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LAND USE REGULATION: SELECTED TOPICS

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Many planners are familiar with the term "Euclidean" zoning, and will almost instinctively equate it with a kind of rigid, unimaginative, and perhaps outdated approach to land use management. Euclid, of course, was the father of geometry. He taught us how to systematically describe and understand the physical world. But despite the apparent parallels between geometry and zoning, planners might also know that Euclidean zoning isn't named for Euclid the mathematician, who did most of his important work around 300 B.C., long before zoning as we know it was invented. Euclid the Village lays a more recent claim to notoriety, being the successful party in a landmark land use decision of the US Supreme Court from 1926. That decision upheld the Village of Euclid's zoning scheme, which prevented an owner, Ambler Realty, from developing its land for industrial use. Ambler said the zoning scheme was an unconstitutional "taking" of its land. The US Supreme Court disagreed.

Canadian planners might be tempted to ignore the *Euclid* decision for at least two reasons: first, unlike in the US, property rights are not constitutionally protected in Canada, and therefore the possibility of a zoning bylaw being overturned as an unconstitutional taking seems remote and perhaps even counterintuitive. Second, the Euclid case involved a very simple zoning scheme ("six classes of use, four classes of height and four classes of area" according to Wikipedia). This approach to zoning is far from *au courant*, either because it's not sophisticated enough to respond to today's complicated land use management challenges, or because it ignores the possibilities of a more nuanced and comprehensive approach (a.k.a. mixed use or comprehensive development zoning; in the US, "planned unit development").

Neither of these arguments for overlooking Euclid is persuasive. The constitutional footing for a takings argument may be unique to the US, but challenges to zoning on the basis of the doctrine of "constructive expropriation" are alive and well in Canada. Although a constructive expropriation claim was rejected by the Supreme Court of Canada in *CPR v. Vancouver* in 2006, in their October 2022 decision in *Halifax v. Annapolis* five of Canada's nine top jurists refused to dismiss a takings claim on a pre-trial motion. In doing so the Court, albeit narrowly, left the door open for an argument that the City of Halifax's refusal to consider applications for "up-zoning" might have amounted to an unlawful taking of property. Almost one hundred years later, and north of the 49th, it is remarkable how similar the facts of *Annapolis v. Halifax* are to *Euclid v. Ambler*. It turns out landowners still hate it when local governments scuttle their best-laid development plans (see also *Onni v. Ucluelet*).

Like it or not, it's fair to say the zoning power is still at the core of any local government's planning and land use management scheme. And the building blocks of zoning in British Columbia, now set out in section 479 (1) of the *Local Government Act*, are still just about the same as the authority the Village of Euclid had exercised before taking a trip to the US Supreme Court in 1926. Section 479(1) authorizes the regulation, by bylaw, of:

- The use of land, buildings and structures (s. 479(1)(c)(i));

- The density of that use (section 479(1)(c)(ii));
- The siting, size and dimensions of buildings, structures, and uses (section 479(1)(c)(iii));
- The location of uses and land and within buildings and structures (section 479(1)(c)(iv));
- The form of tenure (section 479(1)(c.1)); and,
- The shape, dimensions and area of parcels created by subdivision (section 479(1)(d).

The definition of a "zoning bylaw", found in section 1 of the Schedule to the *Local Government Act*, is limited to a bylaw under section 479 of the same statute. But even acting within the confines of section 479, local governments have invented sophisticated and detailed schemes for controlling land and use and development patterns within their boundaries. And for the most part courts have continued to uphold these schemes in the face of sometimes vehement opposition from landowners. We now know, for example, that section 479(1)(c)(i) of the *Local Government Act* alone authorizes the following:

- A requirement that certain gas stations provide full-service facilities;
- A prohibition against retailers of second-hand goods (pawn shops) on land otherwise zoned for retail use;
- A prohibition against parking commercial vehicles on land zoned for residential use, even if those vehicles are not being used for any commercial purpose when parked;
- A prohibition against the retail sale of cannabis where zoning permits the retail sale of tobacco;
- Implicit prohibitions against short term rental accommodation on land zoned for residential use;
- A requirement that short term vacation rental uses in multi-owner buildings be managed by a single entity rather than by individual owners;
- Restrictions preventing long-term moorage of watercraft on a lake; and,
- A rule making permission for one use (resort lodge) conditional upon the prior establishment and ongoing operation of another use (golf course).

