

Administration's Review and Comments of Section of Report "Consideration of Council"

Subdivision and Development Appeal Board Chair

Recommendation

That the October 2, 2018, Urban Form and Corporate Strategic Development report CR_5873, be received for information.

Previous Council/Committee Action

At the April 6, 2018, Urban Planning Committee meeting the following motion was passed:

That the section of the membership report from the Chair of the Subdivision and Development Appeal Board titled "Consideration for Council" be provided to Administration for review and for Administration to return to Urban Planning Committee with comments.

Executive Summary

This report provides information on, and responds to, the section of the membership report from the Chair of the Subdivision and Development Appeal Board.

1. **Development Officer Attendance at Subdivision and Development Appeal Board Hearings**

To advance the City's position to the Subdivision and Development Appeal Board and use staff resources efficiently, Administration provides a detailed summary report for all hearings, and the criteria used by the Development Officer to determine attendance at appeal hearings.

2. **Definition of "equipment" within Zoning Bylaw 12800 as it pertains to Home Based Businesses**

Administration believes that the definition of "equipment" should remain undefined to retain Development Officer discretion to issue a decision based on the merits of individual Home Based Business applications.

3. **Use of Direct Control Zoning**

Administration recognizes concerns with the use of Direct Control Zoning and is undertaking integrated initiatives to reduce the need for Direct Control Zones in

conjunction with the Urban Form Business Transformation and upcoming City Plan and Zoning Bylaw Renewal.

4. Definition of Nightclub vs. Bar and Neighbourhood Pub

Administration is pursuing the reevaluation of use class definitions within the Zoning Bylaw through the Zoning Bylaw Renewal.

Report

Development Officer Attendance at Subdivision and Development Appeal Board Hearings

The first consideration is a request to reinstate the practice of having Development Officers attend Subdivision and Development Appeal Board hearings. The membership report identifies that the Development Officer's attendance is standard for most subdivision and stop order appeals, and that other municipalities across the province will send Officers to provide evidence. The report further indicates that by having the Development Officer present, it better supports the Subdivision and Development Appeal Board's ability to make decisions in line with the *Municipal Government Act*.

Prior to 2014, Administration would only submit the permit decision as evidence and did not attend all Subdivision and Development Appeal Board meetings. In August 2014, Administration began to submit detailed summary reports along with the permit documents and permit decision, and started to attend all meetings. Based on data analysis undertaken from April to September 2017, Administration identified that the combined resource of preparing the summary report and attending the Subdivision and Development Appeal Board meetings amounted to over 550 hours of Development Officer time. Attachment 2 provides details on Development Officer's Subdivision and Development Appeal Board attendance from April 2017 to September 2017. Further, the average amount of time that a Development Officer was required to be in attendance was two hours per meeting, yet the Development Officer generally only participated for 15 minutes.

Based on this analysis and on other work demands, in September 2017, Administration chose to provide selective Development Officer attendance at the Subdivision and Development Appeal Board. The Development Officer prepares a summary report for each hearing. Administration also identified a number of factors that would help determine when a Development Officer should attend the hearing to provide supplemental support to the submitted report. These factors were discussed and approved internally through the Development Services Section, and include:

- Controversial or complaint-driven
- Media interest

- Political sensitivity
- Major Infill Developments (three dwellings or more)
- Development permits where the Development Officer strongly believes that the decision must be upheld
- Applications deemed refused pursuant to the *Municipal Government Act*
- When legal counsel is representing the appellant

The membership report states that the lack of participation by the Development Officer has had a negative impact on the hearing process because there is no longer the opportunity for the Subdivision and Development Appeal Board to request clarification, and that, in the Board's opinion, the City's position is not being effectively advanced before the Board.

Attachment 2 provides a detailed breakdown of appeal outcomes during the above-noted optional and mandatory attendance periods. It shows that there is no clear correlation between Development Officer attendance and appeal outcomes; while the number of refused permit decisions upheld by the Subdivision and Development Appeal Board increased with mandatory attendance, the number of approved permit decisions upheld by the Subdivision and Development Appeal Board decreased with mandatory attendance.

While the Development Officer does not attend all hearings, the summary report provided for all hearings regardless of attendance effectively advances the City's position before the Board.

To address the Subdivision and Development Appeal Board's concerns, Administration will review the summary report to enhance its effectiveness. Administration will also continue to monitor Board outcome statistics and re-evaluate the criteria list if indicated.

