



OMBUDSPERSON
BRITISH COLUMBIA

July 13, 2021
File: 20-183497

Carol Dowe
512 Hawthorne Drive
QUALICUM BEACH BC V9A 1A5

Dear Ms. Dowe:

Thank you for bringing your complaint about the Town of Qualicum Beach (the “Town”) to our Office’s attention. I am writing to confirm that my investigation is complete and our file is closed. This letter is intended to outline my investigation, what I found, and the resolution to the identified fairness issues.

Complaint Summary

I understand that Telus Communications Inc. (“Telus”) has proposed to build a wireless communications tower (the “Tower”) on land owned by the Town. Telus reportedly conducted public consultation in accordance with Innovation, Science and Economic Development Canada (“ISED”)’s Default Public Consultation Process earlier in 2020. Following the completion of their public consultation process, ISED required Telus to formally seek a motion or letter of land use concurrence from the Town.

I understand that at least as early as July 30, 2020, you asked the Town’s corporate administrator to appear as a delegation at the Town’s August 19, 2020 regular council meeting to speak to the matter of the proposed Tower. On August 4, 2020, Ms. Svensen notified you that the Town had not yet received Telus’ formal application for land use concurrence, and so there was nothing in front of Council to speak to. She advised that if the Town received such an application from Telus, staff would request direction from Council on if and how they would like to consult with the public. She also advised you that the Town would therefore not be advancing individual requests for delegations relating to the Tower at that time.

Telus submitted their formal land use concurrence application to the Town on August 5, 2020. On August 7, 2020, you wrote back to Ms. Svensen, again asking to appear as a delegation at the August 19th meeting to speak to the matter of Telus’ application. Ms. Svensen replied to confirm that the Town had received Telus’ application, but declined your delegation request a second time on the basis that Town staff still had to seek direction from Council on public consultation. You sent Ms. Svensen an email on August 11, 2020, requesting for the third time the opportunity to appear as a delegation at the August 19th meeting. You expressed concern that Council would receive and approve Telus’ application without you being given the opportunity to make submissions on Council’s decision. Ms. Svensen replied to indicate that staff recommended against proceeding with any delegation requests for the August 19th meeting before they sought Council’s direction on next steps for public consultation.

On August 19, 2020 the regular council meeting took place over Zoom. Council discussed Telus’ application and ultimately directed staff to execute a satisfactory lease agreement with Telus and to provide Telus with the requested Land Use Concurrence for one of the Proposed Tower sites.

Council declined to schedule or otherwise set down any further public consultation process on the matter. You complained that the Town's decision to decline your delegation request for the August 19, 2020 meeting was arbitrary and unfair.

Investigation Summary

The focus of my investigation was whether the Town acted fairly and consistently with governing legislation and policy in declining your delegation request to speak to Telus' application for land use concurrence at the August 19th regular Council meeting.

As part of my investigation, I reviewed correspondence between you and Town staff leading up to the August 19th meeting, the Town's Council Procedure Bylaw in force at the time Ms. Dowe made her request (the "Council Procedure Bylaw"),¹ the August 19th meeting agenda and minutes, and a staff memorandum for Council's review at the August 19th meeting (subject: "TELUS Cell Tower Proposal"). I also spoke with you as well as representatives of the Town.

Investigation Results & Analysis

Generally speaking, a decision by a public authority may be considered arbitrary if it is made randomly, based on personal opinion, preference, or prejudice, or without regard to rules or standards. When legislation or policy provides a test or criteria for a decision or procedure, this should be identified and applied consistently by decision makers so similar cases are treated similarly.

Leading up to the August 19th meeting, the procedure by which the Town managed delegation requests was provided in section 17 of the Council Procedure Bylaw. The Town declined your delegation request on the basis of subsection 17(5) of the Council Procedure Bylaw:

17(5) The Corporate Officer may schedule delegations to another Council meeting or advisory body, as deemed appropriate, according to the subject matter of the delegation, including for land use amendment applications in progress, referral to applicant's Public Information Meeting, statutory Public Hearing, and other public input opportunities. The maximum number of delegations that will be scheduled for one meeting is three.
[emphasis added]

Specifically, the Town expected Council to create a future public consultation during the August 19th meeting, and intended to subsequently reschedule your delegation to said future public consultation. However, Council declined to create such a public consultation, and so your delegation request was never rescheduled.

In my view, subsection 17(5) does not appear to have contemplated public input opportunities that do not yet exist, and the Town's decision to deny your delegation request on the basis of rescheduling it to a non-existent future public input opportunity did not appear to me to be in line with the language or intent of the provision. I concluded that it did not appear to me that the Town correctly applied subsection 17(5) of the Council Procedure Bylaw in declining your delegation request, and that the decision to decline your request may have been made arbitrarily.

Settlement

¹ Council Procedure Bylaw, Bylaw no. 674, 2013.

Following my investigation, the Town acknowledged that some delegation requests can be inadvertently refused, rather than referred to other public input opportunities as intended. The Town agreed to take the following actions to remedy the unfairness concerns I highlighted:

- The Town agreed to issue you a written apology for failing to correctly apply section 17 of the Council Procedure Bylaw, no. 674, 2013 in denying your request to appear as a delegation at the August 19, 2020 regular council meeting;
- The Town agreed to publish a formal notice on the “News Releases” page of the Town’s website attesting to the error; and
- The Town agreed to provide supplemental training to Town Staff on the application of section 19 (formerly section 17) of the Council Procedure Bylaw, no. 733, 2019, as it relates to delegation requests, with particular emphasis on subsections 19(5) and 19(6) (formerly ss. 17(5) and 17(6)), and including the instruction not to reschedule delegations to public input opportunities which had not yet been created.

As discussed, given that the Town has agreed to take steps necessary to resolve the administrative fairness concerns identified during my investigation, I have ended my investigation and our file is now closed.

If you have any questions about this letter, I can be reached on my direct line at 250-356-7534 or toll-free by calling Service BC at 1-800-663-7867 and asking to be connected to my direct line.

Thank you for bringing your concerns to our attention.

Yours sincerely,



John Sparks
Ombudsperson Officer

13 The Ombudsperson may refuse to investigate or cease investigating a complaint if, in the opinion of the Ombudsperson, any of the following apply:

- (i) the complaint is settled under section 14.

14 (2) At any time during or after an investigation the Ombudsperson may consult with an authority to attempt to settle the complaint, or for any other purpose.

R.S.B.C. 1996