The last example in this list, conditional zoning, is the genesis of this paper and is therefore the first of the "special topics" to be considered. If you can make it through that section, you'll find a discussion of the following further special topics forming the balance of the paper:

- Parcel area regulations under s. 479(d)(i) of the *Local Government Act*;
- Zoning for affordable and special needs housing;
- The law of non-conforming uses;
- The law of "standing" and how it applies to planning land use management decisions;
- Public notice, without newspapers;
- Deciding not to hold a public hearing at all; and,
- Delegating authority to issue development variance permits.

I. CONDITIONAL ZONING

One reason for Euclidean zoning's tarnished reputation is an association between early zoning schemes and a determination to separate, rather than integrate, different land uses. The separation of incompatible land uses is a salutary aim of zoning, but leave out the word "incompatible", and the separation of uses feels less compelling. In fact, it has become an anathema to contemporary planning orthodoxy. Of course, it's one thing to authorize mixed use development, but can local governments regulating under s. 479 go so far as to require it? The operative opening word in section 479(1)(c) is "regulate", which is defined (in the Schedule to the *Community Charter*) as including "authorize, control, inspect, limit and restrict, including by establishing rules respecting what must or must not be done, in relation to the persons, properties, activities, things or other matters being regulated". The BC Supreme Court recently accepted an argument that regulating, by this definition, includes the imposition of requirements:

> … the petitioner contends the Impugned Bylaw does not fit within the definition of "regulate" in the *Community Charter* because the bylaw imposes "requirements". I disagree, and accept the submission of the City that a bylaw that "authorizes" or "restricts" is a regulation. I also accept the City's submission that when done as part of an "authorization," "control," "inspection," "limit," or "restriction," a bylaw that establishes "rules respecting what must or must not be done" is also a regulation. The Impugned Bylaw meets these criteria.
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> The definition of "regulate," in the Schedule to the *Community Charter*, includes that a regulation may establish "what must or must not be done." Implicit in

> those words is the ability to make regulations that include "requirements" in the broad sense of that term.
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> *1193652 B.C. Ltd. v. New Westminster (City)*

The counter argument is that the *Community Charter* specifically authorizes local governments to impose requirements, so not every attempt to impose requirements will necessarily be authorized where the legislature has granted a power to "regulate".

What does any of this have to do with conditional zoning, or mixed-use zoning? Most zoning bylaws authorize certain land uses and certain maximum densities, but far fewer purport to require uses to occur, which means the market decides whether or not to take advantage of what's on offer under a zoning bylaw. In *Orr Development v. North Vancouver*, the District wanted buildings of at least two storeys, but the court said the power to regulate the height of buildings did "not authorize the municipal council to set in a development permit a minimum height or a minimum number of storeys for a building".

Orr Development raises at least some doubt about the authority of local governments to impose height or density requirements (as distinct from regulations) in a zoning bylaw, but the result of a more recent case, decided by the BC Court of Appeal, is more promising. In *Wilde v. Metchosin*, the zoning under review said certain uses (a "Resort Lodge and accessory uses") were only permitted if another use (a golf course) was in existence and operational on the land. Thus the bylaw not only regulated land use by stating what was permitted, it also made permission for one use conditional on the other use actually occurring. Despite or perhaps because of its length, it is worth citing the provision in question. Its detailed and prescriptive terms indicate how far zoning has come since *Euclid*:

