VILLAGE OF PEMBERTON
-REGULAR COUNCIL MEETING AGENDA-

Agenda for the **Regular Meeting** of Council of the Village of Pemberton to be held Tuesday, November 3, 2015 at 7:00 p.m. in Council Chambers, 7400 Prospect Street. This is Meeting No. 1411.

"*This meeting is being recorded on audio tape for minute-taking purposes as authorized by the Village of Pemberton Audio recording of Meetings Policy dated September 14, 2010."*

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c) Mayor

d) Councillors

9. BYLAWS

There are no bylaws for consideration.

10. CORRESPONDENCE

a) For Information

i. Mr. Martin Dahinden, dated October 15, 2015, proposal to improve One Mile Lake Park Beach 132

NOTE: Mr. Dahinden's proposal has been forwarded to Staff for inclusion as part of the One Mile Lake Master Plan initiative and Mr. Dahinden is participating as a member of the Stakeholder Working Group.

ii. Ms. Susan Lee, Woodlands Supervisor, BC Timber Sales, dated October 16, 2015, regarding Timber Sale Licence A91145 133

Recommendation: THAT the correspondence from Mr. Dahinden, dated October 15, 2015, and Ms. Susan Lee, dated October 16, 2015, be received for information.

b) For Action

i. Ms. Kari Mancer, Program Manager, Sea to Sky Clean Air Society, regarding a new annual membership program. 135

Recommendation: THAT consideration of subscribing to the Sea to Sky Clean Air Society Strato Silver annual membership, in the amount of $1000, be added to 2016 budget deliberations.

ii. Ms. Julie Kelly, Chair, Friends of the Library, request for donation for a gift basket for the "Wine and Cheese" Silent Auction 146

Recommendation: THAT $100 be allocated from the Community Enhancement Fund for staff to create a silent auction basket as a donation to the Friends of the Library "Wine and Cheese" event.

11. DECISION ON LATE BUSINESS

12. LATE BUSINESS

13. NOTICE OF MOTION

14. QUESTION PERIOD 148

15. ADJOURNMENT

VILLAGE OF PEMBERTON
-REGULAR COUNCIL MEETING MINUTES-

Minutes of the Regular Meeting of Council of the Village of Pemberton held on Tuesday, October 20, 2015 at 9:00 a.m. in Council Chambers, 7400 Prospect Street. This is Meeting No. 1409.

IN ATTENDANCE:	Mayor Mike Richman Councillor Jennie Helmer Councillor James Linklater Councillor Karen Ross
STAFF IN ATTENDANCE:	Nikki Gilmore, Chief Administrative Officer Sheena Fraser, Manager of Corporate & Legislative Services Lisa Pedrini, Planner Wendy Olsson, Executive Assistant Paige MacWilliam, Legislative Assistant
Public:	**7**

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1. CALL TO ORDER

At 9:00 a.m. Mayor Richman called the meeting to order.

2. APPROVAL OF AGENDA

Moved/Seconded
THAT the Agenda be approved as presented.
CARRIED

3. RISE WITH REPORT FROM IN CAMERA (CLOSED)

Council did not rise with report from In Camera.

4. ADOPTION OF MINUTES

a) Committee of the Whole No. 137 – Tuesday, October 6, 2015

Moved/Seconded
THAT the minutes of Committee of the Whole Meeting No. 137, held Tuesday, October 6, 2015 be adopted as circulated.
CARRIED

b) Special Council Meeting No. 1407 – Tuesday, October 6, 2015

Moved/Seconded
THAT the minutes of the Special Council Meeting No. 1407, held Tuesday, October 6, 2015 be adopted as circulated.
CARRIED

c) Public Hearing – Village of Pemberton Zoning Amendment (Restaurant Uses) Bylaw No. 793, 2015 – Tuesday, October 6, 2015

Moved/Seconded
THAT the minutes of the Public Hearing for Village of Pemberton Zoning Amendment (Restaurant Uses) Bylaw No. 793, 2015, held Tuesday, October 6, 2015, be adopted as circulated.
CARRIED

d) Regular Council Meeting No. 1408 – Tuesday, October 6, 2015

Moved/Seconded
THAT the minutes of Regular Council Meeting No. 1408, held Tuesday, October 6, 2015, be adopted as circulated.
CARRIED

5. BUSINESS ARISING

There was no business arising.

6. COMMITTEE MINUTES – FOR INFORMATION

No minutes to be received.

7. DELEGATIONS

No delegations to be received.

8. REPORTS

a) Mayor

Mayor Richman reported on the following:

- Met with Chief Dean Nelson to discuss the Friendship Trail and bridge
- Attended "The Art of Chairing Meetings" workshop and training session
- Attended the Community Infrastructure Partnership Program workshop with Lil'wat Nation representatives on Oct. 8, discussed water servicing agreement for industrial park, a fire service agreement for Lil'wat, and a commitment to improving the wellbeing of the valley as a common goal
- Congratulated the Pemberton Arts Council on hosting a successful MADE (Music Art Dance Expression) event on Oct. 17

Mayor Richman reminded of upcoming events:

- Haunted House Tours at the Pemberton Secondary School Oct. 24 & 25
- Harlem Crowns Basketball Game Oct. 26
- Halloween Fun at the Museum Oct. 31
- Coffee with the Mayor on Nov. 5 at Grimm's Gourmet & Deli at 9 – 11 a.m.
- Village of Pemberton By-Election for the Office of Councillor
    - Two candidates have been nominated
    - General voting day will be Nov. 7

b) Councillors

Councillor Ross

Councillor Ross reported on the following:

- Attended the Community Infrastructure Partnership Program workshop with Lil'wat Nation representatives on Oct. 8, expressed appreciation for Pemberton being selected to participate in the Federation of Canadian Municipalities program
- Attended the Pemberton Arts Council MADE event

Councillor Helmer

Councillor Helmer reported on the following:

- Summarized the SLRD Agriculture Advisory Committee meeting, lot line adjustment subdivision applications are under consideration
- Announced that David MacKenzie has stepped down as the President of Tourism Pemberton and requested that farewell correspondence be sent

Moved/Seconded
THAT correspondence be sent to Mr. MacKenzie acknowledging his contribution as President of Tourism Pemberton.
CARRIED

Councillor Linklater

Councillor Linklater reported on the following:

- Attended the Pemberton Valley Dyking District Meeting on Oct. 15
- Announced that the Winds of Change Committee will meet next year
- Participated in a successful Pemberton Youth Soccer bottle drive held at the downtown

9. BYLAWS

a) First, Second and Third Reading

i. **Village of Pemberton Permissive Tax Exemption (St. David's Church) Bylaw No. 796, 2015 – First, Second and Third Reading**

Moved/Seconded
THAT Council give the Village of Pemberton Permissive Tax Exemption (St. David's Church) Bylaw No. 796, 2015 First, Second and Third Reading.
CARRIED

Moved/Seconded
THAT a Special Meeting of Council be scheduled for Thursday, October 22, 2015, to give Fourth and Final reading to the Village of Pemberton Permissive Tax Exemption (St. David's Church) Bylaw No. 796, 2015, to comply with the October 31, 2015 deadline as established by the BC Assessment Authority.
CARRIED

b) Third Reading

i. Village of Pemberton Zoning Amendment (Restaurant Uses) Bylaw No. 793, 2015 – Third Reading

Moved
THAT Council rescind First and Second Reading of Village of Pemberton Zoning Amendment (Restaurant Uses) Bylaw No. 793, 2015.
THE MOTION FAILED DUE TO LACK OF SECONDER

Moved/Seconded
THAT Council rescind First and Second Reading of Village of Pemberton Zoning Amendment (Restaurant Uses) Bylaw No. 793, 2015.
CARRIED **OPPOSED: Councillor Helmer**

10. CORRESPONDENCE

a) For Information

i. **Mr. Chris Rose, correspondence regarding action on climate change, dated September 30, 2015**

Moved/Seconded
THAT the staff be directed to include climate action funding opportunities on the grant application calendar.
CARRIED

b) For Action

i. Dr. Shannon Paul, Co-Chair, and Cathy Benns, Co-Chair, Growing Great Children, dated October 14, 2015, request for donation for a gift basket for the "Glamour and Glitz" Silent Auction

Moved/Seconded
THAT $100 be allocated from Community Enhancement Fund for staff to create a silent auction basket as a donation to the Growing Great Children "Glamour and Glitz" event.
CARRIED

11. DECISION ON LATE BUSINESS

There was no late business to be considered.

12. LATE BUSINESS

There was no late business.

13. NOTICE OF MOTION

There was no notice of motion.

14. QUESTION PERIOD

Nikki Gilmore, CAO, stated that the Pique Newsmagazine will no longer be sending a representative to cover Village of Pemberton Council meetings.

There were no questions from the gallery.

15. RESOLUTION TO MOVE IN CAMERA (CLOSED)

Moved/Seconded
THAT pursuant Section 90 (1)(k) negotiations, of the *Community Charter*, the Council of the Village of Pemberton service notice to hold an In Camera Meeting on today's date for the purpose of dealing with matters for which the public shall be excluded from attending.
CARRIED

At 10:18 a.m. Council moved In Camera.

At 12:36 p.m. Council recessed the In Camera portion of the meeting.

At 2:15 p.m. Council reconvened the In Camera portion of the meeting.

At 4:30 p.m. Council rose from In Camera without report.

16. AJOURNMENT

Moved/Seconded
THAT the October 20, 2015 Regular meeting be adjourned at 4:30 p.m.
CARRIED

_____	_____
Mike Richman	Sheena Fraser
Mayor	Corporate Officer

VILLAGE OF PEMBERTON
-REGULAR COUNCIL MEETING MINUTES-

Minutes of the Regular Meeting of Council of the Village of Pemberton held on Tuesday, October 22, 2015 at 8:30 a.m. in Council Chambers, 7400 Prospect Street. This is Meeting No. 1410.

IN ATTENDANCE:	Mayor Mike Richman Councillor Karen Ross
By Telephone:	Councillor Jennie Helmer Councillor James Linklater
STAFF IN ATTENDANCE:	Sheena Fraser, Manager of Corporate & Legislative Services Paige MacWilliam, Legislative Assistant
Public:	**0**

1. CALL TO ORDER

At 8:33 a.m. Mayor Richman called the meeting to order.

2. APPROVAL OF AGENDA

Moved/Seconded
THAT the Agenda be approved as presented.
CARRIED

3. BYLAWS

a) Adoption

i. **Village of Pemberton Permissive Tax Exemption (St. David's Church) Bylaw No. 796, 2015 – Fourth and Final Reading**

Moved/Seconded
THAT the Village of Pemberton Permissive Tax Exemption (St. David's Church) Bylaw No. 796, 2015 receive Fourth and Final Reading.
CARRIED

4. AJOURNMENT

Moved/Seconded
THAT the October 22, 2015 Special meeting be adjourned at 8:35 a.m.
CARRIED

_____
Mike Richman
Mayor

_____
Sheena Fraser
Corporate Officer

REPORT TO COUNCIL

Date: November 3, 2015

To: Nikki Gilmore, Chief Administrative Officer

From: Sheena Fraser, Manager of Corporate & Legislative Services

Subject: Public Hearing Procedures and Case Law

PURPOSE

The purpose of this report is to provide Council with an overview of the Public Hearing process and present case law respecting the practice that a Council/Board not receive any further information on the application after the close of the meeting.

BACKGROUND

As a result of a brief discussion that took place at the In Camera meeting, held on Tuesday, October 20, 2015, Council passed the following resolution:

> *Moved/Seconded*
> ***THAT** Staff bring forward a report to a Regular Meeting of Council regarding case law and how it pertains to discussions with Council following the close of a Public Hearing.*
> ***CARRIED***

As such, Staff has prepared an overview of the Public Hearing process for information and has provided several legal cases that illustrate the importance of not receiving information after the close of the public hearing meeting as a means of ensuring that procedural fairness of the public hearing is maintained.

DISCUSSION & COMMENTS

Part 26, Division 4, Sections 890 – 894 of the *Local Government Act* sets out the process for public hearings (Appendix A). This section establishes that a local government must not adopt an Official Community Plan (OCP) or Zoning Bylaw or any subsequent bylaws to amend the OCP or Zoning Bylaw without first holding a public hearing. The purpose of the public hearing is to allow *"the public to make representations to the local government respecting matters contained within the proposed bylaw*."

OCP/Zoning Amendment Bylaw Process:

When the Village receives an OCP or Zoning Amendment application, Staff will meet with the proponent to review the application. The application is then referred to various agencies, which may include the Squamish Lillooet Regional District, Lil'wat Nation, Village of Pemberton Advisory Land Use Commission, Ministry of Transportation & Infrastructure and other provincial ministries or agencies depending on the intent of the bylaw or lands (area) being considered for amendment. The application would also be referred internally to Village departments and, as

per the Village's practice, to local community or interest groups, such as the Chamber of Commerce, Tourism Pemberton, Stewardship Pemberton and others as may be deemed appropriate.

Staff will then work with the proponent, taking into consideration the referral comments, to prepare a bylaw amendment for consideration by Council. In most cases, the bylaw will be introduced for first and second reading with a recommendation to hold a public hearing as required by the *Local Government Act*. As Council is aware, a local government is able to waive the holding of a public hearing under certain circumstances (Section 890 (1)); however, the Village has only done this on two occasions, once in 2013 and once in 2014 as those amending bylaws under consideration at that time were simple text amendments. Council over time has preferred to hold public hearings even for simple housekeeping amendments in order to ensure the public is made aware and has an opportunity to participate in the process.

For Council's information, a breakdown of the number of public hearings held over the past five (5) years is below:

Year	Number of Public Hearings
2010	2
2011	7
2012	10
2013	9
2014	6
2015	2
Total	**36**

It should be noted that between 2011 and 2013 the Village held more public hearings than in other years due to the introduction of the new Official Community Plan, Boundary Extension and the requirement to establish OCP/Zoning bylaws on the lands that were brought into the Village boundary as well as to adopt a Regional Growth Context Statement. Prior to 2010, the Village averaged between 2 – 5 public hearings a year.

As noted above, public hearings are held after second reading of a bylaw and before third reading. The local government is required to post two notices, the last of which must not be posted more than ten (10) days and not less than three (3) days before the public hearing is to take place (Section 892 (3)). The Village of Pemberton places notices in either the Whistler Question or Pique Newsmagazine or both, as well as on the Village notice boards at the Village Office and at the post office, on the Village website, in the eNEWS and on the Village Facebook page.

In some circumstances, depending on the number of properties subject to the bylaw amendment, notice will also be sent to the individual property owners affected. The Village traditionally errs on the side of caution and may send notices out to affected properties even though Section 892 (7) establishes that this is not a requirement if ten (10) or more parcels owned by ten (10) or more persons are impacted. This was done recently in regard to the proposed Village initiated Zoning Amendment (Restaurant Uses) Bylaw.

The public notice invites interested parties to provide comment by submitting a letter, addressed to Mayor and Council, to the Village Office. If the letter is received by noon the Wednesday prior to the public hearing it will be included in the agenda package, which is distributed on Fridays.

The public is still entitled to submit written comments after the noted deadline and up to 4PM on the day of the public hearing. Written submissions may also be received at the public hearing.

Once notice has been made, the local government must also make available to the public all information related to the Bylaw or Bylaw Amendment. This includes the application, the reports to Council and any other documentation deemed appropriate. This information is available for review at the Village Office and on the Village website during the notice period.

Public Hearing Procedure:

At the public hearing, the Chair (in most circumstances, the Mayor) opens the meeting and reads from a statement (Appendix B) that outlines the procedure for the meeting to ensure that all parties abide by of the rules of procedural fairness. This statement, which is common practice in communities throughout the province, has been developed over time to ensure public hearings meet the procedural requirements in the legislation. Any person attending the hearing who believes that their interest in property is affected is given a reasonable opportunity to make representations or to present a written submission (if one has not already been received), respecting the matters contained in the bylaw. It is not uncommon for a property owner or interested party to submit a written submission in advance of the public hearing and also take the opportunity to speak at the public hearing or alternatively speak at the meeting and present a written submission.

The role of staff at the public hearing is to present the application and amending bylaw and to be available to answer questions or provide clarifications on the bylaw. As well, staff is responsible for taking the minutes of the public hearing.

The function of Council is to hear the views of the public and ask questions for clarification purposes if required. It is not the function of Council at the public hearing to debate the merits of the proposed bylaw.[1] There is also an obligation on the part of a local government to ensure that procedural fairness is upheld. In this regard, the purpose of the legislated requirement to hold a public hearing is to ensure that those persons whose property interests are affected by a land use bylaw amendment have an opportunity to be fairly and fully heard by the local government. When considering matters that may adversely affect a person's rights and interest, members of Council must bring an open mind to these matters.[2] In this sense, when Council is attending a public hearing they are acting in a *quasi-judicial* role.[3] Council decisions run the risk of being overturned if a Court finds that a Councillor involved in a relevant decision has prejudged a matter.

Upon the closure of the public hearing the opportunity for public input has ended. Any debate of the matter will take place at a future regular meeting of Council when the bylaw is being considered for third reading.

The Village has recently prepared a Public Hearing Information Sheet that outlines the process and provides residents information on how to participate in the process. This information is available on the website and at the public hearing (Appendix D).

Process after the Public Hearing:

After the public hearing has concluded, Council may not hear from or receive correspondence from interested parties related to the bylaw amendment as established by case law. That said,

[1] UBCM Advisory Services, Public Hearing Fact Sheet, Series 17, page 4 (At the Hearing) – Appendix C
[2] UBCM Advisory Services, Public Hearing Fact Sheet, Series 17, page 4 (Before the Hearing) – Appendix C
[3] UBCM Advisory Services, Public Hearing Fact Sheet, Series 17, page 1 (Public Hearings Required) – Appendix C

they may hear information from their own staff, consultants or legal counsel, but if they receive any information outside the public hearing venue there is a risk of having the bylaw challenged or quashed.

The next step in the process, if the bylaw is not being considered for third reading at a Council meeting immediately following a public hearing, is for staff to prepare the minutes of the public hearing, review the information or comments received at the public hearing meeting and prepare a report for Council's consideration. If as a result of new information being brought forward it is recommended that the bylaw be revised in any form, a new public hearing will need to be held. If there are no significant changes to the bylaw as a result of the public hearing and staff report, Council may proceed with giving the bylaw third reading.

Hearing New Information:

Case law has established that there is a rule that restricts representations that may be heard from the public after a public hearing. Although there may be limited exceptions to this rule the recommended approach from legal counsel and the UBCM Public Hearing Fact Sheet[4] is to not hear anything further on the matter even if it is information a Council member may have heard before.

Specifically, the rule that prevents post public hearing representations is a common law rule developed by the Courts in the interest of procedural fairness. In essence, as the Village's Legal Counsel has advised, the Courts have determined that Council should not hear from one side or the other after a public hearing as it would create an unfair advantage of representation that the other side (either for or against a given bylaw) would not have a chance to respond to. This rule is often referenced in the context of the Latin phrase *"audi alteram partem"* which means *"to hear from both sides*". This is illustrated in *Reid v. Sunshine Coast Regional District (1990)* on the bottom of page 10 and top of page 11, attached as Appendix E.

This rule would also apply to members of a Council or Board seeking or receiving input after a public hearing has concluded from those who were not able to attend the meeting or did not submit a written comment for consideration. There is a risk that a member of Council could then introduce new information to Council that may become material to Council's decision making. In this regard, the best approach to address this risk is to hold a second public hearing in order to ensure that any and all new information is available to the public at large.

Further, there is existing case law that establishes that Council may not hear new submissions or material information related to a land use bylaw under consideration (especially from the developer or applicant) following a public hearing, again, so that those residents that may or may not be impacted have a right to hear what is being stated and have an opportunity to address the relevant issues. Some examples of case law are attached as follows. The applicable sections have been highlighted:

Appendix F: McMartin v. Vancouver (1968),
Appendix G: Bay Village Shopping Centre v. Victoria (1973)
Appendix H: Bourque v. Richmond (Township) (1977)

In the interest of procedural fairness, Courts have ruled that bylaws are invalid if those residents affected by the decision do not have access to information that is relied upon by a local government in making a decision. Some examples of case law are attached as follows:

Appendix I: Karamanian v. Richmond (Township) (1982)

[4] UBCM Advisory Services, Public Hearing Fact Sheet, Series 17, page 5 (After the Public Hearing)

Appendix J: Eddington v. Surrey (1985)
Appendix K: Paul Esposito Restaurants v. Abbotsford (1990)

It should be noted that upon receipt of new information brought forward after a public hearing, it is not uncommon and is considered best practice, for a local government to hold a second public hearing as a means of ensuring that all those interested or affected have an opportunity to again provide comment on the bylaw.

A review of Village OCP and Zoning Amendment Bylaws shows that 2009 was the last time the Village held a further public hearing on a bylaw. In this regard, a second and third public hearing was required for both the Official Community Plan Amendment (Special Planning Area (Gateway Park / Tiyata Neighbourhood) Bylaw No. 635, 2009 and Zoning Amendment (Comprehensive Development Zone 4 – BCRail Properties/Signal Hill Homes) Bylaw No. 636, 2009 due to new information being provided which necessitated changes to the both proposed bylaws.

Risks:

If the procedural rules as noted above are breached, by either Council or individual members, the primary risk for the Village is that the Bylaw in question will be set aside if challenged in Court. That would require a commitment of staff time and resources, involve incurring potentially significant legal defence costs as well as costs that may be awarded to the party successfully challenging the bylaw.

An additional risk is that if a developer found that a bylaw change that it had applied for was set aside by the Court due to reasons of procedural fairness, there may be some potential for a claim in damages as against the Village.

For a small community such as the Village of Pemberton, the costs associated with legal fees, staff time and resources in responding to a challenge would be considerable and as a bylaw challenge is not insurable through the Municipal Insurance Association (MIA) all costs will be the responsibility of the Village. There is some chance that should a claim be made against the Village for damages this might be covered by MIA but it would depend on the basis for the claim.

COMMUNICATIONS

There is no communication element required.

LEGAL CONSIDERATIONS

This report outlines the legislative authority under which the Village may call a public hearing and the procedure established for holding one. It also provides examples of case law which has established the practice by a local government Council or Board to not receive any new information or discuss the merits of a proposed OCP/Zoning Bylaw following a public hearing.

IMPACT ON BUDGET & STAFFING

This report was prepared in-house by Corporate & Legislative Services staff with review by Development Services and the CAO. There are some legal costs associated with the development of this report to confirm case law and legal precedent.

INTERDEPARTMENTAL IMPACT & APPROVAL

Other than report review by the Village Planner and CAO, there was no involvement of other departments. This review has been incorporated as part of the day to day operations by the assisting departments.

IMPACT ON THE REGION OR NEIGHBOURING JURISDICTIONS

A review of this report has no impact on other jurisdictions.

ALTERNATIVE OPTIONS

There are no alternative options for consideration.

POTENTIAL GOVERNANCE CONSIDERATIONS

This report has been prepared to provide Council with information on the statutory process for holding a public hearing and meets with Strategic Priority No. Two: Good Governance in which the Village is committed to citizen engagement through being open, honest and accountable government.

RECOMMENDATIONS

THAT the Public Hearing Procedures and Case Law report be received for information.

Attachments:

Appendix A: Section 890, Local Government Act
Appendix B: Mayors Opening Statement
Appendix C: UBCM Advisory Services, Public Hearing Fact Sheet, Series 17
Appendix D: Village of Pemberton Public Hearing Information Sheet
Appendix E: Reid v. Sunshine Coast Regional District (1990)
Appendix F: McMartin v. Vancouver (1968),
Appendix G: Bay Village Shopping Centre v. Victoria (1973)
Appendix H: Bourque v. Richmond (Township) (1977)
Appendix I: Karamanian v. Richmond (Township) (1982)
Appendix J: Eddington v. Surrey (1985)
Appendix K: Paul Esposito Restaurants v. Abbotsford (1990)

Sheena Fraser
Manager of Corporate & Legislative Services

CHIEF ADMINISTRATIVE OFFICER REVIEW

Nikki Gilmore
Chief Administrative Officer

APPENDIX A

Public hearings

890 (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.

(3.1) Subject to subsection (3), the chair of the public hearing may establish procedural rules for the conduct of the hearing.

(4) A local government may waive the holding of a public hearing on a proposed bylaw, other than a proposed bylaw under section 914.2, if

(a) an official community plan is in effect for the area that is subject to a proposed zoning bylaw, and

(b) the proposed bylaw is consistent with the plan.

(5) More than one bylaw may be included in one notice of public hearing, and more than one bylaw may be considered at a public hearing.

(6) A written report of each public hearing, containing a summary of the nature of the representations respecting the bylaw that were made at the hearing, must be prepared and maintained as a public record.

(7) A report under subsection (6) must be certified as being fair and accurate by the person preparing the report and, if applicable, by the person to whom the hearing was delegated under section 891.

(8) A public hearing may be adjourned and no further notice of the hearing is necessary if the time and place for the resumption of the hearing is stated to those present at the time the hearing is adjourned.

(9) Despite section 135 (3) *[at least one day between third reading and adoption]* of the *Community Charter*, a council may adopt an official community plan, a zoning bylaw or a bylaw under section 914.2 at the same meeting at which the plan or bylaw passed third reading.

Delegating the holding of public hearings

891 (1) If a local government makes a delegation in relation to one or more public hearings,

(a) that delegation does not apply to a hearing unless the notice of hearing under section 892 includes notice that the hearing is to be held by a delegate, and

(b) the resolution or bylaw making the delegation must be available for public inspection along with copies of the bylaw referred to in section 892 (2) (e).

(2) If the holding of a public hearing is delegated, the local government must not adopt the bylaw that is the subject of the hearing until the delegate reports to the local government, either orally or in writing, the views expressed at the hearing.

Notice of public hearing

892 (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.

(4.1) If the bylaw in relation to which the notice is given is a bylaw under section 914.2 *[early termination of land use contracts]*, the notice must

(a) subject to subsection (5), include a sketch that shows the area subject to the land use contract that the bylaw will terminate, 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 subject to the land use contract that the bylaw will terminate or is within a distance specified by bylaw from that part of the area that is subject to that land use contract.

(5) If the location of the land can be clearly identified in the notice in a manner other than a sketch, it may be identified in that manner.

(6) The obligation to deliver a notice under subsection (4) or (4.1) must be considered satisfied if a reasonable effort was made to mail or otherwise deliver the notice.

(7) Subsection (4) does not apply if 10 or more parcels owned by 10 or more persons are the subject of the bylaw alteration.

(8) In respect of public hearings being held under section 890 (1) or waived under section 890 (4), a local government may, by bylaw,

(a) require the posting of a notice on land that is the subject of a bylaw, and

(b) specify the size, form and content of the notice and the manner in which and the locations where it must be posted.

(9) Specifications under subsection (8) (b) may be different for different areas, zones, uses within a zone and parcel sizes.

Notice if public hearing waived

893 (1) If a local government waives the holding of a public hearing under section 890 (4), it must give notice in accordance with this section.

(2) The notice must state

(a) in general terms, the purpose of the bylaw,

(b) the land or lands that are the subject of the bylaw, and

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

(3) Section 892 (3), (4) and (5) to (7) applies to a notice under subsection (2), except that

(a) the last publication under section 892 (3) is to be not less than 3 and not more than 10 days before the bylaw is given third reading, and

(b) the delivery under section 892 (4) (b) is to be at least 10 days before the bylaw is given third reading.

(4) to (7) [Repealed 2000-7-144.]

Procedure after a public hearing

894 (1) After a public hearing, the council or board may, without further notice or hearing,

(a) adopt or defeat the bylaw, or

(b) alter and then adopt the bylaw, provided that the alteration does not

(i) alter the use,

(ii) increase the density, or

(iii) without the owner's consent, decrease the density

of any area from that originally specified in the bylaw.

(2) A member of a council or board who

(a) is entitled to vote on a bylaw that was the subject of a public hearing, and

(b) was not present at the public hearing

may vote on the adoption of the bylaw if an oral or written report of the public hearing has been given to the member by

(c) an officer or employee of the local government, or

(d) if applicable, the delegate who conducted the public hearing.

(3) After a public hearing under section 890 (1) or third reading following notice under section 893, a court must not quash or declare invalid the bylaw on the grounds that an owner or occupier

(a) did not see or receive the notice under section 892 or 893, if the court is satisfied that there was a reasonable effort to mail or otherwise deliver the notice, or

(b) who attended the public hearing or who can otherwise be shown to have been aware of the hearing, did not see or receive the notice, and was not prejudiced by not seeing or receiving it.

APPENDIX B

CHAIR'S STATEMENTS – BYLAW No. __, 2015

Good Evening. My name is _____ and as Mayor of the Village of Pemberton I will be chairing this Public Hearing.

_____, Village Planner will make a presentation on the Village of _____, 2015 and _____, Corporate Officer will record your comments.

Also in attendance are Councillor _____, Councillor _____, Councillor _____ and Councillor_____.

This Public Hearing is convened pursuant to Section 890 of the *Local Government Act* to allow the public to make representations to Council respecting matters contained in proposed:

Village of Pemberton _____Amendment Bylaw No. ____, 2015

This bylaw was advertised in the issues of the _____ on _____and _____.

A Notice was also posted at Village of Pemberton Office, the Village Notice Board located at the Post Office and on the Village Website, ENEWS and Facebook Page.

Every one of you present who believes that your interest in the property is affected by the proposed bylaw shall be given a reasonable opportunity to be heard or to present written submissions respecting matters contained in the proposed bylaw.

None of you will be discouraged or prevented from making your views known. However, it is important that you restrict your remarks to matters contained in the proposed bylaw.

When speaking please commence your remarks by clearly stating your **full name and address**.

Members of Council may, if they so wish, ask questions following a presentation. However, the main function of Council Members at this Public Hearing is to listen rather than to debate the merits of the proposed bylaw.

Please refrain from applause or other expressions.

After this Public Hearing has concluded, Council will at a future Council Meeting further consider the Bylaw.

May I remind you that tonight **is** your final opportunity for input on the Bylaw and Council

may not hear from or receive correspondence from interested parties relating to this bylaw upon the close of this meeting.

I will now ask _____, to introduce:

Village of Pemberton _____ Amendment No. ____, 2015

I would like to now call upon _____, the Corporate Officer to present any correspondence and petitions received by the Village of Pemberton to date.

Thank you.

The Public is now invited to make their comments on the proposed Bylaw.

AT END OF MEETING: Call three (3) times for further submissions.

