

## CITY SOLICITOR'S REPORT ON SUBDIVISION AND DEVELOPMENT APPEAL BOARD MATTERS

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### EXECUTIVE SUMMARY

On 2014 December 9 the Priorities & Finance Committee considered City Manager Fielding's verbal report regarding the appointment of Councillors to serve as members of the Subdivision and Development Appeal Board (SDAB). The City Solicitor was asked to consider certain additional matters including succession planning for the position of Chair of the SDAB, methods to enhance the consistency of presentations made by the Approving Authority to the SDAB and best practices for Board decision writing. This report outlines proposed amendments to the Subdivision and Development Appeal Board Bylaw to effect some additional changes to the SDAB's operation and structure and includes proposed qualifications for the Chair of the SDAB.

### ADMINISTRATION RECOMMENDATIONS

That the Priorities and Finance Committee recommend that Council:

1. Give three readings to the proposed bylaw to amend Bylaw 25P95, the Subdivision and Development Appeal Board Bylaw;
2. Adopt the qualifications for the Chair of the Subdivision and Development Appeal Board outlined in Attachment 3; and
3. Direct that this report and the attachments remain confidential pursuant to Sections 24(1)(a) and (b) of the Freedom of Information and Protection of Privacy Act until the Priorities & Finance Committee and Council have made a decision in regard to these recommendations.

### RECOMMENDATION OF THE PRIORITIES AND FINANCE COMMITTEE, DATED 2015 JULY 14:

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That Council:

1. Give three readings to the **Proposed Bylaw 35M2015**.
2. Adopt the qualifications for the Chair of the Subdivision and Development Appeal Board outlined in Attachment 3; and
3. Keep the In Camera discussions confidential pursuant to Sections 24(1)(a) and (b) of the *Freedom of Information and Protection of Privacy Act*.

### PREVIOUS COUNCIL DIRECTION / POLICY

On 2014 December 9 the Priorities & Finance Committee considered City Manager Fielding's verbal report (PFC2014-0960) regarding the appointment of Councillors to serve as members of the SDAB.

The Committee directed the City Solicitor to further consider succession planning for the Chair of the SDAB, enhancing the consistency of presentations made by the Approving Authority to the SDAB and best practices for decision writing.

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### BACKGROUND

The Municipal Government Act (MGA) requires municipalities to establish a subdivision and development appeal board to hear and decide appeals of development authority and subdivision authority decisions. Bylaw 25P95 as amended (the "Bylaw"), provides for the establishment and organization of the Board. As a quasi-judicial body and under provisions of the Bylaw, the SDAB establishes its own procedures. It hears and decides appeals as quickly and informally as possible, with less formal rules of evidence but applying its subject matter expertise.

The MGA requires the Board to hold an appeal hearing. The SDAB hears matters *de novo* and may confirm or revoke the decision of the Approving Authority or make its own decision on an appeal of a decision or order. The Board can only consider relevant planning matters when making its decision. The Board's decisions are final unless it can be shown that it erred on a matter of law or jurisdiction. Appeals of the Board's decisions are heard by the Alberta Court of Appeal if the Court grants leave to appeal.

The Board currently has 17 citizen members and one Council representative, Councillor Woolley. The Board also has five citizen supernumerary members who from time to time hear appeals when the Board is challenged to meet quorum. Citizen members receive honoraria for their participation on the SDAB. The SDAB meets regularly, at least once a week as a matter of routine, and conducts its meetings on the premises of the Quasi-Judicial Boards (QJB) Division of the City Clerk's Office, located at 1212 – 31<sup>st</sup> Avenue N.E.

In 2013, joint recommendations of the City Clerk and the Board to enhance the efficiency and effectiveness of the SDAB were adopted by Council. These recommendations included some organizational changes which were accomplished by way of amendments to the Bylaw.

### INVESTIGATION: ALTERNATIVES AND ANALYSIS

The SDAB, generally speaking, is functioning well and has benefited from a number of improvements implemented both as a result of and since Council adopted the joint recommendations of the SDAB and the City Clerk in 2013. The joint recommendations revolved around a number of themes including fee structure and refunds, tools to manage hearing timelines and delays, organizational capacity and succession planning and communicating with citizens. Since then, the SDAB has been committed to a continued review of its processes and best practices.

