing process, there is no mechanism for correction (Lidstone, 1991). As well, Connor observes that the hearing allows anyone to speak,

regardless of their knowledge about the facts of the proposal, which can generate increased misunderstandings and contribute to unnecessary conflicts that preclude a reasoned analysis of a proposal (2001). Other research has showed that participants feel their ability to influence the decision-making process is overshadowed by the procedural rules, and therefore become disenchanted with participating in the process (Connor, 1999).

In sum, the research suggests, that though the purpose of a public hearing is to provide the public with a forum at which they may have input into a land use decision there are some unintended consequences of the public hearing that may undermine the overall objective. The purpose of this research is to show *how* this may happen. To do this I will examine the way that regulations and legislation discursively shape a particular style and form of talk. The findings show that the talk at a public hearing is adversarial, encourages positional argumentation, and does not encourage listening. This form of communication often leads to escalation, polarization, and exaggeration of the issues, aggressive behaviour, and participants do not feel heard or understood. In sum, the style of communication contributes to an escalation of conflict.

The purpose of this research is to show *how* conflict is shaped by discursive technologies. To do this I will first demonstrate the kinds of communication that are performed at a public hearing. I will show that the communication is adversarial and escalates. Having then demonstrated the adversarial nature of communication produced during the public hearing, I then set out to show how this communication is shaped by discursive structures. In particular, I will examine two discursive technologies: 1) Section 890 of the *LGA*, and 2) remarks made by the Chair prior at the start of the public hearing, regarding communication and procedural rules (this is practice). I will then examine the talk at the public hearing and show how the talk at the public hearing is regulated by these discursive technologies.

I will use critical discourse analysis as a method of analysis. Discourse analysis is a qualitative method consistent with a social constructionist perspective. It is a way of understanding, (Fulcher, 2005, pp. 1-3) how the meaning of words spoken and written by others is socially constructed (McGregor, 2003, p. 1). In this case the methodology will show how our feelings, thoughts and inter actions are shaped by technologies which are regulated by policies and laws, themselves produced by particular legal and administrative discourses.

The findings demonstrate that the requirements of the legislation and the procedural rules constitute the kind of communication during the public hearing process. Specifically the technologies shape a public hearing process to construct a form of language that is hierarchal, top down, one way and ultimately, divisive. An analysis of the public hearing talk found themes of positionality, aggression (attack/defend/blame), exaggeration and (extreme) emotionality; together these forms of communication exacerbate the conflict and leaves participants discouraged with the public hearing process. Though participants right to make representation has been upheld, their experience has left them discouraged and frustrated not being heard

Ideally, participation ensures that participants with opposing points of view have an opportunity to be understood and their differences respected: this is an essential element to effective dialogue and participatory governance. In this research, we see that some people who may wish to understand the other's argument are unable to do so because the public hearing process does not provide a space where understanding can take place. Public confidence in the public hearing process is important for the effectiveness of local government. I conclude that we need to reconsider ways that effective communication is ensured in the public hearing process.

As a result, the following recommendations are being presented for consideration.

It is recommended that:

1. A new section be added to the *Local Government Act*, example Section 890.1 that grants the local government the discretionary authority to hold an official "Pre-Public Hearing Meeting(s)" without impacting the legality of an official "Public Hearing" held in accordance with section 890 LGA.
2. Council may use the "Pre-Public Hearing Meeting" if it feels there is a requirement for those land-use planning issues requiring a more open collaborative dialogue.
3. The Council would be a participant in the "Pre-Public Hearing Meeting" and any comments made by individual members of Council are made on a "without prejudice basis".
4. Once directed by Council to proceed with a "Pre-Public Hearing Meeting", the administration of the "Pre-Public Hearing Meeting" is the responsibility of the local government administration who may use either internal or external resources.
5. The "Pre-Public Hearing Meeting" will be designed to facilitate an informal collaborative dialogue between the public, the applicant, staff, and Council on a proposed land-use application.
6. The "Pre-Public Hearing Meeting" would not be required to follow the strict rules (Rules of Natural Justice and procedural requirements) that structures and limits talk at the Public Hearing, mandated by Section 890 of the *Local Government Act*.
7. The local government must not make a decision respecting a land use decision at the "Pre-Public Hearing Meeting".

8. The Province of BC working with the Union of BC Municipalities and the Local Government Management Association of BC, jointly develop guidelines that would be helpful to local governments in designing a “Pre-Public Hearing Meeting” process.
9. Based on the guidelines, local government be given the discretion to develop a process that suits their respective needs.
10. A synopsis of the “Pre-Public Hearing Meeting” form part of the record at the “Public Hearing” mandated by section 890 of the *Local Government Act.*

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Introduction

People do not always agree on land-use planning matters. In British Columbia, local government regulates changes to land-use through an amendment to a land-use bylaw. The process to amend a land-use bylaw involves a number of steps, as defined by the *Local Government Act (LGA or Act).* The first step is for the property owner or agent to become familiar with municipal rezoning policies, guidelines and bylaws, meet the planning staff and become familiar with the local concerns. The next step is to submit an application, which planning staff will review and coordinate input from other departments, subject it to Council policy, and then seek input from Council's Advisory Committees. Planning staff then prepares a report for Council's consideration at a Committee of the Whole Meeting.

At that meeting, Council may direct staff to prepare the necessary bylaw and proceed to a statutory public hearing, postpone consideration of the application and request more information or changes from the applicant or reports from staff, or reject the application. If Council requests the applicant submit additional information, staff will then submit another report to Council, to further seek Council's direction whether Council wishes staff to prepare the necessary bylaw and proceed to a public hearing or reject the proposal. Should the application be approved, forwarded to Public Hearing, and after the close of the hearing, Council may give the bylaw third reading, and possibly fourth (final) reading.

For many local governments, the statutory public hearing, which comes near the end of the rezoning process, is the first time the public has officially become aware of, and invited to provide input into the proposed land-use (see Appendix A). A few local governments have tried to involve the public earlier in the process. Though the intended purpose of the public hearing is for the public to make representation to the local government, the research shows there may be

limitations to the ability of the public hearing to achieve its intended goal. The research shows that there may be problems with the way people talk during the public hearing. The purpose of this research is to explore *how* this may happen.

What is a Public Hearing?

Public input on land use bylaws is through a quasi-judicial process called a public hearing. Prior to holding a public hearing, the local government must give notice of the hearing, the purpose of the hearing, and the time and location of the hearing. The section makes provision for the public's right to be heard and/or present written submissions on land-use planning and decision-making.

The public hearing process is quite formal. It is regulated by legislation, specifically Section 890 (*LGA*) (see Appendix B) and procedural rules (see Appendix C). The hearing consists of the Mayor and Council and staff, with the Mayor presiding has the Chair of the public hearing. As required by the procedural rules the Chair opens the hearing by reading a prepared statement that outlines the public hearing procedures and how the communication between Council and the public is to take place.

Purpose of this Research

The purpose of this research is to show *how* the talk (this is the discursive practice) at the public hearing process exacerbates conflict. To do this I will first situate myself, describe the context of this research and how I came to be involved in this work. I will then undertake a literature review to examine the research that demonstrates the concerns of the public hearing. I will then outline the theoretical approach underlying my methodology. Finally, using Critical Discourse Analysis (CDA) as my methodology, I will examine two key discursive technologies, 1) Section 890 of the *LGA*, and 2) the Chair's opening statement and procedural

rules. I will then examine the communication patterns during the public hearing. Together these analyses will show how these discursive practices and technologies regulate a form of talk at the public hearing. I conclude that while the public hearing does allow the "public to make representations", the form of talk that is construed by the discursive technologies, exacerbates the conflict, and thus diminishes the public's experience of participation. Finally, I will make some recommendations about how to improve public participation in land-use decision making.

Context of this Research and Situating Myself

Within the framework of deliberative democracy, ensuring and sustaining public confidence and participation in public process, is critical to the effectiveness of local government (Mainsbridge, 1962; Putman, 2001; Gastil, 2008). In this research, I will explore *how* a technology of local governance-the public hearing process-intended to provide for public input and participation on land use issues, undermine the public experience of participation, and in turn undermines public confidence in how they are governed.

Reflectivity

Before proceeding to the literature review, I will share that my preconceived beliefs about the public hearing communication processes. These ideas have been formed from experience in local government for 28 years in three municipalities and two regional districts. I was a middle manager for four years, a Senior Department Head, Deputy Chief Administrative Officer (CAO) for nine years and 15 years as a CAO. For 24 years of those 28 years I attended hundreds of public hearings. In my experiences the public hearing communication process was structured to permit only a one way talk, with people saying whatever they wanted, and to say this without proof. As a CAO I watched the decision-makers at Council listen to the information put before

them but unable to respond, while participant anger and frustration with the process would appear to escalate.

