

MINUTES OF THE PLANNING, ENVIRONMENT AND DEVELOPMENT
STANDING COMMITTEE MEETING HELD IN THE BOARD ROOM, CITY HALL, ON THURSDAY,
2005-APR-28, COMMENCING AT 3:00 P.M.

PRESENT: Councillor L. J. Sherry, Chair

Members: Councillor W. J. Holdom

Absent: Councillor R. A. Cantelon

Staff: B. N. Mehaffey D. Jensen
 Chief R. Lambert K. L. Burley
 E. C. Swabey K. King
 A. Tucker

1. ADOPTION OF MINUTES:

- (a) Minutes of the 2005-FEB-10 Meeting of the Planning, Environment and Development Standing Committee held in the Board Room, City Hall at 3:30 p.m.

It was moved and seconded that the Minutes be adopted as circulated. The motion carried unanimously.

2. RECEIVING OF DELEGATIONS:

- (a) Mr. Roger Richer, Chair, Board of Variance, to speak to the report from the Board of Variance regarding changes to bylaw enforcement procedures.

It was moved and seconded that Mr. Richer be permitted to address Council. The motion carried unanimously.

Mr. Richer stated that:

- he is here in his capacity as the Chair of the Board of Variance (BoV) to provide the Committee with background information regarding the report on the agenda from the Board of Variance.
- the Board of Variance is requesting that Council amend its policy to state that bylaw infraction complaints will only be taken if the complainant lives within 100 metres of the offending property.
- most of these complaints are made by two or three residents who drive around the City looking for bylaw contraventions and seldom do these complaints come from neighbouring property owners.
- usually the neighbours of these properties have no problem with the infraction(s) that have been reported.
- the resulting BoV process creates a hardship for people who have to go through it, as well as costing taxpayers a lot of money.

- for this reason, the Board is requesting that the Council Policy be amended to take complaints only if the complainant lives within 100 metres of the offending property.

It was moved and seconded that the presentation be received. The motion carried unanimously.

3. REPORTS OF ADVISORY BODIES:

- (a) Advisory Committee on the Environment - Regulations for Internal Wood Burning Stoves and Appliances to be Certified to 1994 CSA Standards

At the Regular Meeting of Council held 2004-MAY-17, the issue of regulating the use of internal wood-burning stoves and fireplaces was referred to the Advisory Committee on the Environment (ACE).

Local governments in B.C. have taken a variety of measures, including educational programs and amending local building bylaws that require wood burning appliances to display a permanent label showing the appliance has been tested to meet both EPA and CSA standards for clean burning.

ACE supports the first option to provide educational material and arrange for "Burn-It-Smart" workshops at least once a year. The Committee also recommends ACE explore the feasibility of the City initiating a wood burning appliance exchange program in partnership with local business and investigating what other B.C. communities are doing regarding air quality monitoring.

Recommendation: That the Planning, Environment and Development Standing Committee recommend that Council provide direction based on one of the following options:

1. Provide educational information from the "Burn It Smart" program to the public.
2. Report back on the feasibility of a wood burning appliance exchange program.
3. Explore the feasibility of the City monitoring air quality.
4. Prepare a Wood Burning Appliances Bylaw and hire Staff to enforce.
5. Take no further action.

It was moved and seconded that the Planning, Environment and Development Standing Committee recommend that Council:

1. provide educational information from the "Burn It Smart" program to the public; and,
2. develop formal procedures to handle air quality complaints and that this be part of the public education program.

The motion carried unanimously.

(b) Board of Variance - Changes to Bylaw Enforcement Procedures

As Council is aware, present policy regarding Bylaw Enforcement Procedures states:

“All complaints regardless of origin, impact or motivation be dealt with in the same manner.”

As a result, Staff receive and respond to all complaints from individuals regardless of their proximity to the bylaw infraction. When received, Staff advise the property owner of the bylaw infraction and request that it be brought into compliance, or where appropriate, that the owner may apply to the Board of Variance for a variance to the requirements of the Bylaw.

The Board is aware that specific Council policies have also been established for responding to secondary suite and animal control bylaw complaints. Under these policies, Staff are directed to respond only when the complainant lives within a 100 metre radius of an offending property.

As Council is aware, a Board of Variance is required in all municipalities that have a Zoning Bylaw in place. Individuals may make an application to the Board if they allege that compliance with a Bylaw respecting the siting, size or dimension of a building or structure would cause the individual undue hardship.