As a result of discussions between the City Clerk's Office, the Law Department, the Planning, Development and Assessment Department (PDA), the City Manager's Office and the SDAB Chair, Mr. Rick Grol, that occurred subsequent to the 2014 December 9 Priorities & Finance Committee meeting, the following additional information and initiatives are recommended for Council's consideration:

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1. Amendment of the Bylaw to include the following changes with a view to further enhancing both the independence of the SDAB and to ensure appropriate succession planning:
  - (a) The introduction of term limits for both regular and supernumerary members;
  - (b) Appointment by Council of the Chair of the Board, with mandatory appointments of First and Second Vice-Chairs by the Board; and
  - (c) The elimination of the Councillor position on the SDAB;and the establishment of qualifications for the Chair of the Board;
2. The result of a review of the role of the Approving Authority in making presentations to the SDAB;
3. The result of a review of decision writing practices for the SDAB; and
4. The result of a review of the appropriateness of compensation for the Chair and Board members.

### Discussion

1. *Recommended Amendments to Bylaw 25P95 and Qualifications for the Chair of the SDAB*

The recommended amendments are aimed at increasing the efficiency of the Board and creating opportunities for succession planning, board development and transition of members. These improvements will allow for increases in organizational capacity and succession planning. The recommended amendments are outlined in Attachment 1. A version of the Bylaw showing the revisions is included as Attachment 2.

The introduction of term limits for both regular and supernumerary members, with service accumulation commencing in 2016, is aimed at ensuring that new members can be appointed to the Board to allow for a diversity of expertise and perspectives on the Board. This, together with the staggering of appointments previously approved by Council, will support continuity and succession planning as well as reinforce public perception that the Board is responsive to the changing needs of citizens, communities and the development industry.

The mandatory appointment of additional Vice-Chair positions by the Board is aimed at continuity and succession planning. The mandatory second Vice-Chair appointment supports the exposure of other members to leadership experiences and allows for the development of leadership competencies that the Board will need in future. Providing Council with authority to appoint the Chair, after considering recommendations of the Board, highlights the importance of the role and mandate of the Board and brings the model for appointment of the Chair in line with that currently used for the Assessment Review Board (ARB). Proposed qualifications for the Chair of the SDAB are outlined in Attachment 3.

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To increase the institutional independence of the SDAB, the appointment of Councillors to the SDAB is proposed to be removed altogether. While Council members no doubt added value to deliberations at, and gained knowledge from, serving on the SDAB, their busy schedules and the fact that they must recuse themselves from appeals relating to developments in their own wards limits the meetings they can attend.

### 2. *Role of Approving Authority in Presenting to the SDAB*

In 2013, Development and Building Approvals' training group developed an online SDAB course and provided training sessions to key planning staff. Administration also updated the SDAB presentation template to ensure consistency in presentation structure and approach. Members of the SDAB have commented that presentations are much improved. The online course and template are still available to staff and are now managed by the new PDA Knowledge Management (M) team. This team is currently working with management to develop an employee on-boarding program and employee coaching framework to ensure new employees are trained on giving presentations to the SDAB.

The coaching framework includes hiring a retired City planning lawyer to provide advice and mentoring to the Approving Authority, especially in situations in which there are difficult evidentiary issues at play. This will also assist with succession planning as new planners are brought on as presenters to the Board.

### 3. *Decision Writing Practice Review*

The length of SDAB decisions had grown over the past several years. The Board's practice had been to publish its decisions in two parts:

- (a) the Board's reasons for deciding as it had, prepared by the Chair or a presiding officer; and
- (b) an "appendix" representing a summary of evidence reviewed and considered by the Board in coming to its decision. The appendix had typically been longer than the Board's reasons. It was prepared by QJB staff according to the Board's requirements and direction.

In 2015 March, the Board decided to eliminate the appendix portion of its decisions. Shorter decisions are intended to enhance public confidence that the Board's decisions are clear and concise. Most importantly, producing shorter decisions results in decisions being issued as quickly as possible and without unnecessary delay.

The Board has continued to ensure that its decisions meet legal requirements for adequacy. Material facts and evidence are summarized in the Board's reasons. The QJB Division has continued to ensure that adequate notes and records are in place to support the Board's decision-making process and that a record of proceedings is kept as required by the MGA.

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Decisions of the Board issued since 2015 March are 42% shorter, on average, than they were during the preceding year. Decisions are being produced in 29% less time on average.

