

26 Planning & Procedures

Roles in Planning & Development Processes

Planning and development processes involve a great many individuals and groups in the community. The *Local Government Act* (LGA) recognizes special roles for many of these individuals and groups including:

- local government: municipal council or regional district board;
- advisory planning commissions;
- boards of variance;
- approving officer;
- building inspector;
- Minister of Municipal Affairs;
- Inspector of Municipalities; and
- other ministries (e.g., Agriculture and Food, Environment and Climate Change Strategy, Transportation and Infrastructure).

Ultimately, however, the local elected representatives on the council or board are responsible for defining the development objectives of the community, and based upon a realistic strategy to achieve them, for developing appropriate policies and bylaws.

Local Government Powers

Parts 13, 14 and 15 of the *Local Government Act* provide both municipal councils and regional districts with a wide range of tools to manage land use. These include the power to adopt Official Community Plans (and for regional districts, a Regional Growth Strategy); adopt different kinds of regulatory bylaws; issue development permits; development variance permits and temporary use permits; decide whether other types of permits will be required; establish an Advisory Planning Commission; and determine Development Cost Charges and application fees. (Note that the *Community Charter* provides municipalities with additional powers related to land use such as the ability to regulate buildings and other structures and powers related to environmental protection).

The major distinctions between council and board powers in these areas relate to greater involvement in the adoption procedures by the Minister of Municipal Affairs, who may have an approval role for certain regional district bylaws.

Ministerial approval is still required for the Resort Municipality of Whistler, the Resort Municipality of Sun Peaks, and Islands Trust. The *LGA* does provide discretionary authority for the Minister to require approval of regional district bylaws [LGA s. 585].

Land Use Processes & Procedures

The *Local Government Act* sets out requirements that municipalities and regional districts must follow in relation to the exercise of land use powers:

- adoption or amendment of a regional growth strategy [s. 436 & 452]
- adoption or amendment of an Official Community Plan [s. 477]
- public hearing procedures [s. 464-470]

In terms of procedures, the Act also requires:

- a development approval procedures bylaw to be adopted;
- a list of all bylaws and permits to be maintained for the public;
- public notice(s) of temporary commercial & industrial use permits; and
- filing or removing of a notice of certain permits on title in the Land Titles Office as part of the permit process.

A local government may, in addition to the procedures bylaw, prepare an application information package or procedures manual for applicants describing the steps for amendment or approval of permits and bylaws, the requirements to be met at each step, the relevant application forms indicating what information is required, and applicable fees. Such a manual is for information only and does not supersede a procedures bylaw.

Public Process Requirements

There is a requirement in the LGA that local governments must, during the development, repeal or amendment of an OCP, provide one or more opportunities for consultation with persons, organizations or authorities the local government considers would be affected. Section 475 provides a list of parties a local government must consider consulting. These include: the adjacent regional district and municipality; First Nations; school boards; greater boards, and improvement district boards; and provincial and federal government departments and their agencies.

The LGA requires public hearings for the types of bylaws that have the greatest potential to affect how people can use their property. A public hearing, together with the related public notice and information requirements, and the stipulation that deliberations must take place in an open session, are among the most important protections for people's rights that are associated with land use and other regulatory powers. In addition to the provisions contained in the legislation, the courts have inferred many restrictions and requirements related to these protections.

In addition to consulting during development of an OCP bylaw, legislation requires councils and boards to conduct public hearings prior to third reading of OCP, zoning, and heritage designation bylaws, as well as heritage revitalization agreement bylaws that would change use or density of use of property. Local governments are also required to consider all applications for OCP and zoning bylaw amendments.

The chair of a public hearing is responsible for establishing procedural rules for the conduct of the hearing, and these rules must meet certain court-established expectations of fair process.

The role of the public hearing is to provide an opportunity for the public to convey its views to the elected representatives. It is a venue for hearing, not debating. Care must be taken that the rules of procedure are fair to all and are applied even-handedly.

Any information that the council or board will be using for decision-making must be made available for public review before a public hearing. Any person who believes their interests would be affected by the bylaw being considered has a right to be heard at the public hearing. They need not reside or own property within the jurisdiction.

The full board or council need not attend every public hearing. Holding the hearing can be delegated to one of the board or council members, who is responsible for providing a written summary for his or her colleagues.

Advisory Planning Commission

A council may establish an Advisory Planning Commission (APC) to advise it on all matters referred to it by Council respecting land use, community planning or proposed bylaws and permits. A regional board may establish one or more APCs in its electoral areas for these same purposes [s. 461].

Elected officials and staff can attend APC meetings but they cannot be voting members. Some of the other features of an APC are:

- the APC procedures, composition and the types of matters it will consider can be set by the Council or Board in an APC bylaw;
- at least two-thirds of the members must be residents of the area;
- APC members do not receive remuneration but can be reimbursed for their expenses;
- APC meetings must be held in public, only going *in-camera* under the same circumstances that the council or board can meet in private;
- minutes must be kept and be made available to the public on request; and
- applicants for bylaw amendments or permits are entitled to be heard (others can be heard if the APC bylaw provides).