CLOSING STATEMENT:

On behalf of Council and myself I would like to thank all of you who have attended this meeting. Your input and participation in the process is greatly appreciated.

Please be reminded that after this Public Hearing is adjourned, as noted earlier the opportunity for public discussion is ended Council may not hear from or receive correspondence from interested parties relating to this bylaw. This bylaw is now a matter for Council's consideration based upon information received to date.

This Public Hearing for Village of Pemberton _____Amendment Bylaw No. _____, 2015 is now Adjourned.

APPENDIX C

FACT SHEET	SUBJECT: PUBLIC HEARINGS	UBCM ADVISORY SERVICE	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, and 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 2011

APPENDIX D

Box 100 | 7400 Prospect Street
Pemberton, BC V0N 2L0
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Email: admin@pemberton.ca
Website: www.pemberton.ca

PUBLIC HEARING INFORMATION SHEET

What is a Public Hearing?

A Public Hearing is a vital part of Council's review when applications are made to change the Village's Official Community Plan or Zoning Bylaw. A Public Hearing is the primary means for the public to present their views to Council on the item(s) contained in that evening's Public Hearing agenda. The Public Hearing is Council's opportunity to listen to members of the public. The purpose is not for Council to discuss and debate the topic. Simply put, the public speaks and Council listens.

When are Public Hearings Held?

Public Hearings are held on an as needed basis typically at the beginning of the Regular Council Meeting held on the first Tuesday of every month, unless otherwise scheduled as required.

How Are Public Hearings Advertised?

Staff and Council want to ensure that residents have adequate notice and access to information on bylaw amendments. For example, if there is a rezoning proposal that you are interested in, there are a number of ways to find out more about the proposal and when the Public Hearing will be held:

- **On-Site Signage:** Where applicable, on-site signage is placed on a property, which gives general information about the application, and provides contact information.
- **Mail Out & Delivery:** Where applicable, Public Hearing notices are mailed and/or delivered to property owners and tenants subject to the proposal and other owners within a 100 metre radius of the subject property. The notices are sent at least 10 days prior to the Public Hearing date.
- **Village Office:** The Public Hearing notice and background materials are available for viewing at the Village of Pemberton Office, 7400 Prospect Street, during normal business hours, for at least two weeks prior to the scheduled Public Hearing. The agenda for the meeting will be available for viewing before the Public Hearing.
- **Newspaper Advertisements.** Public Hearings are advertised in local newspaper(s), Pique Newsmagazine and/or the Whistler Question, for two consecutive weeks before the Public Hearing.
- **Village Website:** Public Hearing notice is posted on the Village's website at www.pemberton.ca**.** The agenda package will also be posted on the website.

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- **Public Notice Posting Places:** Public Hearing notice is posted on the notice boards at the Village Office at 7400 Prospect Street and at the Post Office at 7431 Prospect Street.

PLEASE NOTE: The purpose of the notification is to provide notice only, therefore, if you would like to know more about the proposal(s) you will need to contact Village staff directly or view the available information on our website. Should you wish to attend the Public Hearing you are strongly advised to seek further information and be sure to have all your questions answered prior to the Public Hearing meeting. The Public Hearing is not a question and answer period – it is an opportunity for your views to be heard.

What Happens at a Public Hearing?

1. The Mayor (or chairperson) calls the meeting to order, describes the procedure for the meeting and proceeds with the first agenda item.
2. When applicable, the Village Planner will provide an overview of the application.
3. The general public will then be given the opportunity to speak to the item. There are no requirements to register for speaking in advance of the meeting. A speakers list will be implemented if there are large numbers in attendance to ensure that everyone has an opportunity to be heard.
4. Everyone who wishes to speak will be given an opportunity to be heard. Once everyone has had a chance to speak, those who wish to speak again may do so. Please keep in mind that if you choose to speak again, you should be presenting new points, not repeating what you have already stated.
5. The Mayor (or chairperson) calls three (3) times, to ask if anyone else would like to speak, should no one raise their hand to speak, the meeting is then closed.
6. If there is more than one Public Hearing schedule, the Mayor (or chairperson) will introduce the next matter and the above steps are repeated.

What Happens When I Want to Speak?
Anyone wishing to speak to a particular Public Hearing item can do so by raising their hand. Once the Mayor (or chairperson) has identified you as the next speaker:

1. Please state your name, address, and whether you are 'in favour' or 'opposed.'
2. Address any comments you may have to Council. Please keep your comments directed to the item you are speaking to, be succinct, and be respectful of Council, Village staff and other members of the public in attendance at the Public Hearing. (Please note that Council may wish to ask questions of you to clarify your statements.)

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Not Able to Attend? Make a Written Submission.

If you are unable to attend a Public Hearing, it is recommended that you provide your comments in a written submission, which must be received by 4:00 pm on the day of the Public Hearing. Written submissions received before noon six (6) days prior to the Public Hearing will be included in the agenda package and will be forwarded to Council members prior to the Public Hearing. You may also submit a written submission at the Public Hearing, and ask that Staff read it for you if you are not comfortable speaking in public.

Written submissions can be provided by any of the following methods:

- **In Person:** Drop off at the reception desk at the Village Office, 7400 Prospect Street.
- **Mail:** Mail to the Village of Pemberton, PO Box 100, Pemberton, BC V0N 2L0
- **Email:** Email should be sent to the Manager of Corporate & Legislative Services, c/o admin@pemberton.ca

What Happens After the Public Hearing?

Council members cannot accept any further information or submissions after the close of the Public Hearing; this is to allow a fair process as established by provincial case law. The Public Hearing is held as part of a Regular Council Meeting; therefore, following the close of the hearing, the Regular Council Meeting will resume (that same evening) and bylaws may be considered for Third Reading.

APPENDIX E

No. A891766
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:	REASONS FOR JUDGMENT
THOMAS REID PETITIONER	
AND:	OF THE HONOURABLE
SUNSHINE COAST REGIONAL DISTRICT, THOMAS MARTIN HOWATT, MARLENE LUCILLE HOWATT, and FARRINGTON COVE PROPERTIES LTD. RESPONDENTS	MR. JUSTICE HINDS (IN CHAMBERS)

Counsel for the Petitioner:	A.C. McQuarrie, Esq.
Counsel for the Sunshine Coast Regional District:	C.S. Murdy, Esq.
Counsel for Farrington Cove Properties Ltd.:	A.P. Seckel, Esq. and Ms. S. Makata
Place and date of hearing:	New Westminster, B.C. September 28, 1989 Vancouver, B.C. February 2, 1990

The Petitioner has applied pursuant to the provisions of section 313 of the Municipal Act, R.S.B.C. 1979, c.290 (the Act) for an order that by-laws 96.109, 1989, and 103.79, 1989, of Sunshine Coast Regional District (the District) be set aside for illegality. The Petitioner relies upon the provisions of s. 956(1), (3), (8) and (9) of the Act in support of the Petition. The relevant provisions of the Act are as follows:

Setting bylaw aside

313. The Supreme Court, on application of an elector of a municipality or of a person interested in a bylaw of its council, may set aside the bylaw in whole or in part for illegality and award costs for or against the municipality according to the result of the application. This section does not apply to a security issuing bylaw providing for the issue of debenture or other evidence of indebtedness to a regional district or to the Municipal Finance Authority of British Columbia.

Public hearing

956. (1) Subject to subsection (4), a local government shall not adopt a community plan bylaw, rural land use bylaw or zoning bylaw 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.

(3) At a public hearing all persons who believe that their interest in property is affected by the proposed bylaw shall 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.

(8) A written report of each public hearing containing a summary of the nature of the representations respecting the bylaw that were made at the hearing shall be prepared and maintained as a public record and be certified as being fair and accurate by the person preparing the report and, where applicable, by the person to whom a hearing was delegated in subsection (6).

(9) A public hearing may be adjourned and no further notice of the hearing is necessary if the time and place for the resumption of the hearing is stated to those present at the time the hearing is adjourned.

Thomas Martin Howatt and Marlene Lucille Howatt (jointly referred to as the Howatts) owned two parcels of land at or near Farrington Cove, near Pender Harbour, B.C., which is within electoral area A of the District. Lot 2 Plan 20502 contains approximately 15 acres and is on the waterfront of Farrington Cove. Lot A Plan 16826 contains approximately 4 acres and is a short distance away from the waterfront and is at a higher elevation than Lot 2. The Howatts proposed to build a substantial number of condominiums on Lot 2 and to pump the sewage therefrom up to Lot A which would be used exclusively as a sewage disposal field.

In 1987 the two properties were re-zoned to enable the proposed development to proceed. Early in 1989 the Howatts decided to sell the two properties and a proposed purchaser ascertained that the re-zoning by-laws passed by the District in 1987 permitted the construction of not more than 86 condominium units on Lot 2, instead of 100 units as understood by the Howatts and as represented by them to the proposed purchaser. The Howatts brought their foregoing understanding to the attention of the District and it appeared that a misunderstanding between the Howatts and the District had occurred concerning the building density that would be allowed under the re-zoning by-laws passed in 1987. The Howatts threatened to take legal action against the District.

On May 25th, 1989, the District gave first and second

readings to the two impugned by-laws, above described. The effect of those by-laws would be to increase the allowable building density on Lot 2 from 86 to 100 condominium units. Thereafter the District published a Notice of Public Hearing to be held at 7:30 p.m. on Tuesday, the 13th day of June, 1989, at the District's office in Sechelt. The District also gave written notice of the public hearing to residents who lived in the vicinity of the Howatt's properties and who might be affected by the passage of the proposed by-laws.

The public hearing was held at the office of the District on the evening of June 13th, 1989. It was chaired by Gordon Wilson, the Electoral Area A Director of the District. Approximately 22 residents of the Farrington Cove area attended and some of them expressed their views concerning the proposed by-laws.

Following the Public Hearing, a written report of the representations made at the Hearing was prepared and it was maintained as a public record of the District. On June 22nd, 1989, Mr. Wilson reported orally to a meeting of the Directors of the District concerning the representations made at the Public Hearing. At the meeting the two by-laws were given third reading and were passed. They were approved by the Minister of Municipal Affairs, Recreation and Culture on August 9th, 1989, and were reconsidered

by the District on August 10th, 1989, and were finally passed. The Petition herein was filed on September 8th, 1989.

The Petition set forth a number of grounds in support of the allegation of illegality. They will be considered.

The first ground was that the Public Hearing on June 13th, 1989, was held at Sechelt, instead of being held at Pender Harbour. Sechelt is approximately 35 km. from Pender Harbour, in which area Farrington Cove is situated. Pender Harbour is located in Electoral Area A of the District, while Sechelt is in a different Electoral Area of the District. Both communities are within the geographic area of the District. There is no requirement in the Act for a Public Hearing to be held at any particular location within a District: see s. 956 of the Act. While it may have been more convenient for some of the residents of the Farrington Cove area to have attended a Public Hearing held in the Pender Harbour area, the decision of the District to hold the Public Hearing in Sechelt did not constitute an act which amounted to illegality. The residents of Farrington Cove area were notified by both public and private notice of the date, time and place of the Public Hearing and a number of them were able to attend the Hearing. The first ground fails.

The second and third ground set forth in the Petition are

inter-related. They stated:

> B. In the alternative, that the said public hearing was conducted in such a manner as to prevent the public from making representations respecting matters contained in its proposed bylaw.
>
> C. That the said public hearing was conducted in such a manner that all persons who believed that their interests in the property affected by the proposed bylaw were not afforded a reasonable opportunity to be heard.

They will be considered together.

Residents who attended the Public Hearing on June 13th, 1989, requested the chairman, Mr. Wilson, to adjourn the meeting to a place in the area of Pender Harbour. He declined to do so. Section 956 (9) of the Act makes provision for the adjournment of a public hearing but it is not mandatory. It is permissive. To require a Public Hearing to be adjourned whenever a person attending such meeting requests an adjournment would frustrate the entire process. At the end of the Public Hearing, which lasted for approximately one hour, Mr. Wilson formally asked on three separate occasions whether there were any more oral or written representations to be made and, hearing none, he declared the meeting closed at 8:35 p.m. Mr. Wilson's refusal to adjourn the meeting to a different location did not amount to illegality.

The most serious ground of complaint was that the chairman prevented some of the residents from expressing their representations and that they were not afforded a reasonable opportunity to be heard. It is to be noted that s. 956(1) of the Act provides for the holding of a public hearing ... "for the purpose of allowing the public to make representations to the local government respecting matters contained in the proposed bylaw". (emphasis added). Moreover, the wording of s.956(3) is noted.

In Ross et al v. District of Oak Bay (1965), 50 D.L.R. (2d) 468 (B.C.S.C.) a zoning bylaw was quashed for illegality under s. 238 of the Municipal Act, R.S.B.C. 1960, c.255. There, the chairman of the meeting, the Reeve, had not allowed repetition of representations already given by persons attending a public hearing. It was held that he had discouraged or prevented people from making representations at the meeting. S.238 was the predecessor of s.313 of the Act and for the purposes of this application, the provisions of those sections are essentially the same.

In Wilson v. Chilliwack (1980), 19 B.C.L.R. 398 (B.C.S.C.), a zoning by-law was attacked on the basis that the chairman of a public meeting held pursuant to s.703 of the Municipal Act R.S.B.C. 1960, as amended, had stifled discussions so as to assist those who were in favour of the passage of the by-

law. Hutcheon J. (as he then was) found that the chairman had not prohibited those who opposed the proposed by-law from replying to its proponents and had not stifled discussion.

When the Petition herein was heard on February 2nd, 1990, counsel for the District confirmed that the proceedings at the Public Hearing had been recorded on tape. Pursuant to my request a transcript has been prepared from that tape. It was recently filed in the Registry. I have considered the transcript and, in addition, I have considered the written report of the Public Hearing which was prepared in accordance with the requirements of s.956(8) of the Act.

I am satisfied that the chairman, Mr. Wilson, did not prevent the public from making representations which were relevant to matters contained in the proposed bylaw. It is recognized that he curbed the public from making representations concerning matters which were irrelevant to the matters contained in the proposed by-law. He was fully entitled to do so. Irrelevant representations were properly curtailed. Moreover, I am satisfied that the chairman afforded the members of the public a reasonable opportunity to express their representations orally or in writing. He did not close the Public Hearing abruptly. Instead, he enquired three times whether there were further representations to be made. Hearing none, he closed the meeting.

The chairman is to be commended, rather than criticized, for the patient, courteous and fair manner in which he conducted the meeting. His conduct is epitomized by the following which appears at p. 41 of the transcript:

> Is there anybody here who has not had an opportunity to speak who wishes an opportunity to speak?
>
> Hearing none, then I adjourn the public hearing. Thank you for coming and for your input.

I agree, with respect, with the following comment of Mr. Justice Hutcheon at p. 400 of the Wilson v. Chilliwack case:

> It would be a serious mistake, in my view, for the courts to impose on chairmen of meetings held pursuant to the Municipal Act a standard of perfection.

That admonition is pertinent to the circumstances of this case.

The second and third grounds fail to establish illegality.

The fourth ground centered upon the written report of the meeting. The Petition alleges that it failed to contain a fair and accurate summary of the proceedings. S. 956(8) of the Act provides that "a written report of each public hearing containing a summary

of the nature of the representations respecting the by-law that were made at the hearing shall be prepared ...". It is noted that it shall be a "summary", not a complete transcript of everything that was stated at the Public Hearing. Furthermore, it shall be a summary of the nature of the representations respecting the by-law. It is not required that the report summarized representations which were not relevant to the by-law.

Upon comparing the contents of the record with the transcript, it is recognized that the former did not summarize every representation made at the Public Hearing, or the response to some of the representations. I am satisfied, however, that the record properly complied with the requirement of s.956(8) in that it fairly summarized the representations which were relevant to the proposed by-law.

The fourth ground does not succeed.

A number of other grounds, not specified in the Petition, were raised by counsel for the Petitioner in the course of his submissions.

He submitted that the chairman of the District had refused to hear a delegation from the public, or to receive a petition signed by members of the public, at a meeting of the

District Board held at its office in Sechelt on June 22nd, 1989. In her affidavit sworn on December 20th, 1989, Peggy Connor, the chairman of the District, swore that she declined to hear the delegation or to receive the Petition as a result of legal advice she had received from the solicitors for the District. In my view that advice was correct: see Re McMartin et al and City of Vancouver (1968), 70 D.L.R. (2d) 38 (B.C.C.A.). Pursuant to the provisions of s. 956 members of the public were given the opportunity to make their representations at the Public Hearing held on June 13th, 1989. The District Board should not hear additional representations subsequent to that meeting.

It was submitted by counsel for the Petitioner that the proposed by-law was not referred to the Advisory Planning Commission in order that it could advise the Board of the District. The evidence indicated that Thomas Martin Howatt and his real estate agent were both members of the Advisory Planning Commission. They would have been in the position of conflict of interest if the proposed by-law had been referred to the Commission and if they had participated in discussions leading to a recommendation to the Board. Under s.955(2) of the Act, such a referral was not mandatory. It was permissive. The failure of the Board to refer the proposed by-laws to the Advisory Planning Commission was understandable and was not a matter upon which an allegation of illegality could be substantiated.

For the foregoing reasons, the Petition is dismissed. Costs will follow the event.

D.B. Hinds

Dated at Vancouver, British Columbia,
this 21st day of February, 1990.

1968 CarswellBC 127, 65 W.W.R. 385, 70 D.L.R. (2d) 38

Most Negative Treatment: Distinguished
Most Recent Distinguished: Lewis v. Surrey (District) | 1979 CarswellBC 632, 10 M.P.L.R. 123, 99 D.L.R. (3d) 505 | (B.C. S.C., Mar 12, 1979)

1968 CarswellBC 127
British Columbia Court of Appeal
McMartin v. Vancouver (City)
1968 CarswellBC 127, 65 W.W.R. 385, 70 D.L.R. (2d) 38

McMartin and Gage (Appellants) v. City of Vancouver (Respondent)

Davey, C.J.B.C., McFarlane and Robertson, JJ.A.
Judgment: June 28, 1968

Counsel: *D. M. Goldie* and *J. S. Clyne*, for appellants.
R. K. Baker, for respondent.
Subject: Public

Headnote

Municipal Law --- Zoning — Attacking validity of zoning by-laws — Grounds — Non-compliance with statutory requirements

Municipal Law --- Zoning — Attacking validity of zoning by-laws — Grounds — Procedural error — Procedural fairness

Municipal Corporations — Amendment of Zoning Bylaw — Requirement of Public Hearing — Council's Decision to Be Made in Light of Representations at Public Hearing — Receipt of Letter from Interested Party Following Conclusion of Hearing — Effect on Bylaw.

The respondent city amended an existing bylaw under the authority of a section of its Charter (1953, ch. 55) which read in part as follows: "566. (1) The Council shall not make, amend, or repeal a zoning by-law until it has held a public hearing thereon ...;" following subsections provided for notice to interested parties, their right to be heard, adjournments of the hearing and provided finally that "after the conclusion of the public hearing, the Council may pass the proposed by-law in its original form or as altered to give effect to such representations made at the hearing as the Council deems fit." A public hearing was held of which proper notice was given and at which appellants were present and made representations; council then resolved to defer consideration until its next meeting. At that meeting council heard expert opinions from some of its officials, received and read a letter from a person in favour of the rezoning (to which appellants were opposed) and thereafter, following voting, the bylaw was passed in the form in which it was presented at the public hearing. Macdonald, J. refused an application to quash and on appeal it was *held, per* McFarlane, J.A. that the appeal

must be dismissed; sec. 566 (1) (added 1959, ch. 107) provided a condition precedent to the amendment of a zoning bylaw in the requirement that a public hearing should be held; but, this having been done, no further limitation could be read into the wording of the statute which precluded council from taking the advice of its experts while deliberating whether or not to pass the amendment; an intention so to limit council's powers could not be imputed to the legislature without clear words.

Per Davey, C.J.B.C.:

The council was in error in receiving the letter from the supporter of the rezoning bylaw at its adjourned hearing but, since there was substantial compliance with the letter of sec. 566, what was done, though irregular, did not invalidate the bylaw, the appeal must be dismissed.

Per Robertson, J.A., dissenting:

Sec. 566 provided a code of procedure governing the amendment of a zoning bylaw; it was clear that council was to act on representations made to it at a public hearing, and on no others. In the case at bar the public hearing was held, representations were made and the hearing was concluded; by receiving the letter from the supporter of the bylaw at a meeting subsequent to the conclusion of the public hearing council clearly failed to comply with the code of procedure contained in sec. 566 and its failure went beyond a mere technicality; it amounted to illegality such as to require that the bylaw be quashed.

***Davey, C.J.B.C.*:**

1 In my respectful opinion, the only points of substance in this appeal are one, whether Alderman Adams who was not present at the public hearing on October 12, 1967, should have voted on the motion on November 7 to postpone the bylaw until the spring of 1968 because of a drainage problem, as requested by the Musqueam-Southlands Homeowners' Association. The motion was lost on a tie vote. The other one is whether after the public hearing had been closed, the council should have received a letter dated October 13, 1967, from Eastern & Chartered Trust Company, representing a property owner, in support of the rezoning.

2 On the first point, I agree with my brother McFarlane that Alderman Adams was entitled to vote. Furthermore, he did not vote when, after consideration of the submissions made at the public hearing, the rezoning was approved. He did vote on the request contained in the letter of the homeowners' association written by McMartin asking that the rezoning be delayed to the spring. But he was present when that letter was read to council on November 7, 1967, and consequently was able to pass judgment on the question whether the letter justified a request that a decision already taken by council should be rescinded and consideration postponed until spring. In addition to the authorities cited by counsel and referred to by my brother McFarlane, a similar question was considered by the Privy Council in *Jeffs v. New Zealand Dairy Production & Marketing Board*,

[1967] A.C. 551, [1967] 2 W.L.R. 136. In my opinion, that authority is distinguishable on the statute law and the facts.

3 On the second point I consider that sec. 566 (added 1959, ch. 107) of the *Vancouver Charter*, 1953, ch. 55, particularly subsecs. (4) and (5), requires all evidence and submissions by or on behalf of the property owners and members of the public to be made at the public hearing, and not otherwise. In some cases the council may act in a quasi judicial capacity to decide an application by a property owner to rezone his property in his own interests, which is opposed by other property owners: See *Wiswell v. Greater Winnipeg Metro. Corpn.* (1965) 51 W.W.R. 513, [1965] S.C.R. 512, reversing (1964) 48 W.W.R. 193. In other cases the council will be concerned with applications to rezone large areas, as here, in which public interest may well be the dominant consideration, so that its function may fairly be described as legislative. But whether the area be large or small, and whether the council be acting quasi judicially or legislatively, the rezoning will in many cases concern vitally the interests of adjacent property owners who bought their property on the faith of the existing zoning regulations, and who ought to be heard.

4 In my respectful opinion, the legislature in enacting sec. 566 of the Charter intended that every person affected by the rezoning should have a full opportunity of presenting his views and contentions and an opportunity of answering the opposing arguments, whether the council was acting quasi judicially or legislatively; therefore it required all submissions by the public and property owners to be made at the public hearing, so that persons affected would have an opportunity of answering opposing views.

5 I find support for that interpretation in the words of subsec. (5) which provide that council may pass the bylaw as altered to give effect to representations made at the hearing. There is no suggestion that the bylaw may be altered to give effect to representations not made at the public hearing. In fact, if the council was acting quasi judicially it would be wrong, apart from sec. 566, for the council to receive later submissions without giving the opposing interests an opportunity of meeting the new arguments. If the council in altering the bylaw is confined to submissions made by property owners at the public hearing I think representations by property owners in support of the bylaw must also be made at the public hearing.

6 In saying that, I do not doubt that the council may obtain such advice as it sees fit, at least from its staff, or experts whom it may retain, on questions raised at the public hearing; even from those officials who have initiated the rezoning scheme.

7 In the result, I have concluded that the city ought not to have received the letter from the Eastern & Chartered Trust Company and that in doing so it violated sec. 566 of the Charter, but I cannot regard that as a breach of the condition precedent to hold a public hearing upon which the council's authority to pass the bylaw depended. It did hold a very full public hearing, so it had full authority to pass the bylaw, unless in receiving the letter of Eastern & Chartered Trust Company it departed so seriously from the statutory requirements that the bylaw may be said to be invalid.

8 That requires consideration of what occurred after council's receipt of the letter. The two appellants, McMartin and Gage, are respectively president and vice-president of the homeowners' association. McMartin was present at the meeting of council on October 17 when the letter was received, but there is nothing to show that it was read or that he learned that day what it contained. On October 18 Gage saw Tartaglio, the author of the letter, and he told Gage that he wrote the letter, and while Gage does not say so, I have no difficulty in inferring that Tartaglio told him the contents, if he did not already know. On November 3, 1967, McMartin, as president of the homeowners' association, wrote to council protesting against the receipt of the letter from Eastern & Chartered Trust Company and production of further information and plans by members of the planning and engineering departments of the city on October 17. McMartin stated that the association did not have an opportunity to answer that new material at the public hearing. He concluded by stating that they were not opposed to the ultimate development of the area and desired to co-operate with the council about it. But in view of the drainage problem and to test the adequacy of the present drainage system he asked that the reading of the bylaw be postponed until next spring.

9 The request made for postponement of the reading of the bylaw and the reason was recited in the minutes of council of November 7. A motion to delete the area from the bylaw was made and lost. So in the result the answer of the appellants to the letter of the Eastern & Chartered Trust Company was, notwithstanding sec. 566 of the *Vancouver Charter*, received and considered by council.

10 In my respectful opinion, while there was a violation of the letter of sec. 566, what was done was a substantial though informal compliance with it, and the irregularity does not invalidate the bylaw.

11 I would dismiss the appeal.

***McFarlane, J.A.*:**

12 The appellants applied under sec. 524 of the *Vancouver Charter*, 1953, ch. 55 and amending Acts for an order to quash that part of bylaw No. 4324 of the city of Vancouver which purports to affect an area within the city designated on a plan attached to the bylaw and numbered Z-119A. The bylaw amends bylaw No. 5375, being the zoning and development bylaw of the city. The effect of the amending bylaw No. 4324 is to rezone the designated area from R.S.-3, one-family dwelling district to R.S.-1, one-family dwelling dis trict, and thereby to reduce the permitted size of individual lots. The application came before Macdonald, J., in chambers. He dismissed it, and the appellants appeal from that dismissal.

13 As the disposition of the appeal depends upon the proper interpretation and application of sec. 566 (added 1959, ch. 107) of the Charter and particularly subsec. (5) thereof, it is convenient

to quote the section except subsecs. (6) and (7) (added 1962, ch. 82) which are irrelevant to this appeal:

> 566. (1) The Council shall not make, amend, or repeal a zoning by-law until it has held a public hearing thereon, and an application for rezoning shall be treated as an application to amend a zoning by-law.
> (2) Council may by by-law require every person applying for an amendment to the zoning by-law to accompany the application with a fee to be prescribed by by-law.
> (3) Notice of the hearing, stating the time and place of the hearing and the place where and the times within which a copy of the proposed by-law may be inspected, shall be published in not less than two consecutive issues of a daily newspaper published (or circulating) in the city, with the last of such publications appearing not less than seven days nor more than fourteen days before the date of the hearing.
> (4) At the hearing all persons who deem themselves affected by the proposed by-law shall be afforded an opportunity to be heard in matters contained in the proposed by-law, and the hearing may be adjourned from time to time.
> (5) After the conclusion of the public hearing, the Council may pass the proposed by-law in its original form or as altered to give effect to such representations made at the hearing as the Council deems fit.

14 The application to amend the zoning bylaw was made by a civic official, the director of planning, following a study of the area and recommendations presented by town planning commission (created under sec. 574 [added 1959, ch. 107] to advise the council on planning matters) and the city's board of administration. I note parenthetically that this is a case of a bylaw of general application and not one requiring a specific decision made upon a specific application concerned with a specific parcel of land. It is therefore unlike the bylaw dealt with by the Supreme Court of Canada in *Wiswell v. Greater Winnipeg Metro. Corpn.* (1965) 51 W.W.R. 513, [1965] S.C.R. 512, reversing (1964) 48 W.W.R. 193. I think the learned chambers judge was right in so deciding.

15 A public hearing was held on October 12, 1967, at which the appellants were present in their personal capacities and as officers of the Musqueam-Southlands Homeowners' Association. It is conceded that the provisions of sec. 566 (3) as to notice were complied with and that interested members of the public including the appellants were given fun opportunity to make and did make representations in opposition to the proposed amendment. At the conclusion of the meeting the council resolved to defer consideration until its next meeting.

16 The matter was then considered at a regular meeting of council on October 17, 1967. The appellant, McMartin, although not formally notified, attended. He did not ask and was not invited to speak at the meeting. The mayor and Alderman Adams who had not been present at the public hearing on October 12 refrained, with the permission of the council, from participation in the debate or voting on the bylaw in question. The council at this meeting resolved to receive a letter dated October 13, 1967, addressed to the mayor and city council by one Tartaglio on the letterhead

of a trust company. In the letter the writer states he is authorized to speak on behalf of a Mr. A. Ritchings for the rezoning. The content of the letter is argumentative and while it is difficult to believe any member of the council would find it at all persuasive I think it must be presumed to have been read by those who made the decision. During the meeting a member of council addressed certain questions to the director of planning and to a representative of the city engineering department. The answers to these questions involved the production by the director of an over-lay drawing, presumably demonstrating the number of lots to be expected from the proposed rezoning, and involved giving advice regarding a possible solution to a drainage problem if the existing system should prove inadequate. Council then on a division, approved the proposed rezoning, and instructed corporation counsel to prepare and bring in the necessary bylaw amendments.

17 On November 7, 1967, the amending bylaw was presented in the form in which it had been referred to in the notice of public hearing given under sec. 566 (3). Alderman Adams was present and voted in favour of the bylaw. The minutes record that a communication was noted from the Musqueam-Southlands Homeowners' Association drawing attention to "the serious drainage problem" and requesting postponement of the passing of the bylaw until the following spring. A motion to delete Plan Z-119-A was defeated on an equal division. The bylaw was thereupon read three times and passed in its original form.

18 Appellants' counsel on the appeal submitted that the bylaw, so far as Plan Z-119-A is concerned, should be quashed on the ground that the city council acted in excess of jurisdiction by failing to give effect to sec. 566 (5) in three respects: (1) In hearing further representations on October 17, 1967, from the director of planning and a member of the engineering department without giving the appellants an opportunity to answer; (2) In receiving the Tartaglio letter on October 17, 1967, failing to disclose its contents to the appellants, and to allow them an opportunity to comment thereon; (3) In permitting Alderman Adams to participate in voting at the meeting of November 7, 1967.