Literature Review

The purpose of this literature review is explore research that has to understand what other challenges have been identified with public hearings, and examine how this has been addressed. To identify relevant literature I used Google scholar. Key phrases in the search included the following, “public hearings”, “public hearing process”, “local government public hearing process”, “problems with the local government public hearing process”, “public participation in local government”, “problems with public participation in the local government planning process” , “land use public hearing in British Columbia”, “land use public hearings in Canada”, “communication during the public hearing process in Canada”, and “problems with the land use public hearing process in British Columbia”. I identified and focused on literature that critiqued the public hearing. Most of this literature critiqued is from a positivist framework in that it is based upon empirical findings, founded upon the science of observable facts, which provides a basis for scrutiny by other researchers. Positivism is a descriptive account of human occurrences limited by the level of analysis of the framework. The positivist framework uses reinforcing language to imply the reader the positivist approach accurately describes the way things are. Only on paper, provided a post-modern critique. I was not able to identify a lot of literature to identify challenges with the public hearing process.

Below I review these critiques from a social, legal and then structural perspective, what researchers have has done to understand the public hearing communication process and to review the research that addresses the concerns of the public hearing process.

Problems with the land-use public hearing process

There are a number of problems that have been identified in the literature associated with the land use quasi-judicial public hearing process used in British Columbia. These problems can be categorized as social, legal and structural.

Social

Indirectly, the public hearing process is facing greater public pressures. These pressures are due to the interaction of economic, environmental and social factors, which has led people to resist change (Connor, 2001). People generally appear not to understand or agree with the goals, methods, or timing of proposed change in land use. For example, a municipality might want to encourage a certain type of commercial or industrial base in order to generate additional revenue from development cost charges to pay for aging infrastructure, but environmental regulations and social factors, each supported by a variety of special interest groups will need to be taken into consideration. The key stakeholders in the process, the community, technical experts, politicians, developers, and special interest groups will often have competing interests, each wanting to have their say. As we will see, the public hearing has difficulty processing these multi-party interests (Municipal Affairs and Housing, 2002). The balance between technical, community and political interests in planning, has shifted over the past 20 years (King-Cullen, 1999). Privileging technical input has been challenged, and considered insufficient to address planning issues (Forester, 2010). People today are better educated, more aware and more articulate about land use planning issues than in the past. Not only are citizens cynical about expertise, they are better educated, and more aware and more articulate about land use planning issues than in the past. Community consultation in part is intended to address the lack of trust in decision-makers, by giving citizens an opportunity to have a say in land use decision-making

(King-Cullen, 1999; Hoppner, 2009). There is pressure therefore, for the public hearing to provide a forum for the public to have *meaningful* input into the decision-making process.

Legal

A public hearing is a legislative requirement prior to the enactment of zoning, land use/or official community plan bylaws (UBCM, 2002). There are only a few exceptions where a public hearing would not be implemented (Rogers, 1988). These include:

1. Federal control over lands used for Indian Reserves, airports, railways, harbours and other purposes that are regulated by federal law.
2. When the Province has retained;
    a. The power to regulate subdivision and land use through its own officers and boards in specific situations (example, under the Agriculture Land Commission Act, RSBC 1979, c.9) and
    b. General exemption of its own activities through section 14 of the *Interpretation Act* RSBC 1979, c.206.

At a public hearing, a member of the public has the right to participate (Rogers, 1988). The Courts have determined when rights are affected there is a duty to act judicially and this implies judicial functions (Attorney General, Ministry of, 1989). The right to participate and the communication that is permitted are regulated through a set of rules outlined in the *LGA* and Court decisions referred to as Common Law. This has led to the development of Administrative Law principles known as the "Rules of Natural Justice" (Rogers, 1988; Kemsley, 1997) (see Appendix D). These rules were developed to ensure fairness during the quasi-judicial procedure (Rogers, 1988; Kemsley, 1997). Fairness is further ensured since decisions of the public hearing decision-makers are open to challenge by means of a judicial review (Rogers, 1988).

The public hearing process, therefore, acts much like a Court procedure. These procedural requirements are a statutory pre-condition of the enactment of a zoning bylaw (Rogers, 1988). However the quasi-judicial public hearing does not necessarily promote proactive communication and understanding of land use issues (Connor, 2001). As a result, participants often find the process adversarial and experience winner/loser outcomes (Connor, 2001).

Even though a public hearing is one of the most important protections associated with land use, persons are becoming disenchanted with participation in the process since their ability to influence the decision-making process is over shadowed by the procedural rules which do not permit the resolution of conflict that is often associated with land use (Connor, 1999). Government processes such as the public hearing process, become out of step with their various publics who become angry with them (Connor, 1993), bringing out high emotional energy, anger, frustration and hostility (Seymoar, 2003).

Structural

There are several aspects of the structure of the public hearing that have concerned researchers. Generally the critiques are bothered that the structure prohibits meaningful exchange. For example, King-Cullen (1999) observes that the public hearing is very technical and analytical, and the community is ancillary. And Baker (2005), acknowledging the structure comments that "the public hearing is not about communication, it is about convincing" (p. 323). Also the place that a public hearing finally occurs in the decision-making process brings the complaint by local government and the Ministry of Aboriginal and Women's Services that by the time a land-use planning bylaw receives second reading, which initiates the public hearing process the momentum for approval is already very strong (UBCM, 2002).

The public hearing also does not provide for a way to correct misleading information that could be brought up during the public hearing process (Lidstone, 1991). The public hearing allows anyone to speak, whether or not they understand the facts of a proposal. This can generate increased misunderstanding and conflict which does not further a considered, reasoned analysis of a proposal (Connor, 2001). To further complicate matters, the Courts have ruled that after the close of a public hearing, a Council cannot discuss the matter or receive new information, without jeopardizing the process (Rogers, 1988).

Others recognize 2 courses of action; improving the status quo, or introducing collaboration into the structural process. Baker's (2005) research identified 10 critical factors for improving the regulation of the current structure of municipal public hearings noted in Appendix E. Of note here, is that his recommendations are about ensuring the adherence to the status quo. He does not question the legitimacy of the process.

Connor (1993, 2001) suggests the process should be separate from the quasi-judicial process and should be a more collaborative process, based on good communication principles and be designed to protect property rights and the public's common law rights. The process would assist with resolving land-use planning issues or at best assist a community to understand planning issues within that community, prior to the public hearing process.

Topal's (2009) research, critiques the value of the public hearing process. He analyzes a public hearing where an application of an oil company who wants to drill a sour well within the City limits of Edmonton, Alberta. He concludes public hearings "use legitimate practices to enact institutional power although they are commonly portrayed as risk-minimizing democratic mechanisms" (p. 277). He cynically concludes that "consequently, public hearings will continue to be an essential means for enacting legitimacy rather than democracy" (p. 293).

Public hearings legitimate government and corporate institutions by enacting public participation that is formal not substantive, creates "public good" that serves particular, not general interests, and uses evaluation which is normative or value-based and not rational (Topal, 2009). Topal concludes the public hearing process enacts ideological or image-based legitimation by constructing an illusion for the general public that they are being included in the decision-making. And though legitimation is illusory, it is effective for enacting state and corporate power (Topal, 2009). This lack of democracy is problematic in that the structural power usurps the citizens' ability, to participate in a meaningful democratic decision-making process.

I suggest that Baker misses the mark. I agree with Topal in that the public hearing process creates an illusion for the public that they are being included in the decision-making process, when in fact, it is illusory. Topal's work provides a springboard for my research. In this paper, I will explore how it is this structural issue is problematic.

Good Communication

It is important to understand what communication should be. Connor (2001) suggests that effective communication is the key to understanding differences of opinion and is critical to resolving conflict. When conflict over land use planning issues is not able to be resolved, people become either winners or losers; some people begin to question the utility and effectiveness of local government's land-use decision-making process. People can become apathetic, cynical and are less likely to involve themselves in the public hearing process (Connor, 1993).

William Isaacs suggests that communication problems stem from an inability to conduct a successful dialogue. Trying to convince others of our positions by refusing to consider other opinions, withholding information, and ultimately getting angry and defensive are common

examples of this (Isaacs, 1999). Isaacs demonstrates that dialogue is more than just the exchange of words, but rather, the embrace of different points of view. It is the art of thinking together (Isaacs, 1999). He says the outcome can be quite different from the traditional winner-looser structure of arguments and debates. Table 1 illustrates what is good communication and what is bad communication (People Community Blog, 2009).

Table 1
Traits of Poor and Good Communication

Poor Communication	Good Communication
People wear masks, they uphold an image or protect a public identity	People are authentic, they don't pretend to be who they are not
Sender attacks receiver	Sender is neutral or positive towards receiver
Receiver doesn't listen to sender	Receiver is open to listen and listens effectively to sender
People (either sender or receiver) are distracted	People are present: paying attention to the conversation
Message is garbled or ambiguous	Message is clear and direct
Sender has a hidden agenda (persuading, controlling, avoiding control, or any other agenda)	Sender discloses to receiver what he/she wants out of the conversation
Receiver is judgmental and filters messages through his/her point of view	Receiver keeps mind clear and open to other points of view
One or more of the people involved are over-emotional (no longer in control of their thoughts, actions, and words)	All parties in the conversation can be emotional, but not over-emotional

We will see that few of the good communication characteristics are observed during the public hearing.