Board of Variance Any local government that has zoning must establish a Board of Variance (BoV). A regional district may appoint separate boards for different areas. The BoV may have three to five members depending on the community's population. Members are appointed by the local government.

The members of the BoV appoint their own chair. Procedures, other than those established in the legislation, must be specified in the bylaw that creates the board. BoV members cannot receive compensation, but appropriate expenses of each member must be paid from the annual budget of the local government.

If a BoV determines that compliance with certain provisions of the zoning bylaw would cause undue hardship due to individual site circumstances, it may grant a minor variance from full compliance with the bylaw. Such a variance cannot vary the permitted uses and density established by zoning; substantially affect adjacent landowners; adversely affect the natural environment; result in inappropriate development of the site; defeat the intent of the bylaws; or conflict with covenants, land use contracts, or floodplain or heritage protection provisions. A BoV decision granting a minor variance is final and cannot be appealed to the courts except on matters of legal interpretation.

Owners and occupiers of land which is the subject of an application before the board or which is adjacent to the subject land, must be informed that a variance has been requested and notified of the time and place where the application will be heard but the legislation does not require the BoV to hold a public hearing on the matter. Each board is responsible for maintaining a record of its decisions and for ensuring that it is available to the public.

A BoV may also determine if a building inspector's decision regarding the proportion of a building that has been damaged or destroyed is in error. This can be important if a "legal non-conforming" building that cannot be replaced under the current zoning is partially damaged. If an applicant or the local government feels the board has erred in its decision respecting the building inspector's determination of building damage, they can appeal the decision to the courts.

Approving Officer The role of the Subdivision Approving Officer is primarily defined in the *Land Title Act*. The Approving Officer is appointed by council in a municipality, and is an official of the Ministry of Transportation and Infrastructure in electoral areas outside of municipal boundaries.

While the Approving Officer may be a municipal employee, when acting in the capacity of Approving Officer he/she is responsible to the Province to carry out the statutory duties. An Approving Officer cannot receive policy direction from the council or board except through official channels such as bylaws (including the Official Community Plan), and even through those channels, cannot accept any instructions that conflict with the statutory responsibilities.

In considering approval of a subdivision, the Approving Officer must ensure: conformity with provincial legislation and local government bylaws; provision of infrastructure in accordance with the standards set by the local government’s servicing standards bylaw; and require highway dedication and parkland acquisition. The Officer’s decision is governed by the bylaws in place at the time of subdivision application and not amendments that local government may make in the interim.

**Minister of
Municipal Affairs**

The Minister's powers include the ability to:

- establish regulations regarding application and inspection fees, regulate installment payments of development cost charges; and
- require a Regional Growth Strategy

Ministerial approval is required for the Resort Municipality of Whistler, the Resort Municipality of Sun Peaks, and Islands Trust. The LGA provides discretionary authority for the Minister to require approval of regional district bylaws [LGA s.585].

The Minister has a broad power under s. 584 of the LGA to intervene in any municipal and regional district land use matters if the minister considers a local bylaw to conflict with significant provincial interests.

**Inspector of
Municipalities**

With respect to land use matters, the Inspector must approve all Development Cost Charge (DCC) bylaws [LGA s.560] and phased development agreements for a term longer than ten years [LGA s. 517]. The Inspector may also revoke approvals, and inquire into the status of development cost charge reserve funds and order monies transferred out of such reserves to other capital funds.

Other Ministries

The process of developing or amending an OCP will likely involve a number of provincial ministries and/or federal departments including:

Federal Government

Fisheries & Oceans	fisheries
Transport Canada	airports, ports

Provincial Government

Environment & Climate Change Strategy	sensitive areas & provincial parks
Forests; Water, Land & Resource Stewardship	Crown & privately managed forest land
Agriculture & Food	Crown land, aquaculture
Transportation & Infrastructure	provincial highways

Others, such as the provincial Agricultural Land Commission, BC Hydro and Ministry of Energy and Mines, may also be involved. Certain ministries are directly involved in local land use matters through provisions of the *Local Government Act*:

Environment:	floodplains and floodplain specifications [s.524]
Agriculture:	intensive agriculture regulations [s.551]

Transportation and Infrastructure: approval of permits for commercial and industrial buildings exceeding 4,500 m² [s.505] and zoning near highway intersections [*Transportation Act* s. 52].

Voting on Plans & Bylaws

All local government bylaws require passage by a simple majority of those present (or, in the case of regional boards, those entitled to vote under sections 196-197). Two exceptions are:

- OCPs require an affirmative vote of a majority of all Council members (or Board members eligible to vote) to pass [LGA s. 477]; and
- members absent from a public hearing can vote only if they have received an oral or written report of the hearing [LGA s. 470].

As an exception to the general rule that municipal bylaws can only be adopted one full day after third reading [CC s. 135], an OCP or zoning bylaw can receive final adoption at the *same meeting* it receives third reading [LGA s. 477(6), 480, 548(5)].

Participation in Regional District Planning

All electoral areas must participate in the planning function of a regional district. All municipalities must participate unless they have given notice that they do not wish to participate or they have established an agreement with the regional board to participate on a limited basis. Only those members participating and sharing the cost of the planning function can vote and the vote is on the basis of one person – one vote [LGA s. 206-2014].

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