Agenda – Council – July 21, 2022

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – July 4, 2022

Item No. 6 Recommendations Regarding the Board of Adjustment

STANDING COMMITTEE RECOMMENDATION:

On July 13, 2022, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the following to Council:

1. That a By-law to amend the Development Procedures By-law No. 104/2020 be enacted, in order to delegate authority to the Director of Planning, Property and Development to consider and make decisions on "C" variance development applications (DAV-C) and "C" conditional use development applications (DCU-C), a draft of which is attached as Schedule A to this report.

2. That a by-law to repeal the Board of Adjustment By-law No. 5894/92 be enacted, a draft of which is attached as Schedule B to this report.

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

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – July 4, 2022

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 13, 2022, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 4, 2022, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

COUNCIL DECISION:

On May 26, 2022, Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and granted an extension of time of up to 180 days for the Winnipeg Public Service to report back with recommendations regarding the reinstatement of the Board of Adjustment.

On October 28, 2021, Council adopted the recommendation of the Governance Committee of Council, as amended, which included the following recommendation:

9. That the Winnipeg Public Service be directed to report back to Council in May 2022, through the appropriate committee, with recommendations regarding the reinstatement of the Board of Adjustment.

ADMINISTRATIVE REPORT

Title: Recommendations regarding the Board of Adjustment

Critical Path: Standing Policy Committee on Property and Development, Heritage and Downtown Development – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Veitch	J. Kiernan	C. Kloepfer	M. Jack

EXECUTIVE SUMMARY

The Board of Adjustment (BOA) is a quasi-judicial body comprised of five citizen members appointed by City Council. The appointment and functions of the BOA are prescribed to it by the Board of Adjustment By-law No. 5894/92 (BOA By-law), which under section 4 contemplates a number of land development applications that Council has the option to refer to the Board, and the Development Procedures Bylaw No. 104/2020 (Development Procedures By-law). In practice, the BOA has only used the powers prescribed to it by the Development Procedures By-law, which primarily includes acting as the hearing body and issuing orders for 'C' variance (DAV-C) and 'C' conditional use (DCU-C) development applications.

In the spring of 2020, City Council cancelled all in-person meetings, including those of the BOA, and temporarily delegated the BOA's decision-making authority to the Director of Planning, Property and Development (the Director). This move was in response to the emerging COVID-19 pandemic and the need to limit the number of meetings that would have to occur in the Council Chamber. Council extended the temporary delegation of authority on multiple occasions in 2020 and 2021 as the pandemic continued. This temporary delegation of authority to the Director is currently set to expire on December 31, 2022.

On October 28, 2021, Council directed the Winnipeg Public Service to report back with recommendations regarding the reinstatement of the Board of Adjustment. The Public Service recommends that Council permanently delegate authority over issuing DAV-C and DCU-C orders to the Director. If Council concurs with this recommendation, then the Public Service also recommends the BOA be eliminated and the BOA By-law be repealed.

If the recommendations in this report are adopted, there will no longer be an initial public hearing requirement for DAV-C and DCU-C applications, and the BOA as a hearing body and decision-maker would be eliminated. Public notice and appeal processes would remain in accordance with current practice and as required by the Development Procedures By-law and *The City of Winnipeg Charter*.

The Director's decisions would remain appealable to the Appeal Committee, which would then have the option to confirm, vary or cancel the Order of the Director. Applicants and the public would continue to have the ability to make submissions regarding DAV-C and DCU-C development applications to the Appeal Committee.

There would be a number of benefits if authority over issuing DAV-C and DCU-C orders is permanently delegated to the Director, and the BOA is eliminated, such as:

- Increased efficiency in dealing with 'C' Development Applications;
- Alignment of decisions with Council-approved by-laws, secondary plans and policies (while retaining the ability to appeal a decision to the Appeal Committee); and
- Reducing City costs.

The Planning, Property and Development Department has also implemented a number of initiatives in order to increase the transparency of decision-making and improve communications around the application process, such as:

- Launch of a new public notice website (https://winnipeg.ca/ppd/PublicNotices/);
- Addition of Quick Response Barcode (QR-CODE) to public notice signs, which take users to the public notice website;
- Pilot project to use plain language for certain application types;
- Issuing work cell phones to development application planners; and
- Notifying the area Councillor when a decision concerning a 'C' Development Application is made.

The above-noted benefits and initiatives are described in more detail in the History/Discussion section of this report.

RECOMMENDATIONS

1. That Council enact a By-law to amend the Development Procedures By-law No. 104/2020 in order to delegate authority to the Director of Planning, Property and Development to consider and make decisions on "C" variance development applications (DAV-C) and "C" conditional use development applications (DCU-C), a draft of which is attached as Schedule A to this report.