19 The validity of these submissions depends upon the interpretation of sec. 566 (5) in its context of the statute as a whole and in particular the remainder of the section itself.

20 Coming to the problem of interpretation I think it important to keep in mind that municipal corporations are statutory instruments of local government and that legislative powers are delegated to them for the purposes of such government. Speaking generally, bylaws are laws, though of local application. The word is derived, as Lord Coke said, from the word "By" or "Bye" meaning a habitation. The principle was stated by Meredith, C.J.O. in *Toronto Elec. Light Co. v. Toronto (City)* (1915) 33 O.L.R. 267, affirmed [1917] AC 84, 86 LJPC 49, 38 O.L.R. 72, as follows, at p. 275:

> It is not to be forgotten that municipal councils are a part of the machinery for the civil government of the Province, and that to them have been delegated many of the powers both of legislation and of administration which by The British North America Act are vested in

the Provincial Legislatures.

21 Sec. 137 (1) (amended 1965, ch. 68) of the *Vancouver Charter* provides that except as otherwise provided the powers of the city shall be exercisable by the council.

22 Sec. 147 reads:

> 147. The Council and other administrative bodies shall be deemed and considered to continue in existence notwith standing any change in their membership, and proceedings begun by one Council or administrative body may be continued and completed by a succeeding Council or administrative body.

23 I think this section has an important bearing upon the ascertainment of the intention of the legislature in enacting sec. 566, because if the contentions of the appellants be sound the council would be acting illegally if, after the conclusion of the public hearing, its members should hear further representations or take expert advice in the absence of persons opposed to the proposed bylaw. The same result would follow the acceptance of those contentions if the bylaw were passed by a council composed of aldermen elected after the conclusion of the public hearing. Such an intention should not I think be imputed to the legislature without good reason to be derived from the language used in the statute.

24 The general power to provide by bylaw for the good rule and government of the city is conferred by secs. 151 and 189. Sec. 292 (1) (amended 1965, ch. 68) empowers the council, for the purpose of regulating the subdivision of land, to make bylaws regulating the area, shape, and dimensions of parcels of land, to be applicable in different zones of the city.

25 Specific authority in broad terms to make zoning bylaws is given by sec. 565 (amended 1964, ch. 72). The statute then by sec. 566 (1) prohibits, by clear words, the council from making, amending or repealing a zoning bylaw "until it has held a public hearing thereon." The holding of a public hearing was therefore a condition precedent to the exercise of the council's general power to pass bylaw No. 4324. I think this subsection should be regarded as a limitation upon the right to exercise the general power conferred by the other provisions of the statute to which I have referred. I can find no satisfactory reason for enlarging or extending that limitation beyond the clear effect of the words used in subsec. (1), namely, "The Council shall not ... amend ... until it has held a public hearing." I think also the correctness of this view is emphasized by the language of subsec. (5) where the legislature states affirmatively that after the conclusion of the public hearing the council may pass the proposed bylaw. In my opinion, this means that after having held a public hearing in the manner required by subsecs. (3) and (4) the council may proceed to exercise its power to make and amend zoning bylaws without further restriction so far as sec. 566 is concerned. The conclusion contended for on behalf of the appellant would involve reading into subsec. (5) words which are not found there.

26 The appellants' counsel relied in particular on *Rex v. Huntingdon Confirming Authority*, [1929] 1 K.B. 698 (*sub nom. George & Stamford Hotels Ltd. v. Huntingdon Confirming Authority*) 98 LJKB 331, and *Re Johnston and Halifax (City)* (1962) 46 M.P.R. 345, *(*sub nom. *Reg. v. Committee on Works of Halifax City Council)* 34 D.L.R. (2d) 45 (N.S. C.A.). In the former case the confirming authority, quarter sessions, was exercising a judicial function in the strict sense as had been decided by the several previous decisions of the court of appeal. In the latter case the committee was dealing with a request for an order for demolition of a building owned by a private citizen. The Nova Scotia supreme court *en banc* held that in these circumstances it was the duty of the committee to act judicially. In my opinion, these authorities do not apply because the city council in the present case was exercising legislative powers and was not acting in a judicial or quasi judicial capacity.

27 Appellants' counsel submitted also that the learned chambers judge erred in admitting in evidence before him and in relying upon two affidavits exhibiting records of the city council and documents presented to it. The purpose of these affidavits was to show that in dealing with bylaw No. 4324 the council was not dealing with a dispute between contending individuals or groups of individuals relating to a specific application concerned with a specific parcel of land, thereby affording the basis for distinguishing the *Wiswell* decision. I think the affidavits were relevant and therefore admissible for that purpose.

28 In my opinion, and for these reasons the appeal should be dismissed.

Robertson, J.A. **(dissenting):**

29 I have had the privilege of reading the reasons for judgment of my brother McFarlane. In them he has set out the principal facts. With respect, I agree with him that the bylaw in question here was unlike the bylaw dealt with by the Supreme Court of Canada in *Wiswell v. Greater Winnipeg Metro. Corpn.* (1965) 51 W.W.R. 513, [1965] S.C.R. 512, reversing (1964) 48 W.W.R. 193. I also agree that the holding of a public hearing was a condition precedent to the exercise of the council's general power to pass bylaw No. 4324; and I agree that the city council in the present case was not acting in a judicial or quasi-judicial capacity. Unfortunately I do not agree with my brother's con clusion that the appellants are not entitled to succeed on any of their grounds.

30 I propose to deal with that one only of the submissions of counsel for the appellants which McFarlane, J.A. has expressed thus: "... the city council acted in excess of jurisdiction by failing to give effect to sec. 566 (5)."

(2) In receiving the Tartaglio letter on October 17, 1967, failing to disclose its contents to the appellants, and to allow them an opportunity to comment thereon.

31 In my opinion, subsecs. (1), (3), (4) and (5) of sec. 566 (added 1959, ch. 107) of the *Vancouver Charter*, 1953, ch. 55, are a code of procedure which must be followed and observed in every respect whenever it is proposed to amend a zoning bylaw. It is not enough for council to purport to hold a public hearing under subsec. (1), while failing to comply with the other subsections.

32 As I have already said, subsec. (1) makes the holding of a public hearing a condition precedent to the exercise of council's power to amend a zoning bylaw. Subsec. (3) requires no comment, except that it requires the proposed amending bylaw to be formulated before notice of the hearing is given, and this gives it "its original form," as referred to in subsec. (5).

33 The words in subsec. (4) "and the hearing may be adjourned from time to time" make it clear that the hearing need not be concluded on the day for which it is originally called, but may be adjourned on that day to some later specified time and place. But the opening words of subsec. (5) make it equally clear that there must be a conclusion of the hearing. I think it follows that, if the hearing is brought to an end and nothing is said about its being resumed, it is concluded. I read subsec. (5) with a pause after the word "altered," so that the sense will be that the form of the bylaw — be it original or altered — will be such as will "give effect to such representations made at the hearing as the Council deems fit." The words last quoted do not apply only to the words "the proposed by-law ... as altered," but apply also to the words "the proposed by-law in its original form." If it were otherwise, council could not deem fit to give effect to any representations that supported the proposed bylaw in its original form.

34 Under subsecs. (4) and (5) there are three principal steps to be taken. The first is the holding of the hearing, where persons affected are to be afforded an opportunity to be heard; the second is the consideration by council of the representations made at the hearing, in order to decide which (if any) of them "Council deems fit" "to give effect to;" and the third is the passage of a bylaw accordingly. The first step must not overlap the second and third steps: It is only "after the conclusion of the public hearing" that council may proceed with the second step.

35 It is clear to me that the decision of council to pass the proposed bylaw either in its original form or in an altered form or not to pass it in any form is to be based on representations made at the hearing, or on the lack of any representations so made. The words in subsec. (5) "after the conclusion of the public hearing" do not merely mark a point in time. They, read with the words that follow them, indicate an intention that the passage (if any) of the proposed bylaw and the form in which it is to be passed are to depend upon the decision that council arrives at based upon the representations made at the hearing. This excludes consideration by council of any other representations.

36 In order to apply my views on sec. 566 to the facts, I shall now set out certain extracts from the minutes of council certified by the city clerk:

City Of Vancouver Special Council - October 12, 1967 Public Hearing

A special Meeting of the Council of the City of Vancouver was held in the Council Chamber, City Hall, Thursday, October 12, 1967, at 2:00 p.m.

. . . . .

Committee of the Whole
Moved by Ald. Graham,
Seconded by Ald. Bird,
That this Council do resolve itself into Committee of the Whole, His Worship the Deputy Mayor in the Chair, to consider proposed amendments to the Zoning and Development By-Law

-- Carried.

Rezoning Applications

1. Lower Musqueam Area

This is an application by the Director of Planning to rezone portions of Blocks 5, 6, 7, 8 and 9 of D.L. 320 and portions of Blocks 3, 4, 5 and 6 of D.L. 314, Group 1, NWD, which is an area bounded generally by Southwest Marine Drive, Collingwood Street, 51st Avenue and Crown Street

From: RS-3 One Family Dwelling District.
To: RS-1 One Family Dwelling District.

The Technical Planning Board and Town Planning Commission recommend that the application be approved.

The Director of Planning spoke in explanation of the application with the aid of maps displayed.

Questions were asked of Mr. Gordon, Engineering Department, concerning the sewerage and drainage situation of this area.

Mr. S. Klein spoke against the application in its present form and filed a petition with 260 signatures proposing that any decision to rezone this area should be based on a comprehensive development plan which should include a number of conditions.

Dr. Oberlander, representing a number of owners in the area also spoke against the application in its present form.

Six other individuals affected also spoke against the application mainly because of drainage problems and the fact that no overall plan was prepared.

Letters from Mrs. J. Binkert and Mr. J. C. Gage were circulated opposing the application.

6. Balance of Rezoning Applications
(Details of four other applications were here set out.) Moved by Ald. Graham,
That the Committee of the Whole rise and report.

-- Carried.

Moved by Ald. Graham,
Seconded by Ald. Rankin,
That the report of the Committee of the Whole be adopted.

-- Carried.

Moved by Ald. Rankin,
Seconded by Ald. Alsbury,
That consideration of the foregoing rezoning applications be deferred until the next meeting of Council.

-- Carried.

City Of Vancouver Regular Council - October 17, 1967
A Regular Meeting of the Council of the City of Vancouver was held on Tuesday, October 17th, 1967, in the Council Chamber, at approximately 9:30 a.m.

. . . . .

Committee Of The Whole
Moved by Ald. Adams,
Seconded by Ald. Graham
That Council do resolve itself into Committee of the Whole, His Worship the Mayor in the Chair.

-- Carried.

. . . . .

Unfinished Business (Cont'd) 2. Rezoning Applications (Public Hearing held on October 12, 1967)

The Council considered various applications for rezoning, referred for decision at this time by the Council when a Public Hearing was held on October 12, 1967.

. . . . .

Each of these applications is dealt with as noted hereunder. (a) Portions of Blocks 5, 6, 7, 8 and 9 of D.L. 320 and portions of Blocks 3, 4, 5 and 6 of D.L. 314, Group 1, NWD.

> Being the area bounded generally by Southwest Marine Drive, Collingwood Street, 51st Avenue and Crown Street.

Moved by Ald. Bird,
That this application be laid on the table and the Engineering Department study, during the winter period, the surface drainage problems for the purpose of making a recommendation to the Council at a later date.

-- Lost.

Moved by Ald. Broome,
That the communication from Eastern and Chartered Trust Company, in favour of the application, be received.

-- Carried.

Moved by Ald. Graham,
That this application for rezoning from RS-3 to RS-1 One Family Dwelling District, be approved.

-- Carried

...

Moved by Ald. Graham,
That the Corporation Counsel be instructed to prepare and bring in the necessary By-law amendments.

-- Carried

...

Moved by Alderman Broome,
That the Committee of the Whole rise and report.

-- Carried

Moved by Ald. Broome,
Seconded by Ald. Adams,
That the report of the Committee of the Whole be adopted.

-- Carried.

37 What happened on October 12 is plain. Council in committee of the whole completed the hearing of the application in question — the first step under subsecs. (4) and (5) — and moved on to four other applications. The hearings of all the applications were ended by the committee of the

whole rising and reporting. Council then resolved that consideration of the applications — the second step under subsecs. (4) and (5) — be deferred until the next meeting of council. There was no suggestion of an adjournment of the hearing. The "conclusion of the public hearing" occurred on October 12. This is confirmed by these words from the minutes of October 17:

> The Council considered various applications for rezoning, referred for decision at this time by the Council when a Public Hearing was held on October 12, 1967.

38 However, instead of merely considering its decision, council on October 17, received the letter from Eastern & Chartered Trust Company signed by Tartaglio, which was expressly noted in the minutes as being "in favour of the application," just as the gists of representations made on October 12 were noted in the minutes of that date.

39 The net effect of what council did was this: With a view to amending the zoning bylaw it held a public hearing on October 12 and there it heard representations in favour of and against the proposed bylaw; on the same day it brought the public hearing to a conclusion; on October 17, when it came to consider "various applications for rezoning, referred for decision at this time by the Council when a Public Hearing was held on October 12, 1967," council received a further representation "in favour of the application" now in question, and then proceeded to resolve that that application be approved. Thus council had before it when it made its decision a representation additional to and later than the "representations made at the hearing" within the meaning of those words in subsec. (5). In my opinion, this was wrong, constituting a failure to comply with the code of procedure in sec. 566 and (if this is relevant, as to which I express no opinion) was a failure in something more than a mere technicality.

40 With great respect for any contrary opinion, I do not think that the Musqueam - Southlands Homeowners' Association's letter of November 3, 1967, signed by McMartin and addressed to city council was, or purported to be, an answer by the appellants to the letter of Eastern & Chartered Trust Company. Instead of dealing with any of the representations in the latter letter (*e.g.*, that a certain area was in excellent condition, that "holding back the rezoning of this area ... would continue to devaluate some of the older homes," that "these people have done little to increase the value of their properties," that "one of the major interests in this group is to keep the land large enough so the families here can continue to play cowboys on the weekend," that "the water, park and schools are no different problems than any other area in Vancouver is now going through," that "under the present lot size of 1 acre few can afford to purchase a lot this size to build a home on," and that this is a "depressed looking area"), the association's letter referred to what had occurred at the meeting on October 17 and said:

> We respectfully submit that this procedure was improper since we did not have the opportunity to hear and to answer the above-mentioned evidence at the Public Hearing.

41 This was no waiver of the appellants' rights nor any attempt to make representations in

reply to the letter of Eastern & Chartered Trust Company. The association's letter did go on to say:

> As we stated at the Public Hearing, we are not opposed to the ultimate development of the above-mentioned area and we wish to co-operate with Council in this regard. However, in view of the serious drainage problem and the impending rainy winter season and in order to be sure that the present drainage system is in fact effective, we respectfully request that you consider postponing the reading of the proposed by-law until next spring.

42 This, however, was only a repetition of the association's position stated on October 12 and a request that council consider postponing the reading of the proposed bylaw. It made no representations on any of the points which it complained it had had no chance to hear and answer at the public hearing.

43 In my view, therefore, there was illegality — in the sense in which that word is used in sec. 524 — in the passing of the amending bylaw No. 4324, and it must be quashed so far as it relates to plan Z-119-A. I would allow the appeal and quash bylaw No. 4324 in part.

End of Document

1972 CarswellBC 265, [1973] 1 W.W.R. 634, 31 D.L.R. (3d) 570

Most Negative Treatment: Distinguished
Most Recent Distinguished: Zanzibar Tavern Inc. v. Las Vegas Restaurant & Tavern Ltd. | 1995 CarswellOnt 177, 27 M.P.L.R. (2d) 272 | (Ont. Gen. Div., Jun 1, 1995)

1972 CarswellBC 265
British Columbia Court of Appeal
Bay Village Shopping Centre Ltd. v. Victoria (City),
1972 CarswellBC 265, [1973] 1 W.W.R. 634, 31 D.L.R. (3d) 570

Bay Village Shopping Centre Ltd. v. Corporation of City of Victoria

Robertson, Nemetz and Davey JJ.A.
Judgment: November 28, 1972

Counsel: *J. J. Gow*, for appellant.
T. P. O'Grady, Q.C., for respondent City.
D. M. Gordon, Q.C., for respondent Yennadon Holdings Ltd.
Subject: Public

Headnote

Municipal Law --- General principles respecting by-laws — Enactment — By plebiscite — Submission — Resubmission

Municipal corporations — Zoning bylaw defeated after public hearing — Reconsideration by Council without further public hearing — Legality of bylaw adopted on such reconsideration — The Municipal Act, R.S.B.C. 1960, c. 255, s. 703, as amended by 1961, c. 43, s. 42; 1968, c. 33, s. 167, and s. 704, as amended by 1961, c. 43, s. 43.
Appeal from the judgment of Seaton J., [1971] 5 W.W.R. 684, refusing an application to quash a zoning bylaw. Appeal allowed.

Respondent City held a public hearing into the merits of a proposed amending zoning bylaw, having complied with all the statutory requirements as to notice and other matters set out in s. 703 of The Municipal Act. After all interested parties had been heard a motion to adopt the bylaw was put and lost. This occurred on 27th May 1971. On 10th June 1971 Council reconsidered the bylaw and received a brief from a representative of a company which was promoting it; in the result the bylaw was passed. There was no public hearing, nor was any notice given to interested parties to the effect that the bylaw was to be reconsidered.

Held, Davey J.A. dissenting, that the appeal must be allowed and the bylaw quashed; the hearing on 27th May was clearly brought to an end when the motion to adopt was defeated and the hearing on 10th June could only be regarded as a new hearing. Sections 704 and 703 set out in the clearest possible terms what requirements were to be met before an

amending bylaw could be passed, and strict compliance with those sections was a condition precedent to the legality of the bylaw.

***Robertson J.A.*:**

1 This is an appeal against the dismissal of an application to quash a bylaw of the respondent City of Victoria ("the City"). The reasons are reported at [1971] 5 W.W.R. 684.

2 The appellant Bay Village Shopping Centre Ltd. ("Bay Village") owned land on one corner of an intersection in the city. The respondent Yennadon Holdings Ltd. ("Yennadon") owned land on another corner of the same intersection. Each of Bay Village and Yennadon wished to develop its land in a way that was not permitted by the City's zoning bylaw. Bay Village, however, did not wish to proceed with its development if Yennadon, among others, was allowed to develop its land in the way it wished to do. Each of Bay Village and Yennadon promoted a bylaw (amending the zoning bylaw) to meet its wishes and the Council of the City ("the Council") passed bylaw No. 249 to benefit Bay Village and bylaw No. 248 to benefit Yennadon. Under The Municipal Act, R.S.B.C. 1960, c. 255, s. 223 [am. 1968, c. 33, s. 63]:

> 223. Every by-law passed by the Council shall be reconsidered not less than one day after the by-law has received third reading and before adoption, and, if adopted by the Council, shall be signed by the Mayor or other member of the Council presiding at the meeting at which the by-law has been adopted, and shall be signed by the Clerk; and the Clerk shall affix thereto the corporate seal of the municipality.

3 Before Yennadon's bylaw No. 248 could be adopted, there had to be compliance with these sections in the Act [s. 703, am. 1961, c. 43, s. 42; 1968, c. 33, s. 167; s. 704, am. 1961, c. 43, s. 43]:

> 703. (1) The Council shall not adopt a zoning by-law until it has held a public hearing thereon, notice of which stating the time and place of the hearing has been published in not less than two consecutive issues of a newspaper published or circulating in the municipality, with the last of such publications appearing not less than three days nor more than ten days before the date of the hearing.
>
> (2) The notice of hearing shall
>
> (*a*) identify the land or lands deemed affected;
> (*b*) state in general terms the intent of the provisions of the proposed by-law; and
> (*c*) state where and the days and hours during which a copy of the proposed by-law may be inspected.

> (3) At the hearing all persons who deem their interest in property affected by the proposed by-law shall be afforded an opportunity to be heard on matters contained in the by-law.
>
> (4) The hearing may be adjourned from time to time.
>
> (5) The Council may without further notice, in the zoning by-law as adopted, give such effect as it deems fit to representations made at the hearing, except that any change subsequent to the hearing shall not alter the substance thereof.
>
> 704. No zoning by-law shall be amended or repealed except after a hearing under section 703, and except upon the affirmative vote of at least two-thirds of all the members of the Council.

4 Notice of a public hearing on bylaw No. 248 to be held on 27th May 1971 was duly published. The next step in the narrative can best be outlined by quoting from minutes of the Council:

> Minutes of the Meeting of the Victoria City Council Held on Thursday, the 27th Day of May, 1971, at 2:00 P.M. ...
>
> **Public Hearing**
> **Re Zoning By-Law Amendments (Nos. 247, 248, 250 and 251).**
> His Worship the Mayor said that this portion of the meeting of the City Council would comprise a public hearing under Section 703(3) of the 'Municipal Act' to afford all per sons deeming their interest in property affected by the proposed Zoning By-Law Amendments an opportunity to be heard by the Council on the matters contained therein.
> The Mayor then said the by-laws provided for ONLY: ...
> (No. 248): The rezoning from 'R-3H High Density Multiple Dwelling' to 'C-1 Limited Commercial' of Parcel A of Lots 1850 and 1851 and South Part Lot 1852, Victoria City — northwest corner Simcoe and Menzies Streets (Case of Wagg and Hambleton, Architects) ...
> It was then announced that any persons desiring a hearing on these by-law amendments may now come forward in turn and address the Council ...
> ***(Re Amendment No. 248):***
> There was read to Council a communication dated 27th May from *Hallatt, Stewart & Gow, Solicitors*, on behalf of *Bay Village Shopping Centre Ltd.*, opposing this proposed amendment.
> *Mr. John A. Mace*, representing *Mace Investments Ltd.* which company is financing the project, appeared and answered any questions by the members of Council ...
> ***(Re Amendment No. 248):***
> *Mr. Hambleton of Wagg and Hambleton, Architects*, on behalf of the company's client,

said they endorsed the remarks of Mr. Mace. He said the company was offering a portion of its property for the widening of Simcoe Street. He also said the company was providing for more than required off-street parking ...

By-Laws

Zoning By-Law, 1956, Amendment By-Law (No. 249), 1971. ...
Each of the above-named by-laws in turn was dealt with by City Council as follows:
On motion by Alderman Christie, seconded by Alderman Witt, the by-law was reconsidered, adopted, and
Finally passed ...

Zoning By-Law, 1956, Amendment By-Law (No. 248), 1971.
Alderman Olafson moved, seconded by Alderman Ramsay, that this by-law be reconsidered, adopted, and finally passed.
This motion was put and LOST ...

5 In these minutes I note particularly that a public hearing was held on Yennadon's bylaw No. 248 and that a motion that the bylaw be adopted and finally passed was lost. I also note that Bay Village's bylaw No. 249 was adopted and finally passed, but nothing turns on this as that bylaw is not attacked.

6 The next relevant minutes are of the meeting of the Council held on 10th June 1971 and I quote from them:

Hearings ...

Re Zoning By-Law, 1956, Amendment By-Law (No. 248), 1971.
Alderman Olafson moved, seconded by Alderman Witt, that the persons requesting a hearing by Council on the above two by-laws be granted a hearing ...

Re Zoning By-Law Amendment (No. 248).
Mr. F. S. Carson, Governing Director, Yennadon Holdings Ltd., read and presented a *Brief* dated *2nd June* supporting that Company's application for rezoning from 'R-3H High Density Multiple Dwelling' to 'C-1 Commercial' of Parcel A of Lot 1850, Lot 1851 and South Part of Lot 1852, Victoria City at the corner of Menzies and Simcoe Streets.
Alderman Olafson moved, seconded by Alderman Christie, that the letter and Brief be received and placed on file.
Carried ...

Motions

Re Zoning By-Law Amendments (Nos. 247 and 248).
Alderman Olafson moved, seconded by Alderman Ramsay, that Zoning By-law, 1956, Amendment By-laws (Nos. 247 and 248), 1971, be reconsidered by City Council under item 16 of the agenda 'By-laws'.
Carried ...

By-Laws

Zoning By-Law, 1956, Amendment By-Law (No. 248), 1971.
This by-law was dealt with by City Council as follows:
On motion by Alderman Olafson, seconded by Alderman Ramsay, the by-law was reconsidered, adopted and
Finally passed.

7 I note particularly that a further hearing on bylaw No. 248 was held, that upon it a brief supporting Yennadon's application for rezoning was read and presented and that after the hearing bylaw No. 248 was adopted and finally passed. The brief was not put in evidence. It is common ground that notice of the hearing on 10th June 1971 was not published in the manner prescribed by s. 703(1) or otherwise.

8 Yennadon's bylaw No. 248 is attacked on two principal grounds. First, it is said that the Council, after having held the hearing on 27th May and defeated a motion to adopt the bylaw, had no right, without publishing further notice, to hold a hearing on 10th June and then to adopt the bylaw. Second, and in the alternative, it is said that the Council was bound to act in a quasi-judicial capacity and acted contrary to the rules of natural justice. I find it necessary to deal only with the first ground and in my narrative I have omitted certain facts that bear on the second ground only.

9 The first ground was raised in the appellant's originating notice of motion to quash in these words:

> 2. the requirements of Sections 703 and 704 of the *Municipal Act*, R.S.B.C., Chapter 255, as to the holding of prior public hearing and due notice thereof have not been complied with.

10 My opinion on ss. 703 and 704 of the Act as a matter of first impression is as follows. There can be no doubt that under s. 704 it is a condition precedent to amending a zoning bylaw that there first be held a hearing under s. 703. The words "except after a hearing under section 703" in s. 704 import into the procedure for amendment of a zoning bylaw only the first four subsections of s. 703 and do not make subs. (5) applicable: subs. (5) does not regulate the

hearing, but says what the Council may do after the hearing. The result is that, when a zoning bylaw is to be amended, subs. (1) is to be read as though the phrase "a zoning by-law" were "a by-law to amend a zoning by-law"; and in subss. (2) and (3) the words "the proposed by-law" refer to the amending bylaw. Under subs. (1) notice of the hearing must be published in a certain way and within a specified period. Under subss. (1) and (2) the notice must give certain information, including the time and place of the hearing. Subsection (3) makes it clear that the purpose of the hearing is to give all interested persons an opportunity to be heard on matters contained in the bylaw. Clearly failure to hold a hearing would be fatal to an amending bylaw. In my opinion the holding of a hearing which did not comply with s. 703 would be equally fatal. In the latter case, an interested person would not have the warning of what is to occur to which subs. (1) entitles him, and this would prejudice his right to prepare to take advantage of the opportunity to be heard that subs. (3) is intended to afford him. To my mind it is essential that, whenever a hearing is to be held, there be compliance with subss. (1), (2) and (3) of s. 703.

11 Here there was no such compliance with respect to the hearing on 10th June. No notice of it was published. Subsection (4) of s. 703 provides that a hearing may be adjourned from time to time, but it is of no assistance here. The hearing on 27th May was brought to an end and the Council proceeded to decide whether it should or should not adopt the bylaw upon which the hearing had been held. The hearing on 10th June must be regarded as a new hearing.

12 It is easy to imagine cases where prejudice can result if proper notice of a second or subsequent hearing is not given. For example, the promoter of a bylaw appears on a hearing and presents his case; no one appears to oppose and the hearing is concluded; on a later date, without publishing any notice, the Council holds a hearing to receive submissions by interested persons who oppose the bylaw; the original promoter has no opportunity to reply to those submissions, or, if he happens to be present for another purpose, he has not had the minimum of three days prescribed by the statute in which to prepare himself and to arrange for his counsel or supporters to be present. It seems to me to be essential, and in accordance with the natural meaning of the words, to construe ss. 704 and 703 as requiring that formal notice be given of every hearing (other than one pursuant to an adjournment) upon an amending bylaw.

13 In fact the failure here to observe the Act was worse than the example that I have given above. The hearing on Yennadon's bylaw No. 248, pursuant to the published notice, was held on 27th May. Following that, a motion that the bylaw be adopted was put and lost. Opponents of the bylaw would have every reason to feel that this was an end of the matter. Apparently, however, certain persons later requested a further hearing and on 10th June it was resolved "that the persons requesting a hearing by Council on the above two bylaws be granted a hearing". A representative of the promoter of the bylaw was then allowed to read and present a brief and, following that, Council reversed its decision of 27th May and adopted the bylaw. I have no hesitation in saying that the course adopted by Council is a breach of both the letter and the spirit of ss. 704 and 703.

14 It is, however, argued for the respondents that the failure to publish notice of the hearing on 10th June was a mere irregularity and reliance is placed on the decision of this Court in *McMartin et al. v. Vancouver* (1968), 65 W.W.R. 385, 70 D.L.R. (2d) 38. In trying to apply that case, three things in particular must be borne in mind: first, while the statutory provision there (The Vancouver Charter, 1953 (B.C.), c. 55, s. 566 [en. 1959, c. 107, s. 20]) was similar in many respects to the provision here (ss. 703 and 704 of the Act), the two are not identical; second, the procedure complained of there was the receipt of a letter, while here it was the holding of a hearing, the precise matter referred to in s. 704; third, in that decision there was no general agreement between any two of the three Judges, each reaching his conclusion by a different process.

15 As to the first thing above, the principal differences that I note are these: (a) s. 566 deals with both making and amending a zoning bylaw, while s. 703 deals with making a bylaw, and s. 704 deals with amending it; therefore, while all the provisions of s. 566 were applicable there, all the provisions of s. 703 are not applicable here, but only subss. (1), (2), (3) and (4); (b) the words "the conclusion of the public hearing" in s. 566(5) do not appear in ss. 703 or 704.

16 In the *McMartin* case, Davey C.J.B.C. relied particularly on subs. (5) of s. 566, the counterpart of subs. (5) of s. 703 (which I have shown does not apply to the procedure here). His conclusion was that, while there was a violation of the letter of s. 566, the receipt of the correspondence was a substantial though informal compliance with it, and the irregularity did not invalidate the bylaw. As he put it during the argument of this appeal, he drew a distinction between directory and imperative requirements. McFarlane J.A. also relied heavily on s. 566(5), saying [p. 391]:

> The validity of these submissions depends upon the interpretation of sec. 566 (5) in its context of the statute as a whole and in particular the remainder of the section itself.