Research Question and Research Statement

It is my hypothesis that during a public hearing, the public and Council feel misunderstood causing conflict to escalate. I propose to show what the communication patterns looks like in the public hearing and how particular discursive technologies shape the communication during a public hearing. These discursive technologies shape a particular kind of communication exchange, which causes existing conflict to escalate.

This hypothesis leads to the following research question and statement.

Question 1 - What is it about the public hearing that produces misunderstandings and conflict?

Statement 1 - The land-use public hearing produces misunderstandings, and an escalation of conflict.

Theory

This study focuses on the talk of citizen during a public hearing. I will use the principles of critical discourse analysis (CDA) to understand the meanings that shape talk, actions and institutions, and how they do so (Fairclough, 2000). CDA exposes how discourse reproduces particular practices by those who have social power, while legitimizing the structure of institutions within which they operate. The public hearing literature previously cited raises doubts about successfully implementing a communication strategy within a system that is more powerful and ideologically dissimilar. Concerns are that the legal rules and procedures that are required to implement a public hearing may sabotage good practices of communication. The language cited above that explains the public hearing as fitting into the regulations about how to talk, who can talk, and when to talk refers to discursive practices that are constituted from the larger, more dominant legalistic discourse. Because these expectations are often disguised in the language of law and regulatory administration, they have an invisible power, and as such are capable of mystifying the places where authority can be exercised in the name of that discourse. In this study, I explore how the talk of citizens at a public hearing is regulated by this legal discourse.

A primary tenet of this paper, then, is that law is a highly privileged discourse that administers power and codified knowledge, which in turn shapes how we talk, think and relate to one another. Analysis of the citizen talk that follows will reveal how the legal discourse

conceals and reproduces power of the bureaucratic system. The findings have significant implications: they suggest that the public hearing, when it is a strategy administered within the land-use decision-making mandate, is potentially neither neutral nor collaborative – dominant discourses have the ability to silently disempower those who participate in the public hearing, reproducing increased conflict, and ultimately, disengagement. In sum, the talk presented below will show *how* in some instances, the public hearing becomes shaped by privileged discourses that are culturally produced and endorsed but in opposition to the principles and values of good communication and collaborative decision-making.

Methodology

The following section will provide the rational why I choose CDA as my methodology. I will select a public hearing and then examine the dialogue that occurs between the public and Council at that public hearing. I will examine the dialogue to identify themes of communication and power relationships that are performed at the public hearing and will map the kind of communication that is produced during the public hearing. I will also undertake a language analysis of the Chair's opening remarks, procedural rules and Section 890 of the LGA to see what impact these three discursive structures have on the dialogue.

Why I choose Discourse Analysis

Discourse analysis, is a qualitative method that aligns with the social constructionist school of thought. At its core is a way of understanding social interactions, (Fulcher, E., 2005) and revealing the often hidden meanings of words (spoken and written) that reside in public discourse and social practice (McGregor, 2003; Taylor, 2001). Discourse analysis challenges us to move from seeing language as abstract to seeing our words has having meaning in a particular historical, social, and political contexts; our words are never neutral (McGregor, 2003).

Stemming from Habermas's (1973) critical theory, discourse theory aims to help us to understand social problems that are mediated by power relationships and to uncover the assumptions that are hidden in the words of oral speeches. In this context, this means that our feelings, thoughts and inter-actions are shaped by technologies that are regulated by policies and laws, themselves produced by particular legal and administrative discourses.

Method: Selection of a Public Hearing

I have chosen a public hearing that was held in Central Saanich on May 4, 20ll. The hearing was about a land-use issue that would amend the Official Community Plan and to rezone 3 of 7 acres of property the Peninsula Co-op owns, at the corner of West Saanich Road and Keating Cross Road, to build a new supermarket. I attended, recorded and then transcribed the entire meeting. The meeting began at 7:00 pm. and ended at 12:33 am (May 5, 2011). The meeting began with the Mayor's opening remarks and explanation of procedural rules, followed by presentations by the Chief Administrative Officer, Director of Planning and Building Services, the applicant, applicant's support staff, and the public.

A record of the May 4, 2011 public hearing proceedings was made by the District of Central Saanich and a copy of that record can be found on CD attached as Appendix F. A copy of my transcription of the proceedings is attached as Appendix G. A copy of Section 890 of the *LGA* is attached as Appendix B and a copy of the Mayor's opening remarks and the procedural rules is attached as Appendix C.

In my analysis I will first examine: 1) Section 890 of the *LGA* to describe the dominant discourses from which the discursive practices are constituted, and 2) the Mayor's opening remarks and procedural rules that are followed, to show how the Mayor administers the legal and administrative discourses and 3) by identifying some talk that occurred between the public and

Council at the May 4, 2011 public hearing to show the way the particular themes of communication are shaped by the discourses. From there, I want to identify themes of communication and power relationships that are permitted at a public hearing.

There are a variety of participants in the public hearing process; the public, special interest groups, developers, legal community, Council members and local government planning staff. As a result, it is important to understand the underlying social structures, which are played out within the conversation or text that occurs during the public hearing process. In order to understand the structures I will identify themes of communication and power relationships.

It is important to put the public hearing into context. As a result the following synopsis of the public hearing is being provided.

Synopsis of the Public Hearing

Prior to the public hearing, litigation occurred between several citizens of Central Saanich and the Peninsula Co-op with regard to the Co-op's recent elections to its Board of Directors. The land use issue and the Co-op's elections were subject to a number of articles in the Times Colonist, Focus Magazine, Saanich Voice Online and the University of Victoria's Martlet. Copies of the articles are attached as Appendix H.

The purpose of the public hearing was to hear public input on a land use application submitted to the District of Central Saanich by the Peninsula Co-op, to amend the Official Community Plan (OCP) and to rezone 3 of 7 acres of property the Co-op owns, at the corner of West Saanich Road and Keating Cross Road, to build a new supermarket. The new store would be about the same size as the Thrifty's Food Store at the Broadmead Mall, would provide a bigger business tax base for the municipality and provide an additional thirty 30 jobs. The land use application required a change to the Official Community Plan and a zoning change.

The public hearing was held on May 4, 2011 at the Saanich Fairgrounds Hall, and lasted 6 ½ hours; starting at 6:30 pm and finishing at 12:30 am. The public hearing was attended by approximately 400 people. The Mayor opened the public hearing and outlined the procedural rules. The applicant and his

team of professionals were permitted to present their application, after which the public was invited to provide input on the proposal. There were 112 speakers; 95 first time speakers and 17 second time speakers. Of the 95 speakers, 50 were in favour and 44 were opposed and one was neutral. The numbers in favour do not include the applicant, the two professionals hired by the Co-op, the Co-op President and Chair and Vice President.

In support of their request, the Co-op presented 7,000 names supporting a new store at the proposed site. About half of the names supporting the new store where from Central Saanich and the rest were Co-op members where living elsewhere in the Region. Those opposed to the larger store in the proposed location were concerned about a variety of issues from increased traffic, poor drainage, and using the property for other than agricultural purposes. Municipal staff in a report, noted that the application has major land use designation implications and cannot be supported based on the existing OCP policies approved by Council. It also involves changing the urban containment boundary which requires approval of the Capital Regional District Board.

Analysis

I will first examine the legal discourses of Section 890 *LGA* to ascertain how this legal technology regulates the administrative discourse specifically the Mayor's opening remarks and the procedural rules. Secondly, I will examine the Mayor's opening remarks and procedural rules to ascertain the type of communication that is permitted by the Chair's comments and the impact this type of communication has on developing the communication themes and power relationships that exist between the participants at the public hearing.

Having dealt with the genre of text, and how the message is framed, I then undertook a more minute level of analysis between the participants at the public hearing: sentence, phrases and words. The transcription of the hearing attached as Appendix G. I first read through the text in an uncritical manner, like an ordinary, undiscerning reader, and then again in a critical manner (LeGreco and Tracy, 2009), in an effort to identify themes of communication and power relationships that may indicate conflict. While doing this I will follow the techniques identified

by McGregor, pp. 5-7, to guide my analysis, which are attached as Appendix I. I will also examine if connections exist between the dialogues, the Chair's opening statement and procedural rules, and section 890 of the *LGA* and what impact the connections might have on conflict.

Section 890 LGA

Two questions arise. How does the discursive structure of Section 890 *LGA* shape communication? How does this discursive technology regulate the production of a form of talk at the public hearing?

Section 890 of the *LGA* lays out the legal formalities that pertain to public hearings (see Appendix B). Section 890, dictates the process of communication that Council has to follow and makes provision for the public's right to be heard. The *Act* comments on the methods that can be used (written submissions, public representations), and the *Act* acknowledges the legal right that people be given a "reasonable opportunity to be heard". Specifically, Section 890 (3) of the *LGA* states:

"*At the public hearing all persons who believe that their interest in property is affected by the proposed bylaw must be afforded a reasonable opportunity to be heard or to present written submissions respecting matters contained in the bylaw that is subject of the public hearing."*

But the *Act* is silent about how people communicate.

