

# Governance Review – Other Bodies – Board of Revision

## ISSUE

The Board of Revision (“BOR”) is a body established by City Council pursuant to section 192 of *The Cities Act* (the “Act”). The BOR is a “body” subject to review by the Leadership Team Governance Subcommittee (the “Governance Subcommittee”) as part of the governance review of the City’s Advisory Committees, Controlled Corporations, Business Improvement Districts (“BIDs”) and other bodies established by the City.

The BOR was chosen as the first of the “other bodies” for review given the increasing complexity of tax assessment appeals of large commercial properties. Also, the BOR has not undergone a governance or functional review for many years. What changes are required to improve the governance and operation of the BOR?

## BACKGROUND

### 2.1 History

At the [February 13, 2017](#) meeting of the Governance and Priorities Committee (“GPC”), the Committee resolved:

“That the project parameters for the review of governance structures, models, practices and procedures of Advisory Committees, Controlled Corporations, Business Improvement Districts (“BID”) and any other agency, board or commission established by the City of Saskatoon be approved.”

Extensive reporting has already occurred for the Advisory Committees and Controlled Corporations, as well as the BIDs. That work remains ongoing.

This report reviews the BOR; one of the boards established by the City.

### 2.2 Current Status

#### a. Assessment Appeals Scheme

The Act is a complete legislative scheme for property tax assessment and appeals in Saskatchewan. As a part of this complete code, the Act requires City Council to appoint a statutory appeal body called the BOR. The BOR hears the initial assessment appeals of taxpayers. Unfavourable decisions of the BOR may be appealed by either the City or the taxpayer to the Assessment Appeals Committee of the Saskatchewan Municipal Board (the “AAC”). Further appeals, with leave of the Court, may be made to the Saskatchewan Court of Appeal (the “SKCA”).

Pursuant to subsection 192(1) of the Act, City Council shall appoint not less than three members to constitute the BOR for the City. Subsection 192(4) of the Act states that a City Council shall prescribe the:

- (a) Term of office of each member of the BOR;
- (b) Manner in which vacancies are to be filled; and
- (c) Remuneration and expenses, if any, payable to each member.

The structure of the BOR is largely prescribed by section 192 of the Act. Members of the BOR are required to choose a Chairperson from among those appointed by City Council [subsection 192(5)]. As required by subsection 192(6), except in the case of simplified appeals, the Chairperson of the BOR appoints panels of not less than three members of the BOR to hear appeals, and further appoints a Chairperson for each panel. A majority of members of the BOR, or of a panel, constitutes a quorum for the purposes of conducting business or sitting on an appeal [subsection 192(9)]. A decision of the majority of the members of the BOR, or of a panel, is the decision of the BOR [subsection 192(10)].

Historically, the City has had a difficult time recruiting BOR members to fill vacancies despite using a broad recruitment approach. For example, the City Clerk's Office advertises annually on the City's website to fill vacancies at the BOR. Advertisements identifying BOR vacancies are typically found in the Star Phoenix, on the City's website, on social media, and through a poster campaign with a number of agencies. Prospective BOR members are asked to provide applications and City Council approves and appoints BOR members pursuant to City Council Policy C01-003, *Appointments to Civic Boards, Commissions, Authorities and Committees*.

City Council, by resolution dated December 13, 1999, set the number of BOR members at 11 citizens. Since 1999, BOR appointments have been made for one year terms. The terms, however, are renewable. Currently, some BOR members have been on the BOR for up to 16 years. Appointees to the BOR also sit on the Saskatoon Licence Appeals Board.

The City's website lists the qualifications for prospective BOR members as:

- Ability to commit required time;
- Understanding of the quasi-judicial function and the role of members of a tribunal;
- Understanding of assessment processes;
- Experience in hearing appeals or in meetings that involve an adjudication process;

- Ability to write, in plain and concise language the BOR's decision that are comprised of the testimony heard and the analysis and summary of the BOR's reasons for its decisions;
- Ability to act with integrity; and
- Ability to organize, read, understand, and apply complex and large documents, statute law and regulations, and case law.

As required by the Act, City Council has set the remuneration and expenses payable to members of the BOR by way of a Council resolution dated February 17, 2009. Remuneration is payable as follows:

Board Chair: \$3,600.00 annually plus \$150.00 per day and \$75.00 per half day while in session.

Panel Chairs: \$1,800.00 annually plus \$150.00 per day and \$75.00 per half day while in session.

Board Members: \$150.00 per day and \$75.00 per half day while in session.

Upon appointment to the BOR, members are provided with a manual, "The Board of Revision Policy and Procedure" (the "Policy"), which sets out the general rules and provides some guidance in relation to how to conduct a proper hearing. Appendix A to the Policy sets out further guidelines as to BOR remuneration/duties/honorarium. A half day per week for each of preparation and deliberation is also offered, in addition to decision writing time at the rate of one day of writing for one full day of hearings. Amounts in excess of these parameters must be approved by the BOR Secretary in consultation with the Board Chair.

**b. Potential Provincial Board of Revision**

The Legislature is currently considering proposed amendments to the Act. One of the potential amendments includes a Provincially-appointed board of revision. Based on the provision proposed by the Province, it appears that:

- The Lieutenant Governor in Council may appoint persons to serve on boards of revision;
- The persons appointed will have the same powers, duties and functions of a person appointed by a city;
- The persons appointed must meet prescribed qualifications and undertake the prescribed training; and
- The Lieutenant Governor in Council will be able to make regulations which:
  - Set remuneration;
  - The areas where the board may hear appeals;

- Specify reporting requirements;
- Appoint the board secretary or secretaries;
- Set rules and procedures for hearing and deciding appeals;
- Set the circumstances in which a municipality may appoint and utilize its own board of revision; and
- Identify any other matters necessary to facilitate the operation of the board of revision.