17 His decision was thus based largely on a provision which was directly applicable there but is not directly applicable here. As I understand his reasons, he was of the view that, the time when the Council received the letter being "after the conclusion of the public hearing", the Council was then at liberty "to exercise the general power conferred by the other provisions of the statute" to which he had referred. My own view was that subss. (1), (3), (4) and (5) of s. 566 were "a code of procedure which must be followed and observed in every respect whenever it is proposed to amend a zoning bylaw", that the receipt of the letter was a breach of the code and that there was illegality in the passing of the amending bylaw.

18 For the considerations that I have indicated, I cannot find in the reasons in the *McMartin* case any agreement on principle that binds this Court; and, to the extent that there is agreement on some aspects of the case, it depends in part on provisions which are not the same as those applicable here. I must approach this appeal untrammelled by the *McMartin* case.

19 Adhering to my first impression of the effect of ss. 704 and 703, I think that the appellant was entitled to have the bylaw quashed in whole for illegality, pursuant to s. 238 of the Act.

20 It will be seen that I have, with respect, disagreed with the view of the learned Judge below, being of the opinion that there was failure to fulfil a statutory prerequisite, that it is immaterial whether or not anyone was prejudiced by the error, and that the Court has no discretion to refuse to quash.

21 I would allow the appeal and quash bylaw No. 248 for illegality. The appellant is entitled to its costs here and below.

***Nemetz J.A.*:**

22 My brothers have set out the relevant facts on this appeal and I will not repeat them. I am, generally, in agreement with the reasons given by my brother Robertson but I wish to add these observations:

23 In *McMartin et al. v. Vancouver* (1968), 65 W.W.R. 385, 70 D.L.R. (2d) 38, it is not possible to extract a thread of agreement between any two of the members of this Court who sat on that appeal. In my respectful view Robertson J.A. was right in holding that subss. (1), (3), (4) and (5) of s. 566 [en. 1959, c. 107, s. 20] of The Vancouver Charter, 1953 (B.C.), c. 55, considered in *McMartin*, formed "a code of procedure which must be followed and observed in every respect whenever it is proposed to amend a zoning bylaw". It is my opinion that the apposite provisions of The Municipal Act, R.S.B.C. 1960, c. 255 (s. 703 [am. 1961, c. 43, s. 42; 1968, c. 33, s. 167] and s. 704 [am. 1961, c. 43, s. 43]) also constitute a code of procedure which must be followed strictly where it is intended to amend a zoning bylaw. In the cir cumstances of this case the bylaw was adopted illegally because the prescribed procedure was not followed. In my view the Legislature's intention in enacting this legislation is clear and unambiguous. That intention is, as I perceive it, to protect the public by requiring a council not to adopt zoning bylaws until a public hearing thereon has been held, "notice of which stating the time and place of the hearing has been published". In order to comply with these requirements it is incumbent upon a council to follow the procedure strictly and without deviation. In my view the failure to give proper notice as provided in s. 703 of the Act made the meeting of 10th June 1971 an illegal one and vitiated any decisions taken in respect of bylaw 248 on that day.

24 Accordingly, I would allow the appeal and quash bylaw No. 248.

***Davey J.A.* (dissenting):**

25 The appellant moved to quash bylaw 248 of the City of Victoria rezoning the property of the respondent Yennadon Holdings Ltd. on the northwest corner of Simcoe and Menzies Streets from "high density multiple dwelling" to "limited commercial". The proposed bylaw was opposed by the appellant, who sought a bylaw declaring its property on the opposite corner to be a development area, which would enable it to negotiate a land use contract with the City permitting the construction of buildings and facilities costing about $5,000,000.

26 The grounds of the application were:

1. the said By-law is not within the jurisdiction and powers of the respondent Municipal Council;
2. the requirements of Sections 703 and 704 of the *Municipal Act*, R.S.B.C., Chapter 255, as to the holding of prior public hearing and due notice thereof have not been complied with;
3. the said By-law is discriminatory and was adopted for the benefit of special interests;
4. in the premises that in making or purporting to make the said By-law the respondent did not act in good faith but acted contrary to natural justice.

27 The bylaw was introduced and received first, second and third readings; pursuant to The Municipal Act, R.S.B.C. 1960, c. 255, s. 703 [am. 1961, c. 43, s. 42; 1968, c. 33, s. 167] and subs. (1) thereof, the Council set 27th May 1971 as the date of the public hearing which was required to be held before the bylaw could be finally adopted. This public meeting was duly advertised as required by the Act, and notice was given to adjacent landowners, as required by the City's procedural bylaw. At the public hearing the appellant submitted a letter from its solicitors Hallatt, Stewart and Gow, opposing the bylaw. John Arnold Mace, president of the appellant, was present representing Mace Investments Ltd., which was financing appellant's project. Mr. Hambleton, an architect, appeared on behalf of Yennadon. The minutes of the hearing do not mention any other person making representations for or against bylaw 248.

28 At the conclusion of the hearing a motion to reconsider, adopt, and finally pass the bylaw was put and lost.

29 Up to that point everything required by law to be done had been meticulously observed, and if the bylaw had been adopted and passed on that day it would have been unimpeachable. The appellant attacks only what occurred later.

30 On the agenda of the meeting of the Council to be held on 10th June 1971 there appeared three items:

(i) Item 1, under the heading of Public Hearing, noting consideration of the proposed land use contract with the appellant.

(ii) Item 3, under the head of Delegations, noting that F. S. Carson would appear for Yennadon Holdings Ltd. in support of bylaw 248.

(iii) Item 13, noting that Alderman Olafson would move reconsideration of zoning bylaw 248.

31 Mr. Stewart appeared before the Council on 10th June 1971 and submitted a brief on behalf of the appellant's application for a land use contract. After a discussion with Alderman Olafson about reconsideration of bylaw 248, that I will consider more fully, Mr. Stewart left the meeting. Mr. Mace stayed until the meeting adjourned.

32 In due course, after Mr. Stewart had left, on motion by Alderman Olafson, seconded by Alderman Witt, it was resolved that persons requesting a hearing on bylaw 248 be granted a hearing. Mr. F. S. Carson then read a brief dated 2nd June 1971 supporting Yennadon's application for rezoning its land to limited commercial under bylaw 248. The minutes do not show that any other person made representations on that bylaw. It was then resolved that Mr. Carson's brief be received and placed on file. The Council then proceeded to consider a number of other items on the agenda until it reached Item 13, when it was resolved that bylaw 248 be reconsidered. Later, pursuant to this resolution, as the penultimate item of business, bylaw 248 was reconsidered, adopted and finally passed.

33 Appellant took three grounds of appeal before us:

(i) That the Council was without jurisdiction to reconsider and finally adopt the bylaw because it did not hold a public hearing on 10th June 1971, as required by s. 703 of The Municipal Act, but on the contrary received the submissions of Mr. Carson at the meeting of the Council of which no notice had been given to the appellant or others concerned with the bylaw, who were entitled to assume that the matter had been finally closed when the motion to reconsider and adopt the bylaw was lost on 27th May 1971 at the conclusion of the public hearing.

(ii) In the alternative, that if the Council still had jurisdiction to adopt the bylaw because of its compliance with The Municipal Act up to and including 27th May 1971, the bylaw as adopted on 10th June 1971 was invalid because of the grave irregularity of the Council in reconsidering and adopting the bylaw on the submissions of Mr. Carson made after the public hearing had been closed on 27th May 1971, especially as that was done without notice to the appellant.

(iii) That in any event the Council violated the rules of natural justice by reconsidering and adopting the bylaw after receiving submissions by Mr. Carson without notice to the appellant and without giving the appellant an opportunity of being heard in

reply.

34 The respondents at the outset take the position that the notice of motion to quash is irregular because it does not sufficiently specify the grounds on which the motion is based, as required by The Municipal Act, s. 239(1) [renumbered 1968, c. 33, s. 68].

35 I think that that section requires that the grounds of the motion be stated with sufficient particularity to enable the City and other persons concerned to know what vice is alleged, and to tie the applicant down to a reasonably specific case. I do not consider that grounds 1 and 4 sufficiently specify the grounds of attack in the circumstances of this case. Ground 3 was not relied upon before us. The case of *Re Wetmore and Timmins*, [1952] O.R. 13, [1952] 2 D.L.R. 854, is distinguishable because The Municipal Act, R.S.O. 1950, c. 243, does not require the grounds to be stated in a motion to quash. But if I be wrong in that, I would still dismiss the appeal.

36 I adhere to the opinion that I expressed in *McMartin et al. v. Vancouver* (1968), 65 W.W.R. 385, 70 D.L.R. (2d) 38, that The Vancouver Charter, 1953 (B.C.), c. 55, s. 566, as enacted by 1959, c. 107, s. 20, requires all evidence and submissions by or on behalf of property owners and members of the public to be made at the public hearing and not otherwise, and that it is irregular for the Council to receive and act upon evidence and submissions received by it after the public hearing has been concluded. I think that this is equally true under s. 702 [am. 1961, c. 43, s. 41; 1968, c. 33, s. 165; 1970, c. 29, s. 20; 1971, c. 38, s. 51] to s. 704 of The Municipal Act, except in the case of reconsideration of a motion carried or lost to adopt and finally pass a zoning bylaw.

37 The learned Judge below held that under the City's procedural bylaw the Council might reconsider the motion that was defeated on 27th May 1971 without holding another public hearing. I agree. It follows that since the Council has power to reconsider a resolution or a lost motion, it has power to receive representations from interested parties on the question whether it should or not exercise that power.

38 The public meeting already having been held in compliance with s. 703(1) of The Municipal Act, it was not necessary to hold another one on the question whether the Council should reconsider the defeated motion.

39 I suppose that representations made to Council on a question whether it should reopen a matter already disposed of should be relevant to that question, and should not go beyond the occasion. There is no suggestion that Carson's brief offended in that way, and the brief is not produced.

40 *Wiswell v. Metropolitan Corpn. of Greater Winnipeg*, [1965] S.C.R. 512, 51 W.W.R. 513, 51 D.L.R. (2d) 754, establishes that in the circumstances of this case the Council was acting quasi-judicially as well as legislatively, and that it was bound to give all interested parties a full opportunity to reply to the representations made on behalf of the respondent Yennadon.

41 Appellant's counsel submits that the City ought to have given it notice that it proposed to reconsider the lost motion and provided an opportunity to reply to Carson's brief.

42 The rules of natural justice do not require a quasi-judicial body to give interested parties notice of its proceedings, so long as it gives them a full opportunity of being heard and replying to an opposing case. There is some language of Hall J. in *Wiswell v. Metropolitan Corpn. of Greater Winnipeg*, supra, that, taken out of context, might suggest that the rules of natural justice require a quasi-judicial body to give notice, although the rule is later stated to be the duty to give an opportunity of being heard. In the *Wiswell* case, and many others, the giving of notice is the means by which an opportunity of being heard is afforded, and without notice an opportunity of being heard is denied, but notice is not the only way in which an opportunity of being heard may be given when occasion permits.

43 No notice was given in the present case, but the only persons interested in the quasi-judicial aspects of the case, apart from the City itself, were the respondent Yennadon, the appellant, and Mace Investments Ltd. which was financing the appellant. The last-named did not join in the motion to quash.

44 The learned Judge below, [1971] 5 W.W.R. 684, found that the appellant knew that Yennadon intended to submit a brief on the question at the meeting of 10th June 1971. That seems to be a fair inference from the facts. Mr. Stewart was present at the meeting to present the brief on the proposed development contract for appellant's property. Mr. Mace was also there and remained throughout. At the conclusion of Mr. Stewart's presentation Alderman Olafson asked him some questions about the appellant's opposition to bylaw 248. Mr. Stewart replied that he had not been instructed to deal with that matter, and he did not intend to do so. He says in his affidavit that many questions were asked him about that matter by other members of the City Council, as well as Alderman Olafson. He states that he left the meeting immediately following his presentation, and was not present when Mr. Carson presented his brief. He states that when he left the City Hall he was unaware that the Council proposed to reconsider bylaw 248. That is literally true because at that time Council had not passed a motion to reconsider the lost motion; the motion to reconsider might be lost, when it was later put, so far as Mr. Stewart knew. The motion to reconsider the lost motion was not put until after the Carson brief had been read, and by that time Mr. Stewart had left the meeting. But I have not the slightest doubt that Mr. Stewart was aware before he left that such a motion to reconsider the lost motion would later be put to the meeting.

45 It is also clear from Mr. Stewart's affidavit that before he left the meeting he had arranged with someone present, probably Mace, to be informed about later developments at the meeting concerning bylaw 248.

46 Mr. Mace was present throughout the meeting which lasted from 2:00 p.m. to 4:00 p.m. and dealt with many matters of business. The development contract was among the first items of business and the adoption and final passing of the bylaw was among the last. The several steps leading to the final adoption of the bylaw occurred at various stages of the meeting. During all that time Mace was present, but remained mute. He did not ask to be heard when Council moved to hear interested parties. He did not even ask for an adjournment so that he could properly instruct someone to reply to Carson's brief. The finding of the learned Judge that the appellant knew what was afoot and had ample opportunity to be heard is fully supported by the evidence. In fact I have no doubt from the evidence that the appellant did not want to make representations at that meeting for fear of curing the alleged violations of the provisions of ss. 702 to 704 of The Municipal Act. But by having taken that position, it cannot now say, when its submissions that the Council violated those sections have been rejected, that it was denied an opportunity to be heard, when the truth is that it chose not to speak.

47 Since the appellant has failed to make good its attacks on the bylaw, I do not need to consider whether the learned Judge properly exercised his discretion under *Haddock v. Corpn. of District of North Cowichan* (1967), 59 W.W.R. 481 (B.C. C.A.) in refusing to quash the bylaw.

48 I would dismiss the appeal.

End of Document

APPENDIX H

Bourque (Re), 1978 CanLII 364 (BC CA)

Date: 1978-05-02

Other citations: 87 DLR (3d) 349; 6 BCLR 130; 6 MPLR 144

Citation: Bourque (Re), 1978 CanLII 364 (BC CA), <http://canlii.ca/t/23gh4> retrieved on 2015-10-28

Court of Appeal for British Columbia
Bourque (Re)
Date: 1978-05-02

G. L. Bisaro, for appellants.

A. K. Thompson, for respondent.

(Vancouver)

[1] 2nd May 1978. BULL J.A. (dissenting):— I have had the opportunity of reading the judgment of my brother Taggart and, like him, agree that it is unnecessary to set out the facts which have been so carefully outlined in the judgment under appeal, now reported in 1977 CanLII 337 (BC SC), 3 B.C.L.R. 22, 77 D.L.R. (3d) 207. However, with deference to contrary views, I am of the opinion that the appeal should be dismissed.

[2] The sole issue is a narrow one as to whether or not s. 703 [am. 1961, c. 43, s. 42; 1968, c. 33, s. 167; 1973, c. 59, s. 16; 1973 (2nd Sess.), c. 133, s. 79; 1974, c. 56, s. 23] of the Municipal Act, R.S.B.C. 1960, c. 255, was complied with in respect of the passing of a by-law authorizing a land use contract. It is plain, as found by Aikins J. and not questioned by the appellants, that the provisions of the section were meticulously complied with up to the point where the council, after completion of two public hearings (at which all those who wished to make representations for or against the proposed by-law to authorize the land use contract in question were heard), ordered, received and considered a report from a standing committee of the municipality, called the "planning committee". This came about because after the public hearings were completed, and the by-law read and passed three times as required, the council on its own motion, in order to assist it in making its final decision, instructed the planning committee to query Mr. Rosborough, the representative of the proposed developer, in order to clarify some details of the proposed development. This the planning committee did and made a short report to the council conveying three details of information of clarification. The report was ordered by motion at a council meeting to be filed for the information of the council. The minutes of a meeting of a "committee of the whole" of the council, immediately following, showed that it had been submitted that the developer had made no submission to the planning committee. The council, as a council again, after discussion

and consideration, reconsidered and finally voted on and passed the by-law as it stood at the end of the second public hearing and without change.

[3] It was common ground that the applicable law is as laid down by this court in *Bay Village Shopping Centre Ltd. v. Victoria,* [1973] 1 W.W.R. 634, 31 D.L.R. (3d) 570, and *McMartin v. Vancouver* (1968), 65 W.W.R. 385, 70 D.L.R. (2d) 38, namely, that where a public hearing or hearings has or have been held on the passing of a by-law, whether it be for re-zoning or to authorize a special use contract, the council must not hear further submissions or representations privately from one or more interested parties other than at a public hearing where all those desiring so to do can be heard in answer. Therefore, the single issue is whether or not the receiving of the report from its own standing planning committee, which in turn had heard, at its request, something from a proponent of the by-law, invalidated the subsequent passage of the by-law. Although conceded that there was nothing to prevent a council from making its own inquiries of its staff experts and committees to assist it in carrying out its duties (and, indeed, I think it would normally be a duty so to do), it was argued that receipt of the report of a municipal committee which itself had heard an interested party in the absence of others interested who had or could have appeared at the public hearings was in effect the receipt, indirectly, of a submission or representation by or from the proponent of the by-law. Hence, it was said that if the council could not hear Mr. Rosborough itself other than at a public hearing then by receiving the committee's report it was wrongfully doing indirectly what it could not do directly.

[4] I disagree. I do not think that the receipt by the council of a report from its own planning committee, which had seen Mr. Rosborough and questioned him on certain details, can properly be characterized as the receipt by the council of a submission or representation that should have been made at a public hearing. To so hold, when public hearings have been properly held after full notice to all, would be to say that the council, its committees and staff must close their eyes and ears to all considerations other than those dealt with at a public hearing and, perhaps, those of their own personal opinion or knowledge. In effect, it would prevent or inhibit any communication with, or questioning of, a proponent or interested party to acquire outside information in order to clarify minor details. I am not prepared, on the facts of this case, to hold that a report properly made by a special municipal committee with the assistance of its municipal staff, and the answers to queries of clarification from the proponent's representative, Mr. Rosborough, could only be properly received by the council at a public hearing.

[5] In his judgment, the learned chambers judge summed up his views neatly in the following passage [pp. 35-36]:

> "The narrow issue, then, is this; is the report of the planning committee to council a representation or submission that should have been made at a public hearing? Or is it no more than advice from a special committee? The reference to the planning committee for advice was proper. The council was not precluded from seeking the committee's advice. The minutes of the planning committee and its report clearly indicate that the committee was concerned with more or less minor problems, none of which went to the substance of the scheme of development. There is no indication that Mr. Rosborough spoke to the planning committee other than about minor aspects of the development which the committee was considering. It

appears to me that the procedure followed cannot be faulted because the committee had Mr. Rosborough back to discuss comparatively minor matters, on which it may well be that he could give relevant and useful answers. On the material there is no indication that Mr. Rosborough made what might be characterized as a submission in favour of the scheme to the committee. In my view, the report of the planning committee received by council cannot be regarded as a submission by the developer which should have been made at a public hearing. In this case the proper referral of the matter to the planning committee for further study did not result in the council receiving a representation or submission which should have been made at a public hearing. Hypothetically, of course, a reference by a council in a situation of this kind to its planning committee, with the developer attending on the committee, could result in a full-blown submission or representation, which should have been made at a public hearing, being given to the committee and being passed on to the council. It may be that in such a situation a council could not properly receive the committee's report except at a further public hearing. However all this may be, this is not what took place in the present case.

"For these reasons my view is that council in receiving the planning committee report did not receive a submission or representation which should have been made at a public hearing."

I am in complete agreement with this conclusion, and, accordingly, would dismiss the appeal.

[6] TAGGART J.A. (ROBERTSON J.A. concurring):— This appeal is from a judgment dismissing an application by the appellants to quash by-law 3305 of the respondent which authorized the respondent to enter into a land use contract with Garry Point Village Development Ltd. (the "developer"). The judgment is now reported in 1977 CanLII 337 (BC SC), 3 B.C.L.R. 22, 77 D.L.R. (3d) 207. The facts are fully set out in the judge's reasons for judgment and I need not repeat them.

[7] The appellants' principal submission was that the judge erred in holding that there had been compliance by the respondent with the provisions of s. 703 [am. 1961, c. 43, s. 42; 1968, c. 33, s. 167; 1973, c. 59, s. 16; 1973 (2nd Sess.), c. 133, s. 79; 1974, c. 56, s. 23] of the Municipal Act, R.S.B.C. 1960, c. 255. That section, which by s. 702A(6) [re-en. 1971, c. 38, s. 52; am. 1972, c. 36, s. 28 (*b*); 1972 (2nd Sess.), c. 9, s. 1; 1976, c. 36, s. 20] of the Act is made applicable to by-laws authorizing the respondent to enter into land use contracts, provides:

"703. (1) The Council shall not adopt a zoning by-law until it has held a public hearing thereon, notice of which stating the time and place of the hearing has been published in not less than two consecutive issues of a newspaper published or circulating in the municipality, with the last of such publications appearing not less than three days nor more than ten days before the date of the hearing.

"(2) The notice of hearing shall

"(*a*) identify the land or lands deemed affected;

"(*b*) state in general terms the intent of the provisions of the proposed by-law; and

"(*c*) state where and the days and hours during which a copy of the proposed by-law may be inspected.

"(2a) The Council shall, on or before the first day of August, 1973, by by-law, provide that notice of the hearing on a rezoning or land use contract must be mailed or otherwise delivered to the occupiers of all real property

"(*a*) within the area that is subject to the rezoning or land use contract; and

"(*b*) within a distance specified in the by-law from the area that is subject to the rezoning or land use contract …

"(3) At the hearing all persons who deem their interest in property affected by the proposed by-law shall be afforded an opportunity to be heard on matters contained in the by-law.

"(4) The hearing may be adjourned from time to time.

"(5) The Council may without further notice, in the zoning by-law as adopted, give such effect as it deems fit to representations made at the hearing, except that any change subsequent to the hearing shall not alter the substance thereof."

[8] It is clear from the judge's reasons for judgment that until immediately before the time when council referred to its planning committee for further consideration the matter of the land use contract with the developer the respondent had meticulously complied with the provisions of s. 703. The appellants' submission, however, is that council was later in breach of s. 703 because after the public hearings it referred the by-law to its planning committee with the intent that the committee would hear Mr. Rosborough, an officer of the developer (see para. 11 of the affidavit of Mr. Blair, the mayor of the respondent, set out at p. 29), and because after receiving the planning committee's report, it reconsidered and finally adopted the impugned by-law without hearing the appellants.

[9] As I read the reasons for judgment of the judge, it was his conclusion that, because Mr. Rosborough did not make what could be considered to be a "submission" to the planning committee, the report by the planning committee to council could not itself be a representation or submission that should have been made at a public hearing with an opportunity afforded to the opponents of the by-law to be heard thereon.

[10] I cannot accept that conclusion. The planning committee consisted of three aldermen, one of whom acted as chairman, and a school trustee. Two members of the municipal staff were in attendance at the meeting with Mr. Rosborough Mr. Rosborough did not request the meeting but the minutes of the meeting show that he made statements concerning the development and items 1 and 3 of the committee's report to council reflect the subjects which appear to have been discussed. It is true that the by-law which was reconsidered and finally passed after council had received the report of the planning committee was exactly the same as the by-law which was considered at the second of the two public hearings, but I do not think that is determinative of the issue here. What is determinative, in my opinion, is that a proponent of the by-law was heard by the planning committee in the absence of opponents of the by-law and that the report of the committee prepared following that hearing was considered by council without the appellants being heard thereon. There is no question that it would have

been improper for council to have heard an officer of the developer in the absence of the opponents of the by-law and without their being afforded an opportunity to be heard. That would contravene the provisions of s. 703 as interpreted by this court in both *Bay Village Shopping Centre Ltd. v. Victoria,* [1973] 1 W.W.R. 634, 31 D.L.R. (3d) 570, and *McMartin v. Vancouver* (1968), 65 W.W.R. 385,70 D.L.R. (2d) 38. I think the provisions of s. 703 are equally contravened where, as in the case at bar, a proponent of a by-law is heard in the absence of opponents of that by-law by a special committee of council which then submits a report to council. That, it seems to me, is doing indirectly what may not be done directly.

[11] In reaching that conclusion I wish to make it clear that I do not question the right of a municipal council, following the conclusion of public hearings, to receive advice concerning a by-law, such as the one now under consideration, from its municipal staff or from experts retained by council to advise it. Both Davey C.J.B.C. and McFarlane J.A. approved of that procedure being followed in *McMartin v.Vancouver.* That, however, was not what was done by council in the present case. On the contrary, it referred to its planning committee the by-law under consideration after the public hearings had been concluded. That was done with the intention that the planning committee would call before it an officer of the developer in order to obtain explanations from him as to certain compromises that he had apparently proposed to property owners affected by the development. In the absence of a verbatim report of what was said at the meeting I think one must assume that Mr. Rosborough would answer inquiries from members of the planning committee in a manner as favourable as possible to the developer. But whether that be so or not, the fact remains that a proponent of the by-law was heard by the planning committee in the absence of opponents of the by-law and that the committee's report was considered by council without the opponents of the by-law being afforded an opportunity to be heard with respect to the matters discussed with Mr. Rosborough by the planning committee.

[12] I think therefore the appeal must be allowed, the application of the appellants granted and the by-law quashed.

APPENDIX I

Karamanian v. Richmond (Township), 1982 287 (BC SC)

1982-07-07

Supreme Court of British Columbia

Karamanian v. Richmond (Township)

Date: 1982-07-07

Dale G. Sanderson, for petitioner.

Ronald F. Schultz, for respondent.

[1] WALLACE J.:—The petitioner applies to quash the respondent's By-law 1430, amendment By-law 4044 (hereinafter called "the by-law").

Facts

[2] The facts are outlined in the petition and are not in dispute. They are:

1. The petitioner is the owner of the property located at 3900 No. 3 Rd. in the Corporation of the Township of Richmond (hereinafter called "Richmond").

2. The property located at 3900 No. 3 Rd., Richmond, British Columbia, and all of the property in the area bounded by No. 3 Rd., Sea Island Way, Sexsmith Rd., and Cambie Rd. in Section 28, Block 5, North Range 6 West, New Westminster District, was at all material times up to March 22, 1982, within the area classified as "General Residential District III" under Richmond's zoning By-law 1430.

3. On or about October 24, 1980, First City Developments Ltd., made an application in writing to Richmond for the rezoning of certain property within the aforesaid zone, in which the petitioner owns property.

4. As of October 24, 1980, the applicant, First City Developments Ltd., was not the registered owner of all of the property it applied to rezone within the area referred to in para. 2 above.

5. On or about November 3, 1981, the planning committee for Richmond submitted a report to Richmond Council recommending:

(a) that the area bounded by No. 3 Rd., Sea Island Way, Sexsmith Rd. and Cambie Rd. be declared a development permit area to regulate those matters set forth in s. 717(2)(*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*) and (*k*) [am. 1980, c. 49, s. 8; 1980, c. 50, s. 67; 1981, c. 11, s. 35] of

the *Municipal Act*, R.S.B.C. 1979, c. 290;

(b) that the rezoning of those properties controlled by the applicant, and detailed in the attached list, to Brighouse Service District 1 be considered; and

(c) that an appropriate zoning amendment by-law be prepared for presentation to a public hearing.

6. On or about November 9, 1981, the Richmond Council considered and debated the application of First City Developments Ltd. and resolved that the planning committee report of November 3, 1981, be adopted and that an appropriate draft by-law be prepared for presentation to a public hearing.

7. On January 8 and 13, 1982, the following notice appeared in the Richmond Review Newspaper:

THE CORPORATION OF THE TOWNSHIP OF RICHMOND

NOTICE OF PUBLIC HEARING

PROPOSED REZONING AND AMENDMENT TO

ZONING BY-LAW

TAKE NOTICE that the Municipal Council of The Corporation of the Township of Richmond will meet and hold a Public Hearing on Monday, January 18, 1982, at 7:00 p.m. in the Council Chamber, Richmond Municipal Offices, 6911 No. 3 Road, Richmond, to hear representation on the matters listed below.

All persons who deem their interest in property affected by the following proposed Rezonings and Amendments to the Zoning By-law shall be afforded the opportunity to be heard on the matters contained therein:

By-law No. 4044. The rezoning of certain of the properties in the area bounded by No. 3 Road, Sea Island Way, Sexsmith Road and Cambie Road in Section 28 Block 5 North Range 6 West, New Westminster District as shown shaded in grey on the below-indicated sketch from their present zoning to BRIGHOUSE SERVICE DISTRICT 1. This rezoning will allow all uses on the properties listed in By-law No. 1430, as amended, in that District; AND to declare the properties in the area bounded by No. 3 Road, Sea Island Way, Sexsmith Road and Cambie Road as a Development Permit Area. This designation will provide that the development of the properties complies with the requirements set out in the regulations in Zoning By-law No. 1430, as amended, except that the Development Permit may be used to regulate the dimensions, siting and exterior finish of buildings, siting and design of parking, to require landscaping, and to ensure construction of the buildings and services in accordance with the Permit, and to regulate exterior finish and design and to require adequate services to the property, including water, sewer, drainage, highways and street lighting. Any Permit that is issued cannot alter the use of

density set out in the regulations of By-law No. 1430, as amended.

SKETCH TO ACCOMPANY BY-LAW NO. 4044.

The petitioner received a similar notice by mail.

8. The proposed zoning to Brighouse Service District 1 permits the following uses, *inter alia*:

Manufacturing, provided that uses which are noxious or otherwise undesirable because of smoke, noise, vibration, dirt, glare, odour, or electrical interference or which is an offensive trade within the meaning of the Health Act, shall not be permitted.

Wholesale business

Retail sales of household furnishings and appliances
Retail sales of building supplies
Testing and research laboratories
Automobile mechanical and body repairing
New automobile sales and used automobile sales in conjunction therewith
Motorcycle sales and service
Custom workshops, custom trades and custom services, but excluding personal trades and services.

9. On January 18, 1982, a public hearing was held with respect to the proposed amendment By-law 4044 and other matters. Present at the public hearing were Mayor J. C. Blair, Alderman G. Halsey-Brandt, K. Kumagai, R. A. McMath, H. Mawby, E. T. Novakowski, C. Perceval-Smith and H. Steves. Absent from the public hearing was Alderman Youngberg. Of the three citizens who spoke at the public hearing with respect to the proposed By-law 4044, Mr. K. Russcher opposed the proposal, Mr. Cowburne stated he did not know what the proposal involved and therefore could not make any representations and Mrs. B. Russell stated that while she did not oppose the proposed rezoning, she was concerned that this particular section was originally designated as part of another area and was concerned that it was being brought forward separately.

10. On or about January 25, 1982, the Richmond Council purported to conduct three readings of amendment By-law 4044 and then voted to pass the said by-law.

