

## **FEATURE: Public input on developments at risk**

**EDITOR'S NOTE:** At a council meeting June 1, Langford council rescinded a April 6 motion to waive public hearings, and are now going to conduct electronic or phone-in hearings like most other jurisdictions. [The staff report](#) recommending rescinding the April measure said: "Although waiving a Public Hearing and holding electronic Council meetings affords the public additional opportunity to address Council on the topic of a Public Hearing, the practice of waiving Public Hearings is sufficiently novel to the Public that it is the cause for some concern. Recent press suggests that the public expects that they will have an opportunity to be heard at a specific Public Hearing. In this instance, it may be prudent to give the public this opportunity."

**BY ROSS CROCKFORD**

THE CITY OF LANGFORD is already famous around the capital region for its rapid-fire, debate-free Council meetings, but it seemed to set a new speed record on Monday night (May 4). In a half-hour, socially-distanced conference call, Langford's Council approved a parks maintenance contract, a five-year financial plan, an alternate property-tax collection scheme — and gave final approval to several contentious developments, without holding a public hearing for any of them.

The biggest of those developments involved 50 acres of mostly forested land on either side of the Trans-Canada Highway and immediately east of the Leigh Road overpass, once belonging to the reclusive Victoria property owner Clara Kramer. Langford's Council voted unanimously on Monday to [rezone the Kramer lands as a "mixed-use employment" district](#), permitting anything from apartments and offices to car dealerships and liquor stores.

Letters of opposition appeared in the agenda package for Langford councillors, however. TLC The Land Conservancy warned that the property included a wetland, and a significant stand of endangered

Garry oaks. But the most troubling messages came from elderly residents of a trailer park south of the highway, afraid that the rezoning and development would force them to move, and upset that they couldn't voice their concerns at a regular public hearing.

"Most of the residents have either vision or hearing problems or no computers so it makes it difficult to keep informed of what's going on during the meeting," one resident wrote. "I think it's very unfair to go ahead with this meeting without giving all of us a chance to be involved."

"50 percent of my neighbours are in their 80s and 90s and feel the same, the difficulty of moving represents a nightmare," wrote another, asking the Council to only rezone the section north of the highway and defer rezoning the trailer park for several years. "Please consider my suggestion, and let us die in our own homes."

Langford's councillors approved nearly all the rezonings during their phone-in meeting without any comment, but Denise Blackwell, the chair of Langford's planning and zoning committee, did say something about this one: "I'd just like to add that it's too bad we couldn't have this in public because of the circumstances. But based on our information from the province on how to conduct these, and the urgency with regard to some of the questions that people are asking, we need to go ahead at this time."

(Langford Council doesn't webcast its meetings, but you can hear how quickly it approves rezoning bylaws from a recording of part of the May 4 phone-in meeting linked [here](#).)

Public hearings are arguably one of the most important procedures conducted by municipal councils. As the province's [online guide to](#)

[local government](#) notes, land-use decisions by elected municipal officials affect entire communities as well as individual properties; consequently, “In order to balance their broad powers, elected officials are required to provide the opportunity for residents and other interested parties to share their views on [rezoning] bylaws through a statutory public hearing process.” Several [B.C. court decisions](#) have deemed public hearings a “quasi-judicial” function of local governments, requiring councils to be impartial and adhere to rules of procedural fairness.

But normal council meetings or public hearings are impossible under COVID-19. In March, after the province declared a state of emergency, public safety minister Mike Farnworth issued an order allowing councils to hold electronic or phone-in meetings. He failed to include public hearings, though, which drew some councils’ attention to a rarely-used provision of [the Local Government Act](#):

464 (2) A local government may waive the holding of a public hearing on a proposed zoning bylaw if

(a) an official community plan is in effect for the area that is subject to the zoning bylaw, and

(b) the bylaw is consistent with the official community plan.

On April 4, the deputy minister of municipal affairs [encouraged](#) local governments “to consider whether it may be appropriate to waive public hearings,” and to “be creative in moving local government business forward.” Langford took that advice and ran with it: [on April 6, it passed a sweeping motion](#) directing staff “to waive all Public Hearings for any zoning bylaws which receive 1st reading on, or before, the World Health Organization rescinds the COVID-19 pandemic.”

