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# Conducting Livestock Conditional Use Hearings

By John Stefaniuk



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Few municipal issues of late in Manitoba have generated more stress for electors and councillors than the approval of intensive livestock operations (ILOs). Here are some easy, practical principles that can be applied to reduce the stress level and to improve the quality of the process.

The Planning Act is your roadmap. The Planning Act governs. If you methodically follow the Act, you avoid aggravation and litigation. Make sure that applications are properly completed and that consents are given by the registered owner of the land. When deciding who gets a notice of the hearing, go from the property limits, not the barn location, when measuring the required radius. Are the spread fields part of the application? Hold the hearing within the time specified in the Act.

Get a good application. Have the CAO or other municipal staff provide some guidance to the applicant in submitting a good application. Explain the application and hearing process. Explain the test that the applicant must meet. Encourage the applicants to do their homework before making the application. Did they talk to the neighbours and attempt to address any concerns? Are there any issues with the site? Should they be looking to establish on other land in the municipality? Are other required approvals in hand or in process? Is there any issue with the municipality's development plan? Will they have the necessary technical back-up to support their application at the hearing? Can the applicants suggest conditions in their presentation that they would consider to be acceptable for inclusion in any conditional use order that might be issued, so as to address potential concerns? Give the same level of support or information to those who may be opposed to the application.

Understand Council's role. A conditional use hearing is a hearing in which council sits in a quasi-judicial capacity for the purposes of receiving evidence in support of and in opposition to the application. Council members must leave their predispositions and previous information outside and decide on the application based on what is presented at the hearing. Rules of procedural fairness must be followed. After the hearing is closed, it is not open to Council to solicit other information, unless all parties are given a right to receive and respond to the information.

Set procedures. Follow the municipality's procedures by-law. If the by-laws are not specific, establish some ground rules at the outset and make them known to everyone, preferably well in advance of the hearing. Typically the applicant presents first, followed by any supporters and then by any objectors. The applicant then is allowed to respond to issues raised by the objectors. Council decides what questions are asked, to whom and when. Council may set time limits for presentations. Repetition of information that has already been presented can be discouraged and ramblers can be cut off. Do not tolerate shouting, abusive comments or disruptive behaviour; mutual courtesy should be the norm. Adjourn to another date fixed at the hearing if the hearing goes too long or gets out of hand, or if additional information is needed.

Know what you have to decide. Section 53(7) of the Act specifies that unless the applicant satisfies Council, based on the facts presented at the hearing, that the criteria for approval are met, Council must reject the application. Keep a copy of the section handy. The development must be found to be consistent with zoning and the development plan and be 'necessary and desirable for, and compatible with, the neighbourhood, the community and the general environment' and not 'detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to property, improvements or potential development in the vicinity'. It is the applicant's job to establish that the tests are met.

Weigh the evidence. Council is likely to be presented with a flood of information. It is up to Council to decide what 'weight' is to be given to each submission and each document. Are the applicant's proposal and the technical review report fully supported, or have the objectors been able to show errors and omissions that cast them into doubt? Are the people that are submitting technical information qualified to defend the information? Are the experts that may be presented independent or biased? Are proposals/ objections supportable, or are they speculative? What do the people most directly affected by the proposed development have to say, pro or con?

Make a decision. There is usually little, if anything, to be gained in delaying a decision. Both applicants and objectors are entitled to a decision within a reasonable time. In most cases the decision should be able to be made immediately following the public presentation portion of the hearing, or at least within a couple of weeks thereafter. Any decision is usually better than no decision.

Make a record and give your reasons. Have the secretary of the hearing present the application and supporting authorizations, the notices, the proof of publication, the lists of persons to whom notice was given, the proposal and the technical review report, to be marked and accepted as part of the record. Do likewise with any written material that is received. When Council makes its decision, consider giving written reasons. Written reasons also form part of the record of the hearing and can be used to show that Council has considered all of the matters that are required to be considered under the Act. If all of the bases are covered, and Council shows that it has made all proper considerations and complied with the Act, it is unlikely that its decision will be successfully challenged. Written reasons also provide a useful guide to future applicants in terms of the issues that Council considered to be important.

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John Stefaniuk engages in a broad practice with emphasis on environmental law, real estate and development law, natural resources and energy, commercial law and municipal law matters. He has particular experience in relation to contaminated sites, mining and mine rehabilitation, wind power development, natural resource development, environmental approvals and licensing, commercial real estate, leasing, financing and development, municipal approvals, taxation and assessment and business acquisitions. He appears regularly before government licensing bodies and administrative tribunals including the Manitoba Clean Environment Commission and Municipal Board, municipal councils, provincial legislative committees and in all levels of court in Manitoba and in the Federal Court in connection with environmental, resource, regulatory municipal, and property issues.