Two words found in section 890 of the *LGA* that indicate theme; "must" and "may". These two words have a direct impact on the communication process the Council must follow during the public hearing. The word "must" means the course of action is mandatory and the word "may" means the course of action is permissive (Rogers, 1988).

For example, section 890 (3) of the *LGA* directs Council to follow a specific course of communication, since it uses the word "must":

"……all persons who believe that their interest in property is affected by the proposed bylaw must be afforded a reasonable opportunity……."

When the permissive word "may" is used, it provides the local government with an opportunity to be creative. However the scope of the Chair's creativity is further limited by the phrase "Subject to subsection 3", which uses the word "must".

Section 890 (3.1) states,

"Subject to subsection (3), the Chair of the public hearing may establish procedural rules for the conduct of a public hearing."

So whatever procedures are developed by the Chair to conduct a public hearing they cannot contravene subsection (3).

The Act specifically relinquishes "procedural rules" to those presiding over the public hearing. This seems to be left for local jurisdictions to determine as they "may establish procedural rules".

In addition to section 890, the Court also plays a significant role in setting the parameters of communication. When Courts are asked to adjudicate whether or not a local government has adhered to the provisions of section 890, the Court will examine the procedures used by the local government to ascertain if the local government procedures fall within the common law developed by the Court, the Rules of Natural Justice upon which section 890 *LGA* is based (see Appendix D). These rules apply to the procedures involved in the exercise of a quasi-judicial function but not to an administrative function (example, Council's decision). The Court has

determined when rights are affected there is a duty to act judicially and this implies judicial functions (Rogers, 1988).

The main theme that stands out as a result of analyzing section 890 *LGA* is one of power. It is clear the power is hierarchal, top down, from the Court to the Province to the local government. This power is seen in the way the legislation structures definite communication parameters on the process. The legislation clearly identifies the types of permitted communication and identifies constraints to that communication. Section 890 is therefore a rule indicating how a language should or should not be used, rather than describing the ways in which a language is used. This type of hierarchal communication can be described as prescriptive.

In the next section I examine the procedural rules that the Chair reads to the participants of the public hearing and how these rules are structured because Section 890 *LGA.*

Mayor's Opening Remarks and Procedural Rules

As noted above, though the *LGA* is silent on how citizens are to talk at the public hearing, there is a provision for local governments to provide procedural rules about how to conduct the meeting. Section 890 (3), states that, "Subject to subsection (3), the Chair of the public hearing may establish procedural rules for the conduct of a public hearing."

Typically these procedural rules are read by the Mayor who chairs the meeting. In British Columbia, these same rules are somewhat standardized and usually have been vetted by the local government's Solicitor. The Mayor's opening remarks at this meeting, which incorporate the procedural rules, are found in Appendix C. Below we discuss how these procedural rules exert power and produce social relations during this process.

First, the rules convey a legislative authority. The Mayor opens the meeting with "…..welcome to the public hearing on May 4th. This public hearing is being convened pursuant

to Section 890 of the *Local Government Act* in order to consider the following bylaws……". With this introduction the audience knows that this is a meeting that is legally mandated. This immediately creates a tone of formality in terms of the process and outcome. As well, the focus of the meeting in to "consider bylaws" takes attention away from people's lives and this renders distance from the matters that concern them. It is the bylaw that is important, rather than the decision that affects people's lives.

Administrative discourse also works to produce formality and authority to the proceedings. For those who wish to speak they are to "address all comments to Council" by clearly and slowly stating your name, address, and place of residence . . . "Speak slowly so that we can be sure to who you are and where you reside: and now you will be held accountable to what you say (we know who you are and where you live). Another procedural rule instructs citizens to talk to Council, not others who are present. Council is the authority here.

The Mayor's comments are also a reminder of the legal purpose of this meeting. People who "believe that their interests in property, is affected by the proposed bylaw" are allowed "to make representation". People learn that they have a right to be heard. This right to be heard though entrenched in law creates an entitlement that will manifest as frustration and anger when citizens experience that they are not being heard.

And finally, the Mayor's remarks are the only place where ground rules are about, *how* to make representation are provided. To begin with, the Mayor sets the stage by stating that comments should be made in a manner "that accords respect to everyone present". This means, if you do not have the floor, you "must refrain from making comments, applauding, or booing or otherwise behaving in a manner that impedes the public hearing". Second, everybody is given an opportunity to speak (within the time available, which is five minutes per person). This sets

up a tone of fairness, but within a certain time constraint. If you want to speak a second time, you may, so long as the comments are relevant to the issues at hand. This gives a sense of order to the meeting, though who decides what is relevant is clearly in the hands of the Chair. And third, there is a pattern of talk that is authorized: citizens make representation to which Council may ask questions. But the exchange is one way: Council listens but will not answer questions from the public.

Below I will provide some of the patterns of talk that are shaped by the legal discourse and procedural rules articulated by the Mayor.

Public Dialogue and Themes of Communication

The next part of the analysis is to see what power and impact the language of the Mayor's opening remarks, the procedural rules and section 890 *LGA* had on structuring the communication parameters that led to the communication themes. It is important to know what types of communication are permitted and how that communication is both produced and constrained or limited since that forms the parameters of how the communication between the Mayor, Council and the public is to take place.

Together, the Mayor's opening statement and procedural rules, developed both documents to meet the requirements set by the Court and the Province; specifically the Rules of Natural Justice and section 890 of the *LGA*. The communication is one way, hierarchical, and is directed at the audience attending the public hearing. For example, in the Mayor's opening statement he states,

1. "The public will be allowed to make representation to Council"
2. "Those of you who wish to speak concerning the proposed bylaw should begin their address to the Council"
3. "Speakers should address all their comments to the Council"
4. "The function of Council this evening is to listen to the views of the public and not to answer questions

of the members of the public or debate...."

The communication parameters structured by the opening statement and the procedural rules, reinforce the provisions of the statue by emphasizing rights of citizens, reinforce the formal structure and who has authority (Council), and reminding citizens that all communication will be one-way. Citizens have the right to speak and Council must listen. The parameters do not allow for a dialogue to take place between Council members, between Council and the public and between individual members of the public.

During the public hearing the Mayor, on several occasions, using his gavel, interrupted the meeting to remind members of the public of the procedures. For example, the Mayor made the following statements,

1. "Please refrain from making comments or applauding. I mean you are disrupting the meeting otherwise we will run out of time."
2. "Please refrain from making comments or applauding. This type of behaviour impedes the progress of the public hearing and is not fair to the speakers, so please treat others with respect. You will be given an opportunity to voice your opinion."
3. "Order please"

The Mayor did state in his opening remarks, "Following your presentations, member of Council may if they wish ask questions of you", but only once did a member of Council ask the Mayor if he could ask a question. Therefore even though the Mayor may have permitted dialogue to occur between a member of Council and a member of the public, the Mayor asked if the question was relevant to the issue. From personal experience, a member of Council has to be very careful how he or she phrases a question, so they cannot be accused of bias. If bias was perceived by a member of the public who did not agree with Council's final decision on the matter, that person could open Council's decision to litigation, based on bias.

Themes

Discourse analysis usually does not produce tables, graphs or statistics (Fulcher, p. 7). However given the size of the transcription, I have summarized some of the relevant text tables, so the reader does not have to continually refer back to the extensive appendices.

The analysis of the dialogue that occurred between the public and Council during the May 4, 2011 public hearing referenced in Appendix G. In the analysis, I focus on themes of communication and power relationships. After attending the public hearing, transcribing the proceedings and reviewing the transcription several times, I identified 4 major themes of communication; positionality; attack/defend/attack; negative emotionality and exaggerated/totalizing talk.

Positionality

It became quite clear during the hearing that the community was strongly divided into two camps, those who were opposed to the proposal and those who were in favour of the proposal. Persons who were opposed to the proposal seemed to be more deeply entrenched in their position than those who were in favour, perhaps because they could feel that there was more to lose.

This entrenchment was reflected in the use of words or phrases. For example, those who supported the proposal used more gentle and supportive words or phrases such as “look favourably”, “urge” and “approve” when advocating their position. On the other hand, those who were opposed personalized the issues (“respect for the people who elected you”, “you only have one choice”), and used more pointed and sharp language, such as you have to “reject”, and “polarization”. The supporter position connotes more collaborative talk and is softer, and less forceful. The against position has a tone of being backed in a corner, and is more judgmental and is loaded with insinuations.

This positionality is reflected in the statements presented in Table 2. The Table has been categorized in two parts, those opposed and those in support. I have identified each speaker with a number which corresponds to the number assigned to that speaker in the transcription.

Table 2

Statements of Positionality

In Support

Speakers	Statements
#3	I request that you look favorably upon this new Coop and God Bless you."
#11	I urge yourself and Council to approve this proposal."
#25	"So I urge the Council to consider the amendment bylaws favorably and to allow the Coop to redevelop a new store that adequately serves its local population and its local community at the new site, at Keating Cross Road and West Saanich Road.

