

Communication and the Public Hearing Process:

A critique of the land-use public hearing communication process

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Admin 598 - Management Report

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Executive Summary

A public hearing is a legal requirement, mandated by Section 890 of the *Local Government Act*, (*LGA*) that makes provision for the public's right to have input to Municipal Councils and Regional District Boards on land-use issues. The purpose of the public hearing is for the public to make representations to the local government on land use issues respecting matters in community plan or zoning bylaws (Section 890(1) *Local Government Act*, *RSBC 290*). The public hearing is preceded by a lengthy process, involves the submission an application, working with local government staff, staff submitting reports to Council, receiving input from Council's Advisory Committees, and the preparation of a bylaw, to which Council has granted first and second readings.

The Court has determined that the public hearing is quasi-judicial in nature (Attorney General, Ministry of, 1989). This means that the public hearing must operate according to administrative fairness, which protects the rights of the property owner and the public's right to make representation. A decision from the public hearing is open to challenge by means of a judicial review (Rogers, 1988; Kemsley, 1997).

The dynamics and characteristics of a public hearing and the regulation of how to communicate at a public hearing, are regulated by the *LGA* and procedural rules, similar to a Court, which dictate when, how and what can be said. Section 890 *LGA* and procedural rules are based on the Rules of Natural Justice. A central premise of the public hearing is that fair treatment be applied (Rogers, 1998; Smart Growth, 2003; Kemsley, 1997).

However, some researchers have noted the limitations of the public hearing. For example, if misleading information arises during the public hearing process, there is no mechanism for correction (Lidstone, 1991). As well, Connor observes that the hearing allows anyone to speak,

regardless of their knowledge about the facts of the proposal, which can generate increased misunderstandings and contribute to unnecessary conflicts that preclude a reasoned analysis of a proposal (2001). Other research has showed that participants feel their ability to influence the decision-making process is overshadowed by the procedural rules, and therefore become disenchanted with participating in the process (Connor, 1999).

In sum, the research suggests, that though the purpose of a public hearing is to provide the public with a forum at which they may have input into a land use decision there are some unintended consequences of the public hearing that may undermine the overall objective. The purpose of this research is to show *how* this may happen. To do this I will examine the way that regulations and legislation discursively shape a particular style and form of talk. The findings show that the talk at a public hearing is adversarial, encourages positional argumentation, and does not encourage listening. This form of communication often leads to escalation, polarization, and exaggeration of the issues, aggressive behaviour, and participants do not feel heard or understood. In sum, the style of communication contributes to an escalation of conflict.

The purpose of this research is to show *how* conflict is shaped by discursive technologies. To do this I will first demonstrate the kinds of communication that are performed at a public hearing. I will show that the communication is adversarial and escalates. Having then demonstrated the adversarial nature of communication produced during the public hearing, I then set out to show how this communication is shaped by discursive structures. In particular, I will examine two discursive technologies: 1) Section 890 of the *LGA*, and 2) remarks made by the Chair prior at the start of the public hearing, regarding communication and procedural rules (this is practice). I will then examine the talk at the public hearing and show how the talk at the public hearing is regulated by these discursive technologies.

I will use critical discourse analysis as a method of analysis. Discourse analysis is a qualitative method consistent with a social constructionist perspective. It is a way of understanding, (Fulcher, 2005, pp. 1-3) how the meaning of words spoken and written by others is socially constructed (McGregor, 2003, p. 1). In this case the methodology will show how our feelings, thoughts and interactions are shaped by technologies which are regulated by policies and laws, themselves produced by particular legal and administrative discourses.

The findings demonstrate that the requirements of the legislation and the procedural rules constitute the kind of communication during the public hearing process. Specifically the technologies shape a public hearing process to construct a form of language that is hierarchal, top down, one way and ultimately, divisive. An analysis of the public hearing talk found themes of positionality, aggression (attack/defend/blame), exaggeration and (extreme) emotionality; together these forms of communication exacerbate the conflict and leaves participants discouraged with the public hearing process. Though participants right to make representation has been upheld, their experience has left them discouraged and frustrated not being heard

Ideally, participation ensures that participants with opposing points of view have an opportunity to be understood and their differences respected: this is an essential element to effective dialogue and participatory governance. In this research, we see that some people who may wish to understand the other's argument are unable to do so because the public hearing process does not provide a space where understanding can take place. Public confidence in the public hearing process is important for the effectiveness of local government. I conclude that we need to reconsider ways that effective communication is ensured in the public hearing process.

As a result, the following recommendations are being presented for consideration.

It is recommended that:

1. A new section be added to the *Local Government Act*, example Section 890.1 that grants the local government the discretionary authority to hold an official “Pre-Public Hearing Meeting(s)” without impacting the legality of an official “Public Hearing” held in accordance with section 890 LGA.
2. Council may use the “Pre-Public Hearing Meeting” if it feels there is a requirement for those land-use planning issues requiring a more open collaborative dialogue.
3. The Council would be a participant in the “Pre-Public Hearing Meeting” and any comments made by individual members of Council are made on a “without prejudice basis”.
4. Once directed by Council to proceed with a “Pre-Public Hearing Meeting”, the administration of the “Pre-Public Hearing Meeting” is the responsibility of the local government administration who may use either internal or external resources.
5. The “Pre-Public Hearing Meeting” will be designed to facilitate an informal collaborative dialogue between the public, the applicant, staff, and Council on a proposed land-use application.
6. The “Pre-Public Hearing Meeting” would not be required to follow the strict rules (Rules of Natural Justice and procedural requirements) that structures and limits talk at the Public Hearing, mandated by Section 890 of the *Local Government Act*.
7. The local government must not make a decision respecting a land use decision at the “Pre-Public Hearing Meeting”.

8. The Province of BC working with the Union of BC Municipalities and the Local Government Management Association of BC, jointly develop guidelines that would be helpful to local governments in designing a “Pre-Public Hearing Meeting” process.
9. Based on the guidelines, local government be given the discretion to develop a process that suits their respective needs.
10. A synopsis of the “Pre-Public Hearing Meeting” form part of the record at the “Public Hearing” mandated by section 890 of the *Local Government Act*.

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Introduction

People do not always agree on land-use planning matters. In British Columbia, local government regulates changes to land-use through an amendment to a land-use bylaw. The process to amend a land-use bylaw involves a number of steps, as defined by the *Local Government Act (LGA or Act)*. The first step is for the property owner or agent to become familiar with municipal rezoning policies, guidelines and bylaws, meet the planning staff and become familiar with the local concerns. The next step is to submit an application, which planning staff will review and coordinate input from other departments, subject it to Council policy, and then seek input from Council's Advisory Committees. Planning staff then prepares a report for Council's consideration at a Committee of the Whole Meeting.

At that meeting, Council may direct staff to prepare the necessary bylaw and proceed to a statutory public hearing, postpone consideration of the application and request more information or changes from the applicant or reports from staff, or reject the application. If Council requests the applicant submit additional information, staff will then submit another report to Council, to further seek Council's direction whether Council wishes staff to prepare the necessary bylaw and proceed to a public hearing or reject the proposal. Should the application be approved, forwarded to Public Hearing, and after the close of the hearing, Council may give the bylaw third reading, and possibly fourth (final) reading.

