

City Clerk's Office Report to
Priorities and Finance Committee
2019 October 08

ISC: UNRESTRICTED
PFC2019-1078

City Appeal Board Fees

EXECUTIVE SUMMARY

This report outlines recommended changes to fees for Calgary Subdivision and Development Appeals (SDAB).

ADMINISTRATION RECOMMENDATIONS:

That the Priorities and Finance Committee recommend that Council:

1. Approve the proposed fees; and,
2. Direct the City Clerk's Office to prepare an amending bylaw with the proposed fees to bring forward during Adjustments to One Calgary Service Plans and Budgets.

PREVIOUS COUNCIL DIRECTION / POLICY

On 2002 December 03, Council adopted Bylaw 22P2002, amending Bylaw 25P95, establishing a \$25 non-refundable administration fee for appeals to SDAB.

On 2007 October 23, Council adopted Bylaw 48M2007 and established the Licence and Community Standards Appeal Board (LCSAB), which included a \$100 non-refundable filing fee for appeals relating to LCSAB appeals

At its 2013 May 27 Regular Meeting, Council approved the joint recommendations of the City Clerk and the SDAB, to:

- increase the subdivision and development appeal filing fee to \$100,
- establish fee refunds for withdrawn appeals; and,
- direct that "...the City Clerk assess and propose incremental fee increases, when necessary, in alignment with the Business Planning and Budget Coordination cycle, every 3 or 4 years as appropriate."

At its 2013 July 29 Regular Meeting, Council amended the Calgary Subdivision and Development Appeal Board Bylaw, Bylaw 25P95, as amended, increasing the appeal filing fee to \$100, and establishing fee refunds for withdrawn appeals.

On 2018 May 16, Council passed a resolution deferring long-term tax support rates for the Appeals and Tribunals service to the 2019 service plans and budgets.

BACKGROUND

The *Municipal Government Act* (MGA) requires Council to establish, by bylaw, a subdivision and development appeal board [MGA, s.627]. Section 630.1 of the MGA also provides that "a council may establish and charge fees for matters under this Part."

The fee for filing development and subdivision appeals was increased at the beginning of 2014 from \$25 to \$100. Recommendations adopted by Council at that time called on the City Clerk to identify changes to fees in alignment with the business planning and budget coordination

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process, when necessary. In 2018, establishment of long-term tax support rates for the Appeals and Tribunals service was deferred to the adjustment process for 2019.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

An appeal fee of \$200 for all SDAB appeals is proposed. This fee would double the existing \$100 fee, but would continue to be below the average of appeal fees in other Alberta jurisdictions, and would also compare favourably to jurisdictions outside the province.

Due to the very small volume of appeals before the LCSAB, no analysis of the \$100 appeal fee for most matters (with the exception of a \$500 appeal fee for *Weed Control Act* appeals) was undertaken.

Fee revenue in relation to operational costs

As intensification of the urban landscape increases, the planning and legal complexity of appeals arising before the Calgary SDAB is also increasing, and rivals that found in any Canadian jurisdiction. This complexity drives cost factors such as the time it takes to process appeals, the length of hearings, the amount of time it takes to write decisions, and related legal and administrative costs.

Fee revenue from development and subdivision appeals has always been relatively low in relation to the cost of supporting the SDAB appeal process. Total annual fee revenue for the City Appeal Boards section of the Appeals and Tribunals division from 2015 to 2018 averaged \$17,047: this represents the equivalent of only one to two percent of what was spent to provide service (excluding facilities and corporate costs).

Despite measures being taken to lower operational costs, such as reducing the size of quorum for SDAB appeals, the average cost of supporting SDAB proceedings has trended upwards over the past number of years. In 2015, the average cost per appeal was approximately \$6,358; by 2018, that cost had risen to \$8,218.

Complaint fees in other jurisdictions

SDAB appeal fees in Calgary remain below the averages for other Alberta municipalities operating under a similar legislative framework (Attachment 1). Development appeal fees in Alberta average \$215. Subdivision appeal fees in Alberta average between \$275 (excluding St. Albert) and \$399 (including St. Albert).

In jurisdictions outside of Alberta, appeal fees are also higher, such as in Vancouver, where the appeal fee is \$531, or in Toronto, where the appeal fee is \$300.

The proposed fee would establish affordability of subdivision and development appeals that is broadly comparable with fees in other jurisdictions.

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Impact

Fees established for the Appeals and Tribunals service should balance the affordability for those who use the service with affordability in maintaining the system. Some of the common participants in development and subdivision appeals before the SDAB include: land developers, businesses, members of the public seeking to develop their own properties, affected persons, subdivision and development authority representatives, and community associations.

A number of measures continue to be taken by the SDAB and the City Clerk's Office to increase the responsiveness of the appeal process for participants. At the same time, measures that improve the cost efficiency of delivering an effective service to the public are also being introduced (e.g. reducing quorum, establishing concurrent hearings).

The \$200 appeal fee proposed in this report balances the scope of fee increase with the evolving cost pressures to deliver effective, timely service.

Copy of a hearing recording fee

A \$50 administration fee is proposed for a copy of an audio recording of a hearing of the SDAB. Previously, the SDAB required individuals to pay for a transcript to be produced, which was both expensive for those who wanted to know what was said at an SDAB hearing, and administratively burdensome. The SDAB recently changed its policy to allow electronic copies of hearing recordings to be provided to those who request them, and so a \$50 fee is proposed to cover the administrative costs.

Stakeholder Engagement, Research and Communication

The SDAB has no position respecting changes to the appeal fee.

Strategic Alignment

This report aligns with Council's priority of a Well-Run City: "Calgary has a modern and efficient municipal government that is focused on resilience and continuous improvement to make life better every day for Calgarians by learning from citizens, partners, and others" (One Calgary 2019-2022).

Social, Environmental, Economic (External)

The Appeals and Tribunals service provides a benefit to individuals who exercise legal rights, and a broad benefit to society in allowing the availability of a process for challenging some decisions of local government in a manner that is less formal, expensive and time-consuming than seeking recourse through courts

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Financial Capacity

Current and Future Operating Budget:

As it is difficult to forecast the number of appeals which may be filed, it is difficult to forecast the impact on future years' revenue; however, if appeal volumes remain relatively consistent with those experienced between 2015 and 2018 (Attachment 2), between \$12,000 and \$19,000 in additional revenue can be anticipated in future years.

Current and Future Capital Budget:

No impact to the current or future capital budget is anticipated.

Risk Assessment

There is a risk that the increased appeal fee will be seen as obstructing the ability of some individuals to participate in the appeal process; however, even after the appeal fee increase proposed in this report, development and subdivision appeals will still be more affordable on average than is the case in many other jurisdictions.

REASONS FOR RECOMMENDATIONS:

Changes to SDAB fees are recommended to balance the scope of a fee increase with the cost pressures in delivering effective, timely service. The proposed fee would also establish a cost which provides affordability of subdivision and development appeals that is broadly comparable to that which exists in other Alberta jurisdictions.

ATTACHMENTS

1. Attachment 1 – Average Alberta Development and Subdivision Appeal Fees
2. Attachment 2 – City Appeal Boards Budget and Fee Revenue