

CONDUCT OF A PUBLIC HEARING UNDER THE PLANNING ACT

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McCandless & Associates

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I. Introduction

This manual is intended as a guide for councils and CAOs on the conduct of public hearings where *The Planning Act* requires a public hearing. The directions are based on the legislation, the case law, and our best judgment as to how the principles from the case law should be applied.

The guide is primarily concerned with development proposals that require council or planning district board approval following a public hearing. This would include:

1. amendment of the development plan
2. amendment of the zoning by-law,
3. approval of a conditional use
4. a variation order
5. subdivision approval (only where there is no development plan or zoning by-law).

Because there is a specific development proposal, there will be a proponent or applicant in favour of the proposal and there may be affected residents who are opposed to the proposal.

Where a municipality (or planning district) is adopting a new development plan or zoning by-law, or making general amendments to one of them, there will not be a specific proposed development with a proponent or applicant. In effect, the council (or the board) is the proponent of the plan or by-law. Much of the guide is relevant to such hearings, and should not be difficult to adapt.

The same comment can be made about public hearings under *The Municipal Act* or other legislation. The general principles apply and, except for details peculiar to *The Planning Act*, much of the guide should be useful.

General comments:

1. Neither *The Municipal Act's* provisions about public hearings nor the municipality's procedures by-law apply to public hearings under *The*

*Planning Act*¹. Therefore, laws and principles about conduct of the hearing must be found in *The Planning Act* and other sources. This means there can be no strict limit on the length of presentations. Nor can council choose presenters where presentations will be similar. Council should adopt (by resolution) procedural rules for *Planning Act* public hearings, but they should be careful not to restrict the opportunity to make representations too much.

2. A planning district board may have its own rules governing how it conducts a hearing on objections to zoning by-laws. In that case, these guidelines will only apply to those things not covered by the rules. But the guidelines governing the conduct of members of the board should be followed.

II. General principles governing public hearings

Those who are interested in a matter that is the subject of a public hearing are entitled to:

- proper notice of the hearing, including information about what is proposed to be done
- members of council free of personal bias
- a real opportunity to make representations and be heard

III. Public hearing for a specific development proposal²

A. Conduct before an application is made

Proponents (and opponents):

- may lobby individual members of council
- may appear as a delegation at a council meeting
 - the meeting should not be closed to the public
- may hold informational meetings with residents

Members of council:

- may have an opinion about development in general, the proposed development or similar developments, and may express the opinion in public or at a council meeting

¹ Section 160 of *The Municipal Act* about public hearings states that it applies to public hearings that a council is required to hold under *The Municipal Act*.

² In the case of a planning district considering an amendment to the development plan, read “board” for “council” below.

- during an election or to the public, may state that that they have a position in opposition to or in favour of development of a certain kind, or a particular proposed development
- may meet with proponents or residents in private BUT
- must report to council on any private meeting with proponents or residents at the next council meeting
- may have an interest in a development proposal e.g. may be an owner of land proposed for a hog production operation which needs the approval of council BUT
- if they have a conflict of interest, must not make any public statement on the matter, must not speak to any other member of council about the matter, even in private (throughout the process)

Council:

- may designate a member or a committee to discuss the proposed development with the proponent, and/or residents (and report to council)
- may discuss with the proponent and/or residents possible conditions of approval, concessions, changes to the proposal, itself (at a formal meeting) or through the designate or committee, either at a formal meeting or through the designate or committee
- must ensure that the proponent (and residents) are informed about the application and approval process, and about how things will be conducted once an application is filed
- should advise the proponent that all information it provides, verbally or in writing, may be open to public access
- must not make any commitment or promise to the proponent on any aspect of the proposal, must not give “approval in principle” or “approval subject to public hearing” or similar indication of support
- must have a resolution or by-law setting out forms, required information, fees and other requirements of applications

CAO:

- must on request provide information to the proponent and opponents about the municipality’s by-laws, policies and application requirements
- should give information to proponent and opponents about expected conduct of the public hearing and approval process, including role of council and individual members
- should inform members of council about the guidelines on conduct
- should record the names and contact information of residents and organizations that express an interest in the matter

B. The application

What is required

- it must be clear to the applicant (and the CAO) what form, information and fees are required in order to initiate the application
- the requirements should be contained in a resolution or by-law
- CAO should not accept an application unless:
 - all requirements of the resolution or by-law are met
 - all owners of the property have signed the application, or have signed authorization for the application
- the application form should have a statement by which the owners and applicant agree to public disclosure of all information which they give to the municipality or members of council in connection with the proposal
- the application form should warn owners and applicants that they may invalidate the proceedings if they approach members of council before a decision is made

subdivision application:

