PUBLIC HEARINGS

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I. INTRODUCTION

We are all very familiar with the requirement of section 890 of the *Local Government Act* that local governments hold a public hearing prior to adopting an official community plan bylaw or a zoning bylaw.

The purpose of that public hearing as stated in the section is to allow the public to make representations to the local government respecting matters contained in the proposed bylaw. To achieve this stated purpose, the Legislature has directed that, at a public hearing, "all persons who believe 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".

The courts have grasped onto the stated purpose of public hearings, and the direction from the Legislature as to how to achieve that purpose, in their consideration of the provisions of the *Local Government Act* found in Part 26: Division 4 – Public Hearings on Bylaws, and in particular in their consideration of whether a local government has satisfied its obligation to hold a public hearing prior to the adoption of an official community plan bylaw or a zoning bylaw.

In doing so, and with the stated purpose in mind, the courts have developed common law requirements to address circumstances where there is a void in the statutorily mandated procedures for public hearings in Part 26: Division 4 of the *Local Government Act*. In addition, the courts have developed common law requirements to supplement the statutorily mandated procedures for public hearings in Part 26: Division 4 of the *Local Government Act*.

In this paper, we will discuss the requirement to hold a public hearing prior to the adoption of an official community plan bylaw or a zoning bylaw, with a view to the requirements of the *Local Government Act* and the common law (as it clarifies and, at times, supplements those requirements).

II. THE REQUIRMENT TO HOLD A PUBLIC HEARING

While the *Local Government Act* requires a local government to hold a public hearing prior to the adoption of an official community plan bylaw or a zoning bylaw, the decision as to whether a proposed bylaw should be advanced to a public hearing is discretionary.

In *Smith v. Surrey*, our Supreme Court considered the discretion of local governments in respect of the consideration of development applications and, in particular, in respect of the holding of a public hearing. In that case, the Court stated:

> … nothing in the *Municipal Act* requires the respondent to proceed to first and second reading, to proceed to a Public Hearing once first and second reading has been given, to set a date for a Public Hearing once first and second reading has been given, to proceed with a Public Hearing even after the date for it has been set, to conclude a Public Hearing once it has commenced, to re-set a specific date if a Public Hearing is not concluded on the date originally set for it, or to set another date for a Public Hearing if no specific date is set when a Public Hearing which has commenced is adjourned. The "Code of Procedure" set out in the *Municipal Act* only requires a Public Hearing prior to the third reading of a zoning bylaw. Nothing which was done by the respondent failed to comply with the "Code of Procedure" set out under the *Municipal Act* relating to the passing of bylaws.

The discretion as to whether a proposed bylaw should be advanced to a public hearing was recently again considered by our Supreme Court; this time in the context of the doctrine of legitimate expectations. In *Vancouver Island Entertainment Inc. v. Victoria*, Vancouver Island Entertainment had applied to the City to rezone land for a casino. The City passed a resolution directing the application to proceed to public hearing, subject to receiving input from the British Columbia Lottery Corporation before the public hearing. The City's solicitor advised Vancouver Island Entertainment that the receipt of input from the Lottery Corporation was not a condition precedent to the public hearing, but that the input was important for land use considerations in zoning applications. After receiving input from the Lottery Corporation that it did not support another casino in the southern Vancouver Island region, the City passed a resolution rescinding its first resolution directing the application to proceed to public hearing. Vancouver Island Entertainment thereafter sought an order from the Court compelling the City to proceed to public hearing on the basis of the doctrine of legitimate expectations.

The Court held that there are four requirements that must be satisfied in order for the doctrine of legitimate expectations to apply. First, the representation or undertaking must be clear, unambiguous and unqualified. Second, the representation or undertaking must not relate to the exercise of legislative powers. Third, the representation or undertaking must not conflict with a statutory duty. Finally, the representation or undertaking must relate to procedural rather than substantive rights.

The Court held that none of the requirements for the application of the doctrine of legitimate expectations were or could be present and that, as a result, Vancouver Island Entertainment was not entitled to have the proposed bylaw forwarded to public hearing.

As can be seen from these cases, the only obligation on a local government to hold a public hearing is where the local government proposes to consider giving third reading to the proposed official community plan bylaw or the proposed zoning bylaw that is the subject of the public hearing.

III. PROCEEDING TO PUBLIC HEARING

A. Scheduling the Public Hearing

Section 890 (2) of the *Local Government Act* provides that, where a local government has decided to proceed with a public hearing for a proposed official community plan bylaw or rezoning bylaw, the public hearing must be held after first reading and before third reading of the proposed bylaw.

