

## THE HEARING – ACT LIKE A JUDGE

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The strata council has the sole authority to determine at first instances whether or not a bylaw has been violated. This duty must be carried out by the strata council and cannot be delegated to any person, including a strata manager.

Standard Bylaw 20(4) prohibits the council from delegating its powers to determine, based on the facts of a particular case, whether there has been a contravention of a bylaw or rule, whether a fine should be levied, including the amount of the fine and whether a person should be denied access to a recreational facility. Section 27 of the *Strata Property Act* (the “Act”) prohibits the strata corporation from interfering with the exercise of this discretion.

The legislature recently added section 34.1 to the Act to permit an owner or tenant to request a hearing. Regulation 4.01 defines a “hearing” as an opportunity to be heard in person at a council meeting.

Section 34.1 reads as follows:

34.1 (1) By application in writing stating the reason for the request, an owner or tenant may request a hearing at a council meeting.

(2) If a hearing is requested under subsection (1), the council must hold a council meeting to hear the applicant within 4 weeks after the request.

(3) If the purpose of the hearing is to seek a decision of the council, the council must give the applicant a written decision within one week after the hearing.

It is not clear what the consequences are for failing to provide a decision within one week.

I recommend that the council adopt the following course of action when it receives a request for a hearing:

1. A council member should not address the matter with any person outside of a scheduled council meeting.
2. No information should be provided about the matter until such time as the matter is addressed at the hearing and a decision rendered. At that time, the owners should be advised of the council decision.
3. A council member must not prejudge the outcome of the hearing and should refrain from making statements of any kind regarding his or her position on the issues prior to the decision.
4. The member should listen and may ask questions during the hearing. However, the member should refrain from making comments regarding the evidence or the manner in which the council member intends to vote or the council member’s leaning on the issues. The council members should avoid any appearance of bias.
5. In other words, a council member should act in an impartial, fair, reasonable, objective and in a quasi-judicial capacity – act like a Judge.
6. Once the hearing is concluded, council may wish to go into an in camera session to address the evidence and arrive at a decision. Observers cannot be present.
7. If the council wishes to seek legal advice, it should do so prior to providing their written decision.
8. The hearing must be held within 4 weeks after the request and if the purpose of the hearing is to seek a decision, then the written decision must be provided within 7 days after the hearing.

The above is not intended to constitute an exhaustive code of conduct when a hearing is requested. If the council has any questions regarding this process, it should seek legal advice to avoid the numerous pitfalls.