- since the application is made to Community Planning, the municipality has no role in the application requirements

Recommendations re: applications

- an application should be for a specific development proposal, e.g. not simply to rezone land; there must a project contemplated and details provided
- the municipality should have a fee structure which reflects the cost of the public hearing system

C. After the application is filed

CAO must

- advise council at the first opportunity
- if there is a real possibility of opposition, CAO should not wait until next council meeting to advise members

livestock operation over 400 AU³:

- immediately send application and supporting material to Technical Review Committee
- should send to TRC for all such proposals involving a public hearing, not just those involved in conditional use applications

Amendment to development plan or zoning by-law:

- the application will not proceed to a public hearing unless council gives first reading to a by-law
- council can have a policy or practice of giving first reading automatically OR it can exercise discretion on a case-by-case basis to give first reading⁴
- council need not notify anyone in advance of making this decision
- (consult development plan and zoning by-law for other (possibly different) procedures)

D. Conduct between filing of the application and holding of the public hearing

Applicant/proponents:

- should not speak to individual members of council
- should not appear as a delegation at a council meeting
- may approach residents and hold meetings with them

³ If the municipality's zoning by-law requires a conditional use for livestock operations below the 400 AU threshold, then use the lower threshold: send the application to TRC if operation is over the zoning by-law's threshold.

⁴ If first reading is rejected, the application fee should be refunded.

Opponents:

- should not seek to influence individual members of council
- should not appear as a delegation at a council meeting
- may hold meetings with the proponent
- may visit the municipal office and read the application file; obtain copies

A member of council:

- should not speak to the applicant
- should avoid discussing the proposal with known opponents
- should avoid expressing opinions about the proposal, in public or at a council meeting
- may attend meetings, if invited, between the applicant and resident groups
BUT
 - as an observer only
 - should only attend while both sides are there
- should tell any person who contacts him/her that the public hearing process requires all representations are to be made to council at the public hearing

Council:

- should not hear delegations on the subject
- should not discuss the proposal at a council meeting
 - **except** in the case of **Amendment to development plan or zoning by-law:**
 - if council exercises discretion about first reading, they may discuss the proposal fully at the meeting
- should have a practice where information and reports are put together as a package by the CAO and distributed to the council members so many days before the public hearing

CAO:

- must continue on request to provide information to the proponent and residents about the municipality's by-laws, policies, the procedures governing the hearing, and the guidelines on conduct
- should ensure members of council are aware of the guidelines on conduct
- must make all documents available for inspection (including the Technical Review Committee report, if any), plus any other documentation provided after the application was filed
- should advise people supplying information that it will be placed on the file and will be open to inspection
- should put together a package of the file information and distribute it to the council members so many days before the public hearing
- should advise people supplying such material that this is how it will be handled

E. Hearing date requirements

Conditional use:

- the hearing must take place within 40 days of the date application was filed (in completed form)
- **except livestock operation over 400 AU:** cannot be scheduled until report of Technical Review Committee received, then no sooner than 30 days after

Variation:

- the hearing must take place within 40 days of the date the application was filed (in completed form)

Subdivision application:

- the hearing must take place within 40 days of receiving the application from the province

Amendment to development plan or zoning by-law:

- scheduling of public hearing is in council's discretion
- (consult development plan and zoning by-law for other (possibly different) requirements)

F. Notice requirements

Follow *Planning Act* requirements

Also:

Content:

- the notice should state the reason for the application, e.g. to permit the construction of a 300-room hotel
- notice should state that all documents submitted to the municipality in connection with the application are open for public inspection
- the notice should say that if people intend to submit something in writing at the public hearing it's requested that they give it to the CAO a few days in advance, so that copies can be made

People to notify:

- if the municipality knows that a person owning land or living within the distance for personal notice will not receive a notice at the address in the assessment roll (e.g. away on holidays, roll not up to date), send a notice to where it will reach them
- send a notice to any person or organization who has expressed an interest in the proposal
- **livestock operation over 400 AU⁵: even if not a conditional use application⁶**, council should instruct the CAO to send the notice to owners within 2 km, or have a policy to that effect

⁵ If the municipality's zoning by-law requires a conditional use for livestock operations below the 400 AU threshold, then use the lower threshold: notify owners within 2 km if operation is over the zoning by-law's threshold.

⁶ Depending on how the zoning by-law works, in some municipalities a livestock operation may be approved by means of a rezoning.