A local government wishing to proceed with a public hearing should pass a resolution referring the proposed bylaw to a public hearing, and directing staff to schedule the public hearing and to give the required notice under section 892 of the *Local Government Act*. It is not necessary for the resolution to set the date, time and place of the public hearing, or to establish the form of notice, as those matters are generally of an administrative nature. Indeed, addressing those issues in the resolution may cause difficulty for the local government; a change in a particular detail addressed in the resolution requiring the local government to amend the resolution before the public hearing may take place.

As for the scheduling of the public hearing, it is important that the public hearing be scheduled sufficiently in the future that members of the public have adequate time to inform themselves as to the issues, and to form a reasoned view as to the effect of the proposed bylaw on their property interest. This is necessary to ensure that the members of the public have been afforded a reasonable opportunity to be heard.

The length of time required for this purpose will depend on the particular circumstances relating to the proposed bylaw to be considered at the public hearing. Proposed bylaws that do not engage technical issues will require less time before the public hearing is held than will proposed bylaws that engage technical issues. In the latter circumstance, it is likely that the public will not be able to assess those technical issues without the assistance of those with expertise in the area, and the public should be afforded the opportunity to seek such assistance.

In *Pitt Polder Preservation Society v. Pitt Meadows (District)*, our Court of Appeal held that the delivery at the beginning of a multi-day public hearing of a number of technical reports requested by Pitt Meadows did not meet the requirements of procedural fairness. The Court observed that the reports were technical in nature and that their contents and conclusions could not readily be assessed without the assistance of those with expertise in the area. For this reason, the Court held that the reports ought to have been made available to the public in advance of the public hearing, and rejected Pitt Meadows argument that the public had an adequate opportunity during the course of the lengthy public hearing to obtain that assistance.

In *Botterill v. Cranbrook (City)*, our Supreme Court elaborated on the right of the public to obtain the assistance of an expert in reviewing technical reports. In that case, the Petitioner argued that members of the public ought to be afforded an equal amount of time to obtain a review of technical reports as the time that was necessary to prepare the reports in the first place. The Court held that all that is necessary is that there be sufficient time to prepare a comment in respect of the reports; it not being necessary to carry out a detailed examination of the reports or to prepare independent reports.

B. Delegating the Public Hearing

A local government may delegate the holding of a public hearing. The delegation may be made by either resolution or bylaw, but may only be made to one or more of the members of the local government's Council or Regional Board.

Where a local government delegates the holding of a public hearing, the delegation is not effective unless the notice of public hearing under section 892 of the *Local Government Act* includes notice that the hearing is to be held by a delegate, and the resolution or bylaw effecting the delegation is available for public inspection along with the proposed bylaw (as required by section 892 (2) (e) of the Act).

If the holding of a public hearing is delegated, the local government must not adopt the proposed bylaw that is the subject of the hearing until the delegate reports, either orally or in writing, the views expressed at the hearing. This report may take the simple form of a representation from the delegate that the public hearing was held, and that the minutes of the public hearing accurately set out the views expressed at the hearing.

C. Giving Notice of the Public Hearing

Section 892 (1) of the *Local Government Act* requires that notice of a public hearing must be given in accordance with that section. Sections 892 (2), (4), and (5) of the *Local Government Act* provide that a public hearing notice must contain the following information:

- The time and date of the public hearing;
- The place of the public hearing;
- In general terms, the purpose of the proposed bylaw;
- The land or lands that are the subject of the proposed bylaw;
- The place where and the times and dates when copies of the proposed bylaw may be inspected; and
- Where the proposed bylaw alters the permitted use or density of any area, either a sketch that identifies the area that is the subject of the proposed bylaw alteration or, if the area can be identified in a manner other than a sketch, identification of the area in that matter.

While ensuring that a public hearing notice complies with requirements 1, 2, 4, 5, and 6 above is generally straightforward, ensuring that a public hearing notice complies with requirement 3 above (i.e., ensuring that a notice, in general terms, sets out the purpose of the proposed bylaw) can prove to be difficult. There is no fixed content in a public hearing notice as to a general statement of the purpose of a proposed bylaw under section 892 (2) (c) of the *Local Government Act*. Each notice must be considered in its particular context. As stated most recently in the cases considering whether public hearing notices set out, in general terms, the purpose of the proposed bylaw, the test is simply whether the notice contains adequate information to allow members of the public to become aware of the purpose of the proposed bylaw in general terms, to decide whether to seek further information, and to decide whether to attend the public hearing. In other words, does the notice provide sufficient information to allow members of the public to fairly consider whether to exercise their right to be heard; a fundamental requirement of procedural fairness.