2. That Council enact a by-law to repeal the Board of Adjustment By-law No. 5894/92 a draft of which is attached as Schedule B to this report.

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

REASON FOR THE REPORT

On October 28, 2021, Council directed the Winnipeg Public Service to report back to Council in May 2022, through the appropriate committee, with recommendations regarding the reinstatement of the Board of Adjustment.

On May 9, 2022, the Standing Policy Committee on Property and Development, Heritage and

Downtown Development granted an extension of time of up to 180 days for the Winnipeg Public Service to report back with recommendations regarding the reinstatement of the Board of Adjustment.

Council approval is required to amend the Development Procedures Bylaw No.104/2020 and repeal the Board of Adjustment By-Law No. 5894/92.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations contained in this report are adopted, the responsibility for deciding and issuing orders for 'C' variance (DAV-C) and 'C' conditional use (DCU-C) development applications would be permanently delegated to the Director of Planning, Property and Development.

An initial public hearing for DAV-C and DCU-C development applications would no longer be required. Public notice and appeal processes would remain in accordance with current practice and as required by the Development Procedures By-law and *The City of Winnipeg Charter,* and improved in accordance with Department initiatives described below in this report.

Council would no longer have the option to refer applications to the BOA under section 4 of the BOA By-law, as the Board as a hearing body and decision-maker would be eliminated. The BOA's authorities under section 4 in the BOA By-law have not historically been used by Council or exercised by the BOA and are already assigned to Council and its committees under the Development Procedures By-law.

HISTORY / DISCUSSION

The Board of Adjustment (BOA) is an impartial quasi-judicial body comprised of five citizen members appointed by City Council. The appointment and functions of the BOA are prescribed to it by the Development Procedures By-law and the BOA By-law, which under section 4 contemplates a number of applications that Council has the option to refer to the BOA. These include:

- Hearing, determining and issuing orders for 'C' conditional use development applications (DCU-C) and 'C' variance development applications (DAV-C).
- Reporting to Council on proposed secondary plan by-laws or zoning by-laws referred to it by Council for that purpose.
- Considering and making decisions on subdivision applications referred to it by Council.
- Reporting and making recommendations to Council on any other planning or development matter referred to it by Council.

The BOA's authority, as contemplated in the BOA By-law, is consistent with the powers, duties and functions that City Council may prescribe to a "planning commission" under Part 6 Section 274(1) and 274(2) of the *City of Winnipeg Charter*.

Despite the additional authority contemplated under the BOA By-law, in practice, the BOA has only used the powers prescribed to it by the Development Procedures By-law, which includes acting as the hearing body to hear, decide and issue orders for DAV-C and DCU-C development applications. The Development Procedures By-law assigns the BOA's other authorities under section 4 of the BOA By-law to Council and its committees as follows:

- Per 22(a), Community Committee is the hearing body for any application to adopt or amend a secondary plan application for property within the geographical boundaries of one community and where the property is not within the area in which the Downtown Winnipeg Zoning By-law applies.

- Per 22(b) the Standing Policy Committee on Property and Development, Heritage and Downtown Development acts as the hearing body for any application to adopt or amend a secondary plan application for property in all other instances.

- Per 23, Council is the approving authority for applications to adopt or amend a secondary plan.

- Per 25(a), Community Committee is the hearing body for any subdivision application, rezoning application or zoning by-law text amendment application for property within the geographical boundaries of one community and where the property is not within the area to which the Downtown Winnipeg Zoning By-law applies.

- Per 25(b) the Standing Policy Committee on Property and Development, Heritage and Downtown Development acts as the hearing body for any subdivision application, rezoning application or zoning by-law text amendment application for property in all other instances.

- Per 27(1)(a), Council is the approving authority for any subdivision application that includes the creation of new rights-of-ways, rezoning application or zoning by-law text amendment.

- Per 27(1)(b), Council is the approving authority for any subdivision application where the Public Service recommends that an agreement be required as a condition of approval.

- Per 27(2), the Director is the approving authority for any subdivision application where an agreement is not required as a condition of approval.

Hearings of the BOA are regulated by the rules set out in the BOA By-law and the Development Procedures By-law. Hearings consist of three-member panels and are typically scheduled bi-weekly. Prior to the hearing taking place, the City is required to give notice of the public hearing in accordance with *The City of Winnipeg Charter*, by posting a notice on the property at least 14 days before the day when the hearing is to take place.

