

SUGGESTED PROCEDURES FOR PUBLIC MEETINGS UNDER THE PLANNING ACT 1983

By W. D. (RUSTY) RUSSELL, Q.C.
OF THE LAW FIRM RUSSELL, WAITE, CHRISTIE & MILLER, ORILLIA, ONTARIO

One of the new wrinkles under the Planning Act, 1983 (effective August 1, 1983) is the requirement to hold a public meeting prior to the passage of an Official Plan Amendment or a Zoning By-law. How should these meetings be conducted?

INTRODUCTION

Let us face it, some public meetings for the consideration of by-laws on planning matters, though - certainly not all, - will be real barn burners! Emotions will run high and ratepayers will vent their anger with comments such as, "they really did not listen to our presentation" or "council had their mind made up before they went to the meeting", or "someone is being paid off!" It has all been said before.

With this background in mind, I decided to jot down some suggested procedures on how to handle these public meetings. I then discussed the suggested procedures with three of my colleagues' and their responses proved most interesting. So let us see if we can get it all together.

OBJECTORS' WEAPONS

THE KEY WEAPON in the arsenal of an objector (and his solicitor) is to cause delay. If they can frustrate the developer to the limit of his endurance, it is their hope that he will tell the municipality that they can take the project and go to h...!

In general, objectors will focus on two points: (a) a claim that proper notice was not sent out such that it must be done all over again; (causing a delay of some weeks) and/or (b) to question the procedural requirements at a public meeting. They may even take this matter into the courts. These then, are the potential problems we should guard against.

LEGISLATIVE REQUIREMENTS

There are two areas in the new *Planning Act* where a municipality is required to hold at least one "public meeting". This public meeting is on 30 days' prior notice - and prior to the passage of an implementing by-law. These areas are:

1. for Official Plan amendments *Section 17(2)(3)*;
2. for Zoning By-law amendments *Section 34*.²

THE GROUND RULES

There are two basic ground rules which must be kept in mind by council when conducting these meetings.

1. By section 60, you must afford the person attending, a "fair opportunity" to make representation. This section does not indicate what constitutes a "fair opportunity". It is a judgment call.

2. When council holds a public meeting under these provisions of the *Planning Act*, 1983, it is not acting "judicially", but is acting "legislatively".³ This means that the provisions of the *Statutory Powers Procedure Act* do not apply. In other words, it is not a "court room" procedure, but a "public meeting" procedure.

SUGGESTED PROCEDURES

To comply with the *Planning Act*, there are certain procedural matters which we think the chairman should specifically address. Perhaps the following could serve as an agenda.

Step 1 — The chairman should first announce that the next item on council's agenda is the holding of a "public meeting" with respect to the introduction of a by-law to ...

Step 2 — The chairman should then ask the clerk to advise (a) the method by which notice of the meeting was given; and (b) confirmation as to the dates that the notices were given.

COMMENT — Under Regulation 404/83⁴ there are three ways in which notice can be given.

1. publication in newspaper of general circulation; or
2. prepaid first class mail to everyone in the area and within 120 meters thereof; or
3. by prepaid first class mail circulation in the area and within 120 meters thereof and the posting of notices on the property or at a nearby location.

The time frames for these notices are critically important to the validity of the proceedings. Generally speaking, in calculating the 30 day prior notice, the rules of the Supreme Court are followed. This means you must exclude the first day (i.e. the day of mailing or of publication in the

newspaper) and include the last day in your countdown. My advice, however, is not to shave it too close. If the chairman finds that this 30 day notice requirement has not been observed, he should immediately call a halt to the meeting and direct that the clerk do it all over again.

Step 3 — The chairman should then state that any persons who want further notice of the passage of a by-law should give their full name, address and postal code to the clerk prior to leaving the meeting.⁶

Step 4 — The chairman should then announce that the procedure for the public meeting will be as follows:

First — the municipal planner or the clerk, will be asked to explain (a) the purpose of the by-law; (b) the reasons for the by-law; and (c) how the by-law proposes to accomplish the stated purpose.

COMMENT — It would seem advisable that a copy of the "proposed by-law" should be available at the meeting. (Some of my colleagues do not feel this is necessary!)

Secondly — After the initial presentation, the chairman will then enquire as follows:

1. "Are there any persons present who wish to make oral or written submissions on the proposed by-law. If so, would they please give their names, addresses and postal codes to the clerk."

2. The chairman should then state that he will first hear from those in support of the by-law (with the possible exception of the applicant) and then he will hear presentations from those opposed to the by-law.