Opposed

Speakers	Statements
#4	"If you have any respect for the people who elected you, you only have one choice and that is to reject this application."
#28	"It's not good for my neighbourhood and I would ask that the Council would consider that and not support this request by the Coop."
#66	"It's another very sad thing, is that they created this polarization of our community."

Positionality contributes to a dynamic of polarization. Positions polarize people – you are for or against as observed by one participant. This is inclined to occur in most social interactions. But in the context of quasi-judicial proceedings, where the formalities of legal proceedings have power to shape behaviour, citizens know their talk must make an impact and stir the attention of the decision makers, quickly. There is no time to build relationships and efforts to engage in collaborative talk would be risky. The binairies of legal discourse-good/bad; right/wrong; even guilty/innocent begin to take a toll. The procedural rules are complicit in administering the legal agenda. But the procedural rules have a special force: they are immediate and the directive comes explicitly from the Chair and is collectively shared.

Attack/Blame/Defend

Many people who were opposed to the proposal used language that reflected a tone of aggression and was characterized by an attack/blame/defend pattern of behavior. The attack/blame dynamic was often directed at the Co-op's Board of Directors. Several speakers opposed to the proposal, suggested the Co-op Board was, "no longer an organization I . . . can trust" (attack), and "[the Board is] circulating misinformation and causing such dissention in our community" (blame). The accusation and personal attacks on the other side are recognized by participants as one speaker observes that "people are destroying each other's reputation . . . attacking the reputations of the people, several of them . . . [saying] the current Board of the Co-op is illegal", "[it is the] same people who make up the current Board and senior management, who are asking Council to permanently destroy our community farmland [this is totalizing] or a piece of our community farmland." and "[there is] no more damning arbitration statement I ever read [this is totalizing]. The current Board of the Coop is illegal." One speaker alleged that Judge Jacob DeVilliers, who had adjudicated a conflict between several citizens of Central Saanich and the Co-op Board, said the Board was involved in "scurrilous and unlawful activities".

Though those in favour of the proposal used softer language, they too demonstrated this form of attack. For example, one citizen in favour of the proposal accused those opposed 'of distributing facts to the community that would counteract the misinformation that is being presented in an effort to feed certain peoples own special agenda." And in another instance, a citizen, more defensive in tone, complained that "Never once did we envision contending with a small group calling themselves Friends of the Co-op, circulating misinformation and causing such dissention in our community."

The attack/blame/defend communication dynamic increases the hostilities between the parties and entrenches positions already existing. The communication is strictly one way in that there is no opportunity for those accused to explain or defend themselves - real dialogic exchanges are not possible - listening is obstructed. Understanding and listening are no longer the prerogative. In such an atmosphere, people do not wish to understand their "opponent's" perspective. Several examples of the language used are provided in Table 3, which also indicates whether the speaker was opposed or in favour of the proposal.

Table 3

Statements of Attack/Blame/Defend

In support

Speaker	Statements
#13	"We have taken the high ground wherever possible, but we have made every effort to distribute facts to the community that would counteract the misinformation that is being presented in an effort to feed certain peoples own special agenda."
#51	"Never once did we envision contending with a small group calling themselves, Friends of the Coop, circulating misinformation and causing such dissention in our community."

Opposed

Speakers	Statements
#4	They reacted in a way I have never personally witnessed before. According to former BC Court Judge Jacob DeVilliers, they conducted scurrilous and unlawful activities. And oh by the way, the people Mr. DeVilliers referred to are the same people who make up the current Board and senior management, who are asking Council to permanently destroy our community farmland or a piece of our community farmland."
#18	"Very often in the speakers that have talked, you know talked about how the community, how the Coop does good things for the community, they give money to causes and I am sure they have given money and jobs to worthy projects, but I have also seen firsthand how they actually perform toward a member who dares to speak against the Boards designs. They are no longer an organization I feel we can trust."
#66	"People are going after each other, destroying each other reputation because of this nonsense. We the people should stick together, nothing should divide us. The attack the reputations of the people, several of them. Nobody from the other side attack their reputation. But they attack reputation of

	many people tonight. Here is the ruling of the arbitrator. Because there is no more damning arbitration statement I ever read. The current Board of the Coop is illegal. Please do not divide this community.

Negative Emotionality

Those persons who were opposed and those who were in favour of the proposal, both exhibited signs of (heightened) emotionality throughout the public hearing process. A sample of the statements of emotionality, are outlined in the Table 4.

Table 4

Statements of Emotionality

In Support

Speakers	Statements
#48	"Another thing I am upset about is there seems to be a lot of people here who are making this a personal vendetta against the people who are voted in to run the Coop"
#64	"I think for some of my co-workers here tonight, admitting that you are a Coop public employee at a public hearing is somewhat embarrassing."

Opposed

Speakers	Statements
#20	"I am pleading with you as a young farmer."
#32	"This has become an emotional issue."
#47	".....I guess we are calling it rural estate which is frightening....."
#99	"They are just trying to tug on your heart strings." "Yet I am insulted by other people here and many other people of this community are insulted, saying we are just a bunch of hobby farmers....."

The heightened (negative) emotionality tells us that people are frightened, hurt or humiliated. They may feel desperate and out of control. Interestingly, some citizens had the insight to articulate that it was the process that was contributing to their being upset. Some of the speakers said they "were upset"; they felt the process was like "a personal vendetta", and it was becoming "an emotional issue", or that the issue was "trying to tug on your heartstrings". People said this "is somewhat embarrassing", were "frightening" and were "insulted". Clearly, people had

emotional reactions, were responding to the attacking statements made at the forum. Though the ground was set by the Mayor to ensure civility, the legal binary of attack/defend leaked into the forum and were impacting the experience of participants. Other words or phrases were used to emphasize a point, such as "guess we are calling it rural estate", admitting that you are a Coop public employee at a public hearing is somewhat embarrassing" and "insulted".

In an atmosphere of heightened emotionality, motives can be misinterpreted just as easily as statements can be misunderstood. When parties are in conflict, there is a tendency to assume the opponent's motives are maligned, even when they are not. In an atmosphere of aggression and emotionality, often communication difficulties arise because people think they know all they need to know about their opponents and that further communication of any kind is unnecessary or they may be expressing difficulty with the process, since they feel misunderstood. When people are emotional and upset, images of opponents tend to be overly hostile and exaggerated. Opponents sometimes are seen to be more extreme and outrageous than they really are. People are showing that they have been injured by this process, where accusations, name calling, and attacks on opinions has become the way of talking**.**

Exaggerated/Totalizing

Exaggeration, which sometimes can be viewed as inflammatory, was mostly used by speakers who were opposed to the proposal. They may have used exaggerated statements, to emphasize the point they were trying to make.

A sample of the statements of exaggeration, are noted in Table 5. Also noted in the table is whether the speaker was opposed or in favour of the proposal.

Table 5	
Statements of Exaggeration	
Speakers	Statements
#22 Opposed	".....that Central Saanich is considered the best, the most well planned community certainly in BC, possibly in North America." "I've heard all the whisperings and I know all the rumours and I say with confidence by intention or by impact, this application will open Central Saanich up to become the next Langford on southern Vancouver Island.
#96 Opposed	"When I picture an OCP being opened up and all the things that are happening recently with all the different rezoning etc and I look at some people's views of what kind of wonderful place could be, as a large city, and I see that the Fire Hall, the Municipal Hall, the Senanous Water Line, the North West Quadrant being thought of has having water etc, I can see Vancouver, North Vancouver, West Vancouver. I can see the whole development there now."
#36 Opposed	"This proposal is just the wedge being used to pry open more and more land for high end housing and development. It will be just an endless zone of ticky tacky houses and urban sprawl, just like everywhere else."

Some examples of exaggeration that were used are; ".....that Central Saanich is considered the best, the most well planned community certainly in BC, possibly in North America" (used to objectify and give a sense of certainty), "I've heard all the whisperings and I know all the rumours and I say with confidence by intention or by impact, this application will open Central Saanich up to become the next Langford" (predicting the future by comparing Central Saanich to Langford), "I can see Vancouver, North Vancouver, West Vancouver. I can see the whole development there now" (as if he were a visionary). The points of exaggeration have the rhetorical effect to be persuasive: totalizing and catastrophizing is used to fortell an undesirable future. Fearing the possibility of this future and with no space to make claims otherwise, "totalizing" has the emotional effect to persuade the listener or reader to accept an argument. In this setting, with no place for two-way discussions, totalizing is a strategy that uses logic and fear to persuade.

Conclusions

Public hearings are a legal requirement as stated in a provision of the *LGA*. The intent of the Act is to ensure citizens have a right to be heard in land-use decisions. Public hearings are often the first time the public is provided a legal right to have input into land-use decisions.