> A Resort Lodge and associated accessory uses and buildings shall only be constructed and occupied as part of a golf course resort development that includes a Class A golf course. For certainty, a resort lodge use is not permitted in the CR5 zone unless there is in existence and operation on the land in the zone a Class A golf course, or all necessary municipal authorizations have been issued for such a golf course and the golf course is under construction. For the purposes of this requirement, a Class A golf course shall be deemed to be in existence and operation on the land in the CR5 zone for ten years following the issuance of the first building permit for a building for a resort lodge use, the intent of this provision being solely to permit the construction and occupancy of resort lodge buildings during the period of time in which associated golf course facilities are being designed and constructed. Land or buildings in the CR5 zone shall not be used for a resort lodge or any associated accessory use after the date that is ten years following the date of issuance of the first building permit for a building for a resort lodge use, unless there is actually in existence and operation on the land in the CR5 zone a Class A golf course or all necessary municipal authorizations have been issued for such a golf course, and in the

> latter case resort lodge and associated accessory uses are not permitted after the date that is thirteen years following the date of issuance of the first building permit for a building for a resort lodge use if by that date construction of the Class A golf course has not been completed and the golf course is not fully operational.

Despite this elaborate language, the Court of Appeal was quick to agree with the lower court judge, who said the District's conditional use scheme was clearly authorized by section 479(1)(c). It was, in the view of both courts, a straightforward and unobjectionable exercise of the statutory authority to regulate, in a zoning bylaw, the use of land.

If *Wilde v. Metchosin* is still good law, and in our view it must be, there should be no need to use covenants to achieve enforceable conditional use regulations. In our experience covenants are more often relied on than the zoning power itself, where conditional use schemes are in play. Again, this should not be necessary. And what's more, there are some good reasons to prefer zoning over covenants, not the least of which are the clear availability of a statutory injunction to enforce zoning regulation and the unavailability of the *Property Law Act* provisions permitting applications to the court to have a covenant discharged from title.

II. SUBDIVISION PARCEL REGULATION UNDER S. 479(1)(D)

Section 479(1)(d) of the *Local Government Act* allows local governments to regulate "the shape, dimensions and area, including the establishment of minimum and maximum sizes, of all parcels of land that may be created by subdivision." Minimum parcel area rules are by far the most common approach to subdivision regulation under s. 479(1)(d), and a subdivision approving officer is not allowed to approve a subdivision that would create a parcel smaller than the minimum area stated in a zoning bylaw. You might be surprised to learn it took a ruling from the BC Court of Appeal to clarify that a subdivision of parcels smaller than the minimum area stated in a zoning bylaw is not allowed (what would be the purpose of stating a specifically authorized rule re: minimum parcel size, if not to prevent the creation of such parcels by subdivision?), and you should also know this does not mean a subdivision of parcels that comply with a minimum parcel size rule must be approved. As courts and the BC Legislature have acknowledged, there is more to subdivision regulation than meeting a minimum parcel area rule. Minimum parcel area is just one hurdle to be cleared on the way to subdivision approval. It is much less common, though similarly lawful, to find maximum parcel size rules in BC zoning bylaws, and it is also rare to find explicit rules about the "shape" of parcels, other than parcel dimension rules or prohibitions against the creation of panhandle lots. One way around panhandle prohibitions, other than a development variance permit, is for the subdivider to provide highway access by easement to a single parcel that does not have direct highway access. An approving officer may, but is not obliged to, allow that type of arrangement under s. 9 of the Land Title Act Regulation, which says nothing about the terms of the easement. (Nor does it mention the possibility of a promise to the local government being that the easement shall not be modified or discharged without the local government's consent, although that kind of accoutrement is often added to a basic s. 9 "alternative access" easement.) One version of a

rule about parcel dimensions, and shape, is to include in the zoning bylaw a sketch or other plan of subdivision for a particular area of land within a zone, or for a whole zone, and to simply state that any subdivision must be in accordance with the plan. But what about prohibition against triangular parcels, or a requirement that parcel lines be generally perpendicular to streets? These kinds of regulations, while perhaps too Euclidean for modern planning practice, would appear to be well within the scope of s. 479(1)(d). For a more contemporary flair, what about a rule that the shape of parcels created by subdivision should respect local topography, or mimic the boundaries of adjacent streams and other natural landforms? These statements would likely be too subjective or ambiguous to be considered for candidacy under s. 479(1)(d), and therefore might be more comfortably expressed as DP guidelines (which can also be included in a zoning bylaw, as long as the DP area designation itself is in an official community plan).