11. On or about March 22, 1982, Richmond Council purported to adopt By-law 4044. It provides, *inter alia,* as follows:

WHEREAS the Municipality recognizes that in the area designated a Development Permit Area in section 2 herein here are special conditions prevailing which include increased traffic, commercial development, and aircraft noise;

Now THEREFORE the Council of The Corporation of the Township of Richmond, in open

meeting assembled, enacts as follows:

"1. The Zoning By-law of The Corporation of the Township of Richmond, is amended by repealing the existing designation of the following areas and by designating themBRIGHOUSE SERVICE DISTRICT 1:

> "Those areas bounded by No. 3 Road, Sea Island Way, Sexsmith Road and Cambie Road in Section 28 Block 5 North Range 6 West, New Westminster District shown shaded in grey on sketch attached hereto and marked Sketch to accompany By-Law No. 4044,

and the Zoning Map of the Township of Richmond accompanying the Zoning By-law of The Corporation of the Township of Richmond is amended accordingly.

"2. That area of land in Section 28 Block 5 North Range 6 West bounded by No. 3 Road, Sea Island Way, Sexsmith Road and Cambie Road is hereby designated as a Development Permit Area."

12. Prior to amendment By-law 4044 being approved on January 25th and adopted on March 22, 1982, by Richmond Council, Council had received a report from the planning committee relating to this proposed rezoning. The report was not made part of the public hearing.

[3] The petitioner raises four objections to the legality of the by-law. In view of the conclusion I have reached, I need only deal with the first, namely, that Richmond Council considered a report of the planning committee dated November 3, 1981, relating to the proposed by-law; that the said report and supporting material was not made public at the public hearing; that persons affected were not given the opportunity to question or make submissions on the report and accordingly, there was a denial of a full and fair hearing.

[4] The material reveals that the council never disclosed First City Development Ltd.'s application for rezoning, and the documents submitted with that application which included a letter outlining the proposal in full, the site plans prepared by the architect and the statement of additional explanatory information. This information was received and considered by the planning committee of the council prior to recommending approval of the rezoning to council. Furthermore, the council never disclosed the report and recommendation of the planning department dated November 3, 1981, which the council considered and adopted on November 9, 1981, with the result that the matter was placed on the agenda of the public hearing to be held on January 18, 1982.

[5] The petitioner says such non-disclosure has denied the right to a "fair and impartial hearing" and a "full opportunity to present his views and contentions", which denial contravenes the statutory requirements imposed on council by s. 720 [am. 1981, c. 21, s. 63] of the *Municipal Act* and the common law.

[6] Section 720 of the *Municipal Act* requires that council shall hold a public meeting prior to adopting a zoning by-law. It provides that "at the hearing all persons who believe their interest

in property affected by the proposed by-law shall be afforded an opportunity to be heard on matters contained in it". Failure to comply with s. 720 will entitle an applicant to have the by-law quashed: see *Re Pullen and Regional District of Nanaimo* (1977), 81 D.L.R. (3d) 751 at pp. 754-5, 5 M.P.L.R. 63 at p. 67.

[7] The applicable common law principles have been enunciated by the Supreme Court of Canada in *Wiswell et al. v. Metropolitan Corporation of Greater Winnipeg*1965 106 (SCC), (1965), 51 D.L.R. (2d) 754 at pp. 765-6, [1965] S.C.R. 512, 51 W.W.R. 513. The court held that, in dealing with a proposed rezoning by-law, a council is acting in a *quasi*-judicial capacity and it must act in good faith and fairly listen to both sides. The body with the power to decide cannot lawfully proceed to make a decision until it has afforded to the person affected a proper opportunity to state his case — "a full opportunity of presenting his views and contentions".

[8] The municipality submits that s. 720 of the *Municipal Act* only requires the holding of a public meeting and public notice thereof in such a form that members of the public can identify the lands affected, the general intent of the by-law and have an opportunity to inspect the by-law if they so wish so they may be in a position to advise council at the public meeting how their interest in property is affected by the by-law. It submits that the procedures carried out by council achieved these objectives and complied with the requirements of s. 720 and the common law.

[9] I cannot accept such a narrow interpretation of s. 720 or of the requirements of the common law. In my view the purpose of the Legislature in enacting s. 720 was to provide a forum at which all aspects of the by-law might be reviewed so that members of the public, having become aware of the by-law's purpose and effect, would be in a position to make representations to council of the manner and extent it affected property owned by them. To make an intelligent assessment of the effect of a by-law on one's property and to be able to question proponents of the by-law one should be informed of the matters considered by the planning committee, the rationale for their recommendation, and such other relevant material considered by council when it adopted the committee's recommendations and decided a public hearing be held. Anything less than full disclosure of the relevant information restricts the scope of the analysis and the consequent representation a homeowner might otherwise make to council at the public meeting. Leaving homeowners ignorant of pertinent information in the possession of council frustrates the objective of a public meeting and denies those homeowners whose property is affected by the by-law a full opportunity to be heard at a fair and impartial public hearing.

[10] Accordingly, I find the by-law is invalid by reason of the failure of council to disclose to the petitioner the information in the possession of and considered by council when accepting the recommendation of the planning committee. Appropriate disclosure could be accomplished by informing the public in the notice of the public hearing that copies of the material might be inspected at the planning department, the procedure followed in this case for inspection of the rezoning amendment by-laws.

[11] The petitioner is entitled to the costs of this application.

Most Negative Treatment: Distinguished
Most Recent Distinguished: Palmer v. Port Moody (City) | 2006 BCSC 265, 2006 CarswellBC 371, 19 M.P.L.R. (4th) 236, [2006] B.C.W.L.D. 2658, [2006] B.C.J. No. 342 | (B.C. S.C., Feb 14, 2006)

1985 CarswellBC 1079
British Columbia Court of Appeal
Eddington v. Surrey (District)
1985 CarswellBC 1079, [1985] B.C.W.L.D. 3082, [1985] B.C.J. No. 1925, 32 A.C.W.S. (2d) 374

Jeanne Laverna Eddington, Petitioner (Appellant) and The Corporation of the District of Surrey, Respondent

Esson J.A., Hinkson J.A., Macdonald J.A.
Oral reasons: June 26, 1985
Judgment: June 26, 1985
Docket: Vancouver CA002329

Proceedings: Reversed, 26 M.P.L.R. 229, 1984 CarswellBC 679, [1984] B.C.J. No. 900 (B.C S.C.)

Counsel: *Robert Watson*, *Nancy Wilhelm-Morden*, for Appellant
T.G. Hanrahan, *E. Wilson*, for Respondent
Subject: Public

Headnote

Planning & zoning --- Zoning by-laws — Validity
At trial a municipal by-law was upheld whereby 20 acres of land would be re-zoned to permit sale of the land to a department store for $1.9 million. The municipality had been in a conflict of interest from the time it accepted the proposal, since it wanted the cash yet had to decide impartially on the benefits of re-zoning. A public hearing was held but certain information that ought to have been available to the public was not made available. The trial judgment had contained a factual error in that significant reports, which the judgment accepted as common knowledge, were not available to the public before the public hearing. *Held*, appeal allowed; by-law quashed. There had been a lack of procedural fairness in the by-law.

***Hinkson, J.A.* (Orally):**

1 This is an appeal from the decision of a judge upholding a by-law of the Municipality of Surrey.

2 A subsidiary of Woodwards Stores carried on negotiations with the Corporation of the District of Surrey during 1981 and 1982 advancing various proposals with a view to establishing a very large shopping centre within that municipality.

3 Ultimately, on July 29, 1983, Woodwards Realty Limited made a proposal to Surrey which the municipality accepted on August 10th, 1983. Involved in that agreement was a proposal that Surrey would sell to Woodwards 20 acres of land for $1,900,000 upon condition that that land and other lands already owned by Woodwards would be re-zoned to permit Woodwards to proceed with its shopping complex.

4 The terms of the agreement required that the necessary re-zoning be completed within three months. On the material before us, that did not occur, but presumably the parties agreed to extend the deadline to November 28th, 1983, when Surrey council passed the necessary re-zoning by-law.

5 From the time that Surrey accepted Woodwards' proposal in August, 1981, the municipality was clearly in a conflict of interest position. On the one hand, it had to consider the appropriateness of re-zoning the lands in question, while on the other hand, it had obviously made up its mind that it desired to obtain the $1,900,000 for its 20 acres and, further, to permit the construction of the shopping complex.

6 Pursuant to the provisions of s.720 of the Municipal Act it was necessary to hold a public hearing before the zoning by-law was passed by the council of the municipality.

7 Woodwards, in seeking to persuade the council to sell the 20 acres and to agree to the proposal of the shopping complex, had hired certain consultants to prepare reports. There were three such reports: first, a Regional Shopping Centre Market Study, prepared by Urbanics Consultants Ltd. in November, 1981; second, Panorama Regional Shopping Centre Retail Impact Study, prepared by Thomas Consultants Inc. in March, 1983; and third, Panorama Shopping Centre: A Preliminary Traffic System Review prepared by IBI Group on August 31st, 1983.

8 In addition, Woodwards prepared a document entitled Panorama Centre: An Application for a Comprehensive Development Re-zoning of Panorama Centre. This was really a promotional material document to assist Woodwards in promoting its shopping complex, both with the municipality and with the ratepayers within the municipality.

9 The evidence discloses that members of the council of the Corporation of the District of Surrey received the consultants' reports but that those reports were never formally tabled with the council as a body.

10 The public hearing required pursuant to s.720 of the Municipal Act was called for October 26th, 1983. Prior to that date copies of the consultants' reports were not available at the Municipal Hall, nor through officials of the municipality.

11 At the meeting of October 26th, 1983, the Urbanics Consultants' study of 1981 and the Thomas Consultants' study of March, 1983 were available and representatives of those two consultants groups were also present to answer questions. The IBI group report was not available at that meeting, nor was a representative of the group available to answer questions.

12 The learned trial judge in discussing the position of the municipality in these circumstances said:

> Surrey's vulnerability to charges that it 'orchestrated' the by-law process is increased by the existence of its agreement to sell 20 acres of land to Woodwards for $1.9 million.

13 I share that view.

14 The principal attack on the by-law is upon the basis that the conduct of the municipality from the time it accepted the offer from Woodwards on August 10th, 1983, until the passage of the by-law on November 28, 1983, departed from procedural fairness and that, therefore, the by-law should be quashed.

15 The learned trial judge in discussing the alleged lack of procedural fairness during this period said:

> Clearly, all three of those reports were significant.

And there he is referring to the Urbanics report, the Thomas report and the IBI group report. He went on to say:

> All three reports were available at the public hearing and those present were invited to direct questions to the respective authors who were in attendance for that purpose.

16 In making that finding he was clearly in error.

17 Subsequent to the public hearing on October 26, 1983, the municipal engineer received a copy of the IBI group report and we are told that he in turn made a report to a closed meeting of council in which he was critical of the IBI Group report.

18 From this view of the facts it would appear that the three reports which the learned trial judge considered to be significant were not available to the members of the public before October 26 from the municipal offices or the officials of the municipality. The explanation given by the municipality is that while members of council had the reports, because the reports were not tabled in council they were not then available to the municipal clerk and he in turn was not in a position to make them available to interested members of the public.

19 I find that explanation entirely unsatisfactory in these circumstances. This is a situation where Surrey had to move with scrupulous care to meet the requirements of procedural fairness. If the clerk, because of that technicality, did not have the reports available to him it was incumbent on the council and the municipal officials to obtain reports from the consultants. Clearly they could have done so had they sought them. In my opinion, it is important that at the public hearing the material that is to be considered by council in due course in determining whether or not to enact the by-law is available to the public for informed discussion.

20 The IBI group report, contrary to the finding of the learned trial judge, was not so available. Further, when it became clear to the council that their own municipal engineer was critical of that report no further public hearing was called in order that the public could consider the IBI report and learn of the criticisms made with respect to it. In those circumstances, in my opinion, council was considering matters that were not available at the public hearing, namely, the IBI report and any criticism that members of the public might have made with respect to it had it been available at that hearing.

21 In the result, I conclude that the respondent municipality did not meet the requirements of procedural fairness in this matter.

22 For these reasons I would allow the appeal and direct that the by-law be quashed.
***Macdonald, J.A.*:**

23 I agree.
***Esson, J.A.*:**

24 What will satisfy the requirements of procedural fairness is something that is not susceptible to rigid rule; it will depend on the circumstances of each case.

25 The circumstances of this case were that the council of the municipality was dealing with a huge project which could, and if it went ahead, almost inevitably would have a very great impact on the municipality and on many of its ratepayers. In terms of its scope and complexity, it was almost without precedent in this municipality.

26 No-one could be expected to mount an intelligent response at the public meeting without reasonable prior access to the reports, both of the Woodwards' consultants and of the staff.

27 This question has been dealt with in a recent decision in the Supreme Court of British Columbia in *Kramanian v. Richmond* (1982) 38 B.C.L.R. 406. The specific factual issues were somewhat different, but again, it was a matter of a zoning by-law and the question whether it could be quashed on the basis of council's failure to allow the ratepayers to be in a position to make informed representations. Mr. Justice Wallace first referred to the decision of the Supreme Court of Canada in *Wiswell v. Metro Winnipeg* (1965) S.C.R. 512, which holds that:

> In dealing with a proposed re-zoning by-law a council is acting in a quasi-judicial capacity...

He quoted the statement of that court to the effect that council cannot lawfully proceed to make a decision until it has afforded to the persons affected a proper opportunity to state their case - "a full opportunity of presenting his views and contentions". He referred to the municipality's contention that all that was required was to make the information available at the meeting. He went on to say:

> I cannot accept such a narrow interpretation of s.720 or of the requirements of the common law. In my view the purpose of the legislature in enacting s.720 was to provide a forum at which all aspects of the by-law might be reviewed so that members of the public, having become aware of the by-law's purpose and effect, would be in a position to make representations to the council of the manner and extent it affected property owned by them.
> To make an intelligent assessment of the effect of a by-law on one's property and to be able to question proponents of the by-law one should be informed of the matters considered by the planning committee, the rationale for their recommendation, and such other relevant material considered by the council when it adopted the committee's recommendations and decided a public hearing be held. Anything less than full disclosure of the relevant information restricts the scope of the analysis and the consequent representation a home owner might otherwise make to the council at the public meeting. Leaving home owners ignorant of pertinent information in the possession of the council frustrates the objective of a public meeting and denies those home owners whose property is affected by the by-law a full opportunity to be heard at a fair and impartial public hearing.
> Accordingly, I find the by-law invalid by reason of the failure of the council to disclose to the petitioner the information in the possession of and considered by the council when accepting the recommendation of the planning committee. Appropriate disclosure could be accomplished by informing the public in the notice of the public hearing that copies of the material might be inspected at the planning department, the procedure followed in this case for inspection of the rezoning amendment by-laws.

28 I am in substantial agreement with what was said there. The great distance between the proper approach to these matters and that which was adopted here can be illustrated by the matter of an exchange between a lawyer who sought information on behalf of a client one week before the public meeting. The record does not disclose for whom he was acting; it does not matter. He said that he was acting on and intended to appear at the meeting on behalf of a person or persons who believed their interests in property to be affected by the proposed by-law.

29 By letter delivered on October 19th he asked to be provided with copies of minutes of meetings and reports from staff. He sent a copy of that letter to the solicitor for the municipality. Before us counsel sought to justify the municipality's response on the basis that staff were alarmed by the lawyer's reference to the possibility that if he did not get the material through

ordinary channels he might invoke the aid of the court. The response was a letter dated October 25th, after a meeting of council on October 24, which simply said:

> In response to your letter of October 19, I wish to advise you that the municipal council has decided not to release the information requested.

That is over the signature of the municipal manager. Undoubtedly it was a matter considered by the municipality's lawyer. That course of events is simply an instance of what appears to have been a policy of giving as little useful information as possible.

30 The Chambers judge referred to the fact that for a twenty-four hour period the municipality even declined to provide to this petitioner a copy of what came to be known as the glossy, that is, the promotional booklet put out by the applicant. What is of particular interest is not so much that short lived refusal to provide any material, but the fact that that is all the material that the municipality was prepared to provide or make available or to cooperate in making available. It was a starting point, it had some information but, of course, only information which would be supportive of the application.

31 I agree with the reasons of Mr. Justice Hinkson and I agree that the appeal should be allowed.

***Hinkson, J.A.*:**

32 The appeal is allowed.

APPENDIX K

Paul Esposito Restaurants Ltd.v. Abbotsford (District of), 1990 CanLII 912 (BC SC)

Date: 1990-07-13

Docket: A900600

Citation: Paul Esposito Restaurants Ltd.v. Abbotsford (District of), 1990 CanLII 912 (BC SC), <http://canlii.ca/t/1dtbb> retrieved on 2015-10-28

A900600
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

RE:IN THE MATTER OF THE JUDICIAL REVIEW PROCEDURE ACT, R.S.B.C. 1979, c. 209 AND SUPREME COURT RULE 10, AND IN THE MATTER OF THE MUNICIPAL ACT, R.S.B.C. 1979, c. 290 AND IN THE MATTER OF THE DISTRICT OF ABBOTSFORD BYLAW NO. 2170-1989; DEVELOPMENT PERMIT NO. 80-1989; AND DEVELOPMENT VARIANCE PERMIT NO. 34-1989

BETWEEN:	
PAUL ESPOSITO RESTAURANTS LTD.	REASONS FOR JUDGMENT
PETITIONER	OF THE HONOURABLE
AND:	MR. JUSTICE FRASER
DISTRICT OF ABBOTSFORD	
RESPONDENT	

Counsel for the Petitioner:	Robert J. Bauman and Daniel R. Bennett;
Counsel for the Respondent:	M. Howard Thomas, Q.C.;
Place and Dates of Hearing:	Vancouver, B.C.,

17th April and
28th June 1990.

The petitioner, which operates a beer and wine store in downtown Abbotsford, seeks to quash a bylaw passed and certain permits issued by the District of Abbotsford, which had the effect of permitting the establishment of a rival beer and wine store.

The grounds on which the petition is based are that the Notice required by the Municipal Act was defective, that the District failed to make disclosure of pertinent documents prior to the public hearing and that the permits allow use of property in a manner contrary to the Community Plan.

The property owner which benefitted from the bylaw and permits, the Park Inn Hotel, was served with the petition but has chosen not to participate in the hearing.

The Park Inn Hotel is located on Pauline Street in Abbotsford, in the town centre. It apparently operated as a hotel and beer parlour for some time before it sought to restructure its commercial operation. It applied in June 1988 for a rezoning which would have allowed it to add a beer and wine store. When this application was under consideration, some documents came into existence within the municipal system, including a memorandum from the Planning Director to the Planning and Development Committee of 29th June 1988, (critical of the application, because of concerns about parking and other matters) and various 1988 Minutes of the Planning and Development Committee (indicating similar concerns). The application was denied by the Municipal Council of Abbotsford in June 1989. My impression is that the rejection was conveyed to the Park Inn in such a way as to indicate receptiveness on the part of Council to the general concept. On 13th October 1989, the Park Inn applied again for the necessary rezoning and permits. The application was sympathetically received by the Planning Department, despite the recognized deficiency in parking spaces. On 11th December 1989, the Council met and gave first and second reading to a spot rezoning bylaw, which would have redesignated the property of the Park Inn Hotel from CT-1 (tourist commercial) to C-3 (town centre commercial) and set 9th January 1990 as the date for a public hearing on the proposed bylaw and on the question whether the necessary Development Permit and Development Variance Permit should be issued.

The requirement that a public hearing be held arises from the Municipal Act, R.S.B.C. 1979 c. 290. Section 956(1) requires a municipality to hold a public hearing before adopting a zoning bylaw. (Section 956(4) permits a local government to waive the holding of a public hearing if it decides that the proposed zoning bylaw is consistent with its Official Community Plan. Evidently, Abbotsford decided not to utilize the provisions of s. 956(4); no reasons were given to me why this route was not chosen.)

Different obligations are imposed on a municipality with respect to the issuance of a Development Variance Permit. Section 980(13) requires the local government to give notice of the proposed issuance and s. 980(14) sets out the requisites of that notice. Presumably, the legislative rationale for the requirement of notice springs from the effect of a Development Variance Permit. Section 974 makes it clear that this kind of permit, in respect of the land to which it applies, may vary and prevail over the provisions of a bylaw.

Both with respect to a notice of public hearing concerning a bylaw and a notice concerning a proposed Development Variance Permit, the Municipal Act prescribes in mandatory terms what the notice shall state. Section 957(2), which applies to the notice of a public hearing concerning a zoning bylaw, states:

> (2) The notice shall
>
> (a) state
> ...
> (v) the place where and the times and dates when copies of the bylaw may be inspected ....

Section 980(14), which applies to the notice of a resolution to issue a Development Variance Permit, states:

> (14) The notice shall
>
> (a) state
> ...
> (iii) the place where and the times and dates when copies of the permit may be inspected ....

What Abbotsford did was to roll these two procedures into one and issue a single Notice, on 20th December 1989. The petitioner concedes that the Notice met all the requirements of

the Act, except the portion of s. 980(14) quoted above. The Notice concluded with a statement that "The above Bylaws may be inspected ...." (giving place, times and dates) but this portion of the Notice did not refer to the proposed Development Variance Permit (the Permit, the related Development Permit and the related resolution to discharge the land use contract over a specified adjacent property were referred to elsewhere in the Notice).

The petitioner, through its solicitors, wrote to Abbotsford on 22nd December 1989. Its letter begins "We are instructed that Council has given two readings to a rezoning bylaw for this site and has set a public hearing date of January 9, 1990." The letter goes on to request a copy of the rezoning bylaw, and copies of "all reports available in the public domain touching on the rezoning."

The petitioner appeared by counsel at the public hearing and expressed its opposition to the proposed rezoning and permits. Some of these representations were political in nature and some addressed zoning and planning considerations, in particular the question of parking. The Minutes of the public hearing record counsel as saying:

> The application contemplates a development variance permit to relax the parking requirements and to allow for payment into the off-street parking fund.

The concept of payment into an off-street parking fund in lieu of provision of parking is simply that the developer must contribute cash toward parking facilities elsewhere. With respect to it, counsel expressed ignorance as to what was in mind. He speculated that the proposed parking facility in question might be the McCallum Activity Centre and argued that it did not qualify. He went on to say:

> If you are going to vary the Bylaw to designate another facility somewhere else as being the facility that triggers the off-street parking spaces, that is not clear from the material on public record and I am unable to make any submissions to you on that.

Counsel concluded his presentation with a general criticism of the impact of the proposed development on the community.

On or about 26th February 1990, Abbotsford adopted the impugned rezoning bylaw and on 5th March 1990 issued the impugned Development Variance Permit and Development Permit.

In the course of the hearing before me, some doubts arose as to the disclosure which Abbotsford had made to the petitioner.

Abbotsford filed an affidavit of Wayne Gordon, Planning Director for the District of Abbotsford, sworn 10th April 1990, to which was appended as Exhibit "A" a document in the form of a Notice. Mr. Gordon identified this as the Notice of 20th December 1989 and deposed, "I mailed copies of the Notice marked Exhibit "A" ... to all of the [prescribed recipients]." But Exhibit "A" was not a true copy of the Notice actually sent out. In Exhibit "A", the omission complained of by the petitioner had been corrected. Instead of saying "The above Bylaws may be inspected ...." as the actual Notice did, Exhibit "A" said "The above documents may be inspected ....". This was the only alteration made.

In consequence of this discrepancy, I ordered that Mr. Gordon be orally examined under oath and that Abbotsford deliver a list of documents, verified by affidavit. In his examination, Mr. Gordon testified that he had received from the Municipality's solicitors by fax a draft of his 10th April 1990 affidavit and a copy of the Notice which the Municipality had sent out. He testified that, because of the poor quality of the fax reproduction, he asked a secretary to retype both and that it was the secretary, acting on her own initiative, who substituted the word "documents" for the word "bylaws". He testified that he swore the affidavit not realizing that the substitution had been made, adding, editorially, "it was without any mischievous intent on her part. I don't believe that my secretary understood the consequences of changing that word; I sincerely believe that."

The familiarity of this excuse does not necessarily mean that it is untrue.

Mr. Gordon also testified that the substitution was not "malicious, malevolent, premeditated or intentional" and that "we had no intent to strip you of some grounds on which you felt you could attack the original notice." Presumably here he speaks for the secretary upon whom he has just laid the blame. No affidavit from her was tendered.

From the disclosure of documents made by Abbotsford pursuant to my order, the petitioner discovered for the first time the existence of the 1988 memorandum of the Planning Director and the various 1988 Minutes of the Planning and Development Committee, to which I have already referred.

The petitioner also learned from the examination of Mr. Gordon of the possibility that the proposed Development Permit and the Development Variance Permit were not even in existence as at the date of the public hearing. Mr. Gordon seemed to put the date of preparation of both documents on or about 26th February 1990, that is, shortly before or shortly after passage of the rezoning bylaw. He was asked:

> Q:So it is accurate to say that neither [the Development Permit] or [the Development Variance Permit] was in existence to be in the hands of the clerk between December 20th, 1989 and January 9th, 1990?

He replied:

> A:No, they would not have been.

If it is the fact that there were no permits which anyone could have inspected pursuant to the Notice, it seems fair to say that this would be a matter of some significance in determining the question whether the disclosure made by the Municipality was adequate.

Abbotsford sought to challenge that interpretation of the answers given by Mr. Gordon on his examination, through the affidavit of Mr. Minchuk, the Assistant Planner. Mr. Minchuk deposed that, by December 20th 1989, he had prepared and had available for inspection the following documents:

> (a)a copy of Bylaw No. 2171-1989 in the form now produced and shown to me and marked Exhibit "B" to this my Affidavit except that at that time the form of the Bylaw was not signed nor certified nor were any of the dates below
>
> "READ A FIRST AND SECOND time this 11th day of December 1989"
>
> filled in;
>
> (b)a copy of Bylaw No. 2170-1989 in the form now produced and shown to me and marked Exhibit "C" to this my Affidavit except that at that time the form of the Bylaw was not signed nor certified nor were any of the dates below

"READ A FIRST AND SECOND time this 11th day of December 1989"

filled in;

(c) a copy of Development Variance Permit No. 34-1989 in substantially the same form in the form now produced and shown to me and marked Exhibit "D" to this my Affidavit except that the date of the authorizing resolution shown on page 2 as "the twenty-sixth day of February, 1990" were not part of the document available for inspection.

It was contended for Abbotsford that what Mr. Gordon really meant by his answer, quoted above, was that the Development Permit and the Development Variance Permit were available, in draft form, for inspection, but that they were not in existence in their formal executed form prior to the public hearing. Certainly, with reference to the Development Variance Permit exhibited to Mr. Minchuk's affidavit, the internal reference in it to "the 26th day of February, 1990" makes it unlikely that it was in existence at or before the date of public hearing. If a draft was in existence prior to the public hearing, why was a copy of it not appended to Mr. Minchuk's affidavit? No answer to this question, posed by the petitioner at the hearing before me, was given by Abbotsford. Further, how to explain the words "substantially the same form in the form" in subparagraph (c) of Mr. Minchuk's affidavit? It seems to reflect at least an uncertainty as to provenance.

The specifics of the Development Variance Permit are not insignificant. Not only did it provide that the off-street loading and parking requirements were to be two-thirds of that required under present bylaws but it also extended the permissible distance between the development and the nearest off-street parking facility from 492 feet to 800 feet. This relaxation, of course, extended to the Park Inn Hotel only.

In his presentation to the public hearing, Mr. Gordon did refer to the fact that the comtemplated Development Variance Permit would waive the provisions of the Parking Bylaw "insofar as the distance that this site must be from a public parking area, and that distance must be varied in order that the cash payment can be made for the additional 21-stall deficiency." but did not specify just what was contemplated.

The petitioner's contentions may be summarized as follows: the Development Variance Permit is void because the Notice was defective. Because the Development Variance Permit, the Development Permit and the rezoning bylaw were all part of one package, the Development Permit and the rezoning bylaw are void in consequence of the invalidity of the Development Variance Permit. The bylaw is also invalid as a consequence of non-disclosure of pertinent documents. Finally, all three are void because they are inconsistent with the Official Community Plan of Abbotsford.

In response, Abbotsford takes the position that the alleged defect in the Notice was technical, that Abbotsford substantially complied with the requirements of the Act and that this was evidenced by the participation of the petitioner in the public hearing. Mr. Thomas characterized the disclosure issue as one of fairness and observed that s. 956(3) of the Act provides only that persons affected by a proposed bylaw be afforded a reasonable opportunity to be heard. He argued that it would put an impossible burden on municipalities if they were compelled to search the history of any parcel of land coming up for a rezoning. Finally, the bylaw/permit package was characterized as being consistent with the Official Community Plan.

The authorities indicate that there must be careful observance of the provisions of the Municipal Act by a municipality which seeks to alter the use of property through rezoning or variance permits. In the words of Nemetz, J.A., in Re Bay Centre Ltd. v. City of Victoria (1972), 31 D.L.R. (3d) 570 (B.C.C.A.), at 578:

> It is my opinion that the apposite provisions of the Municipal Act, ... constitute a code of procedure which must be followed strictly where it is intended to amend a zoning by-law.

In that case, the Council of the City of Victoria held a public hearing, with appropriate notice, and afterwards declined to adopt the zoning amendment under consideration. Two weeks later, the Council adopted the bylaw it had previously rejected, after a brief hearing requested by the developer and for which no notice was given. It was the failure to give notice of the second hearing which led the Court to quash the bylaw.

In Little v. The Cowichan Valley Regional District (1978) B.C.L.R. 369 (B.C.C.A.), the Court of Appeal upheld the quashing of a bylaw on the ground that the newspaper in which the Notice

was published was not a newspaper within the meaning of the Interpretation Act. The Regional District argued that the particular publication in which the Notice was published would come to the attention of more people in the area than any other journal and that there was therefore substantial compliance. Citing Bay Village, the Court said that strict compliance was required as a condition precedent to the legality of the bylaw. The fact that the objecting respondent attended the public meetings for which notice was given was held not to raise an estoppel against him.

In Blair v. West Vancouver (District) (1988),41 M.P.L.R. 301, (B.C.S.C.), a Notice issued by West Vancouver and published on February 28th 1988 concerning a rezoning contained the following paragraph:

> A copy of the proposed zoning bylaw and rezoning and development permit application may be inspected at the Municipal Hall on regular business days between the hours of 8:30 a.m. and 4:30 p.m. Written submissions are requested to be submitted to the municipal clerk prior to 1:00 p.m., 1988, March 7, ..."