For many local governments, the statutory public hearing, which comes near the end of the rezoning process, is the first time the public has officially become aware of, and invited to provide input into the proposed land-use (see Appendix A). A few local governments have tried to involve the public earlier in the process. Though the intended purpose of the public hearing is for the public to make representation to the local government, the research shows there may be

limitations to the ability of the public hearing to achieve its intended goal. The research shows that there may be problems with the way people talk during the public hearing. The purpose of this research is to explore *how* this may happen.

What is a Public Hearing?

Public input on land use bylaws is through a quasi-judicial process called a public hearing. Prior to holding a public hearing, the local government must give notice of the hearing, the purpose of the hearing, and the time and location of the hearing. The section makes provision for the public's right to be heard and/or present written submissions on land-use planning and decision-making.

The public hearing process is quite formal. It is regulated by legislation, specifically Section 890 (*LGA*) (see Appendix B) and procedural rules (see Appendix C). The hearing consists of the Mayor and Council and staff, with the Mayor presiding as the Chair of the public hearing. As required by the procedural rules the Chair opens the hearing by reading a prepared statement that outlines the public hearing procedures and how the communication between Council and the public is to take place.

Purpose of this Research

The purpose of this research is to show *how* the talk (this is the discursive practice) at the public hearing process exacerbates conflict. To do this I will first situate myself, describe the context of this research and how I came to be involved in this work. I will then undertake a literature review to examine the research that demonstrates the concerns of the public hearing. I will then outline the theoretical approach underlying my methodology. Finally, using Critical Discourse Analysis (CDA) as my methodology, I will examine two key discursive technologies, 1) Section 890 of the *LGA*, and 2) the Chair's opening statement and procedural

rules. I will then examine the communication patterns during the public hearing. Together these analyses will show how these discursive practices and technologies regulate a form of talk at the public hearing. I conclude that while the public hearing does allow the “public to make representations”, the form of talk that is construed by the discursive technologies, exacerbates the conflict, and thus diminishes the public’s experience of participation. Finally, I will make some recommendations about how to improve public participation in land-use decision making.

Context of this Research and Situating Myself

Within the framework of deliberative democracy, ensuring and sustaining public confidence and participation in public process, is critical to the effectiveness of local government (Mainsbridge, 1962; Putman, 2001; Gastil, 2008). In this research, I will explore *how* a technology of local governance-the public hearing process-intended to provide for public input and participation on land use issues, undermine the public experience of participation, and in turn undermines public confidence in how they are governed.

Reflectivity

Before proceeding to the literature review, I will share that my preconceived beliefs about the public hearing communication processes. These ideas have been formed from experience in local government for 28 years in three municipalities and two regional districts. I was a middle manager for four years, a Senior Department Head, Deputy Chief Administrative Officer (CAO) for nine years and 15 years as a CAO. For 24 years of those 28 years I attended hundreds of public hearings. In my experiences the public hearing communication process was structured to permit only a one way talk, with people saying whatever they wanted, and to say this without proof. As a CAO I watched the decision-makers at Council listen to the information put before

them but unable to respond, while participant anger and frustration with the process would appear to escalate.

Literature Review

The purpose of this literature review is explore research that has to understand what other challenges have been identified with public hearings, and examine how this has been addressed. To identify relevant literature I used Google scholar. Key phrases in the search included the following, “public hearings”, “public hearing process”, “local government public hearing process”, “problems with the local government public hearing process”, “public participation in local government”, “problems with public participation in the local government planning process” , “land use public hearing in British Columbia”, “land use public hearings in Canada”, “communication during the public hearing process in Canada”, and “problems with the land use public hearing process in British Columbia”. I identified and focused on literature that critiqued the public hearing. Most of this literature critiqued is from a positivist framework in that it is based upon empirical findings, founded upon the science of observable facts, which provides a basis for scrutiny by other researchers. Positivism is a descriptive account of human occurrences limited by the level of analysis of the framework. The positivist framework uses reinforcing language to imply the reader the positivist approach accurately describes the way things are. Only on paper, provided a post-modern critique. I was not able to identify a lot of literature to identify challenges with the public hearing process.

Below I review these critiques from a social, legal and then structural perspective, what researchers have has done to understand the public hearing communication process and to review the research that addresses the concerns of the public hearing process.

Problems with the land-use public hearing process

There are a number of problems that have been identified in the literature associated with the land use quasi-judicial public hearing process used in British Columbia. These problems can be categorized as social, legal and structural.

Social

Indirectly, the public hearing process is facing greater public pressures. These pressures are due to the interaction of economic, environmental and social factors, which has led people to resist change (Connor, 2001). People generally appear not to understand or agree with the goals, methods, or timing of proposed change in land use. For example, a municipality might want to encourage a certain type of commercial or industrial base in order to generate additional revenue from development cost charges to pay for aging infrastructure, but environmental regulations and social factors, each supported by a variety of special interest groups will need to be taken into consideration. The key stakeholders in the process, the community, technical experts, politicians, developers, and special interest groups will often have competing interests, each wanting to have their say. As we will see, the public hearing has difficulty processing these multi-party interests (Municipal Affairs and Housing, 2002). The balance between technical, community and political interests in planning, has shifted over the past 20 years (King-Cullen, 1999). Privileging technical input has been challenged, and considered insufficient to address planning issues (Forester, 2010). People today are better educated, more aware and more articulate about land use planning issues than in the past. Not only are citizens cynical about expertise, they are better educated, and more aware and more articulate about land use planning issues than in the past. Community consultation in part is intended to address the lack of trust in decision-makers, by giving citizens an opportunity to have a say in land use decision-making

(King-Cullen, 1999; Hoppner, 2009). There is pressure therefore, for the public hearing to provide a forum for the public to have *meaningful* input into the decision-making process.

Legal

A public hearing is a legislative requirement prior to the enactment of zoning, land use/or official community plan bylaws (UBCM, 2002). There are only a few exceptions where a public hearing would not be implemented (Rogers, 1988). These include:

1. Federal control over lands used for Indian Reserves, airports, railways, harbours and other purposes that are regulated by federal law.
2. When the Province has retained;
 - a. The power to regulate subdivision and land use through its own officers and boards in specific situations (example, under the Agriculture Land Commission Act, RSBC 1979, c.9) and
 - b. General exemption of its own activities through section 14 of the *Interpretation Act* RSBC 1979, c.206.

At a public hearing, a member of the public has the right to participate (Rogers, 1988). The Courts have determined when rights are affected there is a duty to act judicially and this implies judicial functions (Attorney General, Ministry of, 1989). The right to participate and the communication that is permitted are regulated through a set of rules outlined in the *LGA* and Court decisions referred to as Common Law. This has led to the development of Administrative Law principles known as the “Rules of Natural Justice” (Rogers, 1988; Kemsley, 1997) (see Appendix D). These rules were developed to ensure fairness during the quasi-judicial procedure (Rogers, 1988; Kemsley, 1997). Fairness is further ensured since decisions of the public hearing decision-makers are open to challenge by means of a judicial review (Rogers, 1988).