A decidedly unambiguous rule that may nevertheless be of questionable validity under s. 479(1)(d) is an outright prohibition on subdivision: "land in the XYZ zone shall not be subdivided". Although the same result could presumably be achieved by setting a minimum parcel area for a zone that is more than half the area of the largest existing parcel in the zone, it's not clear s. 479(d)(1) allows a local government to simply prohibit subdivision altogether, without any reference to the factors enumerated in the legislation (the shape, dimensions and area of parcels).

Another question that arises from time to time is whether parcels that don't meet the minimum parcel area requirement for a zone can nonetheless be placed in that zone by an amendment to the zoning bylaw. The answer to this question should be "yes", assuming parcel area rules are indeed intended to apply to subdivision. Sometimes parcel area rules also apply to uses or densities of uses: for example, detached dwellings permitted on all parcels, but duplex dwellings allowed only on larger parcels, or parcels having a certain minimum width or frontage (and by the way parcel width and parcel frontage are not always synonymous). These kinds of rules should not be viewed as having anything to do with subdivision at all unless the effect of a proposed subdivision would be to create a parcel on which no uses are allowed; similarly, they should not prevent a zoning amendment unless the result would be to make a parcel unusable.

What about a subdivision to create a parcel that exceeds a maximum parcel area rule? Maximum parcel area rules are far less common than minimums, and an approving officer cannot approve a subdivision if even one of the lots created is too big, but if two or more contiguous parcels shown on a plan "are owned by one person, or by 2 or more persons as joint tenants or tenants in common, or by the Crown" then a registrar appointed under the *Land Title Act* can cancel the lot lines dividing those parcels without an approving officer's signature and without screening for zoning bylaw compliance. Some local governments have expressed frustration at this apparent loophole for avoiding maximum parcel area rules, and it does seem like a case of the *Land Title Act* taking away what the *Local Government Act* gives, but absent a legislative change a local government's options are limited. Perhaps a prohibition on some or all uses on a parcel that exceeds a certain maximum size, or at least on very restrictive absolute

maximum size for all buildings and structures, would take away some of the appeal of consolidations?

A final parcel area conundrum is whether parcel area rules under s. 479(1)(d) can be adjusted by development variance permit, which cannot be countenanced if the effect would be to adjust "the use or density of land from that specified in the bylaw". The answer, at least according to the BC Court Appeal, seems to depend on the manner in which use or density are "specified in the bylaw", if at all. If density is expressed as 'units per parcel', or something like that, then reducing minimum parcel area to allow more parcels, and therefore more units, might amount to a density variance. If density is controlled by a floor space ratio or similar measure, or is not specifically regulated, then reducing parcel area to allow more parcels might not be considered as having any legal effect on density, even if more parcels seem to yield greater development potential.

III. ZONING FOR AFFORDABLE AND SPECIAL NEEDS HOUSING

Whereas most zoning bylaws include as least some rules authorized under s. 479(1)(d), the authority to designate areas within zones for "affordable and special needs housing, as such housing is defined in the bylaw", under s. 482(3) of the *Local Government Act*, seems to have been largely overlooked. Together, sections 482(1) and (2) authorize density bonus provisions in a zoning bylaw. Under s. 482(1) a zoning bylaw can establish different density rules for a zone: one rule that is generally applicable (often referred to as the "base density" for the zone); and other rule or rules to apply if conditions are met. Conditions to be met to qualify for extra or bonus density available in a zoning scheme under s. 482 can relate to the conservation or provision of amenities, the provision of affordable and special needs housing, or can include a condition that an owner enter into a housing agreement. Housing agreements are fleshed out in s. 483, but first, in s. 482(3), the *Local Government Act* says: "a zoning bylaw may designate an area within a zone for affordable or special needs housing, as such housing is defined in the bylaw, if the owners of the property covered by the designation consent to the designation." It seems clear that affordable and special needs housing for this purpose could be defined as housing that is subject to a housing agreement, and housing agreements (often together with covenants) seem to have emerged as the weapon of choice for local governments in the fight against unaffordable housing. But the Legislature also seems to have been contemplating the enactment of zoning designations for affordable and special needs housing under s. 482(3), in the absence of a s. 483 housing agreement. There's no question the landowner must agree to the zoning designation in the first place, but after that, the local government should be able to enforce whatever zoning rules are agreed to without having to rely on a housing agreement. And given that "affordable and special needs housing" is left to be defined by the local government, in the zoning bylaw, there also appears to be broad discretion to decide what kinds of affordability and special needs rules should be included. It might be difficult if not impossible to control resale escalation with a zoning rule alone, but rental rates and occupancy

