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Client Bulletin

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Court of Appeal Overturns Decision in *Hubbard v. West Vancouver (District)* Adopts More Pragmatic Approach to Staff Input After Public Hearings

On December 21, 2005, the B.C. Court of Appeal overturned a somewhat controversial decision of the B.C. Supreme Court that had invalidated a zoning bylaw on the basis that after the public hearing the Director of Planning had prepared a comprehensive report for council addressing issues raised at the public hearing and indicated why, in his opinion, those issues were not of serious concern. The process followed in the *Hubbard* case was that at the close of the public hearing, the Mayor indicated that the next step would be for planning staff to review the submissions and to report back to council. Council received this report the following week at the meeting where council gave the bylaw second and third readings. The Chambers Judge held that the content of the report was the sort of material information that council was obliged to disclose to the public prior to public hearings, and that the receipt of information after the public hearing which offered new facts and new opinions invalidated the public hearing process.

In a relatively brief decision, the B.C. Court of Appeal examined a number of previous decisions dealing with the duty of disclosure of information in relation to public hearings and disagreed with the Chambers Judge that there was anything in the Planning Director's report that was new and that required a further public hearing for input from the public.

The Court stated:

> *What I take from the authorities is that the process to be followed by council in these controversial matters must be fair in that the procedure adopted must give interested parties a proper opportunity to address the matter being considered by council. If a satisfactory opportunity has been given to opponents of the change to consider all relevant information and to make such comments as they see fit, then it will be for council to decide what in their considered view is in the public interest. Having heard from those opposed to the bylaws in this case, the District council decided that it wished to have further comment on certain subjects from its staff. As the cases point out, this is not uncommon and is usually thought to be an acceptable process. If after receiving such information from staff, council was then required to call a new public hearing, the process would tend to be endless.*

This decision is significant as it represents an important clarification of the law relating to public hearings and supports the practice followed by most local government jurisdictions that depend upon planning staff to provide a thoughtful analysis and response to issues raised by the public at the public hearing to allow for informed discussion of the issues by council at third reading.

Part of the difficulty in this area of the law is that the Courts have acknowledged that the particular duty of fairness that applies in the case of the adoption of a zoning bylaw is largely dependent upon the circumstances of each case. This makes it very difficult to set out hard and fast rules that can be followed without any risk. The Court in *Hubbard* quoted from the earlier decision *Eddington v. Surrey* where the Court stated:

> *What will satisfy the requirements of procedural fairness is something that is not susceptible to rigid rules; it will depend on the circumstances of each case.*

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In *Hubbard* Mr. Justice Hall of the Court of Appeal stated:

> *As Esson J.A. observed in the above excerpt, what is required to provide for a fair hearing in an individual case will depend on the multifarious circumstances thrown up by individual fact situations.*

This does leave it open for someone in the future to argue that, in fact, a staff report did contain new information of the type that ought to have been placed before the public at the time of the hearing. The door is therefore not completely shut on persons who might want to challenge a bylaw on the basis of a flawed public hearing process. However, the decision certainly buttresses the position of local governments to proceed as they have always done, in reviewing submissions made at a public hearing with a view to finding a way of addressing legitimate concerns and dismissing those concerns that may have no real basis in fact.

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