

Brandon Chamber of Commerce

PROPOSED PLANNING ACT CHANGES FOR CITY'S OUTSIDE OF WINNIPEG

Issue

Municipalities outside of the City of Winnipeg, are governed by the Manitoba Planning Act, which provides the framework and regulation of authority and approvals for development across the province. The Planning Act, when enacted, took into consideration a majority of municipalities outside of the City of Winnipeg did not possess the professional skills and expertise, required to carry out strategic land planning and as such put in place a structure of Planning Commissions and Provincial Approvals, in order to govern zoning bylaws, conditional use and subdivision approvals.

While a number of cities, across the province, have taken an active role in developing their planning capabilities, including putting in place development plan processes, guidelines, hiring professional planners, etc., they are still required to conduct business under the existing Planning Act. As a result there is a level of redundancy in the system, creating delays in planning and zoning approvals, slowing down the development process and expending unnecessary time and money in resources, both at a municipal and provincial level.

Background

In June 2005, the Province of Manitoba enacted the Planning Act in order to establish provincial land use policies to guide the sustainable land use and development in the province. The Act governs all municipalities outside of the City of Winnipeg and provides the framework for planning and zoning activities.

The City of Winnipeg is exempt and is governed under its own charter, giving them a different level of autonomy and flexibility in which to set forth, the framework of approvals and processes to best govern their planning activities. They were afforded this responsibility due to maturity of their planning activities at the time the Act was enacted.

Over the years, a number of municipalities have matured in their own planning capabilities and as a result this has created a number of redundancies both at a municipal and provincial level. Outlined below are the sections of The Planning Act and the associated impact.

Planning Act Reference #1 - Zoning By-law and Secondary Plan Amendment Process

- **Planning Act Excerpt**

Public hearing

74(1) Between first and second reading of a zoning by-law, a board, council or planning commission must hold a public hearing to receive representations from any person on the by-law, and give notice of the hearing in accordance with section 168.

Alteration to zoning by-law

74(2) If, after the public hearing, the board or council proposes to alter the by-law, a second public hearing must be held in accordance with subsection (1) to receive representations on the alterations to the by-law.

No hearing for minor alteration

74(3) A second public hearing is not required if the alteration is a minor one that does not change the intent of the by-law.

Adoption if no objection

75 If no person objects to the zoning by-law at the hearing held under subsection 74(1), the board or council may

- (a) give the by-law second and third reading; or
- (b) pass a resolution not to proceed with the by-law.

- **Impact**

Presently all by-laws changes are required to go through first reading of council where no debate is permitted as part of the process. The intent of giving first reading is for Council to accept an application prior to notice of the public hearing being sent to surrounding residence. City of Brandon Council gives first reading to a by-law with no discussion as they rely on professional staff to ensure an application is complete.

The requirement for first reading, without going directly to a public hearing, extends the time by a minimum of two weeks for approvals and creates additional report preparation and presentation, with no measurable impact on the end result.

- **City of Winnipeg Charter**

The following wording in the City of Winnipeg Charter, allows for the streamlining of this process:

Hearing on zoning by-law

236(3) Before or after council gives first reading to a proposed zoning by-law,

- (a) it must be referred to a designated committee of council;
- (b) the city must give notice of a hearing by the designated committee of council respecting the proposed by-law; and
- (c) the designated committee of council must conduct a hearing, and submit a report to council, about the proposed by-law.

- **Recommendation**

Amend the process for adopting or amending a Zoning or Secondary Plan By-law so that 1st reading is not required allowing for an application can go directly to a public hearing.

Planning Act Reference #2 - Subdivision approval authority

- **Planning Act Excerpt**

Board as approving authority

120 At the request of the board of a planning district, the minister may authorize the board to act as the approving authority for the area under its jurisdiction, subject to any conditions the minister considers appropriate

- **Impact**

Presently a city outside of the City of Winnipeg, is required to be part of a Planning District in order to retain subdivision autonomy from the province. This means that a subdivision plan is required to go through an additional approval process the Planning District Board, delaying the overall approval process by a minimum of one month. In the case where a city has professional staff and documented plans, all the work related to ensuring these plans meet municipal standards is conducted between the developer and the municipality. The requirement for the planning district to review these is redundant and takes up time and resources that could be better utilized to support other development activities.

A change to provide authority to qualified authorities at a municipal level would have no measurable negative impact on the process or the end result.