restrictions should be fair game. Among the reasons to opt for the zoning approach as compared to (or perhaps in addition to) the housing agreement approach to affordable and special needs housing, the following come to mind:

- No need for a housing agreement bylaw;
- No need to negotiate the specific terms of a housing agreement;
- Reduced reliance on lawyers for review and vetting of housing agreements;
- No need for registration of notice on title;
- Availability of public law remedies for contraventions, such as ticketing; and,
- No contract law defences against enforcement, such as delay or acquiescence.

Why have so many local governments turned to housing agreements under s. 483, while apparently so few (that we are aware of) have been attracted to what looks as if it could be a more straightforward, less cumbersome and maybe even more potent tool? We don't know, but s. 482(3) should at least be up for consideration by local governments hoping to tackle housing affordability.

IV. NON-CONFORMING USES

So far we have considered a range of planning law options that allow local governments, to different degrees, to control land use. Some uses, however, cannot be controlled or even regulated. Crown immunity protects provincial and federal government uses, and any uses on federal lands are generally outside local control. The Constitution protects uses that lie within the exclusive jurisdiction of Parliament, such as navigation and shipping, telecommunications, and aeronautics. But perhaps the most frequent source of litigation as regards uses local government would like to, but cannot, rule out, arise when owners seek shelter under Division 14 of Part 14 of the *Local Government Act*: "Non-conforming Use and Other Continuations". It is often said that land use patterns are durable: subdivisions are hard to undo; buildings difficult to deconstruct; and land uses become entrenched if not cherished. At the same time, communities evolve, and new and perhaps more desirable uses don't always interact well with existing ones. In this context courts have interpreted Division 14 of Part 14 as trying to strike a balance between allowing existing development to continue, but also facilitating an eventual transition to compliance with new regulations.

A handful of key points about the law of non-conforming uses, in no order of importance:

- First, it's tempting, but not an accurate reflection of the statute to refer to non-conforming uses as "lawful" non-conforming uses. Although the protection is available only for uses that are "lawful" under existing rules when a new land use

regulation bylaw is adopted, the statute thereafter grants permission for continuation as a "non-conforming use", not a "lawful non-conforming use". This might seem like pure semantics, but the point is that once the new land use regulation bylaw is enacted, the use is no longer lawful; if it was, there would be no need for special statutory or common law protection. The use becomes, by definition, unlawful, but thanks to the statute it can continue as a "non-conforming" use.

- Second, the lawfulness of the use is assessed by reference only to regulations under Part 14 of the *Local Government Act*. For example, a use operating without a business licence where one is required may not be disentitled to non-conforming use protection by reason only of the business regulation breach. A use operating in breach of the federal criminal law, however, was not entitled to similarly sympathetic treatment by the court. A use operating within a building constructed without proper permits or inspections, but otherwise lawful under zoning, could likely claim non-conforming use protection, provided the building regulation breaches can be addressed.

- Third, a person alleging a right to continue a use as a non-conforming use must prove their entitlement. Providing convincing evidence might be straightforward, but it might also involve testing the recollections of witnesses or scouring historical records. A court will not assume, for the benefit of an owner, that their land was lawfully used at the time a land use regulation bylaw was adopted. At the same time, just because the local government doesn't bear the onus of proof, the local government is also free to provide its own evidence (through witnesses or documentary evidence) to counter the evidence of an owner.