The Board may order that the variance be allowed if the Board finds that the applicant has proven that compliance with the Bylaw would cause undue hardship and is of the opinion that the variance does not defeat the intent of the Bylaw, adversely affect the natural environment result in inappropriate development of a site, vary the use and density of a site, nor effect the use and enjoyment of adjacent property.

As outlined above, it is the Board's understanding that if a complaint is substantiated, property owners are given the option to bring the infraction into compliance, or when appropriate, to apply to the Board of Variance. As the cost and effort associated with requesting a variance from the Board is generally less than bringing the infraction into compliance, offending property owners often choose to apply to the Board. Consequently, in recent years, the Board has received an increasing number of variance appeals related to bylaw infractions.

A review of Board of Variance records indicates that of the 216 variance requests since 1999, 33 of the requests are related to bylaw complaints. The table below shows the number of complaint generated requests per year since 1999.

Year	Number of Complaint Related Appeals	Total Number of Appeals	Percentage of Appeals Related to Complaints (%)
1999	1	27	3.7
2000	2	19	10.5
2001	7	34	20.6
2002	4	34	11.8
2003	6	44	13.6
2004	13	58	22.4

It is the opinion of the Board that an increasing amount of time and effort has been spent reviewing such variance requests, and as a result, at their regular meeting held 2004-DEC-16, the Board passed the following motion:

“That Council review and amend its current policy regarding bylaw enforcement procedures to respond only to complaints from individuals residing within a 100 meter radius of a property to which a complaint has been lodged”.

Recommendation: That the Planning, Environment and Development Standing Committee recommend that Council amend the present Council policy for dealing with bylaw infractions, to respond only to complaints from property owners or occupants who live within 100 metres of the residence of the bylaw infraction.

It was moved and seconded that the Planning, Environment and Development Standing Committee recommend that Council defer the item of reviewing its policy for dealing with bylaw infractions and direct Staff to prepare a report on this issue. The motion carried unanimously.

4. CITY MANAGER'S REPORT:

DEVELOPMENT SERVICES:

PLANNING:

(1) Steep Slope Development Guidelines

As a result of a number of years of work, including input from the development community and neighbourhoods, Steep Slope Development Permit Guidelines and Zoning were drafted. The associated Bylaw Nos. 6000.036 and 4000.304 were given Third Reading at the Regular Meeting of Council held 2003-APR-14.

Following Third Reading of the associated amendment Bylaw, Staff received new contour information, which more accurately identified steep slope properties within the community. Staff were of the opinion that this new information could result in significant amendments to the Bylaws and as a result, recommended that Council postpone final Adoption while the new data was reviewed.

Separate or Out-of-Character Lots

As part of the review, a number of “smaller” lots were identified that were well separated from other steep slope lots. Although they have met the technical criteria, they would, in Staff’s opinion, be out of character with the surrounding established neighbourhood. As such, Staff recommended that these lots be removed from the Steep Slope Zone. These lots will continue to be included within the proposed Development Permit Area.

Net Change (+/-) (in proposed Zone only): Lots (-) 13
Area (-) 14.309 ha.

The above-noted amendments will result in an overall decrease in the number of lots proposed for inclusion within the Development Permit Area and the associated Steep Slope Zoning.

Total Net Change in Development Permit Area (+/-): Lots (-) 40
Area (-) 80.83 ha.

Total Net Change in Proposed Steep Slope Zone (+/-): Lots (-) 59
Area (-) 119.109 ha.

Previously, Council formed the Neighbourly House Committee to review and make recommendations with respect to the issue of monster homes in the community. Staff recommended that Council use this opportunity to amend the Steep Slope Zone to include the relevant recommendations of the Neighbourly House Committee.

The proposed Steep Slope Zoning allows for multi-family development to a maximum density of 12 units per hectare, based on gross area. The original intent of the Steep Slope Zone was to provide for densities at or near typical single-family subdivisions that could be developed on the site under existing Zoning. As the existing Zoning Bylaw excludes watercourse and their associated leavestrips from the calculation of minimum lot areas, Staff recommend that the proposed Steep Slope Zone be amended so as to base density on net area. There are protected watercourses on 37 of the 159 proposed Steep Slope Zoned properties.

