

CAPITAL REGIONAL DISTRICT
Regional Planning Services Department

Staff Report to the Regional Planning Committee
Wednesday March 19, 2003

SUBJECT:

RGS Settlement Process

BACKGROUND:

A letter dated February 27, 2003 from the Minister of Community, Aboriginal and Women's Services, was recently received by the members of the regional board and the municipalities of Sidney and North Saanich (Attachment A). This letter responds to the CRD letter sent to the Minister (in November 2002), in accordance with the provisions of the provincial legislation, to inform him of the Council decisions made with regard to the regional growth strategy at the conclusion of the statutory referral period on October 31, 2002. The minister's letter acknowledges receipt of the CRD letter, outlines the options for settlement, and invites the parties to the dispute to provide him with information on how they would like to proceed at this point.

A letter dated February 26, 2003 was sent to the regional board Chair and Directors from the Town of Sidney proposing a bylaw amendment to make a text change to the RGS, which may sufficient for the Town to accept the RGS (Attachment B). Sidney has requested a change to Implementation Section 1.1, to delete the reference to a substantial 5-year review of the RGS, and to replace it with wording to "consider whether the RGS should be reviewed for possible amendment once every five years".

The Regional District obtained a legal opinion on the procedural aspects of Sidney's proposal (Attachment C). The legal opinion reiterates that a municipality cannot make a conditional acceptance, it may either accept, or refuse the RGS. The Town of Sidney's proposal is deemed to be a refusal. Should the regional board want to make an amendment to the RGS at this stage, it must re-circulate the bylaw for another 120 days.

DISCUSSION:

The provincial legislation establishes a settlement process for the regional growth strategy. In addition to mediation, the legislation includes the use of peer panels, final proposal arbitration and full arbitration.

Mediation is where the parties to the dispute and an impartial mediator work together to determine a way to resolve the problem. The mediator serves the role as a facilitator who helps the parties work together to come to a resolution they can all live with. The mediator makes process decisions but does not make the ultimate decision as to how to solve the dispute.

There are significant procedural and staff costs associated with this option. If changes are made to the RGS through a mediated settlement, it must be recirculated to the municipalities. The

municipal review is not confined to the issues under dispute, the entire bylaw is subject to review and must be re-adopted or refused. The process continues until unanimous acceptance is obtained. To avoid extending the process, the minister may mandate a settlement process following the conclusion of the second 120day referral process should acceptance not be obtained by all parties.

This is a time-consuming and expensive process to follow considering the nature of the issues under consideration. Since the regional board retains the authority to determine the timing and scope of an RGS review, the public interest is not affected by the recommended text change. The cost/benefit of a re-referral would not be positive.

Peer Panel: The legislation makes provision for the establishment of a peer panel which involves a process similar to a full arbitration, but with three ‘arbitrators’. This is a panel of three local government representatives, not associated with the Capital Regional District or the RGS, who review the issues under dispute. The panel is empowered to settle the dispute, and may make any changes it considers necessary to resolve those issues.

Parties to the dispute would be required to pay the costs associated with panel selection, their review of evidence, interviews with disputants if required, and the writing of the decision. Since the panel members must come from areas outside of the capital region, there will be costs associated with travel, accommodation and expenses.

Arbitration differs from mediation in some important ways. In arbitration each party presents his or her position to an impartial arbitrator. The arbitrator then decides how to resolve the dispute and issues an order that is binding on the parties. The arbitrator serves the function of listening to both sides and then ordering the resolution that is fair.

Arbitration is usually considered when the parties have already tried to work together and cannot seem to come to a mutually agreeable resolution. Arbitration is an opportunity where parties, in effect, hire an individual to reach a decision about their dispute, just as a judge would do. The process is fairly formal, but less so than a court proceeding.