The Notice was held to be defective because there was "no specific mention as such of the dates when the copy of the by-law might be inspected ....". The District argued substantial compliance but it was held that there is no room for the doctrine of substantial compliance where there has been non-performance of a legislative obligation or, if the defect in the Notice more properly was to be characterized as some performance, it was not adequate. This judgment was upheld by the Court of Appeal at (1989) 45 M.P.L.R. 288.

In Mosaic Enterprises Ltd. v. City of Kelowna (1979), 15 B.C.L.R. 327 (B.C.C.A.), the Court of Appeal considered a Notice issued by Kelowna which referred to the intention to "construct a Parkade at the corner of Lawrence Avenue and Pandosy Street ....". It was held that the Notice was defective because the use of the word "Parkade" gave no indication of the size or capacity of the proposed building and the description of the location gave no indication on which of the four blocks adjoining the intersection it was to be built. The rezoning was quashed. This is the context in which the Court stated that a court should not examine what a council has done with a hypercritical eye, overly alert to detect technical defects, but should look rather to the substance of what was done.

In light of these authorities, the contention of the petitioner that the Notice for the Development Variance Permit was defective is unanswerable. What in other contexts might be looked at as technical in the extreme is, in the context of municipal law, critical. I quash the Development Variance Permit.

Before considering whether the rezoning bylaw and the Development Permit fall simply because the Development Variance Permit has been quashed, I turn to the issue whether the rezoning bylaw should be quashed by reason of non-disclosure.

The petitioner complains that critical documents were not made available to it prior to the public hearing. These were the 1988 documents referred to already, the draft Development Permit, the draft Development Variance Permit (if they were in existence) and a Bylaw Referral Questionnaire submitted by Abbotsford to the Ministry of Transportation and Highways of the province. This last document was prepared to secure the necessary approval of the Ministry to the rezoning bylaw. Sent under cover of a letter from Mr. Minchuk, for Abbotsford, dated 27th December 1989, it contains the following entry:

> 14) On site parking meet bylaw standards?
> Yes Deficiencies: None

The questions are those of the Ministry. The answers "Yes" and "None" are those of Abbotsford. They were, of course, false.

The petitioner says that, had it been armed with this documentary information prior to the public hearing, its effectiveness in participating and its ability to persuade would have been enhanced. Reliance was placed on Karamanian v. Richmond (1982), 38 B.C.L.R. 106 (B.C.S.C.), in which a bylaw was quashed because of the failure of the Municipality to disclose a report from the Planning Committee concerning the proposed rezoning. Wallace, J. said, at p. 111:

> To make an intelligent assessment of the effect of a by-law on one's property and to be able to question proponents of the by-law one should be informed of the matters considered by the planning committee, the rationale for their recommendation, and such other relevant material considered by the council when it adopted the committee's recommendations and decided a public hearing be held. Anything less than full disclosure of the relevant information restricts the scope of the

> analysis and the consequent representation a home owner might otherwise make to the council at the public meeting. Leaving homeowners ignorant of pertinent information in the possession of the council frustrates the objective of a public meeting and denies those home owners whose property is affected by the by-law a full opportunity to be heard at a fair and impartial public hearing.

Karamanian was referred to in a later decision of the Court of Appeal, Eddington v. The Corporation of the District of Surrey (CA 002329, Vancouver Registry, 26th June 1985). In that case, the court of first instance refused an application to quash a bylaw in the erroneous belief that certain reports in the possession of members in council were available at the public hearing. They were not and the appeal was allowed, the Court holding that it was important that at the public hearing the material that is to be considered by council in due course in determining whether to enact the bylaw is available to the public for informed discussion.

The petitioner declined to attack the integrity of either Mr. Gordon or Mr. Minchuk and I proceed on the assumption that drafts of the Development Permit and of the Development Variance Permit were in existence prior to the public hearing. The inconsistency in their evidence, coupled with the alteration of Exhibit "A" to the affidavit of Mr. Gordon, is outweighed by what I hope is an improbability: that a public hearing would be organized without those Permits being in place, in draft form. The fact remains that the petitioner was not provided with any draft Permit before the public hearing.

Of course, the Municipality was not asked by the solicitors for the petitioner in their letter of 22nd December 1989 to provide it with copies of the Permits. If the non-disclosure issue rested upon the Permits only, I might have been inclined to the view that the petitioner should not be given relief on the basis of the failure to disclose documents it had not asked for and ought to have known were in existence (given the opening words of the Notice). But the 1988 application was clearly in the mind of Mr. Gordon (at least) as being relevant to and connected with the 1989 application. The documents related to it were not at all buried and forgotten; no burdensome search would have been required to produce them. When the non-disclosure of the Bylaw Referral Questionnaire is added to the other omissions, the cumulative effect is a non-disclosure which offends

the principles articulated in Karamanian and Eddington. The rezoning bylaw is therefore quashed.

The rezoning bylaw, the Development Permit and the Development Variance Permit all came into existence as components of a package through which the Park Inn Hotel was to be allowed to add a beer and wine store to its existing operation. They seem to me to be schematically connected and to have a functional unity, a "three-legged stool", in the words of McKenzie, J. in Rathlef v. Cowichan Valley Regional District (unreported, S.C.B.C., Vancouver Registry No. A860602, 20th May 1986). Accordingly, as in Rathlef, I hold that the invalidity of one invalidates all.

The petitioner also contended that the development was inconsistent with the Official Community Plan for Abbotsford, which articulates a policy of encouraging pedestrian circulation in the town centre commercial area, and which identifies Pauline Street, as a street which should have "a mixed but predominantly pedestrian use". The Plan also calls for each building or building complex to strive for self-sufficiency in terms of parking requirements. The petitioner pointed to the fact that the Park Inn development called for not only a reduction in the number of parking spaces which the parking bylaw ordinarily would require, but a scheme in which the already reduced parking requirements could be satisfied in part by cash payment to the off-street parking facility 800 feet away.

The petitioner says that its own beer and wine store customers come predominantly by motor-vehicle and are at the store for a very short duration. It describes its own operation as "an intensely vehicular oriented business with up to 1,000 customers per day between Friday to Sunday."

It was contended for Abbotsford that the real effect of the development would be to reduce an existing deficiency. Under the zoning which applied prior to the passage of the rezoning bylaw and the permits, the Park Inn Hotel was required to have 105 parking spaces and had a 98-space shortfall. Since part of the development package involved the acquisition of three adjacent lots for parking and provided for payment for 21 off-street spaces, Abbotsford says that the redevelopment reduced the shortfall and was therefore consistent with the Community Plan. Mr. Thomas noted that the beer and wine store's component of the off-street parking requirement was minimal - four spaces out of the total.

In Rogers v. Corporation of the District of Saanich (1983) 1983 CanLII 321 (BC SC), 22 M.P.L.R. 1 (B.C.S.C.), it was established that the written efforts of planners are really objectives and unless there is an absolute and direct collision between proposed developments and the Official Community Plan, developments cannot be derailed because of what is contained in a community plan. Considering the information before me, I am unable to find the absolute and direct collision which would be required to quash the bylaw on this ground.

The remaining issue is whether I should grant the petitioner the additional relief sought: an order directing Abbotsford "to enforce its bylaws and accordingly to direct the Park Inn to cease using its premises for a beer and wine store." Counsel for Abbotsford intimated that, should I quash the bylaw and Permits, as I have done, the Municipality would try again to put through the same bylaw and Permits and, while doing so, would not seek to impede the Park Inn in operating its beer and wine store. I was referred to City of Toronto v. Polai (1969), 1969 CanLII 339 (ON CA), 8 D.L.R. (3d) 689 (Ont.C.A.), aff'd1972 CanLII 22 (SCC), [1973] S.C.R. 38,in which Schroeder and Brooke, JJ.A. compared a municipality, in the context of enforcement of bylaws, to an attorney-general, charged with the power to enforce the rights of the public when they are violated and found that a municipality has analogous discretion whether to enforce, within its own sphere of authority. This judgment was referred to with approval by McIntyre, J., in his dissenting judgment in Kamloops v. Nielsen, 1984 CanLII 21 (SCC), [1984] 2 S.C.R. 2; [1984] 5 W.W.R. 1 (S.C.C.). But Wilson, J., for the majority, held that inaction for no reason or inaction for an improper reason cannot be a policy decision taken in the bona fide exercise of discretion (at W.W.R. 37).

The petitioner came to this Court in a timely fashion. The fact that its motive for doing so may have more to do with its own commercial interests than a public-spirited commitment to the Official Community Plan is irrelevant. Its objections have been found to be valid. On the authorities cited to me, the invalidity of the bylaw and the permits is not to be regarded as "technical".

In April, when this matter came before me originally, the beer and wine store of the Park Inn Hotel was under construction. Then as now, the Park Inn Hotel chose not to take part in these proceedings. At that time, the petitioner asked me to make an order which would stop construction. I declined to do so but said:

> If the Petitioner is ultimately successful in these proceedings, it is the permit holder who will suffer. At present the permit holder is aware of these proceedings and is going ahead with construction at its own risk. The fact that construction may be further ahead or even complete when this proceeding is decided certainly will not affect the outcome of the proceeding.

I do not see it as appropriate to assume that Abbotsford will fail to consider its position and that of the petitioner in response to this judgment, notwithstanding the informed assessment of Mr. Thomas.

A line does exist between a municipality's rightful role as the enforcer of its own laws and what might be described as a calculated indifference to the continuance of a commercial operation carried on illegally and to a judgment of this Court. Accordingly, while the subordinate relief claimed by the petitioner is denied, the petitioner has leave to renew this branch of its application, on such grounds as it may see fit. I do not consider myself seized of it if such an application ensues.

I do direct that Abbotsford, not later than seven days after the earliest meeting of Council at which the matter properly may be considered, specify to the petitioner in writing whether it intends to take any action with reference to the operation of the beer and wine store of the Park Inn Hotel and, if so, what that action will be.

The petitioner will have the costs of this proceeding.

VANCOUVER, B.C.
July 1990.

Village of PEMBERTON

REPORT TO COUNCIL

Date: **November 3, 2015**

To: **Nikki Gilmore, Chief Administrative Officer**

From: **Lisa Pedrini, Village Planner**

Subject: **SLRD Regional Growth Strategy 2015 Scoping Period - Update**

PURPOSE

The purpose of this report is to update Council on the SLRD Regional Growth Strategy (RGS) Steering Committee's progress to date in regards to scoping and preparing for an upcoming review of the RGS.

BACKGROUND

On February 19, 2015, the RGS Steering Committee, which consists of Planning Directors or other appointed employees of the four member municipalities (Lillooet, Pemberton, Whistler and Squamish) met in Whistler to receive input on the *RGS 2015 Review* Process draft Terms of Reference, Communication Plan and *RGS 2015 Review* content items. The RGS was adopted in 2010, and the *Local Government Act* requires regular review of regional growth strategies, with a review to be considered at least once every five years.

On March 26, 2015 the RGS Steering Committee met again and the idea was put forward that rather than initiate a review in 2015, the Steering Committee might enter into a scoping period to identify and development draft content to inform the eventual RGS Review. It was felt that this initial scoping period would assist the member municipalities to better plan for an upcoming review, which could be initiated in 2016. All members of the Steering Committee agreed this was a good approach.

Based on this advice, the SLRD staff presented a report to the Board at the April 22, 2015 SLRD Board meeting, recommending:

> **THAT** the Board consider the 5 year review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" as per Section 869 (2) of the Local Government Act.
>
> **THAT** the Board accept the RGS Steering Committee recommendation to not initiate a review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" at this time, and to instead undergo a preliminary review period through the RGS Steering Committee.
>
> **THAT** the Board direct staff to follow up with a report and recommendations regarding the Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" review at the end of 2015.

At the Regular Council Meeting No. 1395, held May 5, 2015, a report informing Village Council of the postponed commencement of a five (5) year major review of the SLRD Regional Growth

Strategy (RGS), in order to undertake a scoping period between now and the end of 2015, was presented by the Village Planner for information. A copy of this report is attached as **Appendix A**.

As a follow-up, the Regional Board sent correspondence dated May 13, 2015 informing the Village of Pemberton of its decision to undertake a scoping period. This letter is attached as **Appendix B**.

DISCUSSION AND COMMENTS

Since April 2015, the SLRD Planning Department has been facilitating the *RGS 2015 Scoping Period*, in consultation with Planning Staff of the District of Squamish, Resort Municipality of Whistler and the Village of Pemberton, and as such the RGS Committee has met six (6) times.

Presently, the RGS Steering Committee is made up of:

- Kim Needham, Director of Planning and Development Services, SLRD (Chair)
- Claire Daniels, Planner, SLRD
- Lisa Pedrini, Village Planner, VoP
- Mike Kirkegaard, Director of Planning, RMOW
- Matt Gunn, Planner, DoS
- Brent Mueller, Regional Growth Strategies Manager, Provincial MCSCD

The District of Lillooet has not yet had the capacity to participate in the scoping period, but all member municipalities would be involved with the full review, as well as the three Electoral Areas that the RGS pertains to (Area B, C and D), the Boards of each Regional District that is adjoining an area to which the Regional Growth Strategy is to apply, and affected provincial agencies.

Topics that have been discussed to date include:

- Terms of Reference for the RGS Steering Committee
- Minor Amendment Criteria and Process
- Growth Management
- Implementation Guidelines
- Regional Updates

A report prepared by Regional District Staff expanding on the progress made by the Steering Committee during the Scoping Period is attached as **Appendix C**.

The intended timeline of the scoping period was to be from April 2015 until December 2015; however, the process has taken more time than anticipated as discussions have gone beyond those of a scoping nature, into a more thorough analysis of some of these topics. For this reason, the Steering Committee members felt it would be prudent to present an update to the Board and Councils of the member municipalities at this time to keep them apprised of the progress and inform them that a final report and recommendations regarding the Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008 review will not occur until early 2016.

It is worthy to note at this time that as revisions to the Minor Amendment Criteria and Process of the RGS are being proposed, it is likely that the 2016 RGS Review will involve a major amendment process.

COMMUNICATIONS

No communications are required at this time.

LEGAL CONSIDERATIONS

There are no legal considerations at this time.

IMPACT ON BUDGET & STAFFING

Participating in the RGS/scoping period review is a component of the day to day operations undertaken by the Operations & Development Services Department.

INTERDEPARTMENTAL IMPACT & APPROVAL

There are no interdepartmental impacts as this is a function of the Operations and Development Services Department.

ALTERNATIVE OPTIONS

There are no alternative options, as this report is for information only.

POTENTIAL GOVERNANCE CONSIDERATIONS

Participating in the RGS Scoping Period is consistent with the Strategic Plan Priority 3: Excellence in Service through the continuation of delivering quality municipal services by participating in regional initiatives.

RECOMMENDATION

THAT the SLRD RGS 2015 Scoping Period Update report be received for information.

Attachments:

Appendix A – RtC dated May 5, 2015 re: RGS Scoping Period
Appendix B – Letter from SLRD dated May 13, 2015 re: RGS Scoping Period
Appendix C – SLRD Board Report dated Oct 28, 2015 re: RGS Scoping Period Update

Lisa Pedrini

Lisa Pedrini, Village Planner

CHIEF ADMINISTRATIVE OFFICER REVIEW

Nikki Gilmore

Nikki Gilmore, Chief Administrative Officer

APPENDIX A

REPORT TO COUNCIL

Date: **May 5, 2015**

To: **Nikki Gilmore, Chief Administrative Officer**

From: **Lisa Pedrini, Contract Planner**

Subject: **SLRD Regional Growth Strategy Review – Scoping Period**

PURPOSE

The purpose of this report is to inform Council of the postponed commencement of a five (5) year major review of the SLRD Regional Growth Strategy (RGS), in order to undertake a scoping period between now and the end of 2015.

BACKGROUND

The SLRD Regional Growth Strategy (RGS) Bylaw was completed seven (7) years ago (the RGS Bylaw was completed and received first/second reading in 2008, though it was not adopted until 2010). The *Local Government Act* requires regional districts with an adopted regional growth strategy to consider whether the regional growth strategy must be reviewed for possible amendment at least once every five (5) years.

On February 19, 2015, the SLRD held a meeting with the RGS Steering Committee, which consists of Planning Directors or other appointed employees of the four member municipalities (Lillooet, Pemberton, Whistler and Squamish), to receive input on a proposed RGS Review Process to occur in 2015. A draft Terms of Reference, Communication Plan and a list of items to be considered in the 2015 Review were presented.

It should be noted that the RGS Bylaw underwent a significant "housekeeping amendment" in 2013-2014. This was undertaken mainly to provide for the acceptance and inclusion of member municipality Regional Context Statements and associated text and mapping amendments. This process also provided an opportunity to address other "housekeeping items," such as: the inclusion of employment projections, as required by s. 850 of the *LGA*; refinement of the RGS monitoring indicators; and enhancement of layout and graphics. The RGS Amendment Bylaw was adopted on January 28, 2015 by way of a minor amendment process.

On March 26, 2015, the Steering Committee met again to discuss timing and parameters of the 2015 review. The concept of a five (5) year review of the RGS was supported by the Ministry of Community, Sport and Cultural Development (MCSCD) as well as the RGS Steering Committee. However, the Steering Committee acknowledged that the RGS had recently been the subject of an extensive amendment, and there were no pressing issues that warranted an immediate review. After considerable discussion, it was agreed that the preferred approach would be for the Steering Committee to begin by entering into a preliminary review period in which to identify the need for a review, focus on key issues and develop any draft content. This

review and scoping period could inform a forthcoming RGS Review, which could be initiated in 2016. Additionally, it was felt that a preliminary review period led by the RGS Steering Committee would create the opportunity for continued collaboration and alignment throughout the SLRD.

On April 22, 2015, the SLRD Board of Directors supported the RGS Steering Committee's recommendation to:

1) consider the 5 year review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008";
2) not initiate a review at this time and instead undergo a review and scoping period; and
3) direct staff to come back with a report and recommendations regarding the need for a review at the end of 2015.

DISCUSSION & COMMENTS

In general, a Regional Growth Strategy (RGS) is intended to provide a broad policy framework describing the common direction that the regional district and member municipalities will follow in promoting development and services which are sustainable, recognizing a long term responsibility for the quality of life for future generations. A sustainable future is one that provides for balanced economic, social and environmental well-being and that acknowledges the duty to use land and resources in a way that does not diminish their natural capacities at this time and into the future.

There are numerous legislative requirements in Part 25 of the *Local Government Act* which must be adhered to when initiating an RGS and/or embarking on a review of an RGS. While the review of an RGS will not necessary take the amount of time and effort that the original preparation of the RGS took [and it has yet to be determined whether the review will involve a major amendment or a minor amendment to the existing bylaw], it is still a significant undertaking. Village staff supports the RGS Steering Committee's recommended approach to hold off the initiation of a review until 2016, and to use the remainder of the calendar year to undergo a preliminary scoping period.

In order to keep the elected officials informed, SLRD staff will provide the SLRD Board with updates with respect to this process as relevant information is available, and the member municipality Steering Committee members will keep their respective Councils up to date with periodic update reports.

COMMUNICATIONS

Section 869 (3) of the *LGA* states that the regional district must provide an opportunity for input on the need for review from the persons, organizations and authorities referred to in section 855 (2).

Section 885 (2) of the *LGA* sets out the requirements for the regional district to adopt a Consultation Plan as soon as practicable after the initiation of a [review of a] regional growth strategy, which provides opportunities for early and ongoing consultation with, at a minimum,

(a) its citizens,

(b) affected local governments,

(c) first nations,

(d) school district boards, greater boards and improvement district boards, and

(e) the Provincial and federal governments and their agencies.

Since a formal review has not yet been initiated by the SLRD, a formal Consultation Plan will not be forthcoming until such time as a resolution to initiate a review of the RGS is passed by the SLRD Board of Directors.

LEGAL CONSIDERATIONS

Part 25 of the *LGA* contains the enabling legislation for Regional Growth Strategies, which sets requirements for regional districts with adopted regional growth strategies as per Section 869. Specifically, at least once every five (5) years, a regional district that has adopted a regional growth strategy must consider whether the regional growth strategy must be reviewed for possible amendment.

IMPACT ON BUDGET & STAFFING

The RGS preliminary review process will be incorporated into the daily Operations and Development Services departmental work plan.

INTERDEPARTMENTAL IMPACT & APPROVAL

There are no interdepartmental impacts foreseen at this time. The Planner is the Village's representative on the RGS Steering Committee and any work involved in the preliminary review process will be undertaken within the Operations and Development Services Department through the Department Manager.

Pete Neff
Manager of Operations and Development Services

IMPACT ON THE REGION OR NEIGHBOURING JURISDICTIONS

The SLRD Regional Growth Strategy is an initiative of the SLRD, the District of Lillooet, the Village of Pemberton, the Resort Municipality of Whistler, and the District of Squamish. The RGS Bylaw is intended to provide a board policy framework describing the common direction that the regional district and member municipalities will follow in promoting development and services which are sustainable, recognizing a long term responsibility for the quality of life for future generations.

As the bylaw applies to the four member municipalities and three electoral areas (Areas, B, C, and D; the RGS does not apply to Area A) and spans a 20 year horizon, the goals, strategic directions and resulting implementation process have regional impacts – present and future. The impacts on the Village will be more well-known once the review process begins.

ALTERNATIVE OPTIONS

There are no alternative options for consideration, as this report has been prepared for information only.

POTENTIAL GOVERNANCE CONSIDERATIONS

Involvement in the preliminary and future formal review of the Regional Growth Strategy meets several of the Village's 2015 Strategic Priorities including Good Governance, Excellence in Service, and Social Responsibility.

RECOMMENDATIONS

THAT Council receives this report for information.

Attachments:

Appendix A – SLRD Staff Report - SLRD Regional Growth Strategy Review Scoping Period, dated April 22, 2015

Lisa Pedrini

_____
Lisa Pedrini, Contract Planner

MANAGER:

P. Neff

_____
Pete Neff, Manager of Operations and Development Services

CHIEF ADMINISTRATIVE OFFICER REVIEW:

Nikki Gilmore

_____
Nikki Gilmore, Chief Administrative Officer

APPENDIX A to
RTC, May 5, 2015

SQUAMISH - LILLOOET
REGIONAL DISTRICT

REQUEST FOR DECISION

SLRD Regional Growth Strategy Review
Scoping Period

Meeting date: April 22, 2015

To: SLRD Board

RECOMMENDATION:

THAT the Board consider the 5 year review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" as per Section 869 (2) of the *Local Government Act*.

THAT the Board accept the RGS Steering Committee recommendation to not initiate a review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" at this time, and to instead undergo a preliminary review period through the RGS Steering Committee.

THAT the Board direct staff to follow up with a report and recommendations regarding the Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" review at the end of 2015.

KEY ISSUES/CONCEPTS:

Section 869 of the *Local Government Act* (*LGA*) sets requirements for regional districts with adopted regional growth strategies. Specifically, *at least once every 5 years, a regional district that has adopted a regional growth strategy must* ***consider*** *whether the regional growth strategy must be reviewed for possible amendment.*

As it has been seven years since the SLRD Regional Growth Strategy (RGS) Bylaw was completed (the RGS Bylaw was completed and received first/second reading in 2008, though not adopted until 2010), the SLRD needs to *consider* whether a review of the RGS is required.

It should be noted that the RGS Bylaw underwent a significant "housekeeping amendment" in 2013-2014. This was undertaken mainly to provide for the acceptance and inclusion of member municipality Regional Context Statements and associated text and mapping amendments. This process also provided an opportunity to address other "housekeeping items," such as: the inclusion of employment projections, as required by s. 850 of the *LGA*; refinement of the RGS monitoring indicators; and enhancement of layout and graphics. The RGS Amendment Bylaw was adopted on January 28, 2015 by way of a minor amendment process.

Although the concept of a 5 year review of the RGS is supported by the Ministry of Community, Sport and Cultural Development (MCSCD) as well as the RGS Steering Committee*, **the recommended approach is to begin by entering into a preliminary review period in which to identify the need for a review, focus on key issues and develop any draft content. This review and scoping period would inform the RGS Review, which could be initiated in 2016.**

***** *The RGS Steering Committee is comprised of the planning director, or another official appointed by the applicable Board/Council, of the SLRD, District of Lillooet, Village of Pemberton, Resort Municipality of Whistler, and District of Squamish as well as Brent Mueller, Regional Growth Strategies Manager at the Ministry of Community, Sport and Cultural Development (MCSCD)*.

RELEVANT POLICIES:
Regional Growth Strategy Bylaw No. 1062, 2008

BACKGROUND:
Most of BC's high growth regions – comprising 83 percent of the population – are using regional growth strategies to manage population change and guide decision-making and collaboration. The purpose of a regional growth strategy under Part 25 of the *LGA* is to "promote human settlement that is socially, economically, and environmentally healthy and that makes efficient use of public facilities and services, land and other resources."

Covering a period of at least 20 years, the SLRD RGS is intended to "*provide a broad policy framework describing the common direction that the regional district and member municipalities will follow in promoting development and services which are sustainable, recognizing a long term responsibility for the quality of life for future generations"*. Regular review of this bylaw helps ensure consistency and relevance in planning documents and approaches across the region. It also continues to foster a collective commitment to the RGS vision and supports collaborative governance.

ANALYSIS:
After considered discussion, the RGS Steering Committee is advising that a review of the RGS not be initiated at this time. Rather, the RGS Steering Committee is recommending that the year 2015 be set aside as a preliminary review or "scoping" period. It is felt that a scoping period will support a more effective and efficient review process, recognizing that RGS development is cyclical and that the Board can initiate a review at any point in time. Specifically, initiating a scoping period now will enable the RGS Steering Committee to determine the following key components, which will ultimately inform their recommendations to the Board for an RGS Review:

Process -- Minor or Major Amendment: it is difficult to determine the appropriate process to enter into without understanding what content needs to be addressed. A preliminary review period will provide time for the RGS Steering Committee to identify and develop draft content. The content will provide direction as to the appropriate application and required amendment process.

Content – New and Revised: although draft priorities have been identified, developing content will take significant time and effort. The RGS Steering Committee feels they can do much of this work in advance of initiating a formal review, supporting a more efficient and effective process. Draft priorities developed by the RGS Steering Committee include:

-Minor amendment criteria
-Minor amendment process
-Food security – new – this was not included in the RGS and the RGS Steering Committee would like to explore how this can be included in the RGS as food security is now a more pressing concern.
-Regional Road Network improvements – revise and update
-Improve Transportation Linkages and Options – review section
-Memorandum of Understanding regarding referrals – determine when/what to be referred to SLRD/member municipalities, etc.
-Fringe Growth/Boundary expansion- develop policies
-Enhance relations with Aboriginal communities
-Special Planning Areas – review/revise and determine necessity of this land use category
-Table 1: Description of Settlement Planning Map – review/revise to ensure consistency across jurisdictions.
-Bylaw housekeeping

Schedule – Consultation and Timelines: the content and process will determine the required consultation and timelines for the review. A preliminary review period will ensure the appropriate steps and engagement is taken, supporting a meaningful RGS review.

Through a preliminary review period, clarity around the process, content and schedule of the RGS Review will be gained. Additionally, a preliminary review period led by the RGS Steering Committee contributes to and creates the space for continued collaboration and alignment throughout the SLRD. The Steering Committee will provide the Board with updates with respect to this process as relevant information is available.

Proposed Next Steps

1. Initiate a preliminary review period lead by the RGS Steering Committee **(SLRD Board resolution)**
2. Provide an opportunity for input on the need for review of the RGS, as per Section 869(3) of the *Local Government Act*:
   - Forward this Board Report and Resolution to affected local governments (Steering Committee members may wish to include this with an Information Report to their

respective municipalities), First Nations, school district boards, the Pemberton Valley Dyking District,and the provincial and federal governments and their agencies **(SLRD Staff)**

- Offer an web page to citizens informing them of the review process and providing options for involvement **(SLRD Staff)**

REGIONAL IMPACT ANALYSIS:

The SLRD Regional Growth Strategy is an initiative of the SLRD, the District of Lillooet, the Village of Pemberton, the Resort Municipality of Whistler, and the District of Squamish. The RGS Bylaw is intended to provide a board policy framework describing the common direction that the regional district and member municipalities will follow in promoting development and services which are sustainable, recognizing a long term responsibility for the quality of life for future generations. As the bylaw applies to the four member municipalities and three electoral areas (Areas, B, C, and D; the RGS does not apply to Area A) and spans a 20 year horizon, the goals, strategic directions and resulting implementation process have regional impacts – present and future.

OPTIONS:

Option 1 (PREFERRED OPTION)

Accept the RGS Steering Committee recommendations to: 1) consider the 5 year review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008"; 2) not initiate a review at this time and instead undergo a review and scoping period; and 3) direct staff to come back with a report and recommendations regarding the need for a review at the end of 2015.

Option 2

Accept the RGS Steering Committee recommendations with revisions from the Board.

Option 3

Do not accept the RGS Steering Committee recommendations and refer back to staff for more information.

Option 4

Initiate a 5 year review of the Regional Growth Strategy at this time.

ATTACHMENTS:

Appendix A: Information Report SLRD Regional Growth Strategy – 2015 Review (March 18, 2015)

Submitted by: C. Daniels, Planner
Endorsed by: K. Needham, Director of Planning and Development
Reviewed by: L. Flynn, Chief Administrative Officer

Appendix A

INFORMATION REPORT

SLRD Regional Growth Strategy – 2015 Review

Meeting date: March 18, 2015

To: SLRD Board

PURPOSE:
The purpose of this report is to advise the SLRD Board about the required consideration of a Regional Growth Strategy (RGS) 5 year review, and to update the Board on the work that staff is undertaking with the RGS Steering Committee in order to assess whether a review is recommended, and what the scope of that work may be.

KEY ISSUES/CONCEPTS:
Section 869 of the *Local Government Act* (*LGA*) sets requirements for regional districts with adopted regional growth strategies. Specifically, *at least once every 5 years, a regional district that has adopted a regional growth strategy must* ***consider*** *whether the regional growth strategy must be reviewed for possible amendment.*

As it has been seven years since the SLRD Regional Growth Strategy (RGS) Bylaw was completed (the RGS Bylaw was completed and received first/second reading in 2008, though not adopted until 2010), the SLRD needs to review the RGS and consider whether a review is required.

