

To: Electoral Area Services Committee

Date: 2020-05-12

From: David Bennett, Planner II

File No: 3920-20-1592-2020

**Subject:** Proposed amendments to the Fraser Valley Regional District Development Procedures Bylaw No. 1377, 2016 and Delegation of Authority Bylaw No. 0836, 2007

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## RECOMMENDATION

**THAT** the Fraser Valley Regional District Board direct staff to delay the holding of public hearings until such time that the Order of the Provincial Health Officer, Class Order (mass gatherings) re: COVID-19 is cancelled unless directed otherwise by the Board on a case-by-case basis.

## STRATEGIC AREA(S) OF FOCUS

Foster a Strong & Diverse Economy

Provide Responsive & Effective Public Services

## SUMMARY

This report addresses

1) Potential amendments to Development Procedures Bylaw No. 1377, 2016 that were intended:

- firstly to support permit approvals during periods of emergency; and,
- secondarily to take the opportunity for various minor clarifications and improvements to development procedures while the bylaw was being amended.

Since the original impetus for bylaw amendments to address emergency conditions is no longer compelling, staff recommend that the bylaw be tabled to a later date when development procedures can be more fully considered.

2) The holding of public hearings during the COVID-19 pandemic. Staff have made the operational decision to generally delay the holding of public hearings until it is safe to do so. We are looking for Board support for this action, with the understanding that some files will be brought to the EASC and Board for consideration on a case-by-case basis where the Board may wish to consider waiving the hearing in accordance with the *Local Government Act* or holding a public hearing by alternative means as enabled by Ministerial Order M139 issued on May 1/20.

## **BACKGROUND**

### **Amendments to the Development Procedures Bylaw No. 1377, 2016**

#### Provincial State of Emergency

The Province declared a provincial state of emergency to support the province-wide response to the COVID-19 pandemic.

In early April, it was uncertain whether the Electoral Area Services Committee (EASC) would continue to hold meetings. A disruption to EASC meetings would impact FVRD development approvals processes and timelines because Development Procedures Bylaw No. 1377 requires that permits are first considered by EASC before they may be approved by the FVRD Board.

To ensure that development applications could proceed without EASC meetings, an amendment to the FVRD Development Procedures Bylaw was drafted and presented to the Board in April. The amendment would only have enabled the Board to consider issuance of Development Variance Permits and Form and Character Development Permits during declared states of emergency only without the permits first going to the EASC. Public notification of DVP applications would still be required, and input submitted by neighbours would still be considered by the Board. There is no statutory public input process for Development Permits.

The Province has since permitted the EASC to hold open meetings without members of the public, and the committee members now meet remotely. These changes mean that it is unlikely that the committee's meeting schedule will be interrupted. As a result, the original impetus for the procedural change is no longer present. While the proposed amendments would, in the view of staff, have value during other emergencies to reduce approval timelines, there is no longer a need for immediate changes, and staff recommend that the bylaw be withdrawn.

As discussed below, the proposed bylaw also includes consolidations and minor process improvements (discussed below) that staff continue to recommend; these can be considered at a later date when there is an opportunity to work through them in more detail with committee members.

#### Non-Emergency Bylaw amendments

The proposed bylaw amendment includes additional changes - including the consolidation of Delegation of Authority Bylaw No. 0836, 2007 (which delegates the issuance of most Development Permits) with the Development Procedures Bylaw – which is aimed at improving development procedures.

When FVRD staff undertook the process to amend both the FVRD Development Procedures Bylaw to address emergency issues, we took the opportunity to propose additional process changes that we believe will improve process efficiency and clarity. Five amendments are proposed in order to improve

bylaw clarity, application processing, and eliminate certain proscriptive requirements that are overly detailed.

At this time, staff recommend that the consolidated bylaw be withdrawn and re-written to only address the consolidation of the FVRD Development Procedures Bylaw and the FVRD Delegation of Authority Bylaw and to implement the amendments proposed below. The new bylaw will be brought forward at a future EASC meeting when there is an opportunity to work through the proposed changes in more detail.

