

To: Electoral Area Services Committee

Date: 2020-09-09

From: David Bennett, Planner II

Subject: Public Hearings during the COVID-19 Provincial State of Emergency

RECOMMENDATION

THAT the Fraser Valley Regional District Board resolve to resume public hearings for rezoning and Official Community Plan amendment bylaws;

THAT Fraser Valley Regional District Board authorise the holding of public hearings by means of electronic communication;

AND THAT the Fraser Valley Regional District Board direct staff to develop electronic public hearing procedural rules to maximize clarity, transparency and access for the public, and to ensure that due process is maintained.

STRATEGIC AREA(S) OF FOCUS

Foster a Strong & Diverse Economy

Provide Responsive & Effective Public Services

Support Healthy & Sustainable Community

BACKGROUND

In response to the provincial state of emergency, FVRD staff made the operational decision to defer the holding of public hearings. This operational decision was then formalized by FVRD Board resolution (May 2020):

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.

Public Hearings have not been held in the FVRD since the Province declared a public health emergency in March 2020.

COVID-19 impacts on FVRD Public Hearings:

Zoning Bylaw Amendment applications ready for Public Hearing	3	2(Area D) 1(Area F)
OCP ready for Public Hearing	1	Area D
Public Hearings waived	2	Area D

There are currently three (3) rezoning applications that have received first reading and are ready to proceed to a public hearing. Applicants were informed of the FVRD Board resolution to delay the holding of public hearings.

The Electoral Area D Official Community Plan is ready to proceed to a public hearing.

Public Hearings were waived for two rezoning applications (in accordance with section 464 of the Local Government Act).

Provincial Orders

Restrictions on gathering sizes and recommendations on physical distancing will likely remain while the state of emergency is in place. The province recognized the challenges faced by local governments to hold public hearings under these conditions and issued a provincial order to allow for electronic public hearings during the state of emergency.

On June 17, 2020 Ministerial Order M139 under the *Emergency Program Act* was repealed and replaced by Ministerial Order M192. Previous provisions under M139 that enabled local governments to address the challenges of holding public hearings while complying with prohibitions on mass gatherings and recommendations on physical distancing continue to apply.

To enable local governments to proceed safely with public hearings, this order authorizes the FVRD to conduct public hearings using electronic or other communication facilities, such as Zoom.

FVRD Experience with Electronic Meetings

The FVRD is now conducting Electoral Area Services Committee meetings and FVRD Board meetings electronically.

The FVRD is now experienced with operating electronic meetings and incorporating public participation in these meetings.

FVRD Member municipalities have implemented the use of electronic public hearings.

The software that the FVRD is using for electronic public meetings (Zoom) can also be used for Public Hearings.

DISCUSSION

Provincial Guidance for Electronic Public Hearings

Public hearings are separate from council and board meetings and are addressed accordingly under Division 5 of the Order. Under the Order, a council, board or local trust committee of the Islands Trust may conduct a public hearing by electronic or other communication facilities. These provisions provide local governments another tool to hold public hearings while complying with the public health orders on mass gatherings and recommendations on physical distancing.

The Province has stated that it is up to each local government to decide which format of public hearing is best suited to its circumstances, whether it be electronic, in-person or a combination of both.

It is important to note that under the order, a public hearing may be conducted using electronic or other communication facilities despite any applicable requirements in a procedure bylaw. This means that FVRD procedure bylaws do not need amendments to implement electronic public hearings.

Access and Transparency of Electronic Public Hearings:

Electronic hearings are one way by which local governments can ensure that they are complying with the public health orders and necessary physical distancing while continuing to make important planning and land use decisions for their communities, including amendments to bylaws.

Local governments are accountable to their citizens and have a responsibility to ensure that opportunities for public input are accessible and transparent.

Maintaining procedural fairness, transparency and accountability should be of paramount concern in designing a process for electronic or phone participation in a public hearing.

Some community members do not have a computer or are not comfortable using technology. What other options are there to receive their opinions at a public hearing?

Local governments will need to carefully consider issues of access and transparency when holding public hearings that rely on electronic rather than in-person attendance.

In addition to online meetings, the order enables local governments to hold public hearings by phone or teleconference.

Local governments can also encourage the public to provide written submissions, as has always been allowed, as an alternative to attending an electronic public hearing.

How would hearings be conducted?