D. Making The Required Disclosure

1. What Must be Disclosed

Prior to *Pitt Polder*, the common law requirement of pre public hearing disclosure of information relating to a proposed bylaw to be considered at a public hearing was limited to documents in the possession of the local government at the time of the public hearing that either had been or would be considered by the local government in determining whether to adopt the bylaw.

In *Pitt Polder*, our Court of Appeal broadened the scope of that disclosure requirement and quashed official community plan and zoning amendment bylaws because of the manner in which the District had dealt with two categories of documents.

The first category of documents was reports that the District had required the developer to prepare in respect of the development's impact on traffic, the environment, agricultural land, and municipal taxation. The developer made the reports available to the District and to the public for the first time at the commencement of the public hearing that stretched over five days. The Court held that the reports should have been disclosed to the public in advance of the public hearing on the basis that members of the public, in order to be afforded a "reasonable opportunity to be heard" in respect of such reports, had to be afforded an opportunity to have the reports assessed by independent experts prior to the public hearing. The Court made no distinction between brief reports updating earlier impact reports that had been disclosed prior to the public hearing and new reports examining impacts that had not previously been assessed.

The second category of documents included an archaeological assessment provided in relation to the earlier development of adjacent land and correspondence that critiqued that assessment. The assessment had been provided to a predecessor local government several years earlier but was never provided to the District considering the official community plan and zoning amendment bylaws until the developer submitted it to the local government and to the public on the first day of the public hearing. Again, the Court found such disclosure insufficient in view of the scale of development proposed and the nature of the information in the report.

In *Canadian Pacific Railway Co. v. Vancouver (City)*, our Court of Appeal characterized the *Pitt Polder* decision as being regarded as one of the leading decisions in this province dealing with the pre public hearing duty to make disclosure to members of the public who oppose the enactment of a proposed bylaw. The Court in *CPR* also recognized that the decision in *Pitt Polder* is also regarded in the province as "having gone further than any prior decision in imposing a duty on a [local government] to make broad and effective disclosure to members of the public who may wish to oppose the enactment of a bylaw." The Court in *CPR* did not appear question the correctness of the *Pitt Polder* decision.

There have been numerous cases since *Pitt Polder* that have considered the import of that case.

In *Hastings Park Conservancy v. Vancouver (City)*, our Court of Appeal described the duty of disclosure prior to a public hearing as requiring that the public be "given a reasonable amount of information so that reasonably informed representations could be made at the hearing" in respect of the effect of the proposed bylaw.

In *Eaton v. Vancouver (City)*, our Supreme Court reviewed the *Pitt Polder* decision in the context of an allegation by the Petitioner that the City had breached the duty of disclosure by failing to make available to the public information utilized by staff in preparing financial information for the consideration of Council in respect of the proposed development. The Petitioner argued that the disclosure of this information was necessary in order for him to properly review and respond to the financial information provided by staff to the Council. In determining that the City had met its duty of disclosure, the Court held that *Pitt Polder* only imposes a duty on local governments to disclose documents or materials that are provided to and considered by the local government. In that case, it was held not to be necessary to disclose to the public the information relied on by staff in preparing the financial information that was made available to the Council as the information that the Petitioner sought had not been made available to the Council.

In *Eadie v. Vinje Development Properties Ltd. and District of Sicamous*, the Petitioner sought to set aside official community plan and zoning amendment bylaws on a number of grounds, including on the ground that there was an inadequate time frame between the date on which the District had made the proposed bylaws and related information available to the public for inspection (being the dated the District gave the bylaws first and second reading) and the date set for the public hearing; that time frame being 21 days. The Petitioner argued that the time frame was inadequate to allow for him to assess and review environmental and other reports submitted by the developer and, as a result, he was not afforded a reasonable opportunity to be heard at the public hearing. In addition, the Petitioner argued that, in any event, the delivery by the Petitioner of two additional reports to the District on the day of the public hearing precluded him from having a reasonable opportunity to be heard in respect of those reports. The Court held that members of the public were only entitled to disclosure of what was being placed before the Council, and that the District had satisfied its disclosure obligations in all of the circumstances on the basis that "the disclosure process adopted by the District permitted members of the public to have the same documentation that the District had as soon as the Council decided that it would proceed with the amendment process" and as soon as the documentation was made available to

the District. It is important to note that the District did not request the two technical reports that were received by it on the day of the public hearing. Those reports addressed matters within the jurisdiction of other governmental bodies. In this regard, the Court held that it was open to the District to leave consideration of those issues to those other governmental bodies or to later District processes (e.g., the building and development permit processes).