In 2014, staff completed a housekeeping amendment of the RGS undertaken to provide for the acceptance of member municipality Official Community Plan Regional Context Statements, and also made some minor housekeeping changes to the RGS. The housekeeping amendment did not involve a comprehensive review of the RGS. The concept of a 5 year review of the RGS is supported by the Ministry of Community, Sport and Cultural Development (MCSCD) as well as the RGS Steering Committee*. SLRD staff is working with the RGS Steering Committee to develop a recommended approach for this review which will be presented to the Board.

***** *The RGS Steering Committee is comprised of the planning director, or another official appointed by the applicable council, of the SLRD, District of Lillooet, Village of Pemberton, Resort Municipality of Whistler, and District of Squamish as well as Brent Mueller, Regional Growth Strategies Manager at the Ministry of Community, Sport and Cultural Development (MCSCD).*

RELEVANT POLICIES:
Regional Growth Strategy Bylaw No. 1062, 2008

BACKGROUND:
Most of BC's high growth regions – comprising 83 percent of the population – are using regional growth strategies to manage population change and guide decision-making and collaboration. The purpose of a regional growth strategy under Part 25 of the *LGA* is to "promote human settlement that is socially, economically, and environmentally healthy and that makes efficient use of public facilities and services, land and other resources."

Covering a period of at least 20 years, the SLRD RGS is intended to "*provide a broad policy framework describing the common direction that the regional district and member municipalities will follow in promoting development and services which are sustainable, recognizing a long term responsibility for the quality of life for future generations"*. Regular review of this bylaw helps ensure consistency and relevance in planning documents and approaches across the region. It also continues to foster a collective commitment to the RGS vision and supports collaborative governance.

ANALYSIS:
Purpose of a RGS 5 year review
Meet *LGA* Requirements: the *LGA* requires a regular review of regional growth strategies, with a review to be considered at least once every five years.
Improve implementation: through implementation of the RGS Bylaw, SLRD staff and the RGS Steering Committee have identified some issues with the RGS, including the *Minor Amendment Criteria* and *Process* that may require further revision.
Evolve Policy and Processes: the SLRD has experienced considerable change since the RGS was initiated in 2003. There have also been changes at the provincial and federal level that have impacted regional district planning. Finally, member municipalities, through the RGS Steering Committee, have identified a number of issues to be considered. Consideration of a 5 year review will provide the opportunity to evolve policy and processes to reflect the current and future context.
Continue Collaboration: an RGS 5 year review will continue the collaborative efforts as noted in the RGS Bylaw by continuing to assist all parties with an interest in the region to:

1. Work together to address matters of common regional concern;
2. Demonstrate respect for each other's jurisdictions and processes;
3. Maintain good communications and coordination with respect to land use and other decisions of a regional and sub-regional nature;
4. Create a long term vision informed by the key principles of sustainability and embark on a path to our future in a manner that finds a responsible balance between the environmental, economic, and social needs of our communities.

Current and Next Steps

1. Develop a Recommended Approach: SLRD Staff and the RGS Steering Committee will continue to work to develop a recommended approach regarding a 5 year review. Whether the review involves a Minor or Major Amendment Process, and what content the review includes as a result, is to be determined. The RGS Steering Committee met on February 19, 2015 and is scheduled to meet again on March 26, 2015.
2. SLRD Board Resolution: As per s. 854 of the *LGA*, preparation of the regional growth strategy (including a review) must be initiated by resolution of the board. SLRD Staff will present the recommended approach to the Board, for their acceptance, at a future meeting date.
3. Project Initiation: The scope and next steps of an RGS 5 year review will be dictated by whether the proposed review requires a Minor or Major Amendment Process. As noted previously, a recommended approach will be itemized in a future report to the Board.

Submitted by: C. Daniels, Planner
Endorsed by: K. Needham, Director of Planning and Development
Reviewed by: L. Flynn, Chief Administrative Officer

APPENDIX B

SQUAMISH - LILLOOET
REGIONAL DISTRICT

May 13, 2015

Village of Pemberton
Box 100
Pemberton, BC V0N2L0
By email: sfraser@pemberton.ca

Dear Mayor and Council:

RE: Squamish-Lillooet Regional District Regional Growth Strategy – Review

Section 869 of the *Local Government Act (LGA)* sets requirements for regional districts with adopted regional growth strategies. Specifically, *at least once every 5 years, a regional district that has adopted a regional growth strategy must consider whether the regional growth strategy must be reviewed for possible amendment*.

As it has been five years since the Squamish-Lillooet Regional District (SLRD) Regional Growth Strategy (RGS) Bylaw was adopted (the RGS Bylaw was completed and received first/second reading in 2008, though not adopted until 2010), the SLRD needs to consider whether a review of the RGS is required.

Section 869(3) of the LGA further requires that *the regional district must provide an opportunity for input on the need for review from affected local governments.* As such, please find enclosed the SLRD staff report to the Board and the recommendations of the Board. The following resolutions were made by the SLRD Board on April 22, 2015:

> *THAT the Board consider the 5 year review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" as per Section 869 (2) of the Local Government Act.*
>
> *THAT the Board accept the RGS Steering Committee recommendation to not initiate a review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" at this time, and to instead undergo a preliminary review period through the RGS Steering Committee.*
>
> *THAT the Board direct staff to follow up with a report and recommendations regarding the Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" review at the end of 2015.*

Should you have any questions or input regarding the SLRD Regional Growth Strategy Review, please contact Kim Needham, Director of Planning and Development Services at kneedham@slrd.bc.ca or Claire Daniels, Planner at the SLRD at cdaniels@slrd.bc.ca.

Sincerely,

Lynda Flynn,
Chief Administrative Officer
Squamish-Lillooet Regional District

APPENDIX C

SQUAMISH - LILLOOET REGIONAL DISTRICT

INFORMATION REPORT

SLRD Regional Growth Strategy Review
Scoping Period Update

Meeting date: October 28, 2015

To: SLRD Board

PURPOSE:
The purpose of this report is to update the SLRD Board on the Regional Growth Strategy (RGS) Review Scoping Period process to date and identify next steps required in advance of initiating the formal RGS Review.

At the April 22, 2015 Board meeting, the Board resolved:

> THAT the Board *direct staff to follow up with a report and recommendations regarding the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" review at the end of 2015.*

The RGS Review Scoping Period has warranted more comprehensive and robust growth management discussions than originally anticipated. As such, SLRD staff will follow up with the summary report and recommendations within the first quarter of 2016.

KEY ISSUES/CONCEPTS:
Section 869 of the *Local Government Act* (*LGA*) sets requirements for regional districts with adopted regional growth strategies. Specifically, at least once every 5 years, a regional district that has adopted a regional growth strategy must **consider** whether the regional growth strategy must be reviewed for possible amendment.

As it has been seven years since the SLRD Regional Growth Strategy (RGS) Bylaw was completed (the RGS Bylaw was completed and received first/second reading in 2008, though not adopted until 2010), the SLRD needs to *consider* whether a review of the RGS is required.

On April 22, 2015 the Board also resolved:

> *THAT the Board consider the 5 year review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" as per Section 869(2) of the Local Government Act.*
>
> *THAT the Board accept the RGS Steering Committee recommendation to not initiate a review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" at this time, and to instead undergo a preliminary review period through the RGS Steering Committee.*

The RGS Steering Committee has been meeting regularly to conduct the preliminary review/scoping period. This report provides an update on the process and focus of discussions to date. A *Request for Decision* report, including recommendations regarding the process, content and schedule of the RGS Review, will be brought to the Board in early 2016.

RELEVANT POLICIES:
Regional Growth Strategy Bylaw No. 1062, 2008

BACKGROUND:
Regional Growth Strategies
Most of BC's high growth regions – comprising 83 percent of the population – are using regional growth strategies to manage population change and guide decision-making and collaboration. The purpose of a regional growth strategy under Section 849(1) of Part 25 of the *LGA* is to "promote human settlement that is socially, economically, and environmentally healthy and that makes efficient use of public facilities and services, land and other resources."

Covering a period of at least 20 years, the SLRD RGS is intended to "*provide a broad policy framework describing the common direction that the regional district and member municipalities will follow in promoting development and services which are sustainable, recognizing a long term responsibility for the quality of life for future generations"*. Regular review of this bylaw helps ensure consistency and relevance in planning documents and approaches across the region. It also continues to foster a collective commitment to the RGS vision and supports collaborative governance.

Regional Growth Strategy Amendments
In 2014, staff completed a housekeeping amendment of the RGS undertaken to provide for the acceptance of member municipality Official Community Plan Regional Context Statements, and also made some minor housekeeping changes to the RGS. The housekeeping amendment did not involve a comprehensive review of the RGS. The concept of a 5 year review of the RGS is supported by the Ministry of Community, Sport and Cultural Development (MCSCD) as well as the RGS Steering Committee.

Purpose of the RGS Review

Meet LGA Requirements: the *LGA* requires a regular review of regional growth strategies, with a review to be considered at least once every five years.

Improve Implementation: through implementation of the RGS Bylaw, SLRD staff and the RGS Steering Committee have identified some issues with the RGS, including the *Minor Amendment Criteria* and *Process* that may require further revision.

Evolve Policy and Processes: the SLRD has experienced considerable change since the RGS was initiated in 2003. There have also been changes at the provincial and federal level that have impacted regional district planning. Finally, member municipalities, through the RGS Steering Committee, have identified a number of issues to be considered. Consideration of a 5 year review will provide the opportunity to evolve policy and processes to reflect the current and future context.

Continue Collaboration: an RGS 5 year review will continue the collaborative efforts as noted in the RGS Bylaw by continuing to assist all parties with an interest in the region to:

1. Work together to address matters of common regional concern;
2. Demonstrate respect for each other's jurisdictions and processes;
3. Maintain good communications and coordination with respect to land use and other decisions of a regional and sub-regional nature;
4. Create a long term vision informed by the key principles of sustainability and embark on a path to our future in a manner that finds a responsible balance between the environmental, economic, and social needs of our communities.

Through the RGS Review Scoping Period, SLRD staff has been working with the RGS Steering Committee to develop a recommended approach for the RGS Review. The following section provides an update on the process and focus of discussions to date.

ANALYSIS:

Scoping Period Process

The RGS Steering Committee has met 6 times since initiation of the preliminary review/scoping period on April 22, 2015. The *Minor Amendment Criteria and Process*, as well as *Growth Management*, have been the topics of focus for these meetings. The RGS Steering Committee also developed a *Terms of Reference* for the committee, as one had not previously been created, and it was felt that the committee would benefit from a clear set of operating criteria (see Appendix C). *Regional Roundtable* updates (where each community representative on the RGS Steering Committee provides an update on their activities) have taken place each meeting. This has helped to improve collaboration and communication between member municipalities and the SLRD on a range of regional and inter-municipal planning initiatives.

The RGS Steering Committee has focused discussions on the RGS *Minor Amendment Criteria and Process,* with efforts made to: increase clarity around implementation of the RGS Bylaw

and Amendment Process; support growth management priorities; and reflect current best practices. Proposed revisions have been developed through extensive collaboration and consensus-based decision making, and will be presented to the SLRD Board as part of the formal RGS Review.

As part of the RGS Review Scoping Period, *Implementation Guidelines* have been prepared as resources to assist in implementing the Regional Growth Strategy. They include guidelines for the preparation of and amendments to Regional Context Statements, for amendment of the Regional Growth Strategy, and for establishing protocols for OCP/Zoning Amendment referrals. These guidelines are intended to live outside the RGS Bylaw, detail processes and procedures with regards to the implementation of the RGS, and create norms by which member municipalities and the SLRD communicate and collaborate on matters of regional significance. These Implementation Guidelines will be included in the recommendations regarding the RGS 5 year review process which will be presented in early 2016.

As per s. 854 of the *Local Government Act*, preparation of the regional growth strategy (including a review) must be initiated by resolution of the board. SLRD Staff will present the recommended approach to the Board, for their acceptance, in early 2016.

Process to Date and Proposed Next Steps

1. Initiate a preliminary review/scoping period lead by the RGS Steering Committee **(SLRD Board resolution, April 22, 2015)**
2. Provide an opportunity for input on the need for review of the RGS, as per Section 869(3) of the *Local Government Act* **(SLRD Board Report and Resolution were forwarded to affected local governments and agencies in April, 2015)**
3. Provide the Board with updates on the RGS Steering Committee scoping period, as relevant information is available **(SLRD Board Report, October Update)**
4. Seek input from provincial agencies on SLRD RGS Review scoping period in November **(SLRD letter via email)**
5. Report back to the Board on the need for review and provide recommendations regarding the RGS Review process, content and schedule **(SLRD Board Report, early 2016)**
6. Initiate RGS Review **(By SLRD Board Resolution, early 2016)**

The RGS Steering Committee met on October 8, 2015 and is scheduled to meet again in October, November and December.

Please note that as revisions to the Minor Amendment Criteria and Process are being proposed, it is likely that the RGS Review will involve a major amendment process.

REGIONAL IMPACT ANALYSIS:

The SLRD Regional Growth Strategy is an initiative of the SLRD, in partnership with the District of Lillooet, the Village of Pemberton, the Resort Municipality of Whistler, and the District of Squamish. The RGS Bylaw is intended to provide a broad policy framework describing the

common direction that the regional district and member municipalities will follow in promoting development and services which are sustainable, recognizing a long term responsibility for the quality of life for future generations. As the RGS bylaw applies to the four member municipalities and three electoral areas (Electoral Areas B, C, and D; the RGS does not apply to Area A) and spans a 20 year horizon, the goals, strategic directions and resulting implementation process have regional impacts – present and future.

ATTACHMENTS:
Appendix A: Information Report SLRD Regional Growth Strategy – 2015 Review (March 18, 2015)
Appendix B: Request for Decision SLRD Regional Growth Strategy Review – Scoping Period (April 22, 2015)
Appendix C: Proposed RGS Steering Committee Terms of Reference

Submitted by: C. Daniels, Planner
Endorsed by: K. Needham, Director of Planning and Development
Reviewed by: L. Flynn, Chief Administrative Officer

Appendix A

SQUAMISH - LILLOOET REGIONAL DISTRICT

INFORMATION REPORT

SLRD Regional Growth Strategy – 2015 Review

Meeting date: March 18, 2015

To: SLRD Board

PURPOSE:
The purpose of this report is to advise the SLRD Board about the required consideration of a Regional Growth Strategy (RGS) 5 year review, and to update the Board on the work that staff is undertaking with the RGS Steering Committee in order to assess whether a review is recommended, and what the scope of that work may be.

KEY ISSUES/CONCEPTS:
Section 869 of the *Local Government Act* (*LGA*) sets requirements for regional districts with adopted regional growth strategies. Specifically, *at least once every 5 years, a regional district that has adopted a regional growth strategy must* ***consider*** *whether the regional growth strategy must be reviewed for possible amendment.*

As it has been seven years since the SLRD Regional Growth Strategy (RGS) Bylaw was completed (the RGS Bylaw was completed and received first/second reading in 2008, though not adopted until 2010), the SLRD needs to review the RGS and consider whether a review is required.

In 2014, staff completed a housekeeping amendment of the RGS undertaken to provide for the acceptance of member municipality Official Community Plan Regional Context Statements, and also made some minor housekeeping changes to the RGS. The housekeeping amendment did not involve a comprehensive review of the RGS. The concept of a 5 year review of the RGS is supported by the Ministry of Community, Sport and Cultural Development (MCSCD) as well as the RGS Steering Committee*. SLRD staff is working with the RGS Steering Committee to develop a recommended approach for this review which will be presented to the Board.

***** *The RGS Steering Committee is comprised of the planning director, or another official appointed by the applicable council, of the SLRD, District of Lillooet, Village of Pemberton, Resort Municipality of Whistler, and District of Squamish as well as Brent Mueller, Regional Growth Strategies Manager at the Ministry of Community, Sport and Cultural Development (MCSCD).*

RELEVANT POLICIES:
Regional Growth Strategy Bylaw No. 1062, 2008

BACKGROUND:
Most of BC's high growth regions – comprising 83 percent of the population – are using regional growth strategies to manage population change and guide decision-making and collaboration. The purpose of a regional growth strategy under Part 25 of the *LGA* is to "promote human settlement that is socially, economically, and environmentally healthy and that makes efficient use of public facilities and services, land and other resources."

Covering a period of at least 20 years, the SLRD RGS is intended to "*provide a broad policy framework describing the common direction that the regional district and member municipalities will follow in promoting development and services which are sustainable, recognizing a long term responsibility for the quality of life for future generations"*. Regular review of this bylaw helps ensure consistency and relevance in planning documents and approaches across the region. It also continues to foster a collective commitment to the RGS vision and supports collaborative governance.

ANALYSIS:
Purpose of a RGS 5 year review
Meet *LGA* Requirements: the *LGA* requires a regular review of regional growth strategies, with a review to be considered at least once every five years.
Improve implementation: through implementation of the RGS Bylaw, SLRD staff and the RGS Steering Committee have identified some issues with the RGS, including the *Minor Amendment Criteria* and *Process* that may require further revision.
Evolve Policy and Processes: the SLRD has experienced considerable change since the RGS was initiated in 2003. There have also been changes at the provincial and federal level that have impacted regional district planning. Finally, member municipalities, through the RGS Steering Committee, have identified a number of issues to be considered. Consideration of a 5 year review will provide the opportunity to evolve policy and processes to reflect the current and future context.
Continue Collaboration: an RGS 5 year review will continue the collaborative efforts as noted in the RGS Bylaw by continuing to assist all parties with an interest in the region to:

1. Work together to address matters of common regional concern;
2. Demonstrate respect for each other's jurisdictions and processes;
3. Maintain good communications and coordination with respect to land use and other decisions of a regional and sub-regional nature;
4. Create a long term vision informed by the key principles of sustainability and embark on a path to our future in a manner that finds a responsible balance between the environmental, economic, and social needs of our communities.

Current and Next Steps

1. Develop a Recommended Approach: SLRD Staff and the RGS Steering Committee will continue to work to develop a recommended approach regarding a 5 year review. Whether the review involves a Minor or Major Amendment Process, and what content the review includes as a result, is to be determined. The RGS Steering Committee met on February 19, 2015 and is scheduled to meet again on March 26, 2015.
2. SLRD Board Resolution: As per s. 854 of the *LGA*, preparation of the regional growth strategy (including a review) must be initiated by resolution of the board. SLRD Staff will present the recommended approach to the Board, for their acceptance, at a future meeting date.
3. Project Initiation: The scope and next steps of an RGS 5 year review will be dictated by whether the proposed review requires a Minor or Major Amendment Process. As noted previously, a recommended approach will be itemized in a future report to the Board.

Submitted by: C. Daniels, Planner
Endorsed by: K. Needham, Director of Planning and Development
Reviewed by: L. Flynn, Chief Administrative Officer

Appendix B

REQUEST FOR DECISION

SLRD Regional Growth Strategy Review
Scoping Period

Meeting date: April 22, 2015

To: SLRD Board

RECOMMENDATION:

THAT the Board consider the 5 year review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" as per Section 869 (2) of the *Local Government Act*.

THAT the Board accept the RGS Steering Committee recommendation to not initiate a review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" at this time, and to instead undergo a preliminary review period through the RGS Steering Committee.

THAT the Board direct staff to follow up with a report and recommendations regarding the Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008" review at the end of 2015.

KEY ISSUES/CONCEPTS:

Section 869 of the *Local Government Act* (*LGA*) sets requirements for regional districts with adopted regional growth strategies. Specifically, *at least once every 5 years, a regional district that has adopted a regional growth strategy must* ***consider*** *whether the regional growth strategy must be reviewed for possible amendment.*

As it has been seven years since the SLRD Regional Growth Strategy (RGS) Bylaw was completed (the RGS Bylaw was completed and received first/second reading in 2008, though not adopted until 2010), the SLRD needs to *consider* whether a review of the RGS is required.

It should be noted that the RGS Bylaw underwent a significant "housekeeping amendment" in 2013-2014. This was undertaken mainly to provide for the acceptance and inclusion of member municipality Regional Context Statements and associated text and mapping amendments. This process also provided an opportunity to address other "housekeeping items," such as: the inclusion of employment projections, as required by s. 850 of the *LGA*; refinement of the RGS monitoring indicators; and enhancement of layout and graphics. The RGS Amendment Bylaw was adopted on January 28, 2015 by way of a minor amendment process.

Although the concept of a 5 year review of the RGS is supported by the Ministry of Community, Sport and Cultural Development (MCSCD) as well as the RGS Steering Committee*, **the recommended approach is to begin by entering into a preliminary review period in which to identify the need for a review, focus on key issues and develop any draft content. This review and scoping period would inform the RGS Review, which could be initiated in 2016.**

***** *The RGS Steering Committee is comprised of the planning director, or another official appointed by the applicable Board/Council, of the SLRD, District of Lillooet, Village of Pemberton, Resort Municipality of Whistler, and District of Squamish as well as Brent Mueller, Regional Growth Strategies Manager at the Ministry of Community, Sport and Cultural Development (MCSCD)*.

RELEVANT POLICIES:
Regional Growth Strategy Bylaw No. 1062, 2008

BACKGROUND:
Most of BC's high growth regions – comprising 83 percent of the population – are using regional growth strategies to manage population change and guide decision-making and collaboration. The purpose of a regional growth strategy under Part 25 of the *LGA* is to "promote human settlement that is socially, economically, and environmentally healthy and that makes efficient use of public facilities and services, land and other resources."

Covering a period of at least 20 years, the SLRD RGS is intended to "*provide a broad policy framework describing the common direction that the regional district and member municipalities will follow in promoting development and services which are sustainable, recognizing a long term responsibility for the quality of life for future generations"*. Regular review of this bylaw helps ensure consistency and relevance in planning documents and approaches across the region. It also continues to foster a collective commitment to the RGS vision and supports collaborative governance.

ANALYSIS:
After considered discussion, the RGS Steering Committee is advising that a review of the RGS not be initiated at this time. Rather, the RGS Steering Committee is recommending that the year 2015 be set aside as a preliminary review or "scoping" period. It is felt that a scoping period will support a more effective and efficient review process, recognizing that RGS development is cyclical and that the Board can initiate a review at any point in time. Specifically, initiating a scoping period now will enable the RGS Steering Committee to determine the following key components, which will ultimately inform their recommendations to the Board for an RGS Review:

Process -- Minor or Major Amendment: it is difficult to determine the appropriate process to enter into without understanding what content needs to be addressed. A preliminary review period will provide time for the RGS Steering Committee to identify and develop draft content. The content will provide direction as to the appropriate application and required amendment process.

Content – New and Revised: although draft priorities have been identified, developing content will take significant time and effort. The RGS Steering Committee feels they can do much of this work in advance of initiating a formal review, supporting a more efficient and effective process. Draft priorities developed by the RGS Steering Committee include:

-Minor amendment criteria
-Minor amendment process
-Food security – new – this was not included in the RGS and the RGS Steering Committee would like to explore how this can be included in the RGS as food security is now a more pressing concern.
-Regional Road Network improvements – revise and update
-Improve Transportation Linkages and Options – review section
-Memorandum of Understanding regarding referrals – determine when/what to be referred to SLRD/member municipalities, etc.
-Fringe Growth/Boundary expansion- develop policies
-Enhance relations with Aboriginal communities
-Special Planning Areas – review/revise and determine necessity of this land use category
-Table 1: Description of Settlement Planning Map – review/revise to ensure consistency across jurisdictions.
-Bylaw housekeeping

Schedule – Consultation and Timelines: the content and process will determine the required consultation and timelines for the review. A preliminary review period will ensure the appropriate steps and engagement is taken, supporting a meaningful RGS review.

Through a preliminary review period, clarity around the process, content and schedule of the RGS Review will be gained. Additionally, a preliminary review period led by the RGS Steering Committee contributes to and creates the space for continued collaboration and alignment throughout the SLRD. The Steering Committee will provide the Board with updates with respect to this process as relevant information is available.

Proposed Next Steps

1. Initiate a preliminary review period lead by the RGS Steering Committee **(SLRD Board resolution)**
2. Provide an opportunity for input on the need for review of the RGS, as per Section 869(3) of the *Local Government Act*:
   - Forward this Board Report and Resolution to affected local governments (Steering Committee members may wish to include this with an Information Report to their

respective municipalities), First Nations, school district boards, the Pemberton Valley Dyking District,and the provincial and federal governments and their agencies **(SLRD Staff)**
- Offer an web page to citizens informing them of the review process and providing options for involvement **(SLRD Staff)**

REGIONAL IMPACT ANALYSIS:
The SLRD Regional Growth Strategy is an initiative of the SLRD, the District of Lillooet, the Village of Pemberton, the Resort Municipality of Whistler, and the District of Squamish. The RGS Bylaw is intended to provide a board policy framework describing the common direction that the regional district and member municipalities will follow in promoting development and services which are sustainable, recognizing a long term responsibility for the quality of life for future generations. As the bylaw applies to the four member municipalities and three electoral areas (Areas, B, C, and D; the RGS does not apply to Area A) and spans a 20 year horizon, the goals, strategic directions and resulting implementation process have regional impacts – present and future.

OPTIONS:
Option 1 (PREFERRED OPTION)
Accept the RGS Steering Committee recommendations to: 1) consider the 5 year review of the "Squamish-Lillooet Regional District Regional Growth Strategy Bylaw No. 1062, 2008"; 2) not initiate a review at this time and instead undergo a review and scoping period; and 3) direct staff to come back with a report and recommendations regarding the need for a review at the end of 2015.

Option 2
Accept the RGS Steering Committee recommendations with revisions from the Board.

Option 3
Do not accept the RGS Steering Committee recommendations and refer back to staff for more information.

Option 4
Initiate a 5 year review of the Regional Growth Strategy at this time.

ATTACHMENTS:
Appendix A: Information Report SLRD Regional Growth Strategy – 2015 Review (March 18, 2015)

Submitted by: C. Daniels, Planner
Endorsed by: K. Needham, Director of Planning and Development
Reviewed by: L. Flynn, Chief Administrative Officer

Appendix C

SQUAMISH - LILLOOET
REGIONAL DISTRICT

Regional Growth Strategy
STEERING COMMITTEE
Terms of Reference

Purpose

The purpose of the Squamish-Lillooet Regional District Regional Growth Strategy Steering Committee is:

1. To serve as a forum for planning/development services staff from member municipalities, the regional district and the province, where regional and inter-municipal trends can be discussed, information shared, problems and opportunities identified, and solutions defined for issues of common concern;
2. To guide the implementation of the Regional Growth Strategy. This includes: reviewing the annual monitoring report on progress made in achieving the goals of the Regional Growth Strategy; reviewing all requested amendments to the Regional Growth Strategy; and guiding the process of reviewing and updating the Regional Growth Strategy;
3. To advise the Squamish-Lillooet Regional District Board of Directors and member municipalities on Regional Growth Strategy issues/matters, including providing comments and recommendations to the Board/Councils on proposed Regional Growth Strategy amendments and development issues of regional, inter-municipal, and inter-agency significance; and,
4. To serve as the intergovernmental advisory committee for the Squamish-Lillooet Regional District, when called upon, to advise applicable local governments on the development and implementation of the Regional Growth Strategy, including Regional Growth Strategy reviews, and to facilitate coordination of Provincial and local government actions, policies and programs as they relate to the development and implementation of the Regional Growth Strategy.

Establishment & Authority

The Steering Committee's role is advisory. Advice, comments or recommendations from the Steering Committee shall be forwarded to the Board for consideration. The Steering Committee receives its authority to serve as the intergovernmental advisory committee for the Squamish-Lillooet Regional District from Section 867 (1) & (2) of the *Local Government Act* and SLRD Regional Growth Strategy Bylaw No. 1062, 2008.

Composition

The Steering Committee shall consist of the planning director, or another representative, of the Squamish-Lillooet Regional District (SLRD), District of Lillooet (DoL), Village of Pemberton (VoP), Resort Municipality of Whistler (RMOW), and District of Squamish (DoS), as

well as the Regional Growth Strategies Manager for the Southern Interior region at the Ministry of Community, Sport and Cultural Development (MCSCD).

When called upon to act as the intergovernmental advisory committee, this core Steering Committee may be expanded upon to include: senior representatives of the Provincial government and Provincial government agencies and corporations, determined by the minister after consultation with the board; and representatives of other authorities and organizations if invited to participate by the Board.

Organization

The Chair of the Steering Committee shall be the Squamish-Lillooet Regional District Director of Planning & Development Services or equivalent.

Procedures

1. The Steering Committee shall meet as needed, with the number and frequency of meetings varying according to the work plan for each year.
2. An annual meeting of the Steering Committee shall be conducted to review the RGS Monitoring Report, to discuss the achievements and challenges experienced in the implementation of the regional growth strategy (as shown by the indicators), and to determine the future regional growth strategy work program. The annual meeting shall be held in October to permit committee discussion and input to the development of the following year's regional growth strategy program work plan and budget.
3. The Steering Committee is not a formal decision-making body, but rather a forum for inter-municipal and inter-agency discussion, issue identification and resolution related to regional planning and the Regional Growth Strategy. As such, the committee will be non-voting and can conduct its business informally without reference to a quorum of the membership. Recommendations are based on consensus and if consensus is not reached differences are noted.
4. Steering Committee members having a priority interest in an application or who are personally affected by an application /applicant must step aside from the discussion on that particular matter.
5. Representatives of other authorities and organizations may attend meetings of the Steering Committee either by invitation, or as identified through consultation with the Chair or the SLRD staff member responsible for the Regional Growth Strategy.
6. Executive and secretarial support for the Steering Committee will be provided by the SLRD Planning Department.
7. An agenda for the Steering Committee will be prepared by SLRD Staff and emailed to Committee members one week in advance of their meeting.
8. The agendas and minutes of the meetings of the Steering Committee shall be circulated to all Steering Committee members.
9. Steering Committee members will check in/report back to their member municipalities, including elected officials, as needed.

Resources & Support

Squamish-Lillooet Regional District Planning Department shall provide financial and human resources to support the work of the Committee.

From: Dahinden [redacted]
Sent: October-15-15 7:02 PM
To: Sheena Fraser <sfraser@pemberton.ca>; VoP Admin <admin@vilpem.onmicrosoft.com>
Subject: Community Initiative and Opportunities

To Pemberton Mayor and Council:

This is a proposal idea to improve One Mile Lake park beach.

The project requires $12,000 to excavate the lower lake front parking lot, excavate and remove the material to the higher parking lot, bring in new top soil, plant some new trees and grass. Over the years the park beach has been used more and more and now seems to be completely over-used and I feel the extra space is greatly needed and we don't need to park the vehicles so close to the beach. There will be an emergency lane left for any necessary vehicle like fire and/or dragonboating.