- CAO must obtain and keep evidence of public notice (includes inspection of signs, twice, 6 days apart)

G. Issues arising before the public hearing date

Postponements:

Once notice is issued, hearing should not be postponed unless it is beyond anyone's control (e.g. weather, failure of quorum)

CAO should attempt to contact those notified

New date will have to be re-advertised fully in accordance with *The Planning Act*

Possible reasons for adjournment at the beginning of the public hearing

- applicant or opponents say they cannot proceed on the date scheduled for reasons beyond their control
- applicant and opponents are in ongoing discussions / negotiations concerning the proposal

Procedure:

- For issues arising before the hearing date, dialogue should be between CAO and applicant / opponents
- CAO will report to council on the matter
- CAO will advise the applicant / opponents that
 - hearing will open on schedule, and council will consider a request to adjourn to a specific date
 - council may decide to proceed in any case
 - OR applicant may withdraw the application and re-apply

H. The public hearing

No quorum:

- the public hearing will have to be rescheduled and re-advertised fully in accordance with *The Planning Act*

Chairing the hearing:

- normally the head of council will chair the hearing, but if desired a councillor can chair⁷

Opening of public hearing:

⁷ A person who isn't a member of council cannot occupy the chair.

- if a council meeting has been in progress, a motion must be passed to adjourn to the public hearing
- not all members need be present, but no member who is absent at the outset may participate at any time after
- the hearing cannot start before the time stated in the public notice
- if the applicant, or other persons who are expected to attend, are not present, council should wait 10 minutes (or whatever time is specified in council's rules for *Planning Act* public hearings) for them to appear, then start
- the public hearing starts upon the chairman's statement to the effect that the public hearing to consider the matter has begun

Proof of notice:

- CAO must present to council proof of public notice
 - this is done by the CAO showing the notice, newspaper clipping, names and addresses, etc., which are entered into the record of the public hearing (and available to the public)
- if it appears the notice was not properly given, the hearing must be adjourned

- if a date and time are set and announced at the time of adjournment, how notice of the adjourned hearing should be given depends on the nature of the problem, for example:
 - if due to a flaw in the posting or newspaper advertisement, then only that may need be repeated
 - if one or two persons entitled to a mailed notice have been missed, then it may only be necessary to mail them the notice
 - in either case, *The Planning Act* requirements for the notice period must be followed

Recording of persons intending to make representations:

- chairperson asks those present who intend to make representations (including written submissions) to record their names and contact information with the CAO
- it is not necessary to record the attendance of anyone who does not intend to speak or submit something in writing
- those appearing on behalf of others (lawyers, spokespeople) should be recorded, as well as the names of the people or organizations they represent
- (CAO can arrange to do this before the hearing starts, with a sheet to be completed by those intending to make representations; chairman would then ask if there are any persons who intend to make representations who have not signed the sheet)
- **zoning by-law amendment only:**
 - persons have to formally identify themselves as “objectors”
 - the CAO’s sign-in sheet should use this term

Chairperson’s introduction:

Chairperson will explain the purpose of the hearing, how it will be conducted, and what kind of outcome will result; example:

The purpose of this public hearing is to receive representations from the applicant and any persons who wish to make them concerning

We will hear first from the applicant, then from those present who wish to make representations, starting with anyone who wants to speak in favour of the proposal. At the end of the other presentations, the applicant will have an opportunity to respond. If in the response the applicant supplies new information or raises new issues, then the others will be given an opportunity to speak again.

At the end of each presentation the members of council may ask for clarification from the speaker on any fact or issue, but will not enter into a debate.

Persons speaking must address the chair. If they have questions that they think the applicant should answer, they should raise them in their presentation to the chair. The applicant will have an opportunity to respond to questions when the other presentations are finished.

This is also not the time to question the members of council. Under The Planning Act the purpose of the public hearing is for council to receive representations, and a discussion or argument involving members of council is inappropriate.

There should be no interruptions while a person is making a presentation. Order must be maintained.

Minutes will be kept. [Optional: And the proceedings will be recorded.]

Written submissions and reports may be presented, but copies must be made available to all those present who want them.

When all presentations have been completed, the public hearing will close. If the hearing is not completed today, either because we run out of time or further information is to be provided, then we will adjourn the hearing.

If we adjourn, we will tell you at this hearing the date for the continued public hearing. There will be no other notice given of the date.

Even if all the representations are completed today, we do not expect to be making our decision today. Until our decision is made, there can be no further communication of any kind with council or the members about the proposal.