- **City of Winnipeg Charter**

The following wording in the City of Winnipeg Charter, allows for the streamlining of this process:

Delegation to committee of council

256(1) Council may by by-law

(a) authorize a committee of council or a designated employee to consider, and make decisions in respect of, applications for approval of plans of subdivision or specified types of plans of subdivision, and provide that applications for approval of plans of subdivision be referred to either the committee or the designated employee; and

(b) authorize the committee or the designated employee to approve plans of subdivision, or approve them with conditions that, under a by-law passed under subsection 259(1) (conditions for plans of subdivision), may be imposed in respect of plans of subdivision, except the conditions described in clause (d) of that subsection, without conducting a hearing respecting the application if the committee or the employee determines that the plan of subdivision conforms with section 257 and with other plans of subdivision of adjacent land.

- **Recommendation**

Amend the subdivision regulations to allow a designated city its own subdivision approval authority.

Planning Act Reference #3 - Variance or Conditional Approval Process

- **Planning Act Excerpt**

Authority re minor variances

102(1) *A board or council may, by by-law, authorize a designated employee or officer to make an order that varies*

- (a) any height, distance, area, size or intensity of use requirement in the zoning by-law by no more than 10%; or*
- (b) the number of parking spaces required by the zoning by-law by no more than 10%.*

No notice or hearing required

102(2) *An application for a minor variance does not require a hearing under section 96 or notice to any person.*

Decision on minor variances

102(3) *The designated employee or officer must make an order*

- (a) rejecting the requested variance; or*
- (b) varying the application of the zoning by-law with respect to the affected property in accordance with the limits of subsection (1), subject to any conditions considered necessary to meet the requirements of clause 97(1)(b).*

Submissions before setting conditions

102(4) *A minor variance order must not be made subject to conditions unless the applicant has been given a reasonable opportunity to make representations about the proposed conditions.*

Notice to applicant

102(5) *The designated employee or officer must send a copy of the order to the applicant, along with written notice of the applicant's right to appeal the order under subsection (6).*

Appeal of minor variance

102(6) *The applicant may appeal the order of the designated employee or officer, and sections 94 to 100 apply to the appeal, with any necessary changes.*

- **Impact**

Presently all applications for variance or conditional use are required to go through the three reading process, regardless of whether there are objections or not. At the best case, the process takes 6 weeks, however this can longer depending on the time of the year.

In jurisdictions, such as Alberta, delegation of authority has been provided to qualified professional staff whereby once a variance or conditional approval is approved, surrounding property owners are sent a notice of the approval and are provided the opportunity to appeal the decision of administration to City Council. If appealed, a public hearing is conducted by City Council where a final decision is made. Administration maintains the ability to choose not to provide approval and to seek a decision of the Planning Commission or City Council on variances or conditional use applications which may be deemed to be contentious.

In providing the authority to administration, the process would be streamlined to between two and three weeks for a majority of applications. A change to provide the authority to delegate this approval would have no measurable negative impact on the process or the end result.

- **City of Winnipeg Charter**

The following wording in the City of Winnipeg Charter, allows for the streamlining of this process:

Authority respecting conditional uses

253(2) 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.

Authority respecting variances

247(2) 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.

- **Recommendation**

Amend the process to allow a designated city to delegate the initial approval authority to its administration for variances or conditional use.

It is recognized that The Planning Act plays an important role in ensuring consistent planning standards, practices and approvals across the province. One of the critical components to building a community or province is ensuring that individuals, organizations and companies understand we are “open for business”.

The Development Services Division and Economic Development Department of the City of Brandon raised these same recommendations under the Province of Manitoba Red Tape Reduction Task Force in support of this principle.

In order to attract new business development to the province, it is important to recognize the investment many municipalities have made in positioning themselves to take on a larger role in their own planning and development and to seek out areas of redundancy, in order to be able to provide an economic advantage to attracting economic growth into the province.

Recommendations:

The Chamber recommends the Province of Manitoba make the following changes to The Planning Act:

Recommendation #1 - Zoning By-law and Secondary Plan Amendment Process - Amend the process for adopting or amending a Zoning or Secondary Plan By-law so that 1st reading is not required allowing for an application can go directly to a public hearing.

Recommendation #2 - Subdivision approval authority - Amend the subdivision regulations to allow a City with a professional staff complement (P.Eng and/or RPP) its own subdivision approval authority.

Recommendation #3 – Variance or Conditional Approval Process - Amend the process to allow a City with a professional staff complement (P.Eng and/or RPP) to delegate the initial approval authority to its administration for variances or conditional use.