The original bylaw had one proposed Steep Slope Zone covering all single-family zones. Through the review process it was noted that the proposed zoning, which permits a maximum density of 12 units per hectare, conflicted with the density provisions of the Suburban Neighbourhood which targets densities at 8 units per hectare.

In response to this OCP policy, Staff recommend that a second Steep Slope Zone be created for those lots designated Suburban Neighbourhood. The proposed Steep Slope Suburban Zone (RS-8) will mirror the Steep Slope RS-7 Zone with the exception that the density will be limited to 8 units per hectare.

Recently, the Zoning Bylaw was amended to permit secondary suites in all RS (Residential Single-Family) and A (Agricultural) Zones. As the Steep Slope Zone is proposed to replace lots which are presently zoned RS (Residential Single-Family), it was recommended that it be amended to allow secondary suites.

Staff was also recommending a number of text amendments to both the Guidelines and the proposed Steep Slope Zones for the purpose of clarity and consistency with the existing OCP and Zoning Bylaw. These changes included:

1. Amending the proposed Steep Slope Zones to include a maximum floor area ratio of .45 (townhouse density) for any multi-family development consisting of two or more units.
2. Amend the Development Permit exemptions to exclude Development Permit requirement for two units or less on one lot. The original guidelines exempted up to one unit. This amendment would keep the Steep Slope Development Guidelines consistent with other Development Permit Areas.
3. Amend the Development Permit exemptions to exclude the maintenance or works by the City. This amendment would make the Steep Slope Development Permit Guidelines consistent with other Development Permit Areas.

Council had previously received a report from the Fire Department with respect to its ongoing efforts to identify fire interface areas with the hopes of developing policies which respond to the characteristics of these areas. It was proposed, at that time, that the Steep Slope Development Area could include Fire Interface guidelines. While it was evident that a number of the Steep Slope Areas include Fire Interface Areas, the majority of the Fire Interface lands are outside the proposed Steep Slope Development Permit Area. As such, Staff recommended that the original guidelines, which contained some suggestions with respect to fire interface, not be amended to include Fire Interface Guidelines. Given the significant amount of Fire Interface Areas outside of the proposed Steep Slope Development Permit Area, Staff recommended that a separate Fire Interface Development Permit Area be considered.

Through the preparation of the Development Permit Guidelines and associated Bylaw amendments, a number of public open houses / orientation sessions were held in order to provide owners, residents and developers an opportunity to review and comment.

While the proposed amendments do not significantly alter the form or intent of the original Bylaws, Staff recommended that an open house be held in order to provide interested parties an opportunity to review and provide comment on the proposed changes.

Provided Council proceeds with the recommendations of the report, the proposed Guidelines and Zones would be forwarded to an Open House in early May, with a Public Hearing on 2005-JUN-02.

Recommendation: Staff recommend that the Planning Environment and Development Standing Committee recommend that Council:

1. abandon "OFFICIAL COMMUNITY PLAN BYLAW AMENDMENT BYLAW 2003 NO. 6000.036" and "ZONING BYLAW AMENDMENT BYLAW 2003 NO 4000.304"; and,
2. direct Staff to:
 - (a) hold a public information session regarding the proposed amendments to the Steep Slope Guidelines and associated Steep Slope Zone;
 - (b) draft the appropriate Zoning and OCP Amendment Bylaws to implement the revised Steep Slope Design Guidelines and associated Steep Slope Zones; and,
 - (c) bring back a further report with respect to the development of a Fire Interface Development Permit Area.

It was moved and seconded that the recommendations be adopted. The motion carried unanimously.

(2) Amendment to Public Hearing Process

Section 890 of the *Local Government Act* states that, where a local government holds a public hearing when considering adoption of a Zoning Bylaw or Official Community Plan Bylaw, that the public be given reasonable opportunity to voice their opinion and submit written comments with respect to these bylaws. To respond to this requirement, local governments typically establish a process by which these written comments are received and distributed to Council. Staff proposed to amend the existing process for addressing and recording written submissions in an effort to clarify the submission process for the public and ensure all electronic submissions are received by all members of Council.

Under Section 890 of the *Local Government Act*, Council may hold a public hearing when considering adoption of an official community plan bylaw or zoning bylaw. This provides the public an opportunity to make verbal or written submissions to local government respecting matters contained in the proposed bylaw.