The public hearing process, therefore, acts much like a Court procedure. These procedural requirements are a statutory pre-condition of the enactment of a zoning bylaw (Rogers, 1988). However the quasi-judicial public hearing does not necessarily promote proactive communication and understanding of land use issues (Connor, 2001). As a result, participants often find the process adversarial and experience winner/loser outcomes (Connor, 2001).

Even though a public hearing is one of the most important protections associated with land use, persons are becoming disenchanted with participation in the process since their ability to influence the decision-making process is over shadowed by the procedural rules which do not permit the resolution of conflict that is often associated with land use (Connor, 1999). Government processes such as the public hearing process, become out of step with their various publics who become angry with them (Connor, 1993), bringing out high emotional energy, anger, frustration and hostility (Seymoar, 2003).

Structural

There are several aspects of the structure of the public hearing that have concerned researchers. Generally the critiques are bothered that the structure prohibits meaningful exchange. For example, King-Cullen (1999) observes that the public hearing is very technical and analytical, and the community is ancillary. And Baker (2005), acknowledging the structure comments that “the public hearing is not about communication, it is about convincing” (p. 323). Also the place that a public hearing finally occurs in the decision-making process brings the complaint by local government and the Ministry of Aboriginal and Women’s Services that by the time a land-use planning bylaw receives second reading, which initiates the public hearing process the momentum for approval is already very strong (UBCM, 2002).

The public hearing also does not provide for a way to correct misleading information that could be brought up during the public hearing process (Lidstone, 1991). The public hearing allows anyone to speak, whether or not they understand the facts of a proposal. This can generate increased misunderstanding and conflict which does not further a considered, reasoned analysis of a proposal (Connor, 2001). To further complicate matters, the Courts have ruled that after the close of a public hearing, a Council cannot discuss the matter or receive new information, without jeopardizing the process (Rogers, 1988).

Others recognize 2 courses of action; improving the status quo, or introducing collaboration into the structural process. Baker's (2005) research identified 10 critical factors for improving the regulation of the current structure of municipal public hearings noted in Appendix E. Of note here, is that his recommendations are about ensuring the adherence to the status quo. He does not question the legitimacy of the process.

Connor (1993, 2001) suggests the process should be separate from the quasi-judicial process and should be a more collaborative process, based on good communication principles and be designed to protect property rights and the public's common law rights. The process would assist with resolving land-use planning issues or at best assist a community to understand planning issues within that community, prior to the public hearing process.

Topal's (2009) research, critiques the value of the public hearing process. He analyzes a public hearing where an application of an oil company who wants to drill a sour well within the City limits of Edmonton, Alberta. He concludes public hearings "use legitimate practices to enact institutional power although they are commonly portrayed as risk-minimizing democratic mechanisms" (p. 277). He cynically concludes that "consequently, public hearings will continue to be an essential means for enacting legitimacy rather than democracy" (p. 293).

Public hearings legitimate government and corporate institutions by enacting public participation that is formal not substantive, creates “public good” that serves particular, not general interests, and uses evaluation which is normative or value-based and not rational (Topal, 2009). Topal concludes the public hearing process enacts ideological or image-based legitimation by constructing an illusion for the general public that they are being included in the decision-making. And though legitimation is illusory, it is effective for enacting state and corporate power (Topal, 2009). This lack of democracy is problematic in that the structural power usurps the citizens’ ability, to participate in a meaningful democratic decision-making process.

I suggest that Baker misses the mark. I agree with Topal in that the public hearing process creates an illusion for the public that they are being included in the decision-making process, when in fact, it is illusory. Topal’s work provides a springboard for my research. In this paper, I will explore how it is this structural issue is problematic.

Good Communication

It is important to understand what communication should be. Connor (2001) suggests that effective communication is the key to understanding differences of opinion and is critical to resolving conflict. When conflict over land use planning issues is not able to be resolved, people become either winners or losers; some people begin to question the utility and effectiveness of local government’s land-use decision-making process. People can become apathetic, cynical and are less likely to involve themselves in the public hearing process (Connor, 1993).

William Isaacs suggests that communication problems stem from an inability to conduct a successful dialogue. Trying to convince others of our positions by refusing to consider other opinions, withholding information, and ultimately getting angry and defensive are common

examples of this (Isaacs, 1999). Isaacs demonstrates that dialogue is more than just the exchange of words, but rather, the embrace of different points of view. It is the art of thinking together (Isaacs, 1999). He says the outcome can be quite different from the traditional winner-looser structure of arguments and debates. Table 1 illustrates what is good communication and what is bad communication (People Community Blog, 2009).

Table 1 Traits of Poor and Good Communication	
Poor Communication	Good Communication
People wear masks, they uphold an image or protect a public identity	People are authentic, they don't pretend to be who they are not
Sender attacks receiver	Sender is neutral or positive towards receiver
Receiver doesn't listen to sender	Receiver is open to listen and listens effectively to sender
People (either sender or receiver) are distracted	People are present: paying attention to the conversation
Message is garbled or ambiguous	Message is clear and direct
Sender has a hidden agenda (persuading, controlling, avoiding control, or any other agenda)	Sender discloses to receiver what he/she wants out of the conversation
Receiver is judgmental and filters messages through his/her point of view	Receiver keeps mind clear and open to other points of view
One or more of the people involved are over-emotional (no longer in control of their thoughts, actions, and words)	All parties in the conversation can be emotional, but not over-emotional

We will see that few of the good communication characteristics are observed during the public hearing.

Research Question and Research Statement

It is my hypothesis that during a public hearing, the public and Council feel misunderstood causing conflict to escalate. I propose to show what the communication patterns looks like in the public hearing and how particular discursive technologies shape the communication during a public hearing. These discursive technologies shape a particular kind of communication exchange, which causes existing conflict to escalate.

This hypothesis leads to the following research question and statement.

Question 1 - What is it about the public hearing that produces misunderstandings and conflict?

Statement 1 - The land-use public hearing produces misunderstandings, and an escalation of conflict.

Theory

This study focuses on the talk of citizen during a public hearing. I will use the principles of critical discourse analysis (CDA) to understand the meanings that shape talk, actions and institutions, and how they do so (Fairclough, 2000). CDA exposes how discourse reproduces particular practices by those who have social power, while legitimizing the structure of institutions within which they operate. The public hearing literature previously cited raises doubts about successfully implementing a communication strategy within a system that is more powerful and ideologically dissimilar. Concerns are that the legal rules and procedures that are required to implement a public hearing may sabotage good practices of communication. The language cited above that explains the public hearing as fitting into the regulations about how to talk, who can talk, and when to talk refers to discursive practices that are constituted from the larger, more dominant legalistic discourse. Because these expectations are often disguised in the language of law and regulatory administration, they have an invisible power, and as such are capable of mystifying the places where authority can be exercised in the name of that discourse. In this study, I explore how the talk of citizens at a public hearing is regulated by this legal discourse.