At the public hearing, the public is provided with an opportunity to convey their views on an application. Decisions made by the BOA are subject to appeal. When a decision is appealed, the City arranges for a new public hearing by the Appeal Committee, which has the option to confirm, vary or cancel the order of the BOA. Public notice of the Appeal Committee hearing is also posted on the property at least 14 days in advance of the hearing.

TEMPORARY DELEGATION OF AUTHORITY

In April 2020, City Council cancelled all meetings, including those of the BOA, in response to the emerging COVID-19 pandemic. On May 6, 2020, Council enacted By-law No. 48/2020 to amend the Development Procedures By-law and allow for the temporary delegation of the BOA's authority over issuing orders for DAV-C and DCU-C development applications to the Director of Planning, Property and Development. This move was implemented to allow for decisions on DAV-C and DCU-C applications to continue to be made throughout the pandemic without the need for the BOA to hold public hearings every two weeks, and specifically to limit the number of meetings which have to occur in the Council Chamber.

This temporary delegation of authority was initially set to expire on August 31, 2020. However, as the pandemic continued, the temporary delegation of authority was renewed on a number of occasions. Most recently, on February 24, 2022, Council extended the delegation of authority to the Director until December 31, 2022. Unless the temporary delegation of authority is extended, or an amending By-law is enacted, the BOA will be re-instated starting in January 2023.

PERMANENT DELEGATION OF AUTHORITY

On October 28, 2021, City Council requested that the Winnipeg Public Service report back to Council, through the appropriate committee, with recommendations regarding the reinstatement of the Board of Adjustment.

The Public Service recommends that Council permanently delegate authority over deciding on and issuing orders for DAV-C and DCU-C applications to the Director. If this recommendation is adopted, then the BOA would no longer be required for this purpose and, given its historical disuse of the other powers in the BOA By-law and the delegation of those authorities to Council and its committees under the Development Procedures By-law, the Public Service recommends the BOA be eliminated by repealing the BOA By-law.

If the recommendations in this report are adopted, there will no longer be an initial public hearing requirement for DAV-C and DCU-C applications, and the BOA as a hearing body and decision-maker would be eliminated. Public notice and appeal processes would remain in accordance with current practice and as required by the Development Procedures By-law and *The City of Winnipeg Charter*.

The Director's decisions would remain appealable to the Appeal Committee, which would then have the option to confirm, vary or cancel the Director's order. Applicants and the public would continue to have the ability to make submissions regarding DAV-C and DCU-C development applications to the Appeal Committee.

Delegating authority respecting DAV-C and DCU-C development applications to the Director would be consistent with Council authority under *The City of Winnipeg Charter*, specifically:

- Authority respecting Variances, under section 247(2) states*: Council may by by-law authorize a designated employee or a planning commission to consider, and make decisions in respect of, applications for variances or specified types of variances and*

applications for variances may be referred to either the designated employee or the planning commission in accordance with the by-law.

- Authority respecting Conditional Uses, under section 253(2) states: *Council may, by by-law, authorize a designated employee or a planning commission to consider, and make decisions in respect of, applications for conditional uses of real property or specified types of conditional uses, and applications for conditional uses of real property may be referred to either the designated employee or a planning commission as determined in accordance with the by-law.*

Delegating the decision-making authority to the Director in this manner would also match the process that is already in place for DAV-B and DCU-B development applications. It would also match the process that is in place for any variance or conditional use application for property zoned under the Downtown Winnipeg Zoning By-law No. 100/2004, bringing the decision-making for the rest of the City in line and having only one process, versus having one process for the Downtown and a separate process for the rest of the City.

Benefits:

Although the initial impetus for delegating decision-making authority over DAV-C and DCU-C development applications to the Director was space limitations in the Council Chamber during the pandemic, there are benefits to permanently delegating this authority to the Director.

One benefit is that it would create a more efficient and timely way to deal with DAV-C and DCU-C development applications by requiring only one review and decision, with the option to appeal decisions (as opposed to a Departmental review, followed by a BOA review, applicant and public representations and the initial decision at the public hearing, on occasion followed by an appeal process with an additional review, public hearing and decision). This change would also align with Recommendation 15 of the Governance Review Final Report, which recommends to "streamline the Development Application Process" and states on page 79:

- "*The City should also consider whether more decision-making authority could be held by the planning department*" and states that "*five of seven cities reviewed in detail have significantly more authority delegated to planning department staff*".

Delegating decision-making authority to the Director would also ensure that decisions on DAV-C and DCU-C development applications align with Council-approved by-laws, secondary plans, and policies, such as *OurWinnipeg* and the *Complete Communities Direction Strategy*. The initial decision would be based on a critical review by professional City planners and, as stated previously, the Director's decisions would remain appealable to the Appeal Committee.