In order to respond to this requirement, a local government typically establishes a process by which to receive and record these submissions. Verbal submissions are typically unproblematic as they are directly recorded at the public hearing. However, it is proving more complicated to ensure that written submissions are addressed and recorded. Additionally, Council currently has no policy with respect to how written submissions are received and/or acknowledged at the public hearing. In response, Staff recommended that Council implement changes that would increase the effectiveness and efficiency of addressing and recording these written submissions.

Existing Process

Typically, written submissions received prior to a public hearing are compiled and read into the record at the public hearing, including the name of the person making the submission, and an accounting of the content of the submission. Given the increasing number of submissions received via email, it has become difficult to track and catalogue all correspondence. These submissions are being sent to a number of email addresses, and there is concern that these submissions may inadvertently be left out of the submissions made available to Council.

Proposed Process

Staff proposed implementation procedures that will not only streamline the process, but will help to ensure that all written submissions are recognized at the public hearing. These procedures will include:

1. All written correspondence directed to Mayor and Council, and received prior to Council authorizing a bylaw be forwarded to public hearing, will be circulated to Council as general correspondence.
2. A new email address (public.hearing@nanaimo.ca) will be established for receipt of electronic submissions. This address will be displayed on all public hearing notices, the City website, and newspaper advertisements. Notification will also include a deadline for submission of electronic correspondence, set at 4:00 p.m. the day of the public hearing, to ensure Council and other interested parties has access to these submissions at the public hearing.

Electronic submissions (e-mail) should be sent to public.hearing@nanaimo.ca, or submitted online at www.nanaimo.ca. These electronic submissions must be received no later than 4:00 p.m., on the day of the Public Hearing, to ensure their availability to Council at the public hearing.

3. A detailed account of written submissions will not be read out at the public hearing; instead, Staff will make a statement indicating the number of submissions received, and that copies of these submissions are available for review by the public at the public hearing. This will also include any written correspondence received at the public hearing.

Notification

In addition to the change in procedure, the City website would be revised to enhance its content and become more user-friendly. A 'public hearing' web page would be created that provides links for the public hearing notices and minutes, Staff reports, and general information on public hearing procedures. An on-line form would also be available to directly submit electronic comments from the City website. Finally, the public hearing notice format is being revised to become more reader-friendly, as shown on Schedule 'A'. This new format will draw the reader's

attention to the general purpose of each proposed amendment while still providing adequate information on the overall content of the proposed bylaw.

To summarize, written correspondence will be managed in the following manner:

1. Correspondence received prior to the bylaw being approved for 1st and 2nd reading, and authorized to proceed to public hearing.
 - If addressed to Staff, retained in file.
 - If addressed to Council, circulated to Council as general correspondence.
 - Does not form part of the public hearing record
2. Correspondence received after authorization to proceed to public hearing and prior to public hearing.
 - Compiled and made ready for public review at public hearing.
 - Deadline for receipt of email correspondence set at 4:00 p.m. the day of the public hearing.
 - Forms part of the public hearing record.
3. Correspondence received at public hearing.
 - Compiled and made available for public review at the public hearing.
 - Forms part of the public hearing record.
4. Correspondence received after close of public hearing.
 - Correspondence is retained in file.
 - Does not form part of the public hearing record.

Taking these steps would help to ensure a fair and effective process for receiving and recording written correspondence submitted in response to public hearing notification.

Recommendation: That Planning, Environment and Development Standing Committee recommend that Council adopt the "Public Hearing Process" Council policy for receiving and distributing public hearing correspondence as outlined in this report.

It was moved and seconded that the recommendation be adopted. The motion carried unanimously.

5. INFORMATION ONLY ITEMS:

- (a) Report from the Nanaimo Community Heritage Commission, re: Heritage Commission Annual Workplan.
- (b) Report from Ron Lambert, Fire Chief, re: Burning Complaints Received by the Fire Rescue Department.
- (c) Report from the Advisory Committee on the Environment, re: Update on the Partners for Climate Protection Program.

It was moved and seconded that the Information Only Items be received. The motion carried unanimously.

6. ADJOURNMENT:

It was moved and seconded at 4:08 p.m. that the meeting terminate. The motion carried unanimously.

C H A I R

CERTIFIED CORRECT:

DEPUTY MANAGER,
CORPORATE ADMINISTRATION