A primary tenet of this paper, then, is that law is a highly privileged discourse that administers power and codified knowledge, which in turn shapes how we talk, think and relate to one another. Analysis of the citizen talk that follows will reveal how the legal discourse

conceals and reproduces power of the bureaucratic system. The findings have significant implications: they suggest that the public hearing, when it is a strategy administered within the land-use decision-making mandate, is potentially neither neutral nor collaborative – dominant discourses have the ability to silently disempower those who participate in the public hearing, reproducing increased conflict, and ultimately, disengagement. In sum, the talk presented below will show *how* in some instances, the public hearing becomes shaped by privileged discourses that are culturally produced and endorsed but in opposition to the principles and values of good communication and collaborative decision-making.

Methodology

The following section will provide the rationale why I choose CDA as my methodology. I will select a public hearing and then examine the dialogue that occurs between the public and Council at that public hearing. I will examine the dialogue to identify themes of communication and power relationships that are performed at the public hearing and will map the kind of communication that is produced during the public hearing. I will also undertake a language analysis of the Chair's opening remarks, procedural rules and Section 890 of the LGA to see what impact these three discursive structures have on the dialogue.

Why I choose Discourse Analysis

Discourse analysis, is a qualitative method that aligns with the social constructionist school of thought. At its core is a way of understanding social interactions, (Fulcher, E., 2005) and revealing the often hidden meanings of words (spoken and written) that reside in public discourse and social practice (McGregor, 2003; Taylor, 2001). Discourse analysis challenges us to move from seeing language as abstract to seeing our words as having meaning in a particular historical, social, and political contexts; our words are never neutral (McGregor, 2003).

Stemming from Habermas's (1973) critical theory, discourse theory aims to help us to understand social problems that are mediated by power relationships and to uncover the assumptions that are hidden in the words of oral speeches. In this context, this means that our feelings, thoughts and inter-actions are shaped by technologies that are regulated by policies and laws, themselves produced by particular legal and administrative discourses.

Method: Selection of a Public Hearing

I have chosen a public hearing that was held in Central Saanich on May 4, 2011. The hearing was about a land-use issue that would amend the Official Community Plan and to rezone 3 of 7 acres of property the Peninsula Co-op owns, at the corner of West Saanich Road and Keating Cross Road, to build a new supermarket. I attended, recorded and then transcribed the entire meeting. The meeting began at 7:00 pm. and ended at 12:33 am (May 5, 2011). The meeting began with the Mayor's opening remarks and explanation of procedural rules, followed by presentations by the Chief Administrative Officer, Director of Planning and Building Services, the applicant, applicant's support staff, and the public.

A record of the May 4, 2011 public hearing proceedings was made by the District of Central Saanich and a copy of that record can be found on CD attached as Appendix F. A copy of my transcription of the proceedings is attached as Appendix G. A copy of Section 890 of the *LGA* is attached as Appendix B and a copy of the Mayor's opening remarks and the procedural rules is attached as Appendix C.

In my analysis I will first examine: 1) Section 890 of the *LGA* to describe the dominant discourses from which the discursive practices are constituted, and 2) the Mayor's opening remarks and procedural rules that are followed, to show how the Mayor administers the legal and administrative discourses and 3) by identifying some talk that occurred between the public and

Council at the May 4, 2011 public hearing to show the way the particular themes of communication are shaped by the discourses. From there, I want to identify themes of communication and power relationships that are permitted at a public hearing.

There are a variety of participants in the public hearing process; the public, special interest groups, developers, legal community, Council members and local government planning staff. As a result, it is important to understand the underlying social structures, which are played out within the conversation or text that occurs during the public hearing process. In order to understand the structures I will identify themes of communication and power relationships.

It is important to put the public hearing into context. As a result the following synopsis of the public hearing is being provided.

Synopsis of the Public Hearing

Prior to the public hearing, litigation occurred between several citizens of Central Saanich and the Peninsula Co-op with regard to the Co-op's recent elections to its Board of Directors. The land use issue and the Co-op's elections were subject to a number of articles in the Times Colonist, Focus Magazine, Saanich Voice Online and the University of Victoria's Martlet. Copies of the articles are attached as Appendix H.

The purpose of the public hearing was to hear public input on a land use application submitted to the District of Central Saanich by the Peninsula Co-op, to amend the Official Community Plan (OCP) and to rezone 3 of 7 acres of property the Co-op owns, at the corner of West Saanich Road and Keating Cross Road, to build a new supermarket. The new store would be about the same size as the Thrifty's Food Store at the Broadmead Mall, would provide a bigger business tax base for the municipality and provide an additional thirty 30 jobs. The land use application required a change to the Official Community Plan and a zoning change.

The public hearing was held on May 4, 2011 at the Saanich Fairgrounds Hall, and lasted 6 ½ hours; starting at 6:30 pm and finishing at 12:30 am. The public hearing was attended by approximately 400 people. The Mayor opened the public hearing and outlined the procedural rules. The applicant and his

team of professionals were permitted to present their application, after which the public was invited to provide input on the proposal. There were 112 speakers; 95 first time speakers and 17 second time speakers. Of the 95 speakers, 50 were in favour and 44 were opposed and one was neutral. The numbers in favour do not include the applicant, the two professionals hired by the Co-op, the Co-op President and Chair and Vice President.

In support of their request, the Co-op presented 7,000 names supporting a new store at the proposed site. About half of the names supporting the new store were from Central Saanich and the rest were Co-op members where living elsewhere in the Region. Those opposed to the larger store in the proposed location were concerned about a variety of issues from increased traffic, poor drainage, and using the property for other than agricultural purposes. Municipal staff in a report, noted that the application has major land use designation implications and cannot be supported based on the existing OCP policies approved by Council. It also involves changing the urban containment boundary which requires approval of the Capital Regional District Board.

Analysis

I will first examine the legal discourses of Section 890 LGA to ascertain how this legal technology regulates the administrative discourse specifically the Mayor's opening remarks and the procedural rules. Secondly, I will examine the Mayor's opening remarks and procedural rules to ascertain the type of communication that is permitted by the Chair's comments and the impact this type of communication has on developing the communication themes and power relationships that exist between the participants at the public hearing.

Having dealt with the genre of text, and how the message is framed, I then undertook a more minute level of analysis between the participants at the public hearing: sentence, phrases and words. The transcription of the hearing attached as Appendix G. I first read through the text in an uncritical manner, like an ordinary, undiscerning reader, and then again in a critical manner (LeGreco and Tracy, 2009), in an effort to identify themes of communication and power relationships that may indicate conflict. While doing this I will follow the techniques identified

by McGregor, pp. 5-7, to guide my analysis, which are attached as Appendix I. I will also examine if connections exist between the dialogues, the Chair's opening statement and procedural rules, and section 890 of the *LGA* and what impact the connections might have on conflict.

Section 890 LGA

Two questions arise. How does the discursive structure of Section 890 *LGA* shape communication? How does this discursive technology regulate the production of a form of talk at the public hearing?