The arbitration process usually follows the following format:

- 1) pre-arbitration meeting: the parties meet with the arbitrator they have chosen. At this meeting the parties will indicate the nature of the dispute. The arbitrator will verify the rules of the process and the expectations of the participants. A date will be set for the arbitration. An agreement (on the above) is signed by the parties.
- 2) The arbitrator will set a deadline for the exchange of information to be delivered among the parties, and to the arbitrator.
- 3) The actual arbitration takes place. This can take anywhere from a couple of hours to a full day.

The provincial legislation provides for two forms of arbitration; final proposal arbitration and full arbitration.

In **final proposal arbitration**, the arbitrator conducts the proceedings on the basis of a review of written documents and written submissions only. He/she determines each disputed issue by selecting one of the final written proposals for resolving the issue(s) under consideration.

No re-referral process is required. No public hearing is required. If there is general agreement among the members of the Board with the suggestion made by the Town of Sidney, this may be the most effective and efficient route to take. The Board could advise regional district staff to prepare a written submission for the arbitration that adequately reflects the Board's interests.

Full arbitration is usually recommended when the issues are complex and require a more comprehensive review of evidence. The arbitrator not only reviews written documentation, but may call witnesses. In full arbitration, the arbitrator is not restricted in his/her decisions to submissions made by the parties on the disputed issues.

Cost Implications: Estimates on the cost of a mediation or arbitration were obtained from members of the Canadian Arbitration and Mediation Institute.

An average hourly rate for a mediator or arbitrator is \$175/hour. By comparison, the rate for a senior lawyer is approximately \$200/hour.

The cost of a dispute resolution process depends on the number of participants involved and the complexity of the issues. A final proposal arbitration with few issues, may take a few hours to resolve. A full arbitration process for a case that is complex, and involves a lot of evidence, obviously takes much longer and costs more. A figure of \$1,200 was provided as an estimate for a final proposal arbitration involving an initial meeting, minimal evidence, no witnesses to be called, and a half day arbitration session.

Other implications: Of significant concern, in terms of time and cost, is pursuing an option that necessitates another 120-day referral process of the existing bylaw. The provincial legislation is quite rigid in terms of process requirements for even minor changes, as other municipalities within the region have been made aware when their issues were considered. This is the reason for the existing memorandums of understanding prepared with other municipalities. The Town of Sidney has very strongly rejected this option.

There is no disagreement from the province or the staff of the regional district on the substance of the request from Sidney. However, to subject the local governments to that much process at this stage is neither fiscally prudent or particularly equitable for other jurisdictions that have raised concerns regarding the RGS. A re-referral does not guarantee unanimous acceptance.

Cost & Resource Implications of the Settlement Process

	Mediation	Peer Panel	Final Proposal Arbitration	Full Arbitration
Key Features	Professional mediator guides process	Panel of three outside elected officials &/or local government experts	Single arbitrator Evidence & decision limited to written documentation & written submissions	Single arbitrator Extensive evidence, including interviews and witnesses. Decision is not limited to submissions.
Process Requirements	Must re-draft & re-circulate RGS for 120 review. Unlimited scope.	Need to arrange timing and availability of 3 external panel members.	Parties decide on mutually-acceptable arbitrator. Re-referral is not required. Public hearing is not required.	
Timing	approx. 6 months	Approx. 4- 6 months. Depends on complexity of issues	Approx. one month from initiation of process. Actual arbitration is a few hours	Timing depends on complexity of issues and evidence. Approx. 2-3 months
Staff Requirements	Extensive; staff required to guide process, revised RGS, re-circulate, etc.	Logistical & procedural support. May require legal review if panel is not versed in RGS legislation	Limited to drafting initial settlement option for Committee & Board review.	Compiling evidence and drafting submission(s)
Financial Requirements	Mediator @ 175/hour. Most of the cost is associated with staff time at CRD & municipal level. May involve additional legal resources.	Cost associated with panel members travel, accommodation, per diem expenses and charges. <i>Approx. \$5,000 +</i>	Arbitrator @ 175/hour <i>Approx. \$1200</i>	Arbitrator @ 175/hour <i>Approx. \$3,000+</i>
Decision	No guarantee of acceptance or closure	External panel determines solution based on input.	Resolution obtained based on submissions/evidence.	