The format of the public hearing is constituted by the Mayor's opening remarks and procedural rules which are based on the *LGA* and Rules of Natural Justice. In addition local governments are able to include procedural rules to assist in the delivery of the hearing. The findings show that the *LGA*, Rules of Natural Justice address the rights of participants to be heard at the hearing. These documents are silent on how citizens are expected to talk and communicate their concerns. The procedural rules, which are communicated by the Mayor at the hearing, attempt to set the tone for fairness and civility but also the legal discourse, reaffirming who has the authority and the one-way direction of communication. The data shows that citizens communicate from positions, use a pattern of attack/blame/defend, express negative emotionality and use exaggerated/totalizing talk. My findings support Topal's argument, that a public hearing is a means for enacting legitimacy rather than democracy.

A public hearing is the most common form of citizen input, but they often fail to fully achieve their objectives. Although citizens are usually given fair and rightful opportunity to make representation, they are not "heard" at least not in any dialogic sense. A public hearing is constituted around an institutionalized legal discourse, which can lead to mass confrontations which is what I observed.

The flow of information is one way, which limits the "exchange of meaning", and communication (Tidwell, 1998). In other words, the public hearing precludes the imparting of information in a way that keeps parties open minded, and not personalizing the issue (Isaacs,

1999). . Because of this limitation, it is very difficult, if not impossible, to promote meaningful dialogue, which is critical to understanding and resolving conflict (Isaacs, 1999; Habernas, 1981). In order for the parties to communicate effectively, they need to understand (though not necessarily agree with) the perspectives of the other parties to a conflict.

Language sets the parameters of the communication that occurs between the public and Council during the public hearing process. The limitations imposed by section 890 of the *LGA*, and the Rules of Natural Justice, and which are incorporated into procedural rules creates impediments to communication, leading to unnecessary conflict. The public hearing communication process is hierarchal, exacerbates conflict and does not lend itself to the resolution of conflicts that arose prior to or during the public hearing. Themes of positionality, aggression (attack/defend/blame), exaggeration and negative emotionality demonstrate poor communication and unresolved conflict. The process seems to be out of step with their various stakeholders, which has led to the feeling that conflict has been and probably will always be a normal part of the public hearing process with a community becoming polarized on controversial planning issues.

Given the communication parameters that are structured by the public hearing process, disputants do not have good methods for communicating with opposing parties. Some people may wish to communicate so they can understand the other's argument. But they are unable to do so because there is no communication mechanism in place during the public hearing that would permit this type of communication to occur, risking future incidents.

The preliminary results appear to support statement 1.

"The land-use public hearing process permits misunderstandings and an escalation of conflict to occur."

It is important to develop a plausible solution that would address the issues identified in this paper. When parties can find ways to speak freely and truthfully to each other without violating legal requirements, they can create arguments that satisfy both their needs. It could create a stronger sense of community and respect for differing perspectives on land-use planning issues. We need to try a different approach to address the problems associated with the current quasi-judicial public hearing process. No one is on trial here. As a result, the following alternative solution is presented for consideration.

Alternative Solution

I suggest the theoretical concepts of collaboration could be applied to the public hearing process. The new process could be designed to protect legal rights while promoting the resolution of land use planning issues, or at best, it could foster a better understanding of the planning issues within a community; a stronger community. A more meaningful collaborative dialogue is required amongst the participants. I realize this is unfamiliar territory, but the current process exacerbates conflict, and polarizes and divides communities.

It is suggested the manner in which conflict is defined and the application of theories to understand human behavior can lead to a variety of ways to investigate conflict persons experience during the public hearing process, which may lead to the development of alternative approaches to resolving conflict that public hearing process promotes. Tidewell states: *"Views of conflict and how it is resolved, depends on the values held by the parties. Resolving conflict is not a value-free activity and resolving conflict is held in high esteem over conflict continuance. The legal system is loaded with values that are quite different from what Isaacs referred to. The values that inform conflict resolution are largely Western and may act to inhibit its usefulness application across cultural and political barriers. Western notions of conflict*

resolution include non-violence, fairness, individual choice and empowerment and the support for a variety of fundamental principles (examples, human rights common sense or human needs) (p 17).”

It is suggested that since the community views the public hearing process as quasi-judicial in nature, the public tends to view the process has rigid and they can say whatever they want to say to make their views more credible. However, this could be changed if collaborative methods are incorporated into the public hearing legislation. Connor notes that while economy and efficiency are understandable, neither will be achieved if public backlash is felt over and over again as a result of the current public hearing process. It’s important that everyone who participates in the process wins something. It should not be a win-lose scenario which is what usually happens in a quasi-judicial and judicial setting.

Collaborative methods may assist to enhance public participation on land use issues and overcome some of the obstacles of a public hearing. It is suggested that when the parties can find ways to speak freely and truthfully to each other, they can create arguments that satisfy both their needs. The purpose of listening to conflict is to learn about the other. The public hearing process does not offer communication opportunities during or after the hearing has concluded, without violating legal requirements.

Laws in Vermont, Georgia and New Jersey require or encourage the use of collaborative methods, such as negotiation or mediation processes to resolve disputes concerning inconsistencies between comprehensive plans. This can occur at any stage of the process (before or after the hearing is commenced) providing the planning provisions of their state local government legislation are amended to permit this to occur.

Connor (1999) noted that in Australia, the participation process in the public hearing process is varied, but where participation is recognized, it can be quite good whereas others are very poor. There appears to be a broad recognition that consultation is required but not as good an understanding of what it is, or what appropriate processes are.

Prior to holding of public hearing, an official community plan amendment bylaw or a zoning amendment bylaw, the right to hold such discussions is generally unrestricted however, two local principles must be considered when undertaking these discussions:

1. May be liable for misrepresentation for giving incorrect advice.
2. Council may jeopardize a planning or zoning decision if they are seen to have made up their minds prior to a public hearing.

When structuring such a process, it is important that open meeting laws and procedural due process requirements cannot be violated. For the most part, these concerns can be addressed by ensuring that sessions that involve decision-makers occur in public. This process can be viewed as a new way of doing business, seeking to ensure that all community voices are heard, before decisions are made and should be considered when decision-makers are seeking to resolve conflicts.

Connor suggests the first is to create a process for public review of a project before the bylaws have been drafted and before it moves to first and second reading and call it a "Pre-Hearing" to attract attendance. An independent facilitator to run the "Pre-Hearing" and a process to facilitate good communication are critical. Connor suggests representatives from the developer, the planning department and the local community sit down to discuss the proposal and decide on the key issues of public concern.

At the "Pre-Hearing Meeting", after the initial overview presentation by the proponent or developer, time is allocated for each area of concern. After the "Pre-Hearing Meeting", other meetings between the developer, planners and local community to go over the key issues and discuss possible solutions could be arranged. A formal arrangement would need to be made to communicate results and progress back to the community.

Facilitation during this phase would be to ask what the protesting groups want to see from the proposals and to solve problems. If groups or individuals have a strong sense of their own identity they are able to move to equal power relationships. Partnering is where there is mutual respect and empathy for each other's positions, strengths and limitations.

The community deserves a meaningful dialogue; a collaborative rationality (Habermas, 1981, Innes, J. & Booher, D., 2010). As a result, the following recommendation is being presented for consideration.

Recommendations

It is recommended that:

1. A new section be added to the *Local Government Act*, example Section 890.1 that grants the local government the discretionary authority to hold an official "Pre-Public Hearing Meeting(s)" without impacting the legality of a official "Public Hearing" held in accordance with section 890 LGA.
2. Council may use the "Pre-Public Hearing Meeting" if it feels there is a requirement for those land-use planning issues requiring a more open collaborative dialogue.
3. The Council would be a participant in the "Pre-Public Hearing Meeting" and any comments made by individual members of Council are made on a "without prejudice basis".

4. Once directed by Council to proceed with a "Pre-Public Hearing Meeting", the administration of the "Pre-Public Hearing Meeting" is the responsibility of the local government administration who may use either internal or external resources.
5. The "Pre-Public Hearing Meeting" will be designed to facilitate an informal collaborative dialogue between the public and the applicant, staff, and Council on a proposed land-use application.
6. The "Pre-Public Hearing Meeting" would not be required to follow the strict rules (Rules of Natural Justice and procedural requirements) that structures and limits talk at the Public Hearing, mandated by Section 890 of the *Local Government Act*.
7. The local government must not make a decision respecting a land use decision at the "Pre-Public Hearing Meeting".
8. The Province of BC working with the Union of BC Municipalities and the Local Government Management Association of BC, jointly develop guidelines that would be helpful to local governments in designing a "Pre-Public Hearing Meeting" process.
9. Based on the guidelines, local government be given the discretion to develop a process that suits their respective needs.
10. A synopsis of the "Pre-Public Hearing Meeting" form part of the record at the "Public Hearing" mandated by section 890 of the *Local Government Act.*

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Appendices

Appendix A - Examples of the Land Use Planning Process in British Columbia

Appendix B - Section 890 of the *Local Government Act*

Appendix C - Mayor's Opening Remarks and Procedural Rules

Appendix D - Rules of Natural Justice

Appendix E - Ten critical factors to improve the public hearing process (Baker)

Appendix F - Record of the May 4, 2011 Public Hearing on CD

Appendix G - Transcription of the May 4, 2011 Public Hearing

Appendix H - Additional articles commenting on the Central Saanich land-use proposal