Section 890 of the *LGA* lays out the legal formalities that pertain to public hearings (see Appendix B). Section 890, dictates the process of communication that Council has to follow and makes provision for the public's right to be heard. The *Act* comments on the methods that can be used (written submissions, public representations), and the *Act* acknowledges the legal right that people be given a "reasonable opportunity to be heard". Specifically, Section 890 (3) of the *LGA* states:

"At the public hearing all persons who believe that their interest in property is affected by the proposed bylaw must be afforded a reasonable opportunity to be heard or to present written submissions respecting matters contained in the bylaw that is subject of the public hearing."

But the *Act* is silent about how people communicate.

Two words found in section 890 of the *LGA* that indicate theme; "must" and "may". These two words have a direct impact on the communication process the Council must follow during the public hearing. The word "must" means the course of action is mandatory and the word "may" means the course of action is permissive (Rogers, 1988).

For example, section 890 (3) of the *LGA* directs Council to follow a specific course of communication, since it uses the word “must”:

“.....all persons who believe that their interest in property is affected by the proposed bylaw must be afforded a reasonable opportunity.....”

When the permissive word “may” is used, it provides the local government with an opportunity to be creative. However the scope of the Chair’s creativity is further limited by the phrase “Subject to subsection 3”, which uses the word “must”.

Section 890 (3.1) states,

“Subject to subsection (3), the Chair of the public hearing may establish procedural rules for the conduct of a public hearing.”

So whatever procedures are developed by the Chair to conduct a public hearing they cannot contravene subsection (3).

The Act specifically relinquishes “procedural rules” to those presiding over the public hearing. This seems to be left for local jurisdictions to determine as they “may establish procedural rules”.

In addition to section 890, the Court also plays a significant role in setting the parameters of communication. When Courts are asked to adjudicate whether or not a local government has adhered to the provisions of section 890, the Court will examine the procedures used by the local government to ascertain if the local government procedures fall within the common law developed by the Court, the Rules of Natural Justice upon which section 890 *LGA* is based (see Appendix D). These rules apply to the procedures involved in the exercise of a quasi-judicial function but not to an administrative function (example, Council’s decision). The Court has

determined when rights are affected there is a duty to act judicially and this implies judicial functions (Rogers, 1988).

The main theme that stands out as a result of analyzing section 890 *LGA* is one of power. It is clear the power is hierarchal, top down, from the Court to the Province to the local government. This power is seen in the way the legislation structures definite communication parameters on the process. The legislation clearly identifies the types of permitted communication and identifies constraints to that communication. Section 890 is therefore a rule indicating how a language should or should not be used, rather than describing the ways in which a language is used. This type of hierarchal communication can be described as prescriptive.

In the next section I examine the procedural rules that the Chair reads to the participants of the public hearing and how these rules are structured because Section 890 *LGA*.

Mayor's Opening Remarks and Procedural Rules

As noted above, though the *LGA* is silent on how citizens are to talk at the public hearing, there is a provision for local governments to provide procedural rules about how to conduct the meeting. Section 890 (3), states that, "Subject to subsection (3), the Chair of the public hearing may establish procedural rules for the conduct of a public hearing."

Typically these procedural rules are read by the Mayor who chairs the meeting. In British Columbia, these same rules are somewhat standardized and usually have been vetted by the local government's Solicitor. The Mayor's opening remarks at this meeting, which incorporate the procedural rules, are found in Appendix C. Below we discuss how these procedural rules exert power and produce social relations during this process.

First, the rules convey a legislative authority. The Mayor opens the meeting with ".....welcome to the public hearing on May 4th. This public hearing is being convened pursuant

to Section 890 of the *Local Government Act* in order to consider the following bylaws.....”.

With this introduction the audience knows that this is a meeting that is legally mandated. This immediately creates a tone of formality in terms of the process and outcome. As well, the focus of the meeting in to “consider bylaws” takes attention away from people’s lives and this renders distance from the matters that concern them. It is the bylaw that is important, rather than the decision that affects people’s lives.

Administrative discourse also works to produce formality and authority to the proceedings. For those who wish to speak they are to “address all comments to Council” by clearly and slowly stating your name, address, and place of residence . . . “Speak slowly so that we can be sure to who you are and where you reside: and now you will be held accountable to what you say (we know who you are and where you live). Another procedural rule instructs citizens to talk to Council, not others who are present. Council is the authority here.

The Mayor’s comments are also a reminder of the legal purpose of this meeting. People who “believe that their interests in property, is affected by the proposed bylaw” are allowed “to make representation”. People learn that they have a right to be heard. This right to be heard though entrenched in law creates an entitlement that will manifest as frustration and anger when citizens experience that they are not being heard.

And finally, the Mayor’s remarks are the only place where ground rules are about, *how* to make representation are provided. To begin with, the Mayor sets the stage by stating that comments should be made in a manner “that accords respect to everyone present”. This means, if you do not have the floor, you “must refrain from making comments, applauding, or booing or otherwise behaving in a manner that impedes the public hearing”. Second, everybody is given an opportunity to speak (within the time available, which is five minutes per person). This sets

up a tone of fairness, but within a certain time constraint. If you want to speak a second time, you may, so long as the comments are relevant to the issues at hand. This gives a sense of order to the meeting, though who decides what is relevant is clearly in the hands of the Chair. And third, there is a pattern of talk that is authorized: citizens make representation to which Council may ask questions. But the exchange is one way: Council listens but will not answer questions from the public.

Below I will provide some of the patterns of talk that are shaped by the legal discourse and procedural rules articulated by the Mayor.

Public Dialogue and Themes of Communication

The next part of the analysis is to see what power and impact the language of the Mayor's opening remarks, the procedural rules and section 890 *LGA* had on structuring the communication parameters that led to the communication themes. It is important to know what types of communication are permitted and how that communication is both produced and constrained or limited since that forms the parameters of how the communication between the Mayor, Council and the public is to take place.

Together, the Mayor's opening statement and procedural rules, developed both documents to meet the requirements set by the Court and the Province; specifically the Rules of Natural Justice and section 890 of the *LGA*. The communication is one way, hierarchical, and is directed at the audience attending the public hearing. For example, in the Mayor's opening statement he states,

1. "The public will be allowed to make representation to Council"
2. "Those of you who wish to speak concerning the proposed bylaw should begin their address to the Council"
3. "Speakers should address all their comments to the Council"
4. "The function of Council this evening is to listen to the views of the public and not to answer questions"

of the members of the public or debate....”

The communication parameters structured by the opening statement and the procedural rules, reinforce the provisions of the statute by emphasizing rights of citizens, reinforce the formal structure and who has authority (Council), and reminding citizens that all communication will be one-way. Citizens have the right to speak and Council must listen. The parameters do not allow for a dialogue to take place between Council members, between Council and the public and between individual members of the public.

