Minute No. 519
Report - Standing Policy Committee on Property and Development - June 24, 2008

Item No. 2 **Amendment - Development Procedures By-law No. 5893/92 – Related Conditional Use or Variance Applications**
File EP-1

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the Development Procedures By-law No. 5893/92 and the Board of Adjustment By-law No. 5894/92 be amended as outlined in Appendix "A" to the report from the Director of Planning, Property and Development dated June 12, 2008, and include the intent of the following:

   A. That the requirement for Community Committees to hear Conditional Use or Variance applications related to a recently approved Subdivision/Rezoning shall only be applicable to lands with a Commercial, Industrial or Multiple-family zoning designation, and shall expire two (2) years from the date of the approval of the Subdivision and/or Rezoning by-law.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

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DECISION MAKING HISTORY:

Moved by Councillor Swandel,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 9, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On June 24, 2008, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service, as amended, namely:

- Amend Recommendation 1. by adding the following words after "June 12, 2008,"

  "and include the intent of the following:

  A. That the requirement for Community Committees to hear Conditional Use or Variance applications related to a recently approved Subdivision/Rezoning shall only be applicable to lands with a Commercial, Industrial or Multiple-family zoning designation, and shall expire two (2) years from the date of the approval of the Subdivision and/or Rezoning by-law,"

and submitted the matter to the Executive Policy Committee and Council.

On April 29, 2008, the Standing Policy Committee on Property and Development concurred in the recommendation of the Riel Community Committee and requested the Winnipeg Public Service to report back to the meeting on June 24, 2008, on amending The Development Procedures By-law No. 5893/92 to include a provision that would ensure that applications for Variances and/or Conditional Uses on subdivisions recently approved by a Community Committee be directed to the Community Committee and not the Board of Adjustment.

Report - Standing Policy Committee on Property and Development – June 24, 2008

DECISION MAKING HISTORY (continued):

COMMUNITY COMMITTEE RECOMMENDATION (continued):

On April 21, 2008, the Riel Community Committee recommended to the Standing Policy Committee on Property and Development that the Winnipeg Public Service be directed to report back on amending The Development Procedures By-law No. 5893/92 to include a provision that would ensure that applications for Variances and/or Conditional Uses on subdivisions recently approved by a Community Committee be directed to the Community Committee and not the Board of Adjustment.

RE: Proposed Amendments to Development Procedures By-law (Approval Process for Variances and Conditional Uses – Recent Community Committee Subdivision Recommendation)

FOR SUBMISSION TO: Standing Policy Committee on Property and Development

ORIGINAL REPORT SIGNED BY: Director, Planning Property and Development Dept.

REPORT DATE: June 12, 2008

RECOMMENDATION:

1. **That the Development Procedures By-law and the Board of Adjustment By-law be amended as outlined in Appendix A.**
2. **That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.**

Report Summary

Key Issues:

- When local Community Committees hold public hearings on subdivision and rezoning applications, not all details of the design and construction of the project are fully known to the applicant. Once those details are finalized, additional variances or conditional use applications may be required. Currently (except for combined applications) applications for variances and conditional uses are either dealt with administratively by the Director of Planning, Property and Development ("the director") or are referred to the Board of Adjustment for a public hearing and decision.
- Community Committees carry knowledge, history and background information about previous applications on the land and about the local area. They may therefore be in a good position to review the subsequent approvals required. The Board of Adjustment may view a proposed development differently, not having the benefit of the original discussion. However, the area planner would reflect this discussion in their report and it would inform the recommendation brought forward.
- Approval procedures for development applications are laid out in the Development Procedures By-law. In order to accommodate a separate stream for those variance and conditional use applications directly associated with previous subdivision and rezoning applications, the By-law would need to be amended. Consequential amendments would also be required to the Board of Adjustment By-law.
- Delays may be encountered by the development industry as Community Committees do not meet as frequently as the Board of Adjustment. However, the

Public Service believes that the number of applications affected by the proposed change would be minimal (e.g., likely no more than 10 per year).

- The Public Service recommends that the proposed by-law amendments come into force and effect on January 1, 2009 to allow the Public Service sufficient lead time to put appropriate administrative systems in place.
- Also, the Public Service recommends that applications for variances and conditional uses associated with former subdivision and rezoning applications only be cross-referenced for the previous 2 years.

Implications of the Recommendation(s):

General Implications

( ) None

( ) For the organization overall and/or for other departments

(X) For the community and/or organizations external to the City

( ) Involves a multi-year contract

Comment(s): Amending development approval processes to direct certain variance and conditional use applications to the local Community Committee rather than the Board of Adjustment may cause delays in the approval process particularly during Council's prorogue period.