**Bylaw 1592, 2020: overview of application processing changes (non-emergencies):**

Application Type	Current Process	Proposed Process	Discussion
Rezoning and Official Community Plan Amendment Signs	4.8.5 The placement of the sign(s) shall be made by the applicant not less than fourteen (14) days after submitting an application to amend a bylaw or land use contract.	4.8.5 The placement of the signs(s) shall be made by the applicant not less than fourteen (14) days after the Board has given first reading to the subject bylaw(s).	The date of submission of an application is often ambiguous. Application forms often arrive without the complete information, such as technical reports, that enable the application to move forward. The time between submission of the application form and the submission of other information required to advance the application can be months. This raises questions about when the sign must be posted. Furthermore, the current process does not provide applicants, the FVRD, or sign companies with an achievable timeline to install notification signs. Placement of signs after first reading is proposed for the following reasons: a) it provides a clear basis for identifying the date by which the sign must be posted; b) if a bylaw is not given first reading, then the application is denied, and the sign will be removed, there is no further public process for the application; c) after first reading there is certainty of the application specifics because a bylaw was given a reading. An alternative placement timeline could be to place a sign 14 days prior to first reading; this would be consistent with member municipality timelines, including Chilliwack.
Rezoning and Official Community Plan Amendments	4.2.2 The Board shall consider a staff memorandum and recommendations of the Electoral Area Services Committee for every application. The memorandum shall contain:	4.2.2 The Board shall consider a staff memorandum and recommendations of the Electoral Area Services Committee for every application.	<p>The provisions in the current bylaw are overly detailed and prescriptive, which increase opportunities for procedural errors which can invalidate Board approval decision. Much simpler provisions could suffice.</p> <p>It is not the intention of staff to bring less information to the EASC and Board. The intention is to reduce the prescriptive detail of the procedural requirements to reduce opportunities for errors.</p> <p>Staff would continue to follow this process:</p>

	<p>a) a copy of the completed application;</p> <p>b) staff recommendations regarding the proposed amendment;</p> <p>c) where staff recommend first reading or adoption of an amendment bylaw, a copy of the draft amendment bylaw either in hard copy or electronic format except where staff recommend against approval of a bylaw in which case a copy of the draft amendment bylaw need not be attached to the report although staff may attach a draft bylaw for information purposes;</p> <p>d) the recommendations and resolutions of the Electoral Area Services Committee respecting the application, and e) additional relevant information provided by the Director of Planning.</p>		<p>Redacted applications are posted on the FVRD current application webmap.</p> <p>All staff reports to EASC are written with a recommendation section as default by the corporate escribe template.</p> <p>Draft bylaws are prepared.</p> <p>The comments by the Director of Planning are contained with the corporate escribe template.</p> <p>Redacted applications are included in the initial application package to the EASC and Board.</p> <p>These proposed changes would not reduce the information available about an application.</p>
Development Permits	4.3.5 The Director of Planning or Electoral Area Services Committee, as the case may be, shall consider a staff memorandum for every application. The	4.3.5 The Director of Planning or Electoral Area Services Committee, as the case may be, shall consider a staff memorandum for every application.	<p>The great majority of Development Permits are approved by the Director of Planning &amp; Development.</p> <p>Only Form and Character DPs are issued by the EASC - these pertain to some commercial and resort developments and they arise infrequent.</p>

	<p>memorandum shall contain:</p> <ul style="list-style-type: none"> <li>a) a copy of the completed application;</li> <li>b) staff recommendations regarding the proposed permit;</li> <li>c) where staff recommend issuance of a permit, a copy of the draft permit either in hard copy or electronic format; where staff recommend against issuance of a permit, a copy of the draft permit need not be attached to the report, although staff may attach a draft permit for information purposes;</li> <li>d) a statement of the amount of the proposed security to be posted by the permittee, if any, and a rationale for the amount of security recommended;</li> <li>and,</li> <li>e) any additional relevant information.</li> </ul>		<p>The draft permits considered by the Director of Planning or the EASC contain the security amount if one is required. Securities are taken relatively infrequently.</p> <p>The current practices outlined below would continue: Redacted applications are posted on the FVRD current application webmap. All staff reports to EASC are written with a recommendation section as default by the corporate escribe template. Draft permits are prepared except in some instances where staff recommend against issuance. The comments by the Director of Planning are contained with the corporate escribe template. These changes do not reduce the information available about an application.</p>
Development Variance Permits or Temporary Use Permits.	4.4.2 The Board shall consider a staff memorandum and recommendations of the Electoral Area Services Committee for every	4.4.2 The Board shall consider a staff memorandum and recommendations of the Electoral Area Services Committee for every application.	The comments above are generally applicable.