An Electronic Public Hearing would be conducted in a similar manner to the existing FVRD in-person public hearing processes. The FVRD Board may delegate the hearing to the Electoral Area Director for the area where the application is located. The meeting will be broadcast as a livestream so people can watch the meeting. The meeting would be opened by the meeting Chair and FVRD staff would then provide an overview of the procedures for the hearing and then provide an overview of the application. The meeting Chair would then read out the public hearing statement and state the meeting procedures. The Chair will then call for statements from the public. At that time members of the public will be able call-in by phone or using a Zoom (or other) app. After calling three times for statements, the Chair will then close the meeting. A recording of the meeting will be uploaded at a later date.

Unlike a traditional public hearing, for electronic public hearings, members of the public will not have to travel to a venue to attend a hearing or participate. Members of the public may choose to simply watch the hearing, or they may choose to submit comments by phone or the Zoom application.

Like a traditional public hearing, members of the public may submit comments in writing in advance of the hearing and have those comments entered into the public hearing record. Submitting written comments is encouraged.

To assist those who choose to speak at the electronic meeting, FVRD staff will be available to provide support and assistance.

In compliance with provincial orders, in advance of the meeting, written notices will be provided that include instructions on how to participate electronically. Newspaper ads will also include electronic participation instructions. The FVRD website will also include these instructions.

ALTERNATIVES

1. Continue to defer public hearings:

Continuing to defer public hearings will mean that applications will not proceed.

2. Conduct in-person only public hearings:

Conducting in-person public hearings requires compliance with public health regulations. Challenges include: venue availability, capacity limits, sanitizing of surfaces, maintaining physical distancing and complying with health and safety requirements. If an opportunity for an in-person hearing arises, staff will bring it to the attention of the EA Director.

3. Conduct in-person / electronic hybrid public hearings

Conducting in-person / electronic hybrid public hearings includes all of the challenges of an in-person hearing and adds the complexities of a duplicated electronic process.

4. Waive public hearings

Waiving public hearings may be supportable in some circumstances, but waiving a hearing is not recommended when there is community concern about an application. If a zoning amendment application arises that is likely to generate little community interest, staff will consult the EA Director about the potential for the Board to consider waiving the public hearing.

CONCLUSION

To enable local governments to proceed safely with public hearings, provincial orders now authorize the FVRD to conduct public hearings using electronic or other communication facilities.

The FVRD is currently conducting Board and Committee meetings electronically. FVRD staff are now experienced with the operation of the electronic meeting software and incorporating live public participation.

Holding an electronic public hearing will be a learning experience for the FVRD and members of the public. Compliance with provincial orders includes developing new notices and providing new ways to participate. The Province has enabled local governments to develop their own procedural rules to suit their community's needs. The FVRD is learning from member municipalities on how to hold these types of meetings. Hearings will be tailored to suit the needs of the residents of the FVRD.

The software used by the FVRD will allow for members of the public to call-in using a telephone, or over the internet. This will ensure that areas with limited access to the internet will be able to participate.

Members of the public may also continue to submit comments in writing and will be encouraged to do so.

It is therefore recommended that the Fraser Valley Regional District Board resolve to resume public hearings for rezoning and Official Community Plan amendment bylaws, and that Fraser Valley Regional District Board authorise the holding of public hearings by means of electronic communication. It is further recommended that the Fraser Valley Regional District Board direct staff to develop electronic public hearing procedural rules to maximize clarity, transparency and access for the public, and to ensure that due process is maintained.

COST

The table below highlights some of the costs associated with an Electronic Public hearing compared to an in-person Public Hearing (pre-state of emergency).

	In Person Public Hearing	Electronic Public Hearing
Number of Staff	2 (planning)	5 (1 IT, 2 admin, 2 planning)
Hearing notice	Provides details on attending and submitting comments	Must include new details on access to an electronic meeting, additional costs.
Venue	Costs for booking hearing venue	No venue costs
Staff travel	Travel to and from hearing venue + set-up and take down	Conducted from FVRD office

The existing FVRD Zoom licence will accommodate electronic public hearings without additional licencing costs.

COMMENTS BY:

Graham Daneluz, Director of Planning & Development

reviewed & supported

Kelly Lownsborough, Chief Financial Officer/ Director of Financial Services

reviewed & supported

Jennifer Kinneman, Chief Administrative Officer

Reviewed and supported.