2. When Must Disclosure First Be Made

In *Eadie*, the Petitioner had been requesting information from the District in respect of the proposed development for several months prior to the development application having been made. The District did not provide the information until it had given the official community plan and zoning amendment bylaws first and second reading and had directed that the proposed bylaws be forwarded to public hearing. The Petitioner argued that this was inadequate disclosure. The Court accepted the proposition that the duty to disclose the proposed bylaws and relevant information did not arise until such time as the District had given first and second reading to the bylaws and had directed that they be forwarded to public hearing; the duty of disclosure only arising at such time as the decision had been made that the development application would not be denied, but would proceed through the bylaw consideration process.

3. How May Disclosure Be Made

It is common practice for local governments to prepare disclosure binders in respect of proposed bylaws that are to be considered at a public hearing. These binders are updated as new information is received by the local government in respect of the bylaws, and are made available to members of the public for review both prior to and at the public hearing itself.

In *Eadie*, the Court considered the Petitioner's argument that the District had an obligation to satisfy his request that copies of all relevant documentation be provided to him personally at his residence in Alberta. The Petitioner argued that, where much of the public affected by the proposed official community plan and zoning amendment bylaws resided outside of the District, it was insufficient for the District to solely make the disclosure binders in respect of the proposed bylaws available at the District's offices and the local library. The Court held that the District's process for disclosure was adequate and that the Petitioner had no right to personal delivery of the documents and that to impose such a requirement on a local government would be far too onerous.

While the preparation and maintenance of disclosure binders in respect of proposed bylaws that are to be considered at a public hearing is common practice, our Court of Appeal has held that it is not necessary for a local government to do so in order to meet its disclosure requirements. In *Wilde v. Metchosin (District)*, our Court of Appeal upheld the decision of the lower Court where the lower Court stated:

> In this municipality a Counter Book is made available to the public before a public hearing. It is not specific to any particular bylaw and contains documents that give the reader information

concerning the public hearing process, a paper on public hearing procedures and a paper on post-public hearing procedures. No binder is put together containing all of the information that is available to members of Council. In this case, counsel for the petitioner seeks to have the court impose a burden on the respondent to prepare such a document and have it available for inspection by any elector.

I accept the evidence of the respondent's staff member whose affidavit said the following:

> 7. Prior to the public hearing, it was not uncommon for the residents of Metchosin to attend at the Municipal Hall to obtain copies of Bylaw 444 and other information in the District's files with respect to Bylaw 444. We are a small rural community of approximately 5,000, and our practice is an informal one in which I, and other staff members, assist residents and visitors with obtaining, reviewing and copying the information they seek. I do not recall any complaints or concerns from residents requesting, reviewing or obtaining information on Bylaw 444 prior to the public hearing, with respect to this process.

In my view, when an elector comes to the respondent seeking information concerning a bylaw, the respondent has no obligation to determine the issues that concern that elector and direct him or her to the appropriate documents. Electors have the obligation to make specific requests. For example, in this case an elector might ask for the opportunity to review all correspondence between the developer and the respondent. He or she might seek the opportunity to consider all environmental studies or traffic studies made for the purposes of the development. The list of subjects that concern electors could be quite varied. There is a burden on the person seeking information to outline, even in general terms, the nature of the information he or she seeks.

In this case, after the bylaw received 3rd reading for the second time, the petitioner, with the assistance of her solicitor, obtained information which she says should have been given to her before the hearing. As a result of that request through counsel, the petitioner was given all she asked for at that time, with the exception of some documents where the respondent claimed solicitor-client privilege.

…

> I conclude the process engaged in by the respondent was open and designed to address the concerns of its electors. Members of the public were able to attend and, where requests were made, they were given access to relevant documents. There is no evidence upon which I can conclude that any elector, at any time, was denied access to relevant documents. In particular, there is no evidence the petitioner was denied access to relevant documents that would have allowed her to prepare a reasoned presentation.

