THE MUNICIPAL BOARD OF MANITOBA

DECISION AND ORDER

DECISION DATE: January 24, 2022

Interim Order No. D-22-001
File No. 20D2-0002

MATTER: Airport Vicinity Protection Area ("AVPA") Referral Amendment to Secondary Plan By-law No. 6378/94 *The City of Winnipeg Charter, S.M. 1996, c.58, Section 270(1)*

MUNICIPALITY: City of Winnipeg

BY-LAW NO: 49/2019

HEARING DATE: December 6, 2021

PANEL: Diane Stasiuk, Acting Chair
Steve Lupky, Member

PARTIES AND APPEARANCES:

for The City of Winnipeg
Kalyn Bomback, Legal Counsel, City of Winnipeg

for Winnipeg Airports Authority Inc.
Greg Tramley, Legal Counsel, McCandless Tramley

for Towers Realty Group Ltd.
Mark Newman, Legal Counsel, Fillmore Riley LLP
Kate Moir

INTRODUCTION

This Interim Order relates to a Referral by the City of Winnipeg (the "City") to The Municipal Board (the "Board") regarding the proposed City of Winnipeg By-law No. 49/2019 (the "Proposed By-law") amending Airport Vicinity Protection Area (the "AVPA") Secondary Plan By-law No. 6378/94 pursuant to s.270(1) of *The City of Winnipeg Charter* (the "Charter").

As part of a development application initiated by Towers Realty Group Ltd. ("Towers"), Towers brought forward the Proposed By-law to the City which seeks to re-designate certain lands identified generally along the west side of St. James Street between Portage Avenue and Sargent Avenue from

AVPA Policy Area I to Area II (the "Lands"). The re-designation from AVPA Policy Area I to Area II allows for multi-family, mixed-use development. Lands contained under Policy Area I of the AVPA are prohibited from new multi-family residential development.

On August 12, 2021, the Province of Manitoba passed regulation 66/2021, the Airport Vicinity Protection Area Regulation (the "Regulation"). The Regulation alters the boundaries of Area I and II, with the result being the Lands are now contained in AVPA Policy Area II.

On August 16, 2021, following the passing of the Regulation, another Board panel heard preliminary arguments on a separate City AVPA referral, being Board File No. 20D2-0001. In that case, the developer sought to re-designate certain lands from AVPA Policy Area I to Policy Area II. The Regulation moved the lands to Policy Area II. The parties agreed that the issue for adjudication no longer exists, rendering the matter before the Board moot. After considering the Regulation, submissions and case law, the Board agreed with the parties and ordered the City's referral concluded without proceeding to a hearing on the basis of mootness (Board Interim Order No. D-21-001).

The question is whether the Board should make a similar finding with the present Referral and conclude the matter without holding a hearing.

A pre-hearing conference has been held to address this issue.

BACKGROUND

At the commencement of the pre-hearing conference, the Acting Chair of the Board highlighted some of the key events preceding the pre-hearing conference as follows:

In May 2019, an application was made to the City regarding the Proposed By-law.

On June 3, 2020, before second reading of the Proposed By-law, the Assiniboia Community Committee of Council did recommend that the development application initiated by Towers be approved and that Council give second and third reading to the Proposed By-law.

On June 15, 2020, The Winnipeg Airports Authority (the "WAA"), filed an objection letter with the City regarding the Proposed By-law pursuant to Section 270(1)(b) of the Charter.

On June 16, 2020, the Standing Policy Committee on Property and Development, Heritage and Downtown Development laid over consideration of the Proposed By-law indefinitely.

On July 21, 2020, as a result of the WAA objection, the City referred the Proposed By-law to the Board pursuant to Section 270(1)(b) of the Charter.

On August 12, 2021, the Province of Manitoba passed the Regulation altering the boundaries of AVPA Policy Areas I and II, with the result being the Lands are now contained in Area II.

SUBMISSIONS

Winnipeg Airports Authority

Greg Tramley, Legal Counsel for the WAA, acknowledges that the effective date of the Regulation of August 12, 2021 had an impact on the Board's decision in the prior AVPA referral. He adds that there are "lots of moving parts", including direction to the City to amend its planning by-laws. Although he is not sure what the City and Towers are going to do now, the Regulation renders Tower's application moot. He submits that the Board should make the same determination on the Referral as it did in its prior decision, Board Interim Order No. D-21-001, in finding that there is no issue to adjudicate and conclude the matter without proceeding to a hearing. This will resolve the matter once and for all.

The City of Winnipeg

Kalyn Bomback, Legal Counsel for the City, echoes Mr. Tramley's comments regarding mootness and confirms that the subject Lands are all within Policy Area II. She adds that the City is working diligently on by-law amendments as mandated under the provisions of the Regulation. She notes that the City must treat the existing by-law as though it has already been amended. For the purposes of having a record, the Board order could simply state that the within matter is moot.

Towers Realty Group Ltd

Mark Newman, Legal Counsel for Towers, agrees that with the WAA and City with a determination that the matter is moot and that a Board order to that effect would conclude the matter.

ANALYSIS AND RECOMMENDATION

In making a determination in this matter, the Board has considered the Regulation together with Board Interim Order No. D-21-001 and submissions of the parties. The Board notes that the Proposed By-law, which lies at the heart of the Referral, aims to re-designate the Lands to Policy Area II, but the passing of the Regulation effectively moved the Lands to Policy Area II as of August 12, 2021. The Board is satisfied there is no issue for the Board to adjudicate and the matter is deemed moot. The Board therefore concludes the matter without proceeding to a hearing.

THEREFORE, THE BOARD ORDERS:

1. That the City of Winnipeg Referral to The Municipal Board under Section 270(1) of *The City of Winnipeg Charter* (Board File No. 20D2-0002) is concluded without proceeding to a hearing on the basis of mootness.

FOR THE MUNICIPAL BOARD

January 24, 2022
Date

Diane Stasiuk, Acting Chair

S Jensen
Shelley Jensen, Secretary