Last Friday, May 1, Farnworth finally issued [an order permitting electronic public hearings](#) during the province’s state of emergency, currently slated to last until May 12 (a date likely far closer than the WHO rescinding in Langford’s motion). But it seems Langford will continue to waive hearings in most cases. “We have to be respectful

of our needs to protect the public and Council and staff from unnecessary exposure,” said Matthew Baldwin, Langford’s director of planning. “But secondly,” he added, “there really is no material difference to not doing the public hearings.”

As Baldwin noted, under the Local Government Act, the municipality is required to post two notices of the waiver in a newspaper, as it would for a public hearing. (It does not, however, have to post a notice on the property itself, saving the developer several hundred dollars.) “The public is still aware that Council is considering the bylaws. They’re still aware that Council is going to talk about it on this particular night. And they can address Council in the public participation part of the Council meeting.” (Langford allowed public participation during its May 4 phone-in meeting, but no residents called in to speak to any of the rezonings on the agenda.)

Baldwin said that if a rezoning requires an amendment to Langford’s official community plan (OCP), it will hold a “delegated” public hearing under the Local Government Act, in which councillor Blackwell will meet personally with any concerned residents. But few such hearings will be necessary, because Langford’s generous OCP has anticipated dramatic growth.

Langford was able to waive a hearing for the Kramer lands because they were already designated “Mixed Use Employment Centre” in the OCP. Similarly, on May 4, Langford’s Council approved rezoning a lot on a cul-de-sac of single-family houses at [2681 Claude Road](#) for [a six-storey, 35-unit apartment building](#) because that part of town is identified as “City Centre” on the OCP, defined as including “a wide range of high-density housing.” It also approved rezoning a “one- and two-family residential” lot at 595 Hansen Avenue to accommodate seven new townhouses — [despite numerous letters and photos from neighbours](#) showing current issues with parking, traffic and hazards for pedestrians — because Langford’s OCP said that area would support “a range of low and medium density housing.”

In the past, Blackwell and Baldwin [have told FOCUS](#) that few residents participate in Langford's public hearings because the City has resolved most issues raised by neighbours earlier in the development process. The letters tell a different story.

So far, most other B.C. municipalities have been comparatively reluctant to waive public hearings. The City of Delta, for example, [has directed its staff](#) to "recommend" waiving hearings for rezonings consistent with its OCP — but only if they are "routine in nature and where Delta has not received a substantial volume of correspondence in opposition."

On April 2, City of Victoria mayor Lisa Helps expressed interest in waiving public hearings for specific projects, especially those involving affordable housing, but City staff presented [a report](#) stating that "a decision to waive a public hearing must be made by Council for each application individually," and merely recommended "exploring this potential option" in future reports.

Locally, the most vocal debate about waiving public hearings so far has been heard in Saanich, which held a phone-in council meeting of its own on May 4.

Saanich staff put two developments on the agenda, the first rezoning a single-family lot to permit four residences at 3281 Cedar Hill Road, the second rezoning to allow subdivision of a single-family lot at 4595 Cordova Bay Road. Staff suggested waiving hearings for both because the rezonings were consistent with goals in Saanich's OCP to have "a range of housing types" in neighbourhoods, and "limited infill" housing.

Both rezonings provoked letters of opposition. But the proposed waivers [also prompted several neighbourhood associations to write to Saanich Council](#), pointing out that whether a project is "consistent with" an OCP can be a subject of considerable debate. They warned that waiving public hearings for these rezonings could set a worrying

precedent, one that would “circumvent basic principles of natural justice and procedural fairness,” and called on Saanich to postpone the hearings, or come up with ways to hold them electronically.

Saanich councillor Colin Plant, who said he was “shocked” to learn that it was even possible to waive public hearings, moved that both developments go to hearings, electronic if necessary. “It does fit the [official community] plan, and yet we have heard from the public they don’t feel that it necessarily does,” he said, regarding the first rezoning. “So as such, I want to hear from the public and have a fulsome discussion, even if it is in a new way of doing business.” “For me the public need to have input into these projects, and in the past, we’ve seen how public input has created a better project,” said councillor Judy Brownoff. “True democracy, it’s hard and challenging, but we really need to hear and listen to our public before we make any final decisions.”

Councillor Karen Harper pushed back a bit, saying, “There’s a notion that the lack of a public hearing means a lack of public input, and I don’t agree with that notion. We receive input all the time and in all sorts of ways.” In the end, though, Saanich Council voted unanimously to send both rezonings to a public hearing, even though staff had not yet figured out how to conduct one electronically. Saanich CAO Paul Thorkelsson told councillors he would likely have a report on that next week.

**Ross Crockford is a Victoria journalist and former lawyer.**