During the public hearing the Mayor, on several occasions, using his gavel, interrupted the meeting to remind members of the public of the procedures. For example, the Mayor made the following statements,

1. “Please refrain from making comments or applauding. I mean you are disrupting the meeting otherwise we will run out of time.”
2. “Please refrain from making comments or applauding. This type of behaviour impedes the progress of the public hearing and is not fair to the speakers, so please treat others with respect. You will be given an opportunity to voice your opinion.”
3. “Order please”

The Mayor did state in his opening remarks, “Following your presentations, member of Council may if they wish ask questions of you”, but only once did a member of Council ask the Mayor if he could ask a question. Therefore even though the Mayor may have permitted dialogue to occur between a member of Council and a member of the public, the Mayor asked if the question was relevant to the issue. From personal experience, a member of Council has to be very careful how he or she phrases a question, so they cannot be accused of bias. If bias was perceived by a member of the public who did not agree with Council’s final decision on the matter, that person could open Council’s decision to litigation, based on bias.

Themes

Discourse analysis usually does not produce tables, graphs or statistics (Fulcher, p. 7). However given the size of the transcription, I have summarized some of the relevant text tables, so the reader does not have to continually refer back to the extensive appendices.

The analysis of the dialogue that occurred between the public and Council during the May 4, 2011 public hearing referenced in Appendix G. In the analysis, I focus on themes of communication and power relationships. After attending the public hearing, transcribing the proceedings and reviewing the transcription several times, I identified 4 major themes of communication; positionality; attack/defend/attack; negative emotionality and exaggerated/totalizing talk.

Positionality

It became quite clear during the hearing that the community was strongly divided into two camps, those who were opposed to the proposal and those who were in favour of the proposal. Persons who were opposed to the proposal seemed to be more deeply entrenched in their position than those who were in favour, perhaps because they could feel that there was more to lose.

This entrenchment was reflected in the use of words or phrases. For example, those who supported the proposal used more gentle and supportive words or phrases such as “look favourably”, “urge” and “approve” when advocating their position. On the other hand, those who were opposed personalized the issues (“respect for the people who elected you”, “you only have one choice”), and used more pointed and sharp language, such as you have to “reject”, and “polarization”. The supporter position connotes more collaborative talk and is softer, and less forceful. The against position has a tone of being backed in a corner, and is more judgmental and is loaded with insinuations.

This positionality is reflected in the statements presented in Table 2. The Table has been categorized in two parts, those opposed and those in support. I have identified each speaker with a number which corresponds to the number assigned to that speaker in the transcription.

Table 2	
Statements of Positionality	
In Support	
Speakers	Statements
#3	I request that you look favorably upon this new Coop and God Bless you.”
#11	I urge yourself and Council to approve this proposal.”
#25	“So I urge the Council to consider the amendment bylaws favorably and to allow the Coop to redevelop a new store that adequately serves its local population and its local community at the new site, at Keating Cross Road and West Saanich Road.

Opposed	
Speakers	Statements
#4	“If you have any respect for the people who elected you, you only have one choice and that is to reject this application.”
#28	“It’s not good for my neighbourhood and I would ask that the Council would consider that and not support this request by the Coop.”
#66	“It’s another very sad thing, is that they created this polarization of our community.”

Positionality contributes to a dynamic of polarization. Positions polarize people – you are for or against as observed by one participant. This is inclined to occur in most social interactions. But in the context of quasi-judicial proceedings, where the formalities of legal proceedings have power to shape behaviour, citizens know their talk must make an impact and stir the attention of the decision makers, quickly. There is no time to build relationships and efforts to engage in collaborative talk would be risky. The binairies of legal discourse-good/bad; right/wrong; even guilty/innocent begin to take a toll. The procedural rules are complicit in administering the legal agenda. But the procedural rules have a special force: they are immediate and the directive comes explicitly from the Chair and is collectively shared.

Attack/Blame/Defend

Many people who were opposed to the proposal used language that reflected a tone of aggression and was characterized by an attack/blame/defend pattern of behavior. The attack/blame dynamic was often directed at the Co-op's Board of Directors. Several speakers opposed to the proposal, suggested the Co-op Board was, "no longer an organization I . . . can trust" (attack), and "[the Board is] circulating misinformation and causing such dissention in our community" (blame). The accusation and personal attacks on the other side are recognized by participants as one speaker observes that "people are destroying each other's reputation . . . attacking the reputations of the people, several of them . . . [saying] the current Board of the Co-op is illegal", "[it is the] same people who make up the current Board and senior management, who are asking Council to permanently destroy our community farmland [this is totalizing] or a piece of our community farmland." and "[there is] no more damning arbitration statement I ever read [this is totalizing]. The current Board of the Coop is illegal." One speaker alleged that Judge Jacob DeVilliers, who had adjudicated a conflict between several citizens of Central Saanich and the Co-op Board, said the Board was involved in "scurrilous and unlawful activities".

Though those in favour of the proposal used softer language, they too demonstrated this form of attack. For example, one citizen in favour of the proposal accused those opposed 'of distributing facts to the community that would counteract the misinformation that is being presented in an effort to feed certain peoples own special agenda.' And in another instance, a citizen, more defensive in tone, complained that "Never once did we envision contending with a small group calling themselves Friends of the Co-op, circulating misinformation and causing such dissention in our community."

The attack/blame/defend communication dynamic increases the hostilities between the parties and entrenches positions already existing. The communication is strictly one way in that there is no opportunity for those accused to explain or defend themselves - real dialogic exchanges are not possible - listening is obstructed. Understanding and listening are no longer the prerogative. In such an atmosphere, people do not wish to understand their “opponent’s” perspective. Several examples of the language used are provided in Table 3, which also indicates whether the speaker was opposed or in favour of the proposal.

Table 3	
Statements of Attack/Blame/Defend	
In support	
Speaker	Statements
#13	“We have taken the high ground wherever possible, but we have made every effort to distribute facts to the community that would counteract the misinformation that is being presented in an effort to feed certain peoples own special agenda.”
#51	“Never once did we envision contending with a small group calling themselves, Friends of the Coop, circulating misinformation and causing such dissention in our community.”

Opposed	
Speakers	Statements
#4	They reacted in a way I have never personally witnessed before. According to former BC Court Judge Jacob DeVilliers, they conducted scurrilous and unlawful activities. And oh by the way, the people Mr. DeVilliers referred to are the same people who make up the current Board and senior management, who are asking Council to permanently destroy our community farmland or a piece of our community farmland.”
#18	“Very often in the speakers that have talked, you know talked about how the community, how the Coop does good things for the community, they give money to causes and I am sure they have given money and jobs to worthy projects, but I have also seen firsthand how they actually perform toward a member who dares to speak against the Boards designs. They are no longer an organization I feel we can trust.”
#66	“People are going after each other, destroying each other reputation because of this nonsense. We the people should stick together, nothing should divide us. The attack the reputations of the people, several of them. Nobody from the other side attack their reputation. But they attack reputation of

	many people tonight. Here is the ruling of the arbitrator. Because there is no more damning arbitration statement I ever read. The current Board of the Coop is illegal. Please do not divide this community.
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Negative Emotionality

Those persons who were opposed and those who were in favour of the proposal, both exhibited signs of (heightened) emotionality throughout the public hearing process. A sample of the statements of emotionality, are outlined in the Table 4.

