

Delegation to Qualicum Beach Council on “Meaningful Consultation”
February 2, 2015
By Kevin Monahan

Your Worship, Councillors, Thank you for allowing me to speak to you this evening on the subject of “meaningful consultation”.

I worked for more than a decade under the direction of various federal regulatory policies, and I have conducted consultations from coast to coast and in almost every province and territory on behalf of the Canadian Coast Guard and Transport Canada. I was also Island Trustee for Lasqueti Island during the development of its first OCP in the 1970s and later was a member of the Powell River Regional Board’s Environment Committee, and the Advisory Planning Commission for Lasqueti Island.

I would like to open with the following statement about consultation from the Canada West Foundation’s *Enhancing Public Consultation in the 21st Century*

There can be no more devastating criticism levelled against a consultation process than the complaint “Nothing I did made the slightest difference.”

I can safely say that a government ignores “meaningful consultation” at its peril. Meaningful consultation results in positive respect for government, even when difficult and otherwise unpopular decisions have to be made. If one considers that consultation is too time consuming and costly, just consider the cost of not consulting! In the long run it is far greater. This is especially true in light of the recent Supreme Court decision in “Community Association of New Yaletown v the City of Vancouver”.

In Canada we have a strong tradition of public consultation. This tradition is expressed very clearly in Part 6 of the federal *Cabinet Directive on Regulatory Management*, which calls for “meaningful consultation” as the norm for federal departments and agencies. Its purpose is to “Create accessible, understandable and responsive regulation through engagement, transparency, accountability and public scrutiny”.

An internet search of the term “meaningful consultation” will reveal many other sources, one of the best being “*Supporting Meaningful Consultation with Parents*” by the British Columbia Council of Administrators of Special Education, which begins with the statement...

“At its heart, meaningful consultation is about interactive, two-way communication and dialogue. Such consultation is undertaken to seek information, advice and/or informed opinion for consideration **prior to decision making.**”

All the authorities agree; consultation that is not “meaningful consultation” is not actually consultation at all. So what is meaningful consultation? “Meaningful consultation” reflects the following fundamental principles:

- Consultation involves two-way meaningful dialogue, not just a single opportunity for stakeholders to state their opinions. If the government simply provides information

and then listens to responses, (as it does during public hearings) there is no dialogue, and thus no consultation.

- Consultation provides stakeholders with a realistic opportunity to affect outcomes.
- Consultation takes place prior to decision-making. Consultation that is done simply in order to go “through the motions”, is not “meaningful consultation”.
- Consultation is no substitute for a referendum in which every voter’s vote is counted, but there is an obligation on the government to ensure that all points of view are represented.
- Stakeholders for any particular issue may vary depending on the nature of the issue. In general, a stakeholder is anyone who believes they have a stake in the issue. Stakeholders may include (but should never be limited to) people who are not residents but who do business or have other interests in the community (ie. store owners, architects, builders, nearby landowners and first nations, other governments, etc.)
- People have very different needs and styles of communication. Consultation that is meaningful reaches out to people and gives them opportunities to be involved. Times, locations and mechanisms for consultation are as varied as the stakeholders themselves and should reflect the needs and abilities of stakeholders to be involved.
- Meaningful consultation fosters an environment of respect. Everyone has something important to offer. Everyone has different backgrounds, but these backgrounds are recognized as contributing to and not detracting from the process.
- Consultation can be about principles, concepts or “big ideas”, but if so, once a specific proposal has evolved out of consultations, it should be the subject of renewed consultation. So consultation is usually an iterative process.
- Information alone is not consultation. Information is important, for the government to accurately set out its issues and concerns, and for stakeholders to fully understand the proposal. But information is only one aspect of effective consultation.
- During consultations, the actual issue to be addressed must be clearly spelled out. If the issue is not well defined, the solution may well be the wrong one. It is the government’s job to demonstrate that the solution is actually the best answer to the problem.
- Consultation provides the opportunity to examine the “evidence” on which a proposal is based. This should include all the studies or analyses performed in order to demonstrate that the proposal is necessary and will result in a net benefit to the community. These include but are not limited to cost-benefit analysis, economic impact analysis, transportation, environmental, social and land-use analyses. In “Community Association of New Yaletown v the City of Vancouver” the judge quashed a by-law and development permit because the city failed to “...provide an intelligible (i.e. where do the numbers come from?) financial justification...”
- Consultation provides stakeholders with an opportunity to challenge the assumptions and analysis that are used to justify the proposal. If, during consultation it is discovered that the assumptions or analyses are flawed and need to be re-evaluated, the government is able to (and should) adjust its proposal to reflect this re-evaluation.
- Stakeholders may not fully understand the details of a proposal, and may make incorrect assumptions about those details. It is the government’s responsibility to read “between the lines” and determine the nature of the comments and their application to the discussion.
- The form of comments should not be limited. Opinions expressed in letters, e-mails and other forms of communication should all be taken into consideration.

- Consultation is conducted by the government, or its agents, to directly engage stakeholders. As a result, Public Information Meetings conducted by developers do not meet the criteria for meaningful consultation. A Public Information Meeting may be a useful part of the process but after the information meeting stakeholders need to discuss the proposal without the developer as intermediary.
- Consultation must be documented so that the process and the results can be referred to at a later date. The records of consultation processes are a treasure trove of important information.
- And finally—every consultation is different, involving different stakeholders or circumstances. Consultation processes may differ as well and may go by many different names, such as deliberative democracy or “open space technology”, but meaningful consultation is always based on these same basic principles

So why does a government consult?

- The process is deeply rooted in fundamental democratic principles. It allows the government to “take the temperature” of the community.
- It provides the government with valuable “ground-truth” about a proposal and the assumptions on which it is based, thus providing the information needed to re-assess or modify the proposal.
- If a proposal is flawed, consultation helps to identify those flaws and to make the proposal the best it can be.
- It gives the government and stakeholders the opportunity to test alternate scenarios. Is there a “better mousetrap”?—a better way to achieve the stated objectives? The little fellow in the accompanying slide is challenging our concept of what constitutes a good mousetrap.
- Consultation provides “consensus-based” results. Not everyone will be happy with the results, but if the process is honest and “meaningful”, stakeholders become invested in the process and will take a degree of ownership in the end result.

A government does not consult with stakeholders to default on its obligation to make decisions. That responsibility still rests with the government, but if the process is followed properly, government decision-making will be “consensus-based” and will strongly demonstrate its credibility and accountability.

I urge council to take these principles to heart and to establish a policy or bylaw on “meaningful consultation” that will guide deliberations on the development of Official Community Plan reviews and / or any other significant by-law or development proposal.

I would like to thank you for this opportunity to speak to you this evening.