#### 4. *Compensation for the Chair and Board Members*

Remuneration for Board members was examined in 2013. In adopting the recommendations of Report PFC2013-0431, Council directed the City Manager and City Clerk, in consultation with the Chair, to determine an appropriate remuneration model for Board members and approved an increase in remuneration in principle.

The rationale for these changes was three-fold:

- The model no longer reflected a reasonable compensation of professional members for the contribution of their talents to the Board. For example, remuneration for the SDAB had fallen significantly behind that of the ARB;
- Compensation for members who assumed leadership roles on the Board needed to be increased in order to encourage succession planning; and
- The former remuneration model was inflexible and cumbersome to administer.

A new remuneration model was implemented at the beginning of 2014. That model brought remuneration of SDAB members in line with that of the ARB while also reflecting the unique work and challenges of the SDAB's mandate. The remuneration model is based on three elements:

- (a) a day or half-day rate for time spent carrying out Board responsibilities;
- (b) a case review rate, to recognize the time and effort that SDAB members must spend reviewing appeal files in advance of hearings; and
- (c) an hourly rate for decision-writers (excluding the Board Chair).

The Board Chair does not receive an hourly rate for decision writing. The time the Chair spends writing decisions is compensated under the day or half-day rate, as circumstances allow.

Given that the model for Board member remuneration was so recently reviewed, it is Administration's recommendation that remuneration need not be further reviewed at this time.

### **Stakeholder Engagement, Research and Communication**

Discussions about options for addressing PFC's direction involved members of the City Clerk's Office, the Law Department, PDA, the City Manager's Office and the SDAB Chair, Mr. Rick Grol. A letter confirming Mr. Grol's concurrence with the recommendations contained in this report and the proposed amendments to the Bylaw is included as Attachment 4.

### **Strategic Alignment**

The recommendations in this report align with Council's priority relating to a well-run city and particularly, with Council's objectives to:

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- (W2) be as efficient and effective as possible, reducing costs and focusing on value-for-money;
- (W5) regularly collaborate and engage citizens to encourage participation in City decision-making, and better communicate the reasons for the decisions; and
- (W5.2) enhance and broaden public access to information about quasi-judicial processes, decisions, and powers.

### **Social, Environmental, Economic (External)**

This report has been reviewed for alignment with The City of Calgary's Triple Bottom Line (TBL) Policy Framework.

The recommendations in this report should help reduce delays in the resolution of appeals by cutting out unnecessary steps in the decision-writing process and by minimizing delays that might result from transferring knowledge and expertise from past leaders of the Board. Delays resulting from inefficient appeal processes or operations supporting those processes may adversely impact the economic interests of Calgarians seeking to develop their properties or businesses engaged in developing properties. They may also undermine related economic benefits to the overall community.

No social or environmental implications were identified in relation to the recommendations.

### **Financial Capacity**

#### **Current and Future Operating Budget:**

In order to support continuity of the Board's operations in the event of a change in leadership, costs to support the transfer of knowledge and expertise from past leadership to new leadership may arise.

#### **Current and Future Capital Budget:**

Not applicable.

### **Risk Assessment**

The MGA requires The City to establish the SDAB as an independent quasi-judicial board. The proposed changes to the SDAB and the Bylaw will preserve the ability of the Board to adjudicate appeals on the basis of the evidence that comes before it, free from the influence of stakeholders and parties. Legal, financial and reputational risks may arise for The City if the SDAB is not seen to be sufficiently independent to decide each appeal on its own merits.

Term limits may pose a risk to organizational sustainability of the Board, as a transition to term limits may result in experienced and capable Board members not being reappointed to the Board at some point. However, these risks can be mitigated through continuation of independent legal coun

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sel for the Board, enhanced succession planning practices and training.

**REASON FOR RECOMMENDATIONS:**

Administration's recommendations are intended to ensure that succession planning for the Board is implemented in a timely and efficient way and to ensure the independence of the Board's operations and decisions.

**ATTACHMENT(S)**

1. **Proposed Bylaw 35M2015**
2. Blackline of Proposed Changes to the Subdivision and Development Appeal Board Bylaw 25P95
3. City of Calgary Subdivision and Development Appeal Board Chair Qualifications
4. Letter from Mr. Rick Grol, Chair, Subdivision and Development Appeal Board.