- Fourth, in case there was any question, the statute specifically states that a building under construction qualifies as a building "in use for its purpose as determined from the building permit". This provision suggests, and courts have generally confirmed, that in the absence of any construction or land alteration, a non-conforming claim cannot succeed (even where an owner has spent considerable time and effort, and perhaps even secured a development permit or constructed roads, and water and sewer services).

- Fifth, the statute is more lenient as regards non-conforming siting: it allows "repair, extension and alteration" as long as no further contravention of the bylaw is involved. There is at least an argument that "repair" could include an almost complete replacement of a building or structure, again provided there is no further contravention.

- Sixth, the staute says that a non-conforming use of part of a building can be expanded into the entire building, but "in relation to land", a non-conforming use cannot continue "on a scale or to an extent or degree greater than that at

the time of the adoption of the land use regulation bylaw". So a small restaurant in a large building could expand to fill the building even after the restaurant is no longer a permitted use of the building, but apparently could not expand its outdoor patio.

- Seventh, because the last word should always go to the Supreme Court of Canada, there is some room for the evolution of a non-conforming use: "the characterization of the acquired right should not be so general as to liberate the owner from the constraints of what he actually did, and not be so narrow as to rob him of some flexibility in the reasonable evolution of prior activities." In practice, this meant a night club could replace western singers with nude dancers, without compromising its non-conforming use claim.

V. "STANDING" TO CHALLENGE LAND USE MANAGEMENT DECISIONS

Just like zoning, and geometry, our last special planning law topic has both ancient roots and recent litigation exposure. In the past year or so the BC Supreme Court has faced a flurry of cases in which local governments or related bodies have questioned the "standing" of a litigant seeking judicial review of a decision. The law of standing is complex, but it concerns the right of a party to attract the court's attention. Courts will not be distracted by "mere busybodies" who have no real stake or legitimate interest in a matter; however, parties whose private rights or interests are affected by a decision or who can properly represent a broader public interest in the matter, will be heard. In the US, academics have gone so far as to suggest that trees, lakes and other natural entities should be granted standing. Without wading into the merits and pitfalls of that debate, planners can usefully consider the extent to which individual citizens, or groups of them, have been granted standing to challenge land use management decisions. What courts are saying in these cases is instructive on some broader questions of planning practice.

The leading BC case on the standing of a society comprised of allegedly interested citizens, to challenge a local government land use management decision, is a BC Court of Appeal decision from 1983 (*Saanich Inlet*). There the Court could "find no legal reason to deny standing to a society that consists of members who have a legitimate interest in the subject matter of an order, resolution or by-law of a body that is subject to judicial review." In one recent case, this approach led the BC Supreme Court to refuse to deny standing to a local residents' association challenging an OCP and Zoning Amendment decision. In another recent case, however, the Court also carefully considered *Saanich Inlet* and then did deny standing to a similarly constituted society. The difference was that the latter case involved a Board of Variance decision. Notice of board of variance decisions is only required to be given to immediate neighbours, and those are the only people other than the applicant who have a right to be heard by a board of variance. Accordingly, a society full of other members who did not have any statutory right to notice or to be heard did not meet the *Saanich Inlet* test for standing. The Court also considered the fact that the board of variance had notified and invited others to participate even though that was not required by the statute or the board's own procedure

bylaw but was not persuaded that by doing so the board had potentially broadened the class of persons who might have standing to challenge its decision. In fact, the Court said there might have been "a valid complaint against the Board for giving notice to persons who were not entitled to notice and for inviting comments from persons who were not entitled to present evidence and argument under the *Local Government Act* and the Board of Variance Bylaw." These words might temper any enthusiasm local governments might have for broadening participation in decisions where there is no statutory basis for doing so. While OCPs and zoning bylaws will generally be matters of broad interest, given that notice of a public hearing (or a decision not to hold one) and related participatory rights under the statute are broad, matters where little or no notice or public input is statutorily mandated (decisions on development permits, for example) should perhaps be treated more cautiously.