Moving Forward:

While an arbitration process appears somewhat draconian, it may provide the best opportunity to address the outstanding issues in a way that addresses Sidney's concerns in a timely and cost-effective manner, given that the parties are likely in agreement.

The public interest, and value to the taxpaying residents may be better served if the time currently spent on dispute resolution was re-focused on the implementation projects underway, and the proposed interim update, which could incorporate the concerns of all the municipal partners.

RECOMMENDATION:

That the Regional Planning Committee recommend to the Regional Board that:

- (1) there is a unanimous desire on the part of the Regional Planning Committee to settle the regional growth strategy in a timely and effective manner,
- (2) that the regional district, the Town of Sidney and the District of North Saanich settle the RGS through a final proposal arbitration to be initiated immediately
- (3) that regional district staff be advised to prepare a written submission for the arbitration, which shall be submitted to the Regional Planning Committee and the Regional Board for approval prior to formal submission

FINANCIAL IMPACT OF THE RECOMMENDATION:

N/A

Tracy K. Corbett, MCIP
Senior Planner, Regional Planning Services

Mark Hornell, MCIP
Director, Regional Planning Services

EXECUTIVE DIRECTOR'S COMMENTS:

W.M. Jordan, Executive Director

Attachments

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ATTACHMENTS

Attachment A: Correspondence for the Minister of Community, Aboriginal and Women's Services.

Attachment B: Correspondence for the Town of Sidney

Attachment C: Correspondence for Staples, McDannold, Stewart

Attachment D: Excerpt from the *Local Government Act* regarding the settlement process the regional growth strategy

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Sec. 860

- (1) If acceptance by affected local governments cannot otherwise be reached under this Part, the regional growth strategy is to be settled by one of the following:
 - (a) peer panel settlement in accordance with section 861(1)
 - (b) final proposal arbitration in accordance with section 861(2)
 - (c) full arbitration in accordance with section 861(3)
- (2) If more than one affected local government has refused to accept a regional growth strategy, whether the refusals are in relation to the same or different issues, the regional growth strategy is to be settled for all affected local governments in the same settlement proceedings.
- (3) The choice of process for settlement is to be determined by agreement between the proposing board and the local government or governments that refused to accept the regional growth strategy, but if the minister considers that these parties will not be able to reach agreement, the minister must direct which process is to be used.
- (4) Any affected local government may participate in a settlement process under section 861.
- (5) During the 60 days after the provisions of a regional growth strategy are settled under section 861, the proposing board and the affected local government may agree on the acceptance of a regional growth strategy that differs from the one settled.
- (6) At the end of the period under subsection (5), unless agreement is reached as referred to in that subsection, the provisions of a regional growth strategy as settled under section 861 become binding on the proposing board and all affected local governments, whether or not they participated in the settlement process.

Section 861 outlines the three options for settlement

- (1) A **peer panel** comprised of 3 persons selected by the parties to the dispute, or the minister if the parties can't reach agreement. The panel can make any changes to the provisions of the regional growth strategy that it considers necessary to resolve those issues. The peer panel is comprised of local government elected officials from outside the region.
- (2) With **final proposal arbitration**, the provisions of the RGS are settled by a single arbitrator. Subject to the provincial regulations, the arbitrator conducts the proceedings in the basis of a review of written documents and written submissions only, and determines each disputed issue by selecting one of the final written submissions only, and must determine each disputed issue by selecting one of the final written proposals for resolving that issue submitted by one of the participating parties.

- (3) A **full arbitration process** may involve a more complex review of evidence, including face to face meetings with the disputants and the calling of witnesses. The arbitrator is not restricted to submissions made by the parties to the dispute.