E. Conducting the Public Hearing

1. The Role of the Local Government

The role of the members of a local government's Council or Regional Board at a public hearing is to maintain an open mind (i.e., a mind that is amenable to persuasion) and to listen to the representations being made. It is important that the members be attentive.

It is open to the members of a local government's Council or Regional Board at a public hearing to seek clarification from staff, the applicant or any speaker at the public hearing on issues of relevance to the public hearing. However, there is no obligation on the members to debate the issues or state their position in respect of the proposed bylaw at the public hearing.

2. Who May Make Representations

Section 890 (3) of the *Local Government Act* confers the right to speak on "all persons who believe that their interest in property is affected by the proposed bylaw" being considered at the public hearing.

While the section suggests that only persons with an interest in property have a right to speak at a public hearing, it would be very dangerous for a local government to limit speakers at a public hearing to those individuals. There is little doubt that the courts will interpret section 890 (3) of the Act broadly to permit members of the local public that do not have an interest in property to speak as well.

In addition, it is important to note that there is no territorial limitation in respect of the right to speak at a public hearing. The fact that an individual does not reside or own property within the local government's territorial jurisdiction does not remove the right to speak at the public hearing from that individual. There are many circumstances where the property of an individual located in an adjacent municipality or electoral area may be affected by a proposed bylaw. Under section 890 (3) of the Act, the individual has a right to speak at the public hearing. The fundamental question to be asked is, "Does the individual reasonably believe the his/her interest in property is affected by the proposed bylaw?" If the answer is "Yes", then the individual is entitled to speak at the public hearing.

It is permissible for those who are entitled to speak at a public hearing, to do so through a lawyer or other representative (See: *Bay Village Shopping Centre v. Victoria*).

3. The Manner In Which Representations May Be Made

Section 890 (3) of the *Local Government Act* requires that, the public be afforded a reasonable opportunity to be heard or to present written submissions at the public hearing.

The wording of the section affords the choice as to the manner in which the representations are to be made at the public hearing (i.e., orally or in writing) to the individual making them. Thus, local governments should be prepared to accept written submissions at the public hearing itself.

In order to ensure that all persons in attendance at the public hearing have an opportunity to review and respond to the written submissions, the written submissions should either be read into the record by a staff member or should be made available for inspection by members of the public for the duration of the public hearing. Where the written submissions are not read into the record, and are only made available for inspection at the public hearing, the chairperson of the public hearing should periodically announce that all written submissions are available for review if anyone wishes to comment on the content of those submissions. In addition, where the written submissions are not read into the record, and are only made available for inspection at the public hearing, members of the local government's Council or Regional Board should ensure that they review the written submissions before participating in any steps in furtherance of the adoption of the proposed bylaws.

4. The Content of Representations

(a) Irrelevant Representations

Section 890 (3) of the *Local Government Act* provides that representations may be made respecting matters contained in the proposed bylaw that is the subject of the hearing.

The language of the section incorporates the concept of relevance, as it relates to the representations being made, into the conduct of a public hearing. The courts have considered the concept of relevance in numerous areas of the law and have generally considered relevance to be an elastic concept and one that is over-inclusive rather than under-inclusive.

It is not recommended that local governments seek to restrict representations at a public hearing on the basis of relevance unless it is abundantly clear that the representations do not and cannot be seen to go to matters contained in the proposed bylaw. Before restricting representations o the basis of relevance, the chairperson of the public hearing should, without discouraging or suppressing the speaker from continuing his/her representations, first make enquiries of the speaker as to the relevance of the representations.

(b) Repetitive Representations

It is common for there to be a significant amount of repetition at a public hearing. This repetition occurs in the context of a single speaker's representations being repetitive, as well as in the context of a number of speakers making the same or similar representations.

In the former case, it is appropriate for the chairperson of the public hearing to ask that speakers not repeat themselves (as opposed to making the same point of another speaker) and to advise a speaker when he/she is being repetitive. However, the chairperson should be very cautious in doing so; encouraging the speaker to move on to representations that he/she has not already made. Where the speaker insists that he/she is not repeating himself/herself, the speaker should be permitted to continue.

In the latter case, the chairperson should not attempt to limit speakers from repeating the representations of other speakers. The courts have held that the repetition of one speaker's representations by other speakers is a form of advocacy, and can carry significant weight in and of itself.

5. Appropriate Procedural Rules

(a) Speakers Lists

It is open to the chairperson of a public hearing to make appropriate procedural rules for the orderly conduct of the public hearing.