VI. PUBLIC HEARING NOTICE, WITHOUT NEWSPAPERS

And speaking of notice, planners eager to leap into the 21st century might be glad to learn that not only can public hearings now be held "by means of electronic or other communication facilities", but newspaper notice is no longer the only option for public hearing notices. It has always been acceptable to give notice by methods other than the newspaper if those methods are used in addition to the newspaper notice. It is now possible, by bylaw, to do away with newspaper notice altogether, and to provide for entirely alternative forms of notice (subject to some constraints imposed under s. 94 of the *Community Charter*). The required content of a public hearing notice is the same, but always bears repeating: time, date and place of the hearing; in general terms the purpose of the bylaw; subject land; and the place where and times and dates when copies of the bylaw may be inspected.

VII. PUBLIC NOTICE, WITHOUT A PUBLIC HEARING

If you think the departure from newspaper notice of public hearings (among other things that require notice) is radical, what about the departure from a public hearing in the first place? That has always been possible, by waiving a public hearing for a zoning bylaw that is consistent with an official community plan (which every zoning bylaw must be); now a local government under s. 467 of the *Local Government Act* can simply decide not to hold a hearing. However, the word "simply" in the previous sentence should be approached with some scepticism. Previously, a public hearing could be waived after first or second reading of the bylaw with notice of the waiver given in advance of third hearing, similar to the way notice would have been given in advance of the hearing. Now, apparently under the guise of streamlining, the decision not to hold a hearing comes before first reading of the bylaw, but presumably at a meeting of council or the board. This approach seems awkward for at least two reasons: how can a local government decide not to hold a hearing for a bylaw that doesn't exist yet; and how can it be a streamlining initiative if an extra pre-bylaw meeting is required. The first question is rendered moot by the fact the legislation allows it; the second could be addressed by delegating the authority to make decisions whether to hold public hearings for zoning bylaws. Once the decision has been made, whether by the local government or a delegate, the process resembles the waiver regime, except as far as timing. The notice that would previously have

been given before third reading must now be done before first reading, and the content of the notice is almost the same: the purpose of and subject lands for the zoning bylaw, the date of first reading (or more accurately, the date first reading will be considered), and the place where and times and dates when copies of the bylaw may be inspected. In the absence of the public hearing, it should follow that the more onerous document disclosure requirements (not just the proposed bylaw, but also any other information council or the board might rely on in deciding whether to adopt) can also be dispensed with.

VIII. ZONING CHANGES WITHOUT NOTICE OR A HEARING: DELEGATED DEVELOPMENT VARIANCE PERMITS

The last special topic concerns another recent development in BC planning law for this year: the delegation of authority to issue "minor" development variance permits. This innovation is another of the Province's early forays into streamlining development application procedures, and will likely be welcomed by councils and boards whose agendas are cluttered with seemingly inconsequential matters of building siting, size and dimensions. Heretofore, every decision on the issuance of development variance permit had to be made by the municipal council or regional board. Now, under section 498.1 of the *Local Government Act*, the power can be delegated by bylaw to an "officer or employee of the local government". It is not a free-for-all. A careful comparison of existing section 498(1)(a) to the new section 498.1(1)(b) shows the local government's jurisdiction is still broader than what can be passed down to its delegate. Perhaps more important, a delegate can only be given the power to issue a development variance permit for a "minor variance". The delegation bylaw must include "criteria for determining whether a proposed variance is minor", and "guidelines the delegate must consider in deciding whether to issue". Local governments will be tempted to conflate these two requirements for a DVP delegation bylaw but should be careful not to. A bylaw that does not include separate and distinct criteria and guidelines will risk being declared invalid, and even if valid, will be difficult to understand and administer. Another feature of the new minor DVP delegation option is in relation to notice. A council or regional board, before issuing a DVP, must mail or deliver notice to nearby owners and tenants "at least 10 days before adoption of the resolution to issue the permit"; a delegate need not give any notice. And finally, there's always a catch: "if a local government delegates the power to issue a development variance permit, an owner of land that is subject to a decision of the delegate is entitled to have the local government reconsider the matter". Again, the Province has tempered its enthusiasm for streamlining with procedural protections, in this case for owners who might be dissatisfied with the decision of a delegate.

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