Local Government & Public Hearings

Local governments are required by provincial law to hold public hearings to consult with residents whenever they wish to change bylaws, particularly those which effect land planning and use, or allow a variance from those land-use bylaws in specific situations. The Local Government Act of BC is the current legislation specifically applied Land Planning and Use, including public hearing matters (see note 4, below). The same legislation also describes the type, contents, timing, and frequency of public notice required to inform the public of such a hearing.

For example, if council wishes to change the Official Community Plan (OCP), or to add a Duplex zoning category to the Zoning Bylaw, or to allow variances so that a new apartment building can be built larger than allowed, or with less parking than allowed, then proper public hearings must be held. Justice Mark McEwan, in his recent decision, has clarified what constitutes proper public hearing. Not surprisingly, a quick analysis of Justice McEwan's decision show that most municipalities, including Oak Bay, are far from adopting acceptable public consultation procedures.

Council must strictly conform to these laws and processes, including Justice McEwan's decision, or otherwise they risk the underlying bylaw or variance being considered void by the Supreme Court of BC. This can be achieved within a blink of an eye the moment residents and taxpayers can demonstrate that public hearing and consultations were flawed.

This is not new. ***The Mayor and Councillors Handbook*** (see note 1, below) even has a warning about it, quote: "For those seeking to challenge zoning bylaws in the courts, the conduct of the public hearing has always been fertile ground." Despite this clear warning, in BC many local councils have been holding flawed public hearing.

What is New?

What is new is that on January 27th, 2015 the BC Supreme Court (see note 2, below) set a landmark precedent in the *Yaletown Residents vs Vancouver* case. After reviewing the facts of that case, Justice Mark McEwan ordered a stop-work on a development project where $7 million had already been spent, pointing out that the city did not conduct the public hearing process in an appropriate manner.

Below is a **quote from a legal firm** about what this precedent means (see note 3, below):

> "*The result of this decision on future public hearings and development permit processes is that the City:*
>
> *1. must provide **intelligible and understandable information** to the public to allow for scrutiny and consideration;*
>
> *2. must provide the public with a **fair opportunity to communicate** with City Council about the advantages and disadvantages of the proposal; and*
>
> *3. must scrupulously consider the input from the public and **cannot arrive at a pre-ordained conclusion**."*

What does this mean looking forward?

Because of the Supreme Court ruling, from now on local governments must take extra care when holding public hearings. This should result in councillors being more diligent and thorough when reviewing submissions by the public.

No longer should councils:

- keep important information **hidden or not made them available to the public, either by its own decision or upon staff recommendation**

- ignore or underestimate claims from effected residents who make oral or written submission in public hearings, COW meeting and/or Council meetings

- Argue that they have not had time to become familiar with the issues being raised, or have not been informed by city staff of residents' submissions

- Come to conclusion until the proper hearing is done and all submissions are detailed considered as for their "pros" and "cons".

What does this mean looking backwards?

Any resident who feels that a previous land-use or development decision by council has reduced the value of their property, or has cost them in quality of life, now has a good reason to think back to the public hearing process of that decision. If there was a flaw in that process, then **perhaps they should be discussing that flaw with a lawyer.**

Such flaws may include:

- the public notice not sent or posted according to law
- the public notice not being descriptive enough to alert all residents of all potential financial implications of council's decision
- not being given written notice of a variance in a timely manner, with enough time to review, understand, and make submissions if desired
- not being allowed to view all documents pertinent to a variance
- no being informed of the underlying hardship that caused the application for variance
- not being allowed to voice your concerns fully due to your lack of understanding of technical issues
- no detailed layman's description of what the changes will mean to the neighbours or to the community, including tax implications, parking and others
- your concerns not being given detailed consideration by councillors or city officials
- the outcome was pre-ordained, no matter what solid arguments were made

Examples of recent flaws in Oak Bay's public hearing process:

- the bylaw that replaced the Official Community Plan
- the bylaw that allowed the first duplex in forty years
- the variances that allowed the Clive building to be so large

NOTES:

1. The Mayor and Councillor Handbook:

https://www.civicinfo.bc.ca/Library/Elections/Mayor_and_Councillors_Handbook--Oak_Bay--2008.pdf

2. The Supreme Court Decision:

On January 27, 2015 the British Columbia Supreme Court issued its decision in Community Association of New Yaletown v. Vancouver (City), 2015 BCSC 117, in which it decided that the City of Vancouver (the "City") did not act fairly with respect to public hearings concerning a proposed development.

A Google search for "2015 BCSC 117" will give you the case notes, the newspaper articles, and documents that give a legal analysis of the judgment.