Table 4	
Statements of Emotionality	
In Support	
Speakers	Statements
#48	“Another thing I am upset about is there seems to be a lot of people here who are making this a personal vendetta against the people who are voted in to run the Coop”
#64	“I think for some of my co-workers here tonight, admitting that you are a Coop public employee at a public hearing is somewhat embarrassing.”

Opposed	
Speakers	Statements
#20	“I am pleading with you as a young farmer.”
#32	“This has become an emotional issue.”
#47	“.....I guess we are calling it rural estate which is frightening.....”
#99	“They are just trying to tug on your heart strings.” “Yet I am insulted by other people here and many other people of this community are insulted, saying we are just a bunch of hobby farmers.....”

The heightened (negative) emotionality tells us that people are frightened, hurt or humiliated. They may feel desperate and out of control. Interestingly, some citizens had the insight to articulate that it was the process that was contributing to their being upset. Some of the speakers said they “were upset”; they felt the process was like “a personal vendetta”, and it was becoming “an emotional issue”, or that the issue was “trying to tug on your heartstrings”. People said this “is somewhat embarrassing”, were “frightening” and were “insulted”. Clearly, people had

emotional reactions, were responding to the attacking statements made at the forum. Though the ground was set by the Mayor to ensure civility, the legal binary of attack/defend leaked into the forum and were impacting the experience of participants. Other words or phrases were used to emphasize a point, such as “guess we are calling it rural estate”, admitting that you are a Coop public employee at a public hearing is somewhat embarrassing” and “insulted”.

In an atmosphere of heightened emotionality, motives can be misinterpreted just as easily as statements can be misunderstood. When parties are in conflict, there is a tendency to assume the opponent’s motives are maligned, even when they are not. In an atmosphere of aggression and emotionality, often communication difficulties arise because people think they know all they need to know about their opponents and that further communication of any kind is unnecessary or they may be expressing difficulty with the process, since they feel misunderstood. When people are emotional and upset, images of opponents tend to be overly hostile and exaggerated. Opponents sometimes are seen to be more extreme and outrageous than they really are. People are showing that they have been injured by this process, where accusations, name calling, and attacks on opinions has become the way of talking.

Exaggerated/Totalizing

Exaggeration, which sometimes can be viewed as inflammatory, was mostly used by speakers who were opposed to the proposal. They may have used exaggerated statements, to emphasize the point they were trying to make.

A sample of the statements of exaggeration, are noted in Table 5. Also noted in the table is whether the speaker was opposed or in favour of the proposal.

Table 5	
Statements of Exaggeration	
Speakers	Statements
#22 Opposed	“.....that Central Saanich is considered the best, the most well planned community certainly in BC, possibly in North America.” “I’ve heard all the whisperings and I know all the rumours and I say with confidence by intention or by impact, this application will open Central Saanich up to become the next Langford on southern Vancouver Island.
#96 Opposed	“When I picture an OCP being opened up and all the things that are happening recently with all the different rezoning etc and I look at some people’s views of what kind of wonderful place could be, as a large city, and I see that the Fire Hall, the Municipal Hall, the Senanous Water Line, the North West Quadrant being thought of has having water etc, I can see Vancouver, North Vancouver, West Vancouver. I can see the whole development there now.”
#36 Opposed	“This proposal is just the wedge being used to pry open more and more land for high end housing and development. It will be just an endless zone of ticky tacky houses and urban sprawl, just like everywhere else.”

Some examples of exaggeration that were used are; “.....that Central Saanich is considered the best, the most well planned community certainly in BC, possibly in North America” (used to objectify and give a sense of certainty), “I’ve heard all the whisperings and I know all the rumours and I say with confidence by intention or by impact, this application will open Central Saanich up to become the next Langford” (predicting the future by comparing Central Saanich to Langford), “I can see Vancouver, North Vancouver, West Vancouver. I can see the whole development there now” (as if he were a visionary). The points of exaggeration have the rhetorical effect to be persuasive: totalizing and catastrophizing is used to foretell an undesirable future. Fearing the possibility of this future and with no space to make claims otherwise, “totalizing” has the emotional effect to persuade the listener or reader to accept an argument. In this setting, with no place for two-way discussions, totalizing is a strategy that uses logic and fear to persuade.

Conclusions

Public hearings are a legal requirement as stated in a provision of the *LGA*. The intent of the Act is to ensure citizens have a right to be heard in land-use decisions. Public hearings are often the first time the public is provided a legal right to have input into land-use decisions.

The format of the public hearing is constituted by the Mayor's opening remarks and procedural rules which are based on the *LGA* and Rules of Natural Justice. In addition local governments are able to include procedural rules to assist in the delivery of the hearing. The findings show that the *LGA*, Rules of Natural Justice address the rights of participants to be heard at the hearing. These documents are silent on how citizens are expected to talk and communicate their concerns. The procedural rules, which are communicated by the Mayor at the hearing, attempt to set the tone for fairness and civility but also the legal discourse, reaffirming who has the authority and the one-way direction of communication. The data shows that citizens communicate from positions, use a pattern of attack/blame/defend, express negative emotionality and use exaggerated/totalizing talk. My findings support Topal's argument, that a public hearing is a means for enacting legitimacy rather than democracy.

A public hearing is the most common form of citizen input, but they often fail to fully achieve their objectives. Although citizens are usually given fair and rightful opportunity to make representation, they are not "heard" at least not in any dialogic sense. A public hearing is constituted around an institutionalized legal discourse, which can lead to mass confrontations which is what I observed.

The flow of information is one way, which limits the "exchange of meaning", and communication (Tidwell, 1998). In other words, the public hearing precludes the imparting of information in a way that keeps parties open minded, and not personalizing the issue (Isaacs,

1999). . Because of this limitation, it is very difficult, if not impossible, to promote meaningful dialogue, which is critical to understanding and resolving conflict (Isaacs, 1999; Habernas, 1981). In order for the parties to communicate effectively, they need to understand (though not necessarily agree with) the perspectives of the other parties to a conflict.

Language sets the parameters of the communication that occurs between the public and Council during the public hearing process. The limitations imposed by section 890 of the *LGA*, and the Rules of Natural Justice, and which are incorporated into procedural rules creates impediments to communication, leading to unnecessary conflict. The public hearing communication process is hierarchal, exacerbates conflict and does not lend itself to the resolution of conflicts that arose prior to or during the public hearing. Themes of positionality, aggression (attack/defend/blame), exaggeration and negative emotionality demonstrate poor communication and unresolved conflict. The process seems to be out of step with their various stakeholders, which has led to the feeling that conflict has been and probably will always be a normal part of the public hearing process with a community becoming polarized on controversial planning issues.

Given the communication parameters that are structured by the public hearing process, disputants do not have good methods for communicating with opposing parties. Some people may wish to communicate so they can understand the other's argument. But they are unable to do so because there is no communication mechanism in place during the public hearing that would permit this type of communication to occur, risking future incidents.