Definition of "equipment" as it pertains to Home Based Businesses

The Subdivision and Development Appeal Board recommended that Administration draft a definition for 'equipment' as it pertains to Home Based Business in Zoning Bylaw 12800, as a result of the Court decision in *Edmonton (City) v Edmonton (Subdivision and Development Appeal Board)*, 2017 ABCA 140, also referred to as the "Grewal" decision.

The Court reinstated the development authority's decision after determining that the Subdivision and Development Appeal Board incorrectly interpreted the Major Home Based Business use class definition and had erred in concluding that it did not have jurisdiction to consider the impact of equipment used for a home based business on access roads.

Administration reviewed the court findings, and as outlined in CR_3348 Amendments to the Zoning Bylaw to Clarify Minor and Major Home Based Businesses, presented at the September 6, 2017 Urban Planning Committee, concluded that no amendment to the Zoning Bylaw is required. By using standard dictionary definitions of 'equipment', the Development Officer is able to retain some flexibility and issue a decision based on the land use impacts of an application.

Use of Direct Control Zoning

In the membership report presented to the Urban Planning Committee on April 6, 2018, the Subdivision and Development Appeal Board identified concern with the widespread use of Direct Control Zoning. Administration agrees that Direct Control zones can create implementation challenges in the long term as they are static, whereas Zoning Bylaw 12800 and the context of the City evolves over time.

A particular challenge when reviewing applications in Direct Control zones is the inability of the Development Officer to issue variances unless variance powers are explicitly prescribed within the Direct Control Zoning regulations. This may lead to more refusal decisions being appealed to the Board. Additionally, any specific references to Zoning Bylaw 12800 in the text of the Direct Control requires the Development Officer and the Board to review the exact regulations that were in place at the time of the passage of the Direct Control Zone, even though the Bylaw itself has been amended over time.

Recognizing these concerns, Administration is undertaking a number of different initiatives intended to reduce the need for Direct Control Zones. These include:

- An update of the medium scale zones to better reflect current development practices and market practices
- Increasing flexibility by amending definitions of use classes within standard zones
- Reviewing and updating the Land Development Application process as part of the Urban Form Business Transformation Project
- Preparing a brochure for internal and external use to clarify and specify appropriate scenarios for the use of Direct Development Control Provisions (DC1), Site Specific Development Control Provisions (DC2), Special Area Zoning and Text Amendments to the Zoning Bylaw 12800 (see Attachment 3).

Administration anticipates that the the upcoming City Plan and Zoning Bylaw Renewal Projects will further reduce the use of Direct Control Zones. An updated City Plan, with policy guiding spatial outcomes, will assist Administration in better determining appropriate zoning outcomes for development. The Zoning Bylaw Renewal will update zones, uses, regulations and development standards, which will more accurately reflect current and future development needs.

Definition of Nightclub vs Bar and Neighbourhood Pub

The Subdivision and Development Appeal Board has identified that there is a degree of similarity between the Nightclub and Bar and Neighbourhood Pub use classes. Administration generally interprets that a Bar and Neighbourhood Pub applies to those facilities where its patrons may consume alcohol in a passive setting, while the Nightclub use applies to a facility where its patrons may consume alcohol in conjunction with another social activity, such as dancing. Both uses may apply to a single establishment. A Bar and Neighbourhood Pub may operate as a Nightclub after a certain time of day.

While that is the general interpretation, Administration is aware of the similarity between the uses and has committed to a comprehensive review of these use classes as part of the the Zoning Bylaw Renewal Project. This will enable Administration to engage with all relevant stakeholders and look at the issue holistically.

Corporate Outcomes and Performance Management

Corporate Outcome(s): Conditions of Success			
Outcome(s)	Measure(s)	Result(s)	Target(s)
Update municipal regulations to better reflect changing business, citizen, and environmental needs	Number of Direct Control Zones rezoned as a proportion of all lands rezoned	80/327=25% (2017)	Decrease

*DC zones are custom zones created for a specific development. Need for DC zones will decrease if standard zones meet the needs of development industry.

Attachments

1. Development Officer Time at Subdivision and Development Appeal Board (April 2017 - September 2017)
2. Appeal Outcomes during Optional Attendance Period (2012-2014)
3. Bylaw Amendment Information Brochure

Others Reviewing this Report

- S. Padbury and R. Kits, Acting Deputy City Managers, Financial and Corporate Services
- C. Owen, Deputy City Manager, Communications and Engagement