Appendix I - Techniques Identified by McGregor

AGENDA ITEM 8(a)(i)

A bridge too far.pdf
Backyard chickens home to roost in WV.pdf
Be wary of wily Homus Evictus.pdf
Bear shot in North Vancouver basement break-in.pdf
BRB.Cops.pdf
Building bridges.pdf
Calling all district residents who care about strays.pdf
Calls about problem bears on the North Shore hit record number.pdf
Capilano Road construction to get noisier, go later.pdf
City of North Vancouver sets bike lift study in motion.pdf
Coast crossing a smart idea.pdf
Council gives Ambleside BIA its stamp of approval.pdf
Cure for the Cut -from NSNFRI20150918.pdf
Delbrook community plan to kick off soon.pdf
Democracy deserves a discussion.pdf
DIG DEEP_ Get to the root of recent blowdowns.pdf
District of North Vancouver orders homeowner to fix wall caving over creek.pdf
DNV-advisory-committees-request.pdf
DNV-notice-Invasive-Plant-Management-Strategy.pdf
DNV-October-Council-Meetings.pdf
DNV-Permissive-Tax-Exemptions.pdf
DNV-request-for-honour-nomination.pdf
Duo entering hall of fame.pdf
DWV-notice-to-amend-start-council-meetings at-6pm.pdf
Energy, economy key election issues in North Vancouver.pdf
Enough yo-yo science.pdf
Enrolment up in North Vancouver and West Vancouver schools.pdf
Fatal attraction.pdf
Invasive-species-workshop-by-DNV.pdf
Ironworkers bike lanes much improved, not so the view.pdf
It's no easy living where the wild things are.pdf
Leaf blower makes lousy coffee mate.pdf
Men's recovery house in Seymour as good as built.pdf
North Vancouver candidates spar at Edgemont debate.pdf
North Vancouver girl, 5, seriously injured after tree falls on her in Highlands schoolyard Monday.pdf
North Vancouver RCMP asks_ what can we do better_.pdf
North Vancouver trail saboteur pleads guilty to mischief on Fromme.pdf
Partial-Braemar-School-site-for-4-sf-homes-PIM.pdf
Parties promise transportation fixes.pdf
PH-Sep15-Mens-Turning-Point.pdf
Planning for an aging demographic.pdf
Ridgeway Annex redevelopment plan gets public input.pdf
Round and round.pdf
Seaspan to build new head office on North Vancouver waterfront.pdf
Seymour candidates debate anti-terrorism bill.pdf
Sprinkling restrictions eased.pdf
Sunshine Coast bridge plan raises ire in West Vancouver.pdf
Taking care.pdf
Task force issues call to action.pdf
There is no denying that humans contribute to climate change.pdf
Tragic accident warrants tree bylaw review.pdf
TransLink service not on par with its charter.pdf
Turning Point addictions recovery house debated in North Vancouver.pdf
Turning Point recovery house approved in North Vancouver.pdf
West Vancouver homeowner sues neighbours over trees.pdf
Young & voteless.pdf

AGENDA ITEM 8(b)(i)

FROM: Jurassic Parliament Newsletter September 2015 Vol. VIII, No. 9

Quick tip: Call for the question needs a second

When someone "calls the question," the chair should immediately ask, "Is there a second?" If someone seconds the motion, it means that at least two people want to stop debate and vote right away. The chair then takes the vote by a show of hands. If two-thirds are in favor, discussion is over and the chair immediately takes the vote on the immediately pending motion (whatever the group is discussing).

It is also fine for the chair to ask, "Is there any objection to stopping debate and voting right now?" If no one speaks up, silence means consent, and the group is ready to vote.

Either method works well. But don't be fooled by the common misunderstanding, and imagine that the words "I call the question" have the toxic power to stop the discussion instantly.

AGENDA ITEM 8(b)(i)

Jurassic Parliament
Mastering meetings using Robert's Rules

Jurassic Parliament Newsletter October 2015 Vol. VIII, No. 10

"The Intern" and my love story

My oldest son took me to see “The Intern” this week and I loved every bit of it. Afterwards, I realized that **the arc of the story line followed my own love story.** In my twenties, I was a “bright young thing” enjoying a great career with the State Department. Everything looked great on the outside. Inside, though, I was all over the map. I’ll spare you, dear reader, the boring details, but **emotionally I was as “out of it”** as the Anne Hathaway character.

The Foreign Service had assigned me to Moscow when I had the great good fortune to fall in love with **Lew Macfarlane, my late husband.** Lew was ten years older than I and embodied **the best qualities that we saw in the Robert DeNiro character** (as well as a few more, of course!). His steady attention to what really needed to be done, his quiet caring for other people, his creative solutions and his ability to act decisively were all mirrored in the movie.

A good leader, in my view, embodies those qualities. A good leader **supports followers to persevere** in the face of difficulties. A good leader **identifies**

the real problems and speaks the truth about them in a way that encourages others to tackle them. A good leader **"doesn't sweat the small stuff,"** and knows that much of life consists of small stuff. And a good leader always sees the human side of others, and enables followers **to become better human beings** despite their quirks, failings and errors.

Lew used to tell me, **"Jurassic Parliament is not about dinosaurs."** As we move forward developing new curriculum and materials to share with you, I realize that **it's about more than Robert's Rules.** I learned so much from Lew, and I miss him so much. But I am filled with gratitude at having been married to him for 33 happy years. And I am so grateful, through my partnership with Andrew Estep in Jurassic Parliament, to be able to share what I learned about leadership and life in that marriage with you.

Ann G. Macfarlane
Professional Registered Parliamentarian

Quick tip: The chair must control the meeting

Every chair must know how to control the meeting. **Be prepared to interrupt people** who are rude or who speak out of turn. You are the guardian of the members and must speak up when their rights are violated. Simply put, **if you lose control, the meeting is a failure.**

Get the real scoop on motions, voting and quorum, and chairing the meeting - and enjoy doing it!

We promise you that you will enjoy our webinars on Robert's Rules - unlikely as that may sound. And the proof of the pudding is in the feedback: **"It was like a conversation over coffee with an expert in their field. Very enjoyable,"** was the comment of Gary Kipp, Executive Director of the Association of Washington School Principals.

Read more comments here, and sign up today for an hour with Ann. You'll be glad you did!

Mastering Motions in Robert's Rules 1 hour
Wednesday, October 14, 2015 9:00 am Pacific time

Avoiding Voting and Quorum Mistakes 1 hour

Tuesday, October 20, 2015 9:00 am Pacific time

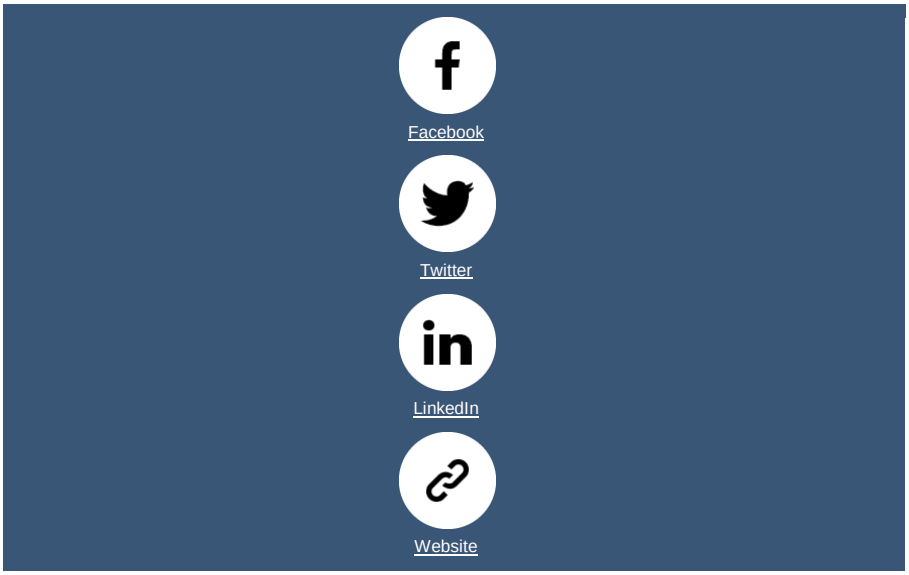
Iron Hand, Velvet Glove: Chairing the Meeting 1 hour
Tuesday, October 27, 2015 9:00 am Pacific time

More topics in November and December.

These webinars are affordable at $29 each. We also offer a special rate for clerks, secretaries and executive assistants at $19.

News about us

Ann is singing with the Magnolia Chorale again, loving the splendid music. She has the honor to serve as president of the board this year, thereby giving her parliamentary inclinations full scope (don't question her fellow board directors too closely about that...). Andrew and his partner are enjoying the lovely new home they recently purchased. They are looking forward to hosting bigger and better parties.



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AGENDA ITEM 8(b)(ii)

Your municipal clients have a duty to keep trails and pathways in a safe condition

http://www.citopbroker.com/special-reports/safe-city-trails-pathways-5789

Barb Szychta on October 2, 2013

Safe City is a column on risk management issues and broker advice for municipalities and other public entity clients.