COMMENT — It is my suggestion that the applicant for the by-law go last. This gives him time to respond to the objections previously raised. Also, there is a tendency for the first few objectors to get a lot off their chest at the beginning and it is sometimes best that this not be directed at the applicant. Sparks might fly too early in the evening.

Step 5 — The chairman should then announce that all persons wishing to address the by-law ask their questions through the chair.

COMMENT — As the public meeting progresses, it is inevitable that ratepayers will be asking direct questions to the planner or the person who is presenting the by-law. This really cannot be avoided, but if the chairman is of the opinion that a question is out of order, he can require that the ratepayer re-address his question through the chair. In this way he can keep control.

POSITION OF CHAIRMAN AND COUNCIL

It is my suggestion that council should not take a position on the proposed by-law during the course of the public meeting.⁷

It is better that they listen to all representations, and direct their questions to the planner or the clerk or the objectors in an attempt to gather as much information as possible. A good example of this procedure can be found in the legislative committee hearings, where MPPs ask some very "straight from the shoulder" questions.

UNRULY OBJECTORS

The possibility of some of the objectors getting out of hand cannot be dismissed. If this occurs, the chairman might consider the following approaches:

1. Give the ratepayer a warning that his questions are out-of-line, and that he had best re-phrase them through the chair.

2. If he persists, warn him that he can be ejected from the meeting.

3. If the situation deteriorates to a confrontation between the ratepayer and the chairman, it is suggested that the chairman call a five minute recess and announce to the objector that he is doing this in order to give him a few minutes to think about the suitability of his conduct and remarks. If he persists after this, then eject him.

4. If you find that a ratepayer (or his

lawyer) are overextending the time of a reasonable presentation, the chairman should interrupt the presentation and advise the ratepayer that he has three minutes in which to summarize and conclude his remarks. At the end of the three minutes - hit the gavel!

END OF PUBLIC PRESENTATIONS

Sometimes it is difficult to end the public presentation. Many want just one more word on the subject. This is where the chairman has to be fair but firm. He can then state:

(a) "The public meeting is now concluded!"; and

(b) "Council will consider all the matters placed before it prior to coming to a decision." or

(c) alternatively — "Would council now like to consider a motion on the proposed by-law?"

WRITTEN SUBMISSIONS

If there are written submissions, these should be filed with the clerk as they will form part of his record for filing material with the Minister or with the Ontario Municipal Board.

CONCLUSION

These suggestions are just that - suggestions only. Please feel free to add, subtract and vary to your heart's content. We do, however, suggest that you prepare an agenda for the chairman, so that he will feel comfortable with the proceedings.

One thing that cannot be compromised, is the need for the chairman to enquire that proper notice, with the proper time allowances, has been given. If you want to be sure that your municipality does not end up in the court room, comply strictly with the notice provisions and time periods in the *Planning Act*.

1. The energetic and capable Roger Beaman of the law firm of Thomson, Rogers of Toronto; the old pro, Charles Onley Q.C. of North York; and my intuitive colleague Robert Christie, assistant solicitor for the Regional Municipality of Halton.

2. These comments also apply to a first Official Plan and an initial Comprehensive Zoning By-law.

3. See Section 60 of the Act.

4. The Planning Act Regulations, 1983.

5. Personal service is also included as a method of giving notice, however prepaid mail circulation is by far the most common.

6. If it is a public meeting on an Official Plan amendment, the chairman should state that no further notice will be given unless the person does leave their name, address and postal code with the clerk. (Section 17(8)).

7. Some municipalities are considering the appointment of a "committee of council" under Section 106 of the Municipal Act, to hear the public representations. This section requires a written report, a summary of the evidence and arguments presented at the meeting. It strikes me that it is like travelling to New York by way of Honolulu!

ANNUAL MEETING

The annual meeting of the Canadian Institute of Surveying will be held in Quebec City, from May 1st to May 4th, 1984.

For detailed information, please contact:

Léo-R. Lasnier
Arpenteur-Géomètre du Québec
The Canadian Institute of Surveying
Lac Beauport
Québec G0A 2C0

RMS
MEMBER A.P.E.O.

RMS

RESOURCE MAPPING SERVICES
A TOTAL AERIAL SURVEY SYSTEM

- ANALYTICAL AEROTRIANGULATION
- MAP COMPILATION
- COMPUTER DRAFTING
- CO-ORDINATE AERIAL SURVEYS
- GEODETIC AND CONTROL SURVEYS
- QUALITY MOSAICS
- AERIAL PHOTOGRAPHY
- QUANTITY AND PROFILE SURVEYS
- PHOTOGRAMMETRIC CONSULTING
- ENGINEERING SURVEYS

300 STEELCASE ROAD WEST UNITS 4 & 5 MARKHAM, ONTARIO L3R 1B3