Or visit the website of the Community Association of New Yaletown: http://www.newyaletown.ca/

3. The precedent:

Here is the full legal analysis of the McMillan Lawyers:

http://www.mcmillan.ca/Recent-BC-Decision-Quashes-Rezoning-and-Land-Swap

4. The BC law about public hearings and public notices:

An explanation of the expectations from the provincial government:
http://www.cscd.gov.bc.ca/lgd/planning/public_hearings.htm

The actual law from: http://www.bclaws.ca/Recon/document/ID/freeside/96323_00

BC Local Government Act - Table of Contents

Part 26 - Planning and Land Use Management
- Division 4 - Public Hearings on Bylaws
  - **890 Public hearings**
  - 891 Delegating the holding of public hearings
  - **892 Notice of public hearing**
  - 893 Notice if public hearing waived

894 Procedure after a public hearing

Division 9 - Permits and Fees

922 Development variance permits

5. 890 Public Hearings (Part 26, Division 4, Local Government Act) .

(1) Subject to subsection (4), a local government must not adopt an official community plan bylaw, a zoning bylaw or a bylaw under section 914.2 [early termination of land use contracts] without holding a public hearing on the bylaw for the purpose of allowing the public to make representations to the local government respecting matters contained in the proposed bylaw.

(2) The public hearing must be held after first reading of the bylaw and before third reading.

(3) 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 the subject of the hearing.

(there are six more subsections)

6. 892 Notice of public hearing (Part 26, Division 4, Local Government Act)

(1) If a public hearing is to be held under section 890 (1), the local government must give notice of the hearing

(a) in accordance with this section, and

(b) in the case of a public hearing on an official community plan that includes a schedule under section 970.1 (3) (b), in accordance with section 974.

(2) The notice must state the following:

(a) the time and date of the hearing;

(b) the place of the hearing;

(c) in general terms, the purpose of the bylaw;

(d) the land or lands that are the subject of the bylaw;

(e) the place where and the times and dates when copies of the bylaw may be inspected.

(3) The notice must be published in at least 2 consecutive issues of a newspaper, the last publication to appear not less than 3 and not more than 10 days **before the public hearing**.

(4) If the bylaw in relation to which the notice is given alters the permitted use or density of any area, the notice must

(a) subject to subsection (5), include a sketch that shows the area that is the subject of the bylaw alteration, including the name of adjoining roads if applicable, and

(b) be mailed or otherwise delivered **at least 10 days before the public hearing**

(i) to the owners as shown on the assessment roll as at the date of the first reading of the bylaw, and

(ii) to any tenants in occupation, as at the date of the mailing or delivery of the notice, of all parcels, any part of which is the subject of the bylaw alteration or is within a distance specified by bylaw from that part of the area that is subject to the bylaw alteration.

(there are five more subsections)

7. 922 Development variance permits (Part 26, Division 9, Local Government Act)

(1) On application by an owner of land, a local government may, by resolution, issue a development variance permit that varies, in respect of the land covered in the permit, the provisions of a bylaw under any of the following:

(a) section 694 (1) (j) [construction and layout of trailer courts, etc.];

(b) Division 7 [Zoning and Other Development Regulation], 8 [Use of Land for Agricultural Operations] or 11 [Subdivision and Development Requirements] of this Part;

(c) section 8 (3) (g) [fundamental powers - protection of persons and property] of the Community Charter in relation to matters referred to in section 63 (e) [protection - trailer courts, manufactured home parks and camping grounds] of that Act.

(2) As a limit on subsection (1), a development variance permit must not vary

(a) the use or density of land from that specified in the bylaw,

(b) a flood plain specification under section 910 (2), or

(c) a phased development agreement under section 905.1.

(3) In the event of conflict, the provisions of a development variance permit prevail over any provision of the bylaw.

(4) If a local government proposes to pass a resolution to issue a permit under this section, it must give notice in accordance with subsections (5) and (6).

(5) The notice under subsection (4) must state the following:

(a) in general terms, the **purpose of the permit**;

(b) the land or lands that are the subject of the permit;

(c) the place where and the times and dates when **copies of the permit may be inspected**.

(6) The notice under subsection (4) must be mailed or otherwise delivered **at least 10 days before adoption** of the resolution to issue the permit

(a) to the owners, as shown on the assessment roll as at the date of application for the permit, and

(b) to any tenants in occupation, as at the date of the mailing or delivery of the notice,

of each parcel, any part of which is the subject of the permit or is within a distance specified by bylaw from that part of the land that is subject to the permit.

(there are 2 more subsections)

End of Appendix.