When council makes its decision, all persons who made a representation at the hearing will be notified.

Development plan amendment: *If Council decides to give second reading to the by-law, those who made representations at this public hearing will have an opportunity to file an objection with the Minister of Intergovernmental Affairs.*

Zoning by-law amendment: *If Council decides to give second reading to the by-law, those who made objections at this public hearing will have an opportunity to file a second objection with the*

[Municipal Board OR Planning District Board]. So if you want to have this opportunity, please make sure that you identify yourself as an objector⁸.

Conditional use and variation: *When Council makes its decision on the application, it is final. There is no appeal to the [Municipal Board OR Planning District Board].*

If anyone has a preliminary point or procedural objection to raise, please may we hear from you now. If not, we'll begin.

Written submissions from persons not present:

- may include Technical Review Committee report
- CAO advises council and enters them into the record of the hearing
- copies to be available for applicant and those present
 - the copies should be made immediately; a recess may be needed for this purpose

⁸ A person is free to withdraw their objection, but this should be clearly stated and confirmed, and recorded in the minutes.

Receiving representations:

- speakers are not sworn or affirmed
- the municipality may set out maps etc. to assist communication
- applicant goes first
 - if written materials are submitted, those present must have an opportunity to read them
 - recess may be necessary for this purpose
- when applicant is finished, chairman may ask the members of council whether they have any questions
 - questions should be confined to clarification
- if the applicant has not done so in its presentation, the chairman should ask it to state what conditions of approval it is prepared to accept
- next each person makes a presentation
 - if written materials are submitted, applicant must have an opportunity to read them
 - recess may be necessary for this purpose
- when each person is finished, chairman may ask the members whether they have any questions
 - questions should be confined to clarification
- chairman should ask whether there is anyone else present who wishes to speak⁹
- when all are finished, applicant may respond
 - if appropriate based on issues raised by objectors, and applicant has not already done so, chairman may ask applicant if it is prepared to accept other conditions of approval
- if chairman thinks applicant has given new information or raised a new issue, chairman will give the others an opportunity to respond
- that ends the presentations
- (unless an adjournment is needed) chairman declares that receipt of representations is complete and that the public hearing is concluded

I. Problem areas

Order:

- chairperson is in charge of order
- no interruption, heckling or demonstration should be tolerated
- if disorder is persistent, chairperson can call a recess
- chairman can ask disorderly person to leave
 - (if the person stays and continues to be disorderly, chairperson can call the police)

Members of council:

⁹ Someone may not have signed the CAO's sheet, perhaps because they came late.

- all members present at the opening of presentations must be present throughout
 - if a member wishes to leave the room, even to go to the bathroom, there must be a recess
 - a member who has not been present during all of the representations cannot take part in the decision¹⁰
- members must respect the procedure, e.g. not speak out of turn, not act as if their mind is made up, not speak privately to any of the presenters
 - if obvious or persistent, chairperson should call a recess, and advise the member in private
 - council's rules may provide that if misconduct by a member is serious and persistent, the hearing will be adjourned unless the member remove himself/herself from the panel

¹⁰ For a development plan or zoning by-law, this means the decision to give second reading. When a by-law comes back from the Minister or Municipal/District Board for third reading, the member can participate and vote at this stage.

Request or need for adjournment:

- possible grounds for adjournment:
 - one side may want time to respond to information or documents the other side has presented
 - applicant and proponents may want to meet to discuss the proposal; or council may want them to do so
- if one side wants an adjournment and the other is opposed, council will have to use its judgment, after hearing from both sides on the subject

Procedural problems, legal issues:

- if these arise, council should ask the applicant and those concerned to state their position, then take a recess to consider the matter in private
- during the recess, council can consult with the CAO and legal counsel if necessary
- if council is still uncertain about what to do and the question is important, it will have to adjourn the hearing (unless the person raising the issue abandons it)

Value of recess:

- the chairperson should not hesitate to call a recess if there is any doubt about how to handle a procedural matter or any confusion that arises

¹⁰ For a development plan or zoning by-law, this means the decision to give second reading. When the by-law comes back from the Minister or Municipal/District Board for third reading, the member can participate and vote at this stage.

J Adjourment requirements

- adjournment should always be to a fixed date, time and location, announced by the chairman at the time of adjournment
 - if not, notice will have to be given over again¹¹

- if a presenter has advised that he or she cannot stay to the end of the public hearing, and it is subsequently adjourned, CAO should attempt to contact the person

¹¹ Notice should be advertised as per *The Planning Act* and mailed to those who are on record from the hearing.