Policy Implications

(X) No

( ) Yes

Comment(s): The proposed change would be consistent with existing policies and legislation.

Regulatory Implications

( ) None

( ) Eliminates or reduces regulatory impact

(X) Proposes regulatory impact

Comment(s): The suggested improvement would be accomplished through changes to the Development Procedures and Board of Adjustment by-laws.

Environmental Implications

(X) No

( ) Yes

Comment(s):

Human Resources Implications

( ) No

(X) Yes

Comment(s): A proposed change to the Development Procedures By-law to forward variance and conditional use applications to the local Community Committee rather than the Board of Adjustment would place an additional draw on Councillors' time to participate in public hearings and approvals associated with variance and conditional use applications. Correspondingly, it would reduce the number of applications being reviewed by the Board of Adjustment.

Financial Implications

(X) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Comment(s): As this report proposes only to amend text in a by-law, there are no financial implications associated with the recommendations of this report.

Report

REASON FOR THE REPORT:
On April 29, 2008 the SPC on Property and Development concurred in the recommendation of the Riel Community Committee and requested the Winnipeg Public Service to report back to the meeting on June 24, 2008, on amending The Development Procedures By-law No. 5893/92 to include a provision that would ensure that applications for Variances and/or Conditional Uses on subdivisions recently approved by a Community Committee be directed to the Community Committee and not the Board of Adjustment.

HISTORY:
Outside the downtown, applications for subdivisions where new streets are being created are forwarded to the local Community Committee for a public hearing. Under Section 6 of the Development Procedures By-law, where a variance and/or conditional use is associated with that subdivision, it must be packaged and forwarded to the Community Committee for the public hearing and recommendation. The Community Committee sends its recommendation to the respective Standing Policy Committee (SPC); either Property and Development or Downtown Development (except for Conditional Uses in the downtown which are approved by the Director, Planning Property and Development Department). This same process applies to rezonings. Within the downtown, applications for subdivision and rezoning approval are heard by the SPC on Downtown Development.

However, as projects are being designed and built, the need for a new or additional variance may come to light or the proposed use may change, requiring a conditional use. Typically variances or conditional uses arising after the original approval are minor in nature (e.g., yards, height, parking requirements, signage, change of tenant, etc). Depending on the scope of the variance, the Development Procedures By-law provides for review and consideration by either the director (e.g., tolerances or minor variances), or the Board of Adjustment. The Board holds public hearings on all applications that are referred to it.

The Board of Adjustment was originally established by Council to ease the load at Community Committees for approvals of a minor nature and to streamline the development approval process (i.e., “Red Tape”). The Board meets every 2 weeks, much more regularly than the Community Committees (once per month), allowing for development proposals to be considered in a timely manner. The Board is composed of a panel of citizen members appointed by Council. Appeals are handled by the Appeals Committee, a body of Councillors.

The City of Winnipeg Charter enables Council to create a Planning Commission by by-law to consider and make decisions in respect of applications for variances and conditional uses. The City of Winnipeg does not have a Planning Commission and the Board of Adjustment currently functions in this capacity. Council may also refer other planning matters to a Planning Commission including hearings on Plan Winnipeg (limited), secondary plans, zoning by-laws, amendment to a Development Agreement, subdivision standards by-law, subdivision approval, consents and business licenses.

Historical records over the past few years indicate that a nominal number of applications for variances and conditional uses are submitted per year that are associated with a former rezoning and/or subdivision (10 – 2006; 4 – 2007; 0 – 2008 to date) aside from those that are normally heard by the Community Committees.

DISCUSSION:
The motion from the SPC on Property and Development suggests changing the Development Procedures By-law to include a provision that would allow subsequent applications for variances and/or conditional uses associated with subdivisions recently reviewed by the local Community Committee to be redirected from the Board of Adjustment to the Community Committee. After consulting with the Chair of the SPC on Property and Development, it was determined that the motion was intended to apply to rezonings in addition to subdivisions (i.e., those development applications where the Community Committee hosts the public hearing).

Currently section 12 of the by-law indicates that conditional use and variance applications, other than those where the Director of the Planning, Property and Development Department has delegated authority to approve the Orders, shall be referred to the Board of Adjustment. An exception would need to be included in the by-law to direct certain applications to the local Community Committee. A draft amending by-law illustrating the proposed change is attached as Appendix A. The amending by-law also includes consequential amendments to the Board of Adjustment By-law.