	<p>application. The memorandum shall contain:</p> <ul style="list-style-type: none"><li>a) a copy of the completed application;</li><li>b) staff recommendations regarding the proposed Development Variance Permit or Temporary Use Permit;</li><li>c) where staff recommend issuance of a permit, a copy of the draft permit either in hard copy or electronic format; where staff recommend against issuance of a permit, a copy of the draft permit need not be attached to the report although staff may attach a draft permit for information purposes;</li><li>d) a statement of the amount of the proposed security to be posted by the permittee, if any;</li><li>e) the recommendations and resolutions of the Electoral Area Services Committee respecting the application; and</li><li>f) additional relevant information provided by the Director of Planning.</li></ul>		
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Bylaws – General	<p>4.9.2 Where an applicant makes a significant change, such as a change in land use, to an amendment application after it has received first reading from the Board, the Board may refuse the original application for an amendment. The original application will be closed and the applicant must make a new application.</p> <p>4.9.3 Re-application for a bylaw amendment, land use contract amendment or permit that has been refused shall not be considered within a six (6) month period immediately following the date of refusal.</p>	<p>4.9.2 Where an applicant makes a significant change, such as a change in land use, to an Amendment application after it has received first reading from the Board, the Board may refuse the original application for an Amendment. The original application will be closed, and the applicant must make a new application. <b>Section 4.9.3 of this bylaw does not apply to applications refused under this section.</b></p> <p>4.9.3 Re-application for a bylaw amendment, land use contract amendment or permit that has been refused shall not be considered within a six (6) month period immediately following the date of refusal.</p>	This amendment provides clarity.
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The proposed amendments will improve bylaw clarity, application processing, and eliminate certain proscriptive processes.

The bylaw will be redrafted and brought forward to a future EASC meeting.



## **Public Hearings**

In response to the provincial state of emergency, FVRD staff made the operational decision to defer the holding of public hearings. FVRD staff are seeking the FVRD Board's endorsement of this operational decision.

### Public Hearings by electronic or other communication facilities

On May 1st, the Province made a new Order regarding Local Government Meetings and Bylaw Process. This order permits conducting public hearings by electronic or other communication facilities.

Implementing alternative public hearing processes to accommodate electronic or other communication facilities will require further review to determine costs, feasibility, logistical requirements and legal requirements. There would be significant effort and cost involved in developing and implementing an alternative hearing process. The costs will decrease as other local governments bring forth solutions appropriate for our context. Staff recommend that implementing a new process for certain applications could be considered on an application by application basis by the FVRD Board.

### Waiving Public Hearings

The *Local Government Act* allows local governments to waive the holding of public hearings if a bylaw is consistent with the Official Community Plan. Waiving a public hearing is not a common practice in the FVRD. UBCM's fact sheet on public hearings notes that "although a public hearing is not required for a zoning bylaw which is consistent with an official community plan, some municipalities have chosen to hold hearings on all zoning bylaws to avoid any suggestion that council might be using the provision in s. 464(2) to "sneak through" a zoning change that would face significant opposition at a public hearing if one was held".

During this state of emergency, the FVRD has four (4) rezoning bylaws ready to proceed to a public hearing.

Two of these rezoning bylaws are not expected to generate community concerns or have already held one or more public information meetings. For those proposed bylaws, a resolution to waive the public hearing may be appropriate. Consideration of waiving a hearing can be made at future Board meetings on an application by application basis.

The other proposed bylaws have generated community concern and for those bylaws, waiving a public hearing is not recommended by staff.

## **COST**

There are no costs associated with this memorandum.

## **CONCLUSION**

During this emergency, it is recommended that all public hearings be deferred until provincial orders are cancelled.

On an application-by-application basis, the Board may waive public hearings, or approve a public hearing to be held by electronic or other communication facilities.

The decision to approve a public hearing to be held by electronic or other communication facilities should only be made after a determination of the feasibility and logistics of holding a public hearing by electronic or other communication facilities are presented to the Board.

## **COMMENTS BY:**

**Graham Daneluz, Director of Planning & Development:** Reviewed and supported

**Jennifer Kinneman, Chief Administrative Officer:** Reviewed and supported.