K. Record of meeting

Minutes must be kept:

- they should be concise; to a similar standard as for a council meeting
e.g. *“Ms A described the proposed operation in detail. She stated that she had read the report of the Technical Review Committee and agreed with it. She is prepared to accept the recommended conditions.”*
“Mr S objected to the proposal on the basis of potential odours and contamination of groundwater”.
- statements by the proponent as to the acceptance of conditions should be recorded

Tape or video recording:

- at council's discretion
- have to ensure that all speeches are recorded, and that speaker can be identified
- recording is not a substitute for minutes; they must be kept regardless
- following the hearing, person requesting transcript of recording or copy of videotape must pay the cost

Media, others who wish to record the hearing:

- the newspapers' access cannot be restricted
- council does not have to agree to live broadcast of the hearing
- if the media or anyone else wants to record the hearing (tape or video), council may place reasonable restrictions on them, such as:
 - practical matters such as placement of cameras or tape recorders
 - the media must agree to make the recording available to council or participants on request

L. Conduct until decision is made

This applies

1. while the public hearing is adjourned and
2. during the time between the end of the public hearing and the day of the decision

Applicants/proponents:

- should not speak to individual members of council about the matter
- should not appear as a delegation at a council meeting
- may approach residents and hold meetings with them

Opponents:

- should not speak to individual members of council about the matter
- should not appear as a delegation at a council meeting
- may hold meetings with the proponent

Individual members of council:

- should not speak to the applicant, proponents or opponents about the matter
- should avoid discussing the proposal with anyone
- if someone sends the member a report or other information, the member must return it unread
- should not attend meetings between the applicant and resident groups

Council:

- should not hear delegations on the subject
- while the public hearing is adjourned, should not discuss the proposal at a council meeting
- may have *in camera* meetings with their lawyer

- if council has agreed to await a report the applicant or objectors wish to submit in response to information or an issue which arose at the hearing, it must adjourn the hearing rather than declare it completed
- at the reopened hearing the applicant or objector will present the report and the other side will have an opportunity to respond

- the only representations and documents before the council when it makes its decision are those presented in public at the hearing
 - if the municipality receives a letter or report after the public hearing is closed, CAO must not automatically present it to council
 - council could have a rule that no communications will be accepted OR
 - council could have a policy for the CAO to follow, to this effect: if the information is new and important, the CAO is to advise council of its existence (not its contents); if council wants to consider the new information before making the decision, council must decide to reopen the public hearing¹²
 - if, inadvertently or otherwise, a member receives important new information, then the member should report it to council, which then must reopen the public hearing

M. Making the decision

Decision is made at a council meeting:

- no notice should be given
- members are free to discuss the proposal among themselves
- council may not close the meeting to the public to discuss the decision
- but council may consult their lawyer in private and in confidence
 - this may be useful where the wording of conditions is important

¹² Notice should be advertised as per *The Planning Act* in addition to mailing to those who are on record from the hearing. The notice will have to explain the reason for reopening the hearing.

- members of council who were not present at the public hearing must abstain from voting

Form of decision:

- **development plan or zoning by-law amendment:**
 - give second reading to the by-law
 - OR alter the by-law and hold another public hearing
 - OR resolve not to proceed with the by-law

- **conditional use:**
 - by resolution, approve the application with or without conditions
OR reject it

- **variation order:**
 - if approved, is in the form of an order, appended to a resolution
 - the resolution should contain the following words:

“Whereas council is satisfied that

(a) the general environment, amenity and convenience of the community as a whole will not be adversely affected; and

(b) the general environment, amenity, convenience, character and value of adjoining properties will not be adversely affected;

council approves variation order no. _____ attached to this resolution.”
 - if rejected, by resolution

- **subdivision approval:**
 - by resolution, approve the application with or without conditions
OR reject it

Reasons for decision:

- no reasons should be stated for a decision either approving or rejecting an application
 - members may have different reasons for the way they voted

- **conditional use:**
 - members should not approve unless they think the facts presented at the hearing establish the things listed in section 53(7)(b) of *The Planning Act*

- **variation order:**
 - members should not approve unless they are satisfied as to the things mentioned in the resolution form (above)

If council is only prepared to approve the proposal subject to conditions the applicant has said it is not prepared to accept, council should reject the application.

This guide was prepared for University of Manitoba
Continuing Education Division by

McCANDLESS & ASSOCIATES
Winnipeg, Manitoba

Please direct questions or comments to
Mike McCandless 488-1243
Greg Tramley 949-7750 or 231-2703