Municipal trails and pathways promote personal health and fitness and provide a green "escape" space within an urban setting. They also come with the potential for liability. Your municipal clients have a duty, as an occupier, to keep the equipment and property in a safe condition to accommodate its intended purpose. Three key considerations for trail management that your clients need keep in mind are: the duty of care the municipality owes to users of the trails; the protection of the environment and natural resources; and the provision of high quality user experience of the trails.

Read: Safe City: Managing Beaver Dams

There are many challenges involved in the design and maintenance of trails, including the fact that there is no province-wide code of trail conduct in Ontario nor any minimum trail standards. There has also been an increase in ATV users, but little development of ATV trails. Maintaining the integrity of the environment is also a concern, as is the need to protect aboriginal communities and sacred lands.

Another challenge is getting all necessary permits and creating contracts with various involved parties. But establishing a risk management strategy can help deal with all of these challenges.

Read: E-bikes becoming costly risk for brokers

Risk management essentials:

- Build and maintain the trail to a standard
- Institute a system of inspection
- Create a system for maintenance
- Ensure signage and barriers are in place
- Recruit and properly train volunteers

- Make sure the municipality has contracts with landowners and all necessary permits
- Use an accident/incident report template and ensure it is filed and that their is follow up.

Read: Cottage insurance–when is it a commercial risk?

Managing the Risk

There are a wide variety of trail user groups, including joggers, mountain bikers, cross-country skiers and horse riders. Municipal trails need to be safe for all users. There are several ways in which your municipal clients can manage this risk:

Trail Markings: Signs with the trail name and length of the trail should be posted. Display the user group for whom the trail is intended (i.e. experienced or inexperienced users). A lack of trail markings can cause confusion and potential for injury, increasing liability. Designate trails as either single use (walking) or multiple use (biking and walking). Signs should indicate which activities are allowed and which are prohibited. Provide different trail uses with different routes (one route for walkers and one for bikers).

Barriers: Barriers on trails prevent unauthorized users from accessing the trail. They are also used to protect adjacent fragile and hazardous areas. Barriers should adhere to local building codes. Ensure that emergency vehicles will be able to get through or around the barrier in an emergency.

Read: Risk of rail collisions at rail crossings too high, says TSB

Inspections and Maintenance: Municipalities should inspect trails regularly to ensure they are in good condition. They should follow an inspection process that includes: identifying the features/facilities on the trail; evaluating current conditions/problems of the trail; detailing maintenance work; providing expected corrections and timeframe for them to be completed; documentation of all inspections and maintenance using a standard inspection form/template; performing all maintenance within an appropriate defined timeframe; calling in experts or contractors for bigger maintenance issues.

Signage: There are four main issues with trail signs: 1) Design. Signs should be designed using universal symbols. Ensure the colour stands out. Also, take into account: glare from the sun; snow build up; and the vantage point of users. Abide by local or provincial sign requirements. 2) Location. Use STOP signs at intersections or trail crossings. Indicate hazards at 30 metres (98 feet). Use signs to indicate the presence of: roads; water; railroads; steep slopes; hazardous conditions; 911 markings. 3) Visibility. Ensure text is large enough to read from certain distances and that signs are free from obstructions. 4) Maintenance. Ensure proper maintenance of signs is frequent. Clean signs regularly and after snowfalls. Clean signs that are close to roads. Regularly trim the environment around signs. Replace signs whenever necessary.

Municipalities shouldn't use signs to convey trail difficulty, as this can change with trail conditions, and as the term "difficulty" is subjective.

Avoid using “international” symbols to mark the trails. An example of this would be to use ski hill symbols (green circle = easy; blue square = intermediate, etc.) to classify trail difficulty. You can’t assume that everyone knows what these symbols will mean.

Ensure your facility meets wheelchair accessiblilty standards criteria before posting an accessibility sign.

Read: Meeting the requirements of Ontario’s Accessibility Act

Risk Prevention

From a risk management perspective, it is very important for municipalities to develop a custom risk management policy for trails; maintain and repair trails to eliminate hazards; inspect trails regularly; and document all processes and procedures.

Municipalities should measure the frequency and severity of incidents to help determine which risks are more of a priority. By taking precautions, they can reduce the risk of accidents and injuries that are common to recreational trails.

Barb Szychta is the director, risk management for the Frank Cowan Company, located in Princeton, Ont. She can be reached at barb.szychta@frankcowan.com. For more information on managing public entity risk, visit Frank Cowan Company’s Risk Management Centre of Excellence at http://excellence.frankcowan.com. The next edition of Safe City will explore municipal liability around bike/walkathons, and will be published on October 16.

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AGENDA ITEM 8(b)(iii)

Extreme-sports facilities not required to report injuries

Lauren Pelley

OurWindsor.Ca | Jul 14, 2015

Ian McAdam became a quadrapelegic at 13-years-old on a bike run at Blue Mountain.

Critical injury lawyer Patrick Brown is raising awareness about the lack of regulations at extreme sport facilities around the city.

While Ian McAdam was mountain biking down a trail at Blue Mountain Ski Resort in July 2007, his bike bucked on a dirt jump — sending him over the handlebars. He broke his neck.

At the age of 13, McAdam was suddenly a quadriplegic.

But the resort wasn't required to report the incident to any government body or the public.

Eight years after the crash, McAdam is among those questioning why injuries at extreme sports facilities are typically dealt with behind closed doors and not publicly reported.

http://www.thestar.com/news/gta/2014/05/28/blue_mountain_reaches_settlement_with_quadriplegic.html

"The only time you hear about anything at a facility is if someone has a critical injury or dies, and that's only after the families step forward and say anything about it," McAdam, now 21, told the Toronto Star.

Last year, Blue Mountain reached an undisclosed financial settlement with McAdam after a $21-million lawsuit alleged the resort failed to have proper safety measures in place to assess and monitor young people using the hill.

The Star reported last year that the resort had removed certain jumps, implemented new safeguards to assess the skill level of people under the age of 16, and required additional equipment on riders after McAdam's injury.

McAdam's lawyer, Toronto-based critical injury expert Patrick Brown , has since raised red flags about the lack of government regulation surrounding extreme sports facilities such as mountain-bike parks, rock-climbing centres and white-water rafting facilities.

"When it comes down to injuries at these places, there's no obligation for the enterprise to report the injuries or provide any stats to the government," Brown said.

During the lawsuit, Brown was able to gain access to data revealing how many children have suffered significant injuries within the resort, but the numbers are secret: since it was through a court order, Brown said he legally can't reveal the information.

"I was absolutely amazed that none of that gets reported to any government agency," Brown continued.

Brown questioned why there is a "big hole" with extreme sports facilities, while the provincial government regulates amusement devices — such as roller coasters, water slides, bungee devices and zip lines — through the Technical Standards and Safety Authority under the Ministry of Government and Consumer Services.

Anne-Marie Flanagan, a spokesperson for the ministry, confirmed that extreme sports are not regulated. Because of that, facilities are not required to report any on-site injuries unless they fall under another legislative framework. Employee injur for instance, fall under the Ministry of Labour, she noted.

"There should be some type of obligation to at least report online the number of injuries or deaths that might happen at tha (extreme sport) activity, just so people get an understanding of the degree of risk," Brown said.

In addition, these private businesses do not fall under the Freedom of Information and Protection of Privacy Act, which on covers public-sector organizations — meaning that the act could not be used to gain internal facility injury data, if any exis

In the case of Blue Mountain, a spokesperson said the resort does track every detail of on-site injuries and uses the data an "ongoing basis" to increase safety and reevaluate programs, but does not release the information to the public or repor to any governing body.

“For us, we use it internally, but it isn’t posted online or public,” said spokesperson Tara Lovell.

Dr. Charles Tator, a brain surgeon at Toronto Western Hospital and expert in catastrophic brain and spiral injuries, said the should be better recording of injuries that occur among members of the public, even though the facilities might be private. think it’s very important to have the information in the public domain and not just held by the resorts,” he said.

But it doesn’t have to be distributed through the government, he noted. “It could be mandated that every organization is responsible for keeping its records, and then for making them public annually,” Tator said.

Jeff Jackson, an Algonquin College professor who has spent 26 years working in the extreme sports and adventure indus said aggregated data could be useful — but raised concern over the public’s ability to understand what the specific facility numbers mean.

More challenging parks would likely have more injuries, for instance, but that wouldn’t necessarily be a sign of lax safety measures.

“I see problems with forcing individual operators to release data, because I don’t think the public is sophisticated enough t interpret it,” Jackson said.

Even so, he doesn’t see a “compelling argument” why the public shouldn’t be informed about injuries at extreme sports facilities.

As for McAdam, he said public reporting of injuries could be useful for statistical purposes and to give people the chance t call out facilities for their injury rates. It could be bad for business, but it’s also “public safety,” McAdam noted.

“How many people have to be injured severely before the government does anything?” he said.

- With files from Toronto Star staff

Toronto Star