Since the temporary delegation of authority, timelines for processing DCU-C and DAV-C development applications have improved and the Director's decision happens in a much quicker timeframe, enabling faster development reviews. As the BOA hearings occurred once every two weeks, DAV-C and DCU-C development applications had to enter a queue and wait for the next available meeting date, in order to adhere to on-site public notice requirements as per *The City of Winnipeg Charter*.

Between May 2020 and October 2021, there were a total of 383 'C' Development Applications that would have gone to the BOA (if not for the temporary delegation of the Director) and would have been heard on a two-week meeting schedule. Instead, the Director issued the 383 DAV-C

and DCU-C orders ‘in-house’, processing applications with an average 34-day turnaround, saving applicants and landowners many weeks of time in their land development schedule. While an analysis of the average length of time it took to process a ‘C’ Development Application that required a public hearing and initial decision at BOA was not undertaken, the City’s application forms would advise applicants that the process takes approximately six to eight weeks from the date of the application submission to completion (which is an average of 49 days).

An analysis of appeals going back to 2018 shows that appeal levels remain relatively consistent regardless of whether the original decision was made by the BOA or the Director. From January 2018 to March 2020, approximately 20% of the BOA’s decisions were appealed; whereas between May 2020 and October 2021, approximately 22% of the Director’s decisions were appealed.

Eliminating the BOA would also reduce City costs. The total City Clerk’s budget for the BOA is $22,933 per year. Of that, $19,284 is for compensation for Board members. The remainder is postage and other operating expenses. If the BOA’s authority is delegated to the Director and BOA were to be eliminated, these funds would no longer be required from the Clerks Department. However, if the BOA were to be reinstated in 2023 (once the temporary delegation of authority expires) there could be additional costs necessary to accommodate additional support staff to deal with video streaming and Zoom.

IMPROVING COMMUNICATION WITH THE PUBLIC AND COUNCIL:

To increase the transparency of decision-making and improve communication around the application process, the Planning, Property and Development Department has, or will be, implementing the following improvements:

- Launched a new public notice website (https://winnipeg.ca/ppd/PublicNotices/), which users can visit to obtain relevant information on development applications such as Administrative Reports, conditions of approval, copies of the submitted plans, information on appeal timelines, and Public Service contact details to obtain more information from the report author.

- Addition of Quick Response Barcode (QR-CODE) to public notice signs, which can be scanned with a smartphone and will take users to the aforementioned public notice website.

- Updated design of public notice signage, starting with a pilot project that would use plain language for certain application types. The launch of this pilot project is imminent and the new plain language signs are expected to roll out within the next few months.

- Work cell phones have been issued to the development application planners, those cell numbers are now being added to the public notification posters allowing additional communication options to access the Public Service.

As per the Council Decision on February 24, 2022, the Director of Planning, Property and Development is also now required to notify the area Councillor when a decision concerning a DCU-C or DAV-C development application is made, so that the Councillor is aware of the decision and relevant appeal timelines.

FINANCIAL IMPACT

Financial Impact Statement

Date: June 8, 2022

Project Name:

First Year of Program 2023

Recommendations regarding the reinstatement of the Board of Adjustment

	2023	2024	2025	2026	2027
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	22,933	22,933	22,933	22,933	22,933
Net Budget Adjustment Required	$ (22,933)	$ (22,933)	$ (22,933)	$ (22,933)	$ (22,933)

Additional Comments: The majority of the existing budget amounts (i.e. $19,284) represents the remuneration that would otherwise be paid to members of the Board of Adjustment (BOA) with the remainder being for expenses such as printing, photocopying and postage. With the elimination of the BOA, this budget will no longer be requred by City Clerks.

Mike McGinn June 8, 2022

Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:
- City Clerks Department
- Legal Services (as to legal issues)

OURWINNIPEG POLICY ALIGNMENT

01-3 Prosperity
- *Direction 1: Provide efficient and focused civic administration and governance.*

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Key Direction 4.2: Ensure New Areas of Growth are Designed According to the Principles of Complete Communities.

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Consideration was given as to whether this report connects to any of the specific Goals and Objectives in the PRS and it was determined that the PRS does not apply to this specific report.

SUBMITTED BY

Department: Planning, Property and Development
Division: Urban Planning and Design Division
Prepared by: R. Hayer, RPP, MCIP
Date: June 10, 2022

Attachments:
Schedule A – Draft Amending By-law

Schedule B – Draft Amending By-law