One acceptable procedural rule for such purposes is the establishment of a speakers list. The speakers list should be maintained by a staff member, who should be readily accessible by the public. Members of the public should be permitted to have their name added to the speakers list at any time, regardless of whether they have already spoken or not. However, where a member of the public has already spoken, it is permissible for that person to be required to wait until all members of the public wishing to speak have had a first opportunity to do so.

(b) Time Limits

It is open to a local government to require a speaker to limit his/her representations to a specified time period initially, then to stand aside until all others present have had an opportunity to speak. Such a rule would be justified in order to protect the rights of others to be heard. However, there should not be an overall speaking time limit for any one speaker or for the hearing generally. Such a rule could have the effect, especially in the case of complex bylaws, of denying a speaker of his/her right to a reasonable opportunity to be heard at the public hearing.

6. The Duration of the Public Hearing

Local governments should not attempt to shorten a public hearing by holding it open continuously into the late hours of the night or the early hours of the morning until there is no one left to speak. It is likely that a person who attended the hearing has been denied a reasonable opportunity to be heard if he/she has been unable to speak and must return to his/her job or other commitments as a result of the hearing extending to the late hours of the night or the early hours of the morning. It is recommended that a public hearing be adjourned at a reasonable hour to another day to avoid such an issue. Where a public hearing is adjourned, it is not necessary for the local government to give further notice of the public hearing so long as the date, time and place for the resumption of the public hearing is announced to those present at the time that the hearing is adjourned.

IV. AFTER THE PUBLIC HEARING

A. Receipt of New Information

Our Court of Appeal has, on several occasions, considered the procedural fairness obligations of local governments relating to disclosure following a public hearing. The Court has clearly established that it is not proper for local governments to receive new information from either the proponents or opponents of a proposed bylaw after the public hearing. Where local governments have received new information after the public hearing, the local government must hold a new public hearing.

However, the Court has been mindful of the need for local governments to receive clarification and opinion in respect of issues raised at a public hearing from their staff after the close of the public hearing.

In *McMartin and Gage v. City of Vancouver*, the Court of Appeal considered circumstances where, after a public hearing, the local government received a letter from an officer of a trust company in favour of the proposed bylaw and heard further representations from the local government's Director of Planning and a member of its Engineering Department without giving a further opportunity to members of the public to make representations in respect of those representations. The Court held that, while representations from proponents or opponents of the proposed bylaw should be made at the public hearing, no similar constraint existed in relation to advice from staff or experts retained by the local government following the public hearing. Indeed, the Court stated that "the [local government] 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."

In *Bourque v. Richmond*, in quashing the bylaw in question as a result of the local government having received a report from a committee that had heard from the developer after the close of the public hearing, the Court of Appeal specifically noted that "in reaching that conclusion [the Court wishes] to make it clear that [the Court does] 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."

Finally, in *Jones v. Delta*, the Court of Appeal considered a challenge to the receipt of a staff report after the public hearing on the basis that the report was merely a vehicle for putting forward explicit and express representations from proponents of the proposed bylaw. The staff report in *Jones v. Delta* had physically attached to it a letter of support from a proponent. The Court held that the various public petition representations and letters attached to the staff report raised no new issues that would warrant the reopening of the public hearing and upheld the bylaw.

Most recently, in *Hubbard v. West Vancouver*, the Court of Appeal considered whether it was a breach of the duty of procedural fairness applicable to the conduct of public hearings under the *Local Government Act* for a local government to receive, after the close of a public hearing, a staff report that contained opinions, conclusions, and recommendations in respect of issues raised at the public hearing without giving members of the public an opportunity to make submissions to the local government on those opinions, conclusions, and recommendations. The Court of Appeal determined that procedural fairness requirements for public hearings do not extend to providing the public with an opportunity to review and comment on any staff report prepared after a public hearing, thus triggering a further public hearing. The Court struck a balance in endorsing the longstanding practice of local government's receiving staff reports after a public hearing but with the caution that, if the staff report raises new issues, a new public hearing will be required.

B. Consideration and Amendment of the Proposed Bylaws

Section 894 of the *Local Government Act* provides that, after a public hearing, the local government may, without further notice or hearing, adopt or defeat the proposed bylaw, or alter and then adopt the bylaw (provided that the alteration does not alter the use, increase the density or, without the consent of the owner, decrease the density of any area of the lands that are the subject of the bylaw).