The intent is that where applications for variances and conditional uses are received for a property after a subdivision or rezoning has previously been approved on the land, but prior to the buildings being constructed and occupied, those applications would be sent to the Community Committee for review, a public hearing and approval. This approach would facilitate a coordinated review of related proposals on the subject property at a local level where the Committee hearing the application possesses the knowledge, history and background information about previous approvals, neighbouring property owners' concerns and the context of the local area.

It is important to note that the area planner would likely have been involved in the application that went before Community Committee and would be able to relate the knowledge, history and background to this previous approval in the report to the Board

of Adjustment and reflect this in the recommendation. It is the planner's role to maintain application and neighbourhood history and trends in order to provide a common thread throughout the process regardless of changes to the make-up and structure of the various civic committees over time.

The proposed changes may have an impact on the workloads of both the Community Committees and the Board of Adjustment. However, an analysis of development application records over the past few years indicate that less than 10 applications per year for variances and conditional uses proceed through the system that are associated with previous subdivision and rezoning applications so the Community Committees should be able to absorb this increase in their regular meetings.

Changing the approval process also has implications for the applicant. Whereas currently applications of a minor nature are handled by the Board of Adjustment in a timely manner, forwarding these applications to the Community Committee may cause a delay in the approval process. Community Committees only meet once per month and have an interruption in their meeting schedule when Council prorogues during the summer period, the busiest time of the year for construction activity. The worst case scenario would be if a development application was submitted in the month just prior to Council's summer prorogue period. The application could potentially be delayed for a public hearing until the fall. With the appeal period factored in, almost the entire construction season could be lost.

While approvals may proceed more smoothly with the original hearing body reviewing the application, the proposed changes to the process are generally not consistent with eliminating 'red tape' and reducing the timeline for approvals. However, the number of applications affected appears to be minimal.

Council should consider whether it wants to place a time limit on applications that are cross-referenced. If a new application is received for a variance or conditional use, should it be cross-referenced with all previous subdivision and rezoning applications on the same property, or only applications filed within the past year, 2 years or some longer timeframe? Rezoning and subdivision approvals typically expire within 1-2 years if not acted upon, and 2 years may therefore be a reasonable time limit. It would be difficult to track applications back to the original approval beyond a 2 year timeframe. If Council recommends a timeframe, it should be included in the amending by-law.

Administratively, the change to the by-law will mean that the Community Committees will have to issue Variance and Conditional Use Orders and the City's application and permits staff will have to develop a system (preferably automated) to track related applications. The Public Service would prefer to have sufficient lead time to put the appropriate systems in place for monitoring, administration and oversight before the proposed changes become active. The Public Service recommends that the proposed implementation date of the by-law be January 1, 2009.

Financial Impact Statement Date: June 11, 2008

Project Name:

Amendment to Development Procedures By-law (Approval Process for Variances and Conditional Uses)

COMMENTS:

The recommendations in this report are that the Development Procedures By-law be amended as outlined in Appendix A and that the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

There are no direct financial implications associated with these recommendations.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

- Legal Services Division

External Consultation With:

- None

THIS REPORT SUBMITTED BY:

Department: Planning Property and Development Department
Division: Office of the Director
Prepared by: Valdene Buckley, MCIP
PPD File No.:

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APPENDIX "A"

THE CITY OF WINNIPEG
BY-LAW NO. XXX/2008

A By-law of The City of Winnipeg to amend the Development Procedures By-law No. 5893/92 and the Board of Adjustment By-law No. 5894/92.

THE CITY OF WINNIPEG, in Council assembled, enacts as follows:

1 *The Development Procedures By-law No. 5893/92 is amended*

(a) *by adding the following after Section 11:*

Application for variance or conditional use - recent community committee subdivision and rezoning recommendation
11.1 An application for a variance or a conditional use on land which was the subject of a public hearing and recommendation by a community committee on an application for subdivision or rezoning approval shall be heard and determined by the same community committee.

(b) *in section 12, by striking out* "section 6" *and substituting* "sections 6 and 11.1".

2 *The Board of Adjustment By-law No. 5894/92 is amended*

(a) *in clause 4(1)(a), by striking out* "section 6" *and substituting* "sections 6 and 11.1".

This By-law comes into force on January 1, 2009.

DONE AND PASSED this day of , 2008.

_____
Mayor

_____
City Clerk

Approved as to planning details:

_____
for Director of Planning, Property and Development

Approved as to form:

_____
for City Solicitor/Manager of Legal Services