The preliminary results appear to support statement 1.

“The land-use public hearing process permits misunderstandings and an escalation of conflict to occur.”

It is important to develop a plausible solution that would address the issues identified in this paper. When parties can find ways to speak freely and truthfully to each other without violating legal requirements, they can create arguments that satisfy both their needs. It could create a stronger sense of community and respect for differing perspectives on land-use planning issues. We need to try a different approach to address the problems associated with the current quasi-judicial public hearing process. No one is on trial here. As a result, the following alternative solution is presented for consideration.

Alternative Solution

I suggest the theoretical concepts of collaboration could be applied to the public hearing process. The new process could be designed to protect legal rights while promoting the resolution of land use planning issues, or at best, it could foster a better understanding of the planning issues within a community; a stronger community. A more meaningful collaborative dialogue is required amongst the participants. I realize this is unfamiliar territory, but the current process exacerbates conflict, and polarizes and divides communities.

It is suggested the manner in which conflict is defined and the application of theories to understand human behavior can lead to a variety of ways to investigate conflict persons experience during the public hearing process, which may lead to the development of alternative approaches to resolving conflict that public hearing process promotes. Tidewell states:

“Views of conflict and how it is resolved, depends on the values held by the parties. Resolving conflict is not a value-free activity and resolving conflict is held in high esteem over conflict continuance. The legal system is loaded with values that are quite different from what Isaacs referred to. The values that inform conflict resolution are largely Western and may act to inhibit its usefulness application across cultural and political barriers. Western notions of conflict

resolution include non-violence, fairness, individual choice and empowerment and the support for a variety of fundamental principles (examples, human rights common sense or human needs) (p 17).”

It is suggested that since the community views the public hearing process as quasi-judicial in nature, the public tends to view the process as rigid and they can say whatever they want to say to make their views more credible. However, this could be changed if collaborative methods are incorporated into the public hearing legislation. Connor notes that while economy and efficiency are understandable, neither will be achieved if public backlash is felt over and over again as a result of the current public hearing process. It's important that everyone who participates in the process wins something. It should not be a win-lose scenario which is what usually happens in a quasi-judicial and judicial setting.

Collaborative methods may assist to enhance public participation on land use issues and overcome some of the obstacles of a public hearing. It is suggested that when the parties can find ways to speak freely and truthfully to each other, they can create arguments that satisfy both their needs. The purpose of listening to conflict is to learn about the other. The public hearing process does not offer communication opportunities during or after the hearing has concluded, without violating legal requirements.

Laws in Vermont, Georgia and New Jersey require or encourage the use of collaborative methods, such as negotiation or mediation processes to resolve disputes concerning inconsistencies between comprehensive plans. This can occur at any stage of the process (before or after the hearing is commenced) providing the planning provisions of their state local government legislation are amended to permit this to occur.

Connor (1999) noted that in Australia, the participation process in the public hearing process is varied, but where participation is recognized, it can be quite good whereas others are very poor. There appears to be a broad recognition that consultation is required but not as good an understanding of what it is, or what appropriate processes are.

Prior to holding of public hearing, an official community plan amendment bylaw or a zoning amendment bylaw, the right to hold such discussions is generally unrestricted however, two local principles must be considered when undertaking these discussions:

1. May be liable for misrepresentation for giving incorrect advice.
2. Council may jeopardize a planning or zoning decision if they are seen to have made up their minds prior to a public hearing.

When structuring such a process, it is important that open meeting laws and procedural due process requirements cannot be violated. For the most part, these concerns can be addressed by ensuring that sessions that involve decision-makers occur in public. This process can be viewed as a new way of doing business, seeking to ensure that all community voices are heard, before decisions are made and should be considered when decision-makers are seeking to resolve conflicts.

Connor suggests the first is to create a process for public review of a project before the bylaws have been drafted and before it moves to first and second reading and call it a “Pre-Hearing” to attract attendance. An independent facilitator to run the “Pre-Hearing” and a process to facilitate good communication are critical. Connor suggests representatives from the developer, the planning department and the local community sit down to discuss the proposal and decide on the key issues of public concern.

At the “Pre-Hearing Meeting”, after the initial overview presentation by the proponent or developer, time is allocated for each area of concern. After the “Pre-Hearing Meeting”, other meetings between the developer, planners and local community to go over the key issues and discuss possible solutions could be arranged. A formal arrangement would need to be made to communicate results and progress back to the community.

Facilitation during this phase would be to ask what the protesting groups want to see from the proposals and to solve problems. If groups or individuals have a strong sense of their own identity they are able to move to equal power relationships. Partnering is where there is mutual respect and empathy for each other’s positions, strengths and limitations.

The community deserves a meaningful dialogue; a collaborative rationality (Habermas, 1981, Innes, J. & Booher, D., 2010). As a result, the following recommendation is being presented for consideration.

Recommendations

It is recommended that:

1. A new section be added to the *Local Government Act*, example Section 890.1 that grants the local government the discretionary authority to hold an official “Pre-Public Hearing Meeting(s)” without impacting the legality of a official “Public Hearing” held in accordance with section 890 LGA.
2. Council may use the “Pre-Public Hearing Meeting” if it feels there is a requirement for those land-use planning issues requiring a more open collaborative dialogue.
3. The Council would be a participant in the “Pre-Public Hearing Meeting” and any comments made by individual members of Council are made on a “without prejudice basis”.

4. Once directed by Council to proceed with a “Pre-Public Hearing Meeting”, the administration of the “Pre-Public Hearing Meeting” is the responsibility of the local government administration who may use either internal or external resources.
5. The “Pre-Public Hearing Meeting” will be designed to facilitate an informal collaborative dialogue between the public and the applicant, staff, and Council on a proposed land-use application.
6. The “Pre-Public Hearing Meeting” would not be required to follow the strict rules (Rules of Natural Justice and procedural requirements) that structures and limits talk at the Public Hearing, mandated by Section 890 of the *Local Government Act*.
7. The local government must not make a decision respecting a land use decision at the “Pre-Public Hearing Meeting”.
8. The Province of BC working with the Union of BC Municipalities and the Local Government Management Association of BC, jointly develop guidelines that would be helpful to local governments in designing a “Pre-Public Hearing Meeting” process.
9. Based on the guidelines, local government be given the discretion to develop a process that suits their respective needs.
10. A synopsis of the “Pre-Public Hearing Meeting” form part of the record at the “Public Hearing” mandated by section 890 of the *Local Government Act*.

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Appendices

Appendix A - Examples of the Land Use Planning Process in British Columbia

Appendix B - Section 890 of the *Local Government Act*

Appendix C - Mayor's Opening Remarks and Procedural Rules

Appendix D - Rules of Natural Justice

Appendix E - Ten critical factors to improve the public hearing process (Baker)

Appendix F - Record of the May 4, 2011 Public Hearing on CD

Appendix G - Transcription of the May 4, 2011 Public Hearing

Appendix H - Additional articles commenting on the Central Saanich land-use proposal

Appendix I - Techniques Identified by McGregor