This idea is used in Whistler at Rainbow Park and is an efficient use of space with more room at the beach. It would be great to do the project now so the soil has time to settle and let the grass develop root systems before the hot weather in the summer.

The money will be used for excavator time and buying landscape supplies and soil.

Thanks,
Martin Dahinden

File: 19620-20/A91145

October 16, 2015

Mayor Mike Richman and Council
Village of Pemberton
PO Box 100
7400 Prospect Street
Pemberton, British Columbia
V0N 2L0

Dear Mayor Mike Richman and Council:

Thank you for the opportunity to meet with council on July 21, 2015 regarding the proposed Pemberton Community Forest Agreement (CFA).

In response to your letter of June 26, 2015 regarding the Pemberton Community Forest Feasibility Study, BC Timber Sales (BCTS) has provided planning and block information to Robin Clark and his team to assist with completing the Feasibility Study.

As you are aware, the proposed Pemberton CFA area overlaps BCTS operating area and while the CFA is under discussion, BCTS will continue to operate in the area. We commit to harvesting a volume equivalent to the proposed CFA allowable annual cut of 10,000 cubic metres per year on a rolling average calculated over a three year period.

BCTS has developed the Timber Sale Licence (TSL) A91145 consisting of cut blocks LR101 and OW014, which are located within the proposed CFA area. Information sharing for Block LR101 was done with the Village of Pemberton on August 13, 2013 as part of Operating Plan 11, and for Block OW014 on September 29, 2014 as part of Operating Plan 15.

The total volume for TSL A91145 is 9,912 cubic metres and this TSL will be advertised as a Category 2 sale in the third quarter (October 1 – December 31, 2015).

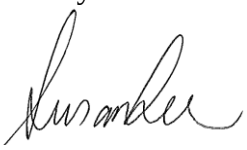
Category 2 TSLs allow only those registrants who have a timber processing facility to bid on these TSLs through the BCTS auction process. This sale is being advertised as Category 2 in response to a request from Continental Pole. Continental Pole is a local Category 2 registrant who contacted BCTS to discuss their need to access local timber to process at their facility in Pemberton.

Ministry of Forests, Lands and Natural Resource Operations
BC Timber Sales
Chinook Business Area
Timber Sales Office

46360 Airport Road
Chilliwack, BC V2P 1A5
Tel: 604-702-5700
Fax: 604-702-5711

If you have any questions or concerns, or if you require further information for the Feasibility Study, please contact Balvinder Biring, Planning Forester by email at Balvinder.Biring@gov.bc.ca or by phone at 604-898-2130.

Thank you.



Susan Lee
Woodlands Supervisor
BC Timber Sales
Chinook Business Area

Cc: Dave Southam, District Manager, Sea to Sky District, Ministry of Forests, Lands and Natural Resource Operations
Kerry Grozier, Timber Sales Manager, BC Timber Sales, Ministry of Forests, Lands and Natural Resource Operations

sea to sky clean air society

Village of Pemberton
ATTN: Mayor and Council
Box 100, 7400 Prospect Street
Pemberton, B.C., V0N 2L0

October 8, 2015

Dear Mayor and Council:
We are excited to share the news that we are launching a new annual membership program beginning 2016 (January 1 to December 31, 2016), inviting municipalities and regional districts, corporations and individuals to support our work. Tiers of support enable members to select a level of commitment and suite of benefits that are right for them. The renewable membership options for municipalities are enclosed.

We are seeking your membership and continued support; both are vital for the work we do on behalf of our airshed communities and for implementing the Air Quality Management Plan (AQMP). I've attached the AQMP Implementation Framework, which provides a detailed work plan for what we will accomplish over the next 3 years.

In the coming year, we will continue our work on a number of projects including Clean Air Commute, Bike to Work week, Idling Outreach and the Woodstove Exchange Program. We are also exploring a number of exciting new projects and programs, but need your support to get them off the ground. These include Burn Smart workshops, a speaker series on topics ranging from energy conservation to green building, a gathering to discuss the future of transit in our region, and the creation of a coffee table book featuring stunning photos of our airshed and offering information on our work and the importance of clean air. Funds that we raise through our membership campaign will help us continue to produce our newsletters, articles and learning materials. Membership contributions will also enable us to continue supporting clean air research, sharing important air quality and climate change information with the public, and offering support to municipalities and businesses that want to reform their policies and practices with respect to air quality and climate change. You can read more about our work on our website, www.seatoskyairquality.ca

Thanks in advance for helping to make this a successful annual membership drive. Please continue to share the goals and work of the Sea-to-Sky Clean Air Society with your community. You can help us spread the word by encouraging others to become members, and donate to our work. A member of the SSCAS Board or I would be happy to make a presentation in person, if you so desire.

Thanks again for your generous support!

Kari Mancer
Program Manager
PO Box 1015 Pemberton, BC V0N 2L0
604-907-0019 / seatoskycleanair@gmail.com / www.seatoskyairquality.ca

2016 Membership Tiers for Municipalities and Regional Districts

Tropo Bronze- suitable for very small airshed communities (population under 2000)
Strato Silver- suitable for small to mid-sized airshed communities (population of 2000-5000)
Meso Gold- suitable for mid-sized airshed communities (population of 5000-10000)
Aurora Platinum- suitable for large airshed communities (population over 10,000)

Please note that these membership tiers are suggestions only-members may give what they feel is appropriate.

Benefits

LOCAL GOVERNMENT LEVELS OF MEMBERSHIP	TROPO BRONZE $300	STRATO SILVER $1000	MESO GOLD $2000	AURORA PLATINUM $4000
Newsletter	✓	✓	✓	✓
Featured supporter on website		✓	✓	✓
Logo on website			✓	✓
Consultation			✓	✓

*All donations receive a tax receipt.

sea to sky clean air society

SEA-TO-SKY CLEAN AIR SOCIETY RENEWABLE MEMBERSHIP APPLICATION FORM- 2016

Please fill out the information below (if applicable) and return the form to the Sea-to-Sky Clean Air Society at the address noted to the right-hand side, along with a cheque for the appropriate amount.

Please mail your application form and cheque to:
Sea-to-Sky Clean Air Society
PO Box 1015
Pemberton, B.C. V0N 2L0
www.seatoskyairquality.ca

organization _____ contact _____

street address _____ mailing address _____
if different from street address

_____ _____

_____ _____

phone number _____ phone number _____
primary *secondary*

email address _____

website _____

Facebook _____

membership □ Tropo Bronze $300 □ Strato Silver $1000 □ Meso Gold $2000 □ Aurora Platinum $4000

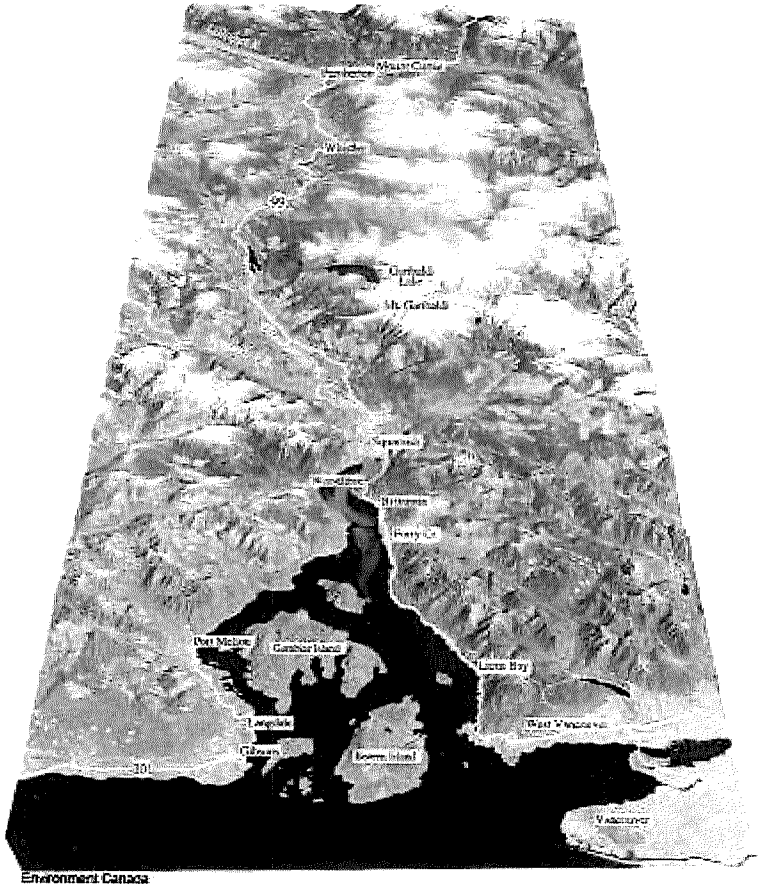
fee enclosed □yes □no fee amount $ _____

receipt number #
for internal office use

PO Box 1015, Pemberton B.C. V0N 2L0 / 604-698-7697 / seatoskycleanair@gmail.com

Sea to Sky Clean Air Society
Air Quality Management Plan
Implementation Framework
2015

Photo: James Wheeler, Flickr, http://bit.ly/1d8zorh



SEA-TO-SKY AIRSHED

FOREWORD

A great deal of gratitude is owed to everyone who contibuted to and participated in the development of this framework.

Thanks to the past, present and future efforts of the Sea-to-Sky Clean Air Society (SSCAS) in working to protect our airshed and champion the Air Quality Management Plan (AQMP). The passion and dedication of all involved- board of directors, members and volunteers- are greatly appreciated.

Thanks to the partners and stakeholders for their time in developing this framework, and for the resources they've contributed in support of it.

Thank you Cariboo Environmental Consulting for completing the AQMP Review (2014).

Finally, extensive gratitude is owed to the British Columbia Ministry of Environment (MoE) for funding the development of this framework, as well as for the ongoing funding and technical support of SSCAS and the AQMP.

BRITISH COLUMBIA

Ministry of Environment

Photo: Kyle Pearce, Flickr, http://bit.ly/1SPs84k

INTRODUCTION

This framework guides implementation of the recommendations contained in the Air Quality Management Plan Review (AQMP-2014) as adopted by the Sea-to-Sky Clean Air Society (SSCAS) Board. "An airshed plan provides a blueprint to help communities manage development and control air-contaminant sources. The process is stakeholder-driven and recognizes that every one of us has a role to play in keeping our air and our communities clean." (BC Ministry of Environment, bcairquality.ca/plans/airshed-planning-bc.html)

The Sea-to-Sky AQMP is designed to maintain or improve air quality in order to protect human health, the environment, and other values. It is a comprehensive road map outlining the actions needed to protect this resource through the use of tools including air quality monitoring, emission controls, policy development, proactive community planning, and public education.

In 2014, a review was undertaken of the AQMP, which evaluated the efficacy to date of the plan and SSCAS as its champion. A number of recommendations were made for strengthening the plan and addressing emissions sources, as well as building SSCAS's capacity for implementing the plan moving forward.

This Implementation Framework serves as an efficient, cost-effective plan that will put the AQMP recommendations into action in the Sea-to-Sky Airshed over the next three years. Framework development included undertaking a review of the original AQMP, identifying strengths and weaknesses, making appropriate recommendations, engaging stakeholders, prioritizing the recommendations, and identifying strategic air quality actions for the next three years.

Transforming these actions into tangible activities and tasks, and providing a timeline for implementing them will deliver this framework. Appropriate indicators and targets have been provided to ensure actions are tracking successfully. These will be reviewed annually, and revised as needed.

While this framework details goals, strategies, and tactics for SSCAS to undertake, it is understood that SSCAS is by no means the lone agent in their implementation. Tackling airshed emissions, and making progress on this framework will require strong collaborative partnerships between airshed stakeholders, as well as cost-sharing and resource-pooling, and support for SSCAS and its work.

ABOUT THE SEA-TO-SKY AIRSHED

The Sea-to-Sky Airshed covered by this framework includes the Sea-to-Sky corridor, which extends approximately 150 kilometres from the Howe Sound entrance at the Strait of Georgia (Vancouver, BC) to the confluence of the Pemberton and Lillooet valleys at Pemberton, BC. It includes the communities of Bowen Island, Gambier Island, Gibsons, Horseshoe Bay, Lions Bay, Squamish, Whistler, and Pemberton (see map inset).

BACKGROUND

This region features stunning natural assets, of which clean air and stunning viewscapes are key components. It has a global reputation for tourism and outdoor recreation, a historical woodfibre and timber industry, and diverse communities. Largely owing to these natural assets, the region is attracting more and more residents, recreational users and tourists every year, which translates into potentially large increases in mobile emissions from vehicles and area emissions from community development. Wood burning, land clearing and forestry are also sources of area emissions. Proposed industrial and commercial developments, notably an LNG processing facility located in Squamish, represent potential new point sources of emissions.

Compounding the issue of existing and potential emissions is the fact that the Sea-to-Sky Airshed possesses geographical features that have the potential to produce poor air circulation. This can lead to the build-up of pollutants, particularly during periods where high-pressure systems prevent pollutant dispersion. Summer conditions in particular tend to exacerbate air quality problems as stagnant and polluted air from the Greater Vancouver region can be channelled up the narrow valley into Sea-to-Sky Airshed communities. Pollutants of particular concern, for impacts to both human health and visibility, are ground-level ozone and particulate matter under 2.5 micrometres in diameter (PM2.5).

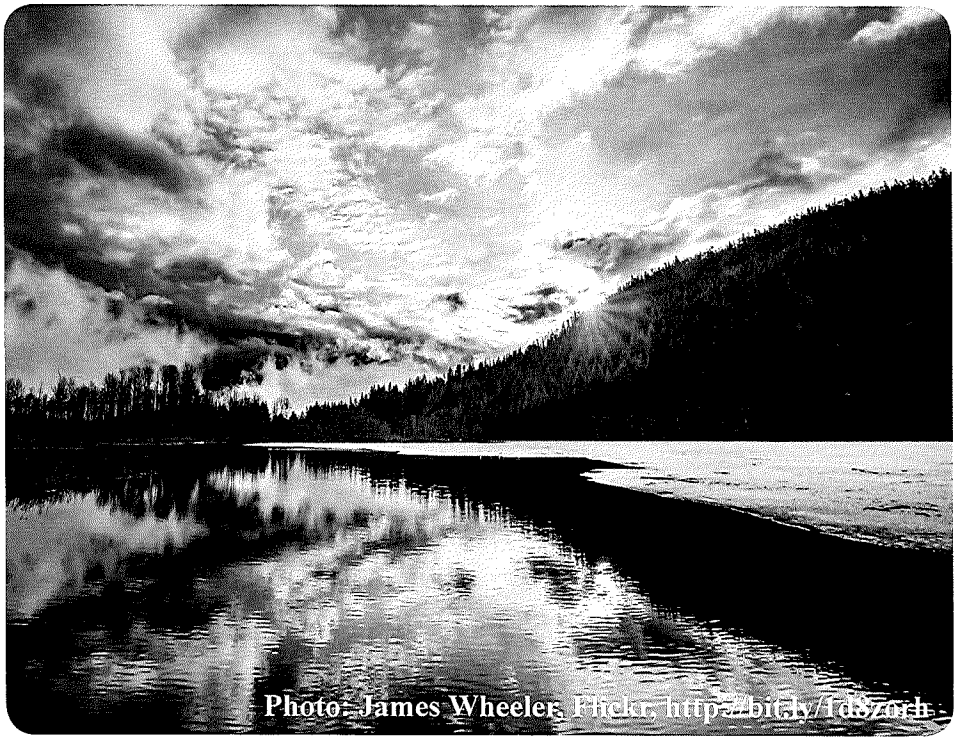
The Sea-to-Sky Air Quality Coordinating Committee (AQCC); initially a multi-stakeholder committee consisting of provincial, regional and municipal government representatives of the corridor, transit companies, utility companies and local industry, developed the first Air Quality Management Plan (AQMP) in 2007. The plan was championed by the AQCC, which evolved into the SSCAS. A review of the original AQMP was undertaken in 2014 and the recommendations that resulted have been fashioned into this action-based implementation framework.

CURRENT REALITY

Overall, regional air quality is relatively good, but pressures from mobile, area and point source emissions – both existing and proposed – could result in poor or deteriorating air quality. These pressures do in fact result in occasional exceedances and near exceedances of air quality objectives with respect to particulate matter and ground level ozone, typically at peak tourism times in the summer and winter. Ensuring these exceedances, which can trigger air quality advisories, do not become more frequent, and addressing their root causes so that they may be avoided altogether are key directives of the AQMP (which takes a preventative approach to air quality management aiming to anticipate and ameliorate/minimize possible impacts to air quality) and this Implementation Framework (which details specific steps for SSCAS to take to mitigate emissions in the airshed over the next three years).

DESIRED FUTURE

At a workshop held on February 5, 2015, SSCAS and stakeholders expressed the following aspirations in support of this framework: *Air quality is important to all residents and visitors to the airshed. Through ongoing fundraising, program development, outreach, education and communication, the SSCAS becomes a robust and resilient charitable organization that has the capacity to take the lead on addressing air quality and climate challenges in the region. Focused programs deliver outcomes that protect and enhance regional and local air quality. Regional partners work together to effectively measure, manage and mitigate negative air quality impacts.*



VISION

Communities in the Sea-to-Sky Airshed will enjoy clean air that sustains and contributes to the health of our residents and guests, our economy, and our environment and wildlife.

PURPOSE

This is a regional, collaborative, action plan for protecting air quality and mitigating emissions in the Sea-to-Sky Airshed that will:

1) Refine the recommendations contained in the 2014 AQMP;
2) Review and prioritize relevant recommendations;
3) Ensure action recommendations are clearly articulated as goals;
4) Provide strategies and tactics across an action timetable, and;
5) Set measureable, accountable indicators and targets.

FRAMEWORK COMPONENTS

Goals

Goals have been set to realize the airshed vision and implementation framework purpose. They are:

1) Enhance Organizational Capacity;
2) Build Strategic Partnerships to Further Stakeholder Collaboration
3) Produce Effective Communications that Drive Positive Air Quality Policies and Behaviours, and;
4) Do successful Projects, Programs and Research

Strategies

For each goal a number of strategies have been derived from the original AQMP and subsequent recommendations derived from the 2014 AQMP review.

Tactics & Indicators

SSCAS Board and stakeholders made tactical suggestions to achieve each strategy. These tactics are guidelines only; this plan is intended to be flexible and adaptable. Tactics may need to be adjusted according to new information and circumstances. Relevant indicators (metrics) were also provided to ensure actions are measureable and can be evaluated for success.

Timeline

SSCAS Board and stakeholders prioritized the strategies and tactics according to the time scope for implementation: Short-term (within one year of adoption of this plan); Mid-term (1-2 years), and; Long-term (2-3 years).

SSCAS will take the lead on this plan, but to succeed, will need support from other airshed stakeholders. Further discussion is needed to identify and fine-tune the roles of those implementing this plan.

Short Term Tactics (under 1 year) | Medium Term Tactics (1-2 years) | Long Term Tactics (3+ years)

GOAL 1: ENHANCE ORGANIZATIONAL CAPACITY

Strategy 1 - Secure Funding

- Obtain financial advice
- Apply for grants
- Charge membership fees
- Gain sponsorships
- Develop products / services to sell
- Organize annual fundraising events

Strategy 2 - Grow Membership

- Create membership program
- Build web platform
- Advertise program
- Create incentives to attract members
- Engage members through face-to-face and virtual campaigns

Strategy 3- Strengthen Governance

- Recruit diverse Board
- Create sub-committees to action priorities
- Annual strategic planning
- Regular check-ins
- Update bylaws re: Board terms
- Bi-annual Board and Staff evaluations
- Terms of reference created for Board positions
- Code of conduct
- Board directors receive training

Strategy 4 -Attract & Retain Volunteers

- Advertise volunteer opportunties through Community Foundation of Whistler newsletter
- Create a volunteer plan
- Follow volunteer plan (advertise volunteer opportunities, create recognition opportunities and volunteer benefits)
- Have volunteers work on long-term action items

Goal 1 Indicators:

1) Sufficient funding to cover overhead and run programs and support 1-3 staff
2) Engaged Board strategically guiding SSCAS
3) Grow volunteer resources

Goal 1 Targets:

1) $50,000 + / year from diverse sources (grants, sponsorships, members)
2) 10+ Board directors, meet 4-6 times per year. Active sub-committees
3) 10 new volunteers / year

GOAL 2: STRENGTHEN STRATEGIC PARTNERSHIPS & STAKEHOLDER ENGAGEMENT

Strategy 1 -Engage Municipalities

- Create municipal membership benefits
- Annual Council presentations
- Howe Sound Forum
- Create engagement survey
- Create and share bylaw templates to achieve standardization throughout region

Strategy 2 - Engage First Nations

- Partner on Burn Smart workshops
- Identify shared interests and potential opportunities for collaboration
- Send invitation to join Board

Strategy 3- Engage Businesses

- Send out invitation to join Board
- Host a stakeholder meeting
- Add key business profiles on SSCAS website

Strategy 4 -Engage Interest Groups

- Identify shared interests and potential opportunities for collaboration
- Attend monthly non-profit meeting (Whistler)
- Team up on events with shared purpose
- Reps join SSCAS Board

Strategy 5 -Engage Public, Youth

- Send a letter to schools to join SSCAS and / or collaborate on youth-focused program(s)
- Identify youth leaders in the region
- Develop youth-focused contest crowd-sourcing solution to air quality issue of their choice (idling)

Goal 2 Indicators:

1) Growth of membership
2) Board representation
3) Partnerships / collaborations with other groups

Goal 2 Targets:

1) Grow membership base by 10% / year
2) Board represents airshed communities and key sectors / interest groups
3) 1-2 projects / collaborations / year with other groups

Short Term Tactics (under 1 year)	Medium Term Tactics (1-2 years)	Long Term Tactics (3+ years)

GOAL 3: COMMUNICATIONS THAT DRIVE POSITIVE AIR QUALITY BEHAVIOUR

Strategy 1 - Develop Communications Plan & Policies

- Identify target audiences, channels and messages
- Develop a communications plan
- Develop internal & external communications policies

Strategy 2 - Report on State of Air Quality

- Report out to Councils
- Host an info session
- Create customized reporting tool for web and presentations
- Create a visibility index for the region
- GHG trend report

Strategy 3- Feedback to Stakeholders on Issues

- Create issue statements (WtE, LNG, development, energy, public transportation)
- Create report cards for municipalities / businesses
- Develop web version of report cards for municipalities / businesses

Strategy 4 -Disseminate Air Quality / Climate Information & Action Ideas

- Write 2-4 articles / year
- Facebook posts 1 / week
- Newsletters 4 / year
- Website updates
- Create information resources for different audiences, available on the website
- Share news on local projects / actions
- Track and report on municipal progress on BC Climate Action Charter
- Organize speakers
- Photobook project

Strategy 5 -Share SSCAS Successes

- Do frequent Facebook / website updates
- Newsletters 4 / year
- Include update of successes in annual report
- Hold recognition event for members / volunteers

Goal 3 Indicators:

1) Annual reports
2) Monthly communication via diverse channels
3) Well-attended events

Goal 3 Targets:

1) Thorough annual reports and presentations to airshed communities
2) Grow Facebook likes, website hits, newsletter subscribers by 25%
3) 1-2 events / year. Grow attendance by 10% / year

GOAL 4: PROJECTS, PROGRAMS & RESEARCH THAT HELP TO REDUCE EMISSIONS

Strategy 1 - Reduce Mobile Sources of Emissions

- Complete Clean Air Commute (Bike to Work, Idling Outreach, Carpool Kits)
- Develop fundable programs
- Work with municipalities to standardize & shorten idling bylaws
- Ensure community development plans reference, and integrate with, AQMP

Strategy 2 - Reduce Area Sources of Emissions

- Apply for more funding to continue Woodstove Exchange program
- Implement Burning and Smoke Control Strategic Plan
- Work with municipalities to stengthen and enforce burning bylaws

Strategy 3- Minimize Point Sources of Emissions

- Attend information sessions of industrial developments
- Comment on projects
- Work with proponents to improve reporting and responding to complaints
- Work with MoE towards completion of an emissions inventory

Strategy 4 -Offset GHG Emissions

- Apply for funding for treeplanting project
- Complete restoration / treeplanting project
- Explore app idea for people to offset their travel

Strategy 5 -Support Air Quality and Climate Research

- Participate in research re: climate reporting through LNG EA processes
- Source funding for an emissions inventory
- Work with students (Quest, BCIT) to develop an emissions dispersion model

Goal 4 Indicators:

1) Criteria Air Contaminants (average total by community)
2) Greenhouse Gases (total per capita by community)
3) Health (AQHI + BCAAQO for PM)
4) Visibility & Odour

Goal 4 Targets:

1 , 2 & 3) Decreasing trend from baseline year (2005).
4) Improve trend-reduce visibility / odour complaints (0 per year)

GAPS

While this framework directs the work of SSCAS, commitment from and strong partnerships with stakeholders are required to move it forward. A lack of uptake on actions from airshed stakeholders, as well as SSCAS's limited funding and staff capacity to execute and measure action completion, have been identified as risks to effectively implementing this framework and achieving the desired outcomes. Enhancing SSCAS's organizational capacity and improving stakeholder collaboration are paramount to meeting the shared goals for air quality in this region.

NEXT STEPS

In order for this framework to succeed, there is a need for continuous monitoring and evaluation of its strategies and tactics, and regular reporting on results.

This will be done through:

1. Frequent check-ins with the SSCAS Board of Directors and Staff;
2. Developing collaborative capacity with partners and stakeholders;
3. Annually managing, monitoring and reporting implementation actions and associated tasks;
4. Hosting annual community engagement events to inspire action on air quality and climate change mitigation;
5. Reviewing the implementation framework on an annual basis. A comprehensive review and update will take place every three years.

CONCLUSION

This Implementation Framework will guide the efforts of the SSCAS over the next three years in executing the AQMP and recommendations thereof. It is intended to be a living document that fluidly adapts to dynamic conditions that may include changing emissions sources and key actors and/ or new funding, project or partnership opportunities.

CONTACT

Sea-to-Sky Clean Air Society
PO BOX 1015
Pemberton. BC
V0N 2L0

seatoskycleanair@gmail.com
seatoskyairquality.ca

From: Julie Kelly [mailto:[redacted]]
Sent: October-27-15 9:57 AM
To: VoP Admin <admin@vilpem.onmicrosoft.com>
Subject: wine and cheese

Dear Mayor and Council,
The Friends of the Library are once again putting on our annual Wine and Cheese on December 4th in the Great Hall and Library.
I am asking you for another great basket to be auctioned off. In the past your baskets have been very popular and this year we are raising money to provide the Library with Movable Stacks.
They will first go into the children's room to make more room during story time and other programs that take place.
Thank you for considering this request.
Julie Kelly
Chair of Friends of the Library
[redacted]

STRATEGIC PRIORITIES CHART

February 2015

CORPORATE PRIORITIES (Council/CAO)

NOW

1. **FRIENDSHIP TRAIL BRIDGE: Application**
2. **COMMUNITY FOREST: Feasibility**
3. **BOUNDARY EXTENSION: Analysis**
4. **PVUS: Joint Governance Review**
5. **SHELF READY PROJECT: Selection**

TIMELINE

Februar
y June
March
June
June

NEXT

- CAPITAL STRATEGY
- RECREATION SERVICE DELIVERY
- ECONOMIC DEVELOPMENT STRATEGY
- SEWER FEES
- FIRE SERVICES AGREEMENT
- ONE MILE LAKE PLAN
- FIRST NATION SHARED SERVICES

ADVOCACY / PARTNERSHIPS

- ***Gas Tax Grant***
- ***Friendship Trail Bridge Grant***
- ***PVUS Joint Governance Review***

OPERATIONAL STRATEGIES (CAO/Staff)

CHIEF ADMINISTRATIVE OFFICER

1. **FRIENDSHIP TRAIL: Application - Feb.**
2. **PVUS: Joint Governance Review - June**
3. **BOUNDARY EXTENSION: Analysis - Mar.**

- **SHELF READY PROJECT: Selection**
- FIRE SERVICES AGREEMENT

FIRE

1. Fire Truck Specifications - April
2. Fire Hall Design - June
3. FUSS Report: Review Priorities - Mar.

- Training Ground Upgrades
-

CORPORATE & LEGISLATIVE SERVICES

1. **COMMUNITY FOREST: Feasibility - June**
2. Council Procedure Bylaw - April
3. Employee Manual - Sept.

- ECONOMIC DEVELOPMENT STRATEGY
- Chamber Welcome Sign

OPERATIONS

1. Reservoir - June
2. Water Looping - Sept.
3. I&I and Outflow inspections - May

- ONE MILE LAKE: Projects & Plan
- Eagle Drive Remediation

FINANCE / ADMINISTRATION

1. CAPITAL STRATEGY: Priorities - Oct.
2. SEWER FEE: Anaylsis - Nov.
3. Admin fee Bylaw Review - Sept.

- Expense Policy Review
-

DEVELOPMENT

1. Barn Program - April
2. Agricultural Parks Plan - Sept.
3. Development Procedure Bylaw - June

- Zoning Bylaw
- OCP Review

CODES: BOLD CAPITALS = NOW Priorities; CAPITALS = NEXT Priorities; *Italics = Advocacy;*
Regular Title Case = Operational Strategies

Box 100 | 7400 Prospect Street
Pemberton, BC V0N 2L0
P: 604.894.6135 | F: 604.894.6136
Email: admin@pemberton.ca
Website: www.pemberton.ca

OPEN QUESTION PERIOD POLICY

THAT the following guidelines for the Open Question Period held at the conclusion of the Regular Council Meetings:

1) The Open Question Period will commence after the adjournment of the Regular Council Meeting;

2) A maximum of 15 minutes for the questions from the Press and Public will be permitted, subject to curtailment at the discretion of the Chair if other business necessitates;

3) Only questions directly related to business discussed during the Council Meeting are allowed;

4) Questions may be asked of any Council Member;

5) Questions must be truly questions and not statements of opinions or policy by the questioner;

6) Not more than two (2) separate subjects per questioner will be allowed;

7) Questions from each member of the attending Press will be allowed preference prior to proceeding to the public;

8) The Chair will recognize the questioner and will direct questions to the Councillor whom he/she feels is best able to reply;

9) More than one Councillor may reply if he/she feels there is something to contribute.

Approved by Council at Meeting No. 920
Held November 2, 1999

Amended by Council at Meeting No. 1405
Held September 15, 2015