The proposed provision is still in draft form. The Bill (*The Miscellaneous Municipal Statutes Amendment Act, 2019*) received second reading on March 10, 2020. However, even if the proposed provision is adopted, there is no timeline for the implementation of a Provincial board of revision.

Further, based on the current draft of the proposed provision, it is not clear whether Saskatoon will be required to use the Provincial board of revision or the Lieutenant Governor in Council will require Saskatoon to continue its own board of revision. What is clear from the proposed provision, is that Saskatchewan has recognized the need for a qualified board of revision and to provide board of revision members with the necessary training and resources to fulfill their duties.

**c. Joint University of Saskatchewan/City of Saskatoon Research Project**

The University of Saskatchewan and the City Solicitor's Office have received a grant to review the boards and tribunals established by the City. The report is expected to provide suggestions on best practices which would also help to inform City Council's decision in respect of some of the "other bodies" established by City Council, including the BOR. Despite this, an interim review and changes to the BOR are still beneficial. Specific project parameters and timelines have yet to be determined.

**2.3 Public Engagement**

This report will be shared with BOR members once it becomes public. In accordance with established practice, this report will be tabled and BOR members will be invited to provide feedback for consideration by GPC in advance of the report being debated.

**2.4 City of Saskatoon's Current Approach**

The BOR hears and adjudicates appeals of property tax assessments brought by a taxpayer and is the trier-of-fact on any factual issues raised by the taxpayer or by the City. At the BOR, the parties submit all of their evidence which informs the record for the BOR, the AAC and the SKCA.

Findings of fact are made by the BOR and are based on the evidence submitted by the parties. Findings of fact are owed deference by appellate bodies, including the AAC and the SKCA. Appeals from decisions of the BOR are "on

the record”, meaning fresh evidence is only permitted in very limited circumstances. This means that if the BOR makes an incorrect finding of fact in relation to an assessment, it is very difficult for a taxpayer or the City to have the finding overturned at the AAC. The SKCA does not allow appeals based on questions of fact.

From the standpoint of the AAC and the SKCA, the BOR is considered to be an “expert panel” consisting of individuals who have considerable knowledge in mass appraisal and quasi-judicial hearing procedures. The expectation is that such expertise be reflected in the conduct and decisions of the BOR.

Given the extremely deferential standard applied by the AAC, correcting inadequacies of BOR decisions is incredibly difficult. As a result of this deference, the decisions of the BOR may not reflect an appropriate value for any given property and could be contrary to the Act.

Thus, it is imperative that the BOR makes decisions in accordance with principles of procedural fairness, mass appraisal and the Act. Otherwise, an appellant, whether the City or the taxpayer, is faced with a substantial challenge to reverse a decision that may have repercussions for the individual property, the group of assessed properties, or the assessment system as a whole. Appendix 1 contains a confidential legal opinion, subject to solicitor-client privilege, which outlines the legal implications.

Given the level of expertise required to hear and determine assessment appeals, it is incumbent on the City to ensure that BOR members are properly qualified and compensated. While the governance structure of the BOR is legislated, the governance review has provided the opportunity to consider the qualifications, compensation, training and resources of the BOR to better equip the BOR to hear the appeals brought before it.

## **2.5 Approaches in Other Jurisdictions**

The Governance Subcommittee considered the qualifications, compensation, training and resources provided to boards of revision in Alberta (Calgary and Edmonton), Ontario (Province-wide) and British Columbia (Province-wide). Regina’s compensation model was likewise considered. Appendix 2 contains the detailed information gathered from this jurisdictional scan.

These jurisdictions were chosen largely because they have similar legislation and, like Saskatchewan, utilize similar tribunal structures and concepts. Manitoba was excluded from this report as it does not operate a comparable appeal process to that of Saskatchewan. Namely, the assessment appeal regime in Manitoba requires the City to prove that its assessment is correct, as opposed to the assessment being presumptively correct in Saskatchewan. Other jurisdictions had limited data available and were not included in this report.

## OPTIONS

### **Option 1: Amend Qualifications, Compensation, Training, and Resources of the Board of Revision**

This option proposes to make amendments to the qualifications and training required for BOR members, to increase the compensation offered and ensure that appropriate resources are provided to help the BOR succeed. The advertising of vacancies in different forums, coupled with a requirement for more particular qualifications and increased compensation, may expand the pool of potential applicants.

There are many assumptions that go into the forecasting of the BOR budget. It is estimated that the proposed changes to the compensation of members for 2021, a revaluation year, would be at least doubled from the previous revaluation year of 2017. The compensation is purely based on the number of appeals heard, which is difficult to estimate. Further, there would be financial implications for potential additional training costs and greater resources, including legal services, provided to the BOR. Advertising in different forums may also have an associated cost. The City Clerk's Office would be seeking a budget adjustment for the 2021 year as there is not adequate funding to support the recommend changes.

The following chart outlines the budget and actuals for previous years:

<b>Year</b>	<b>Budgeted</b>	<b>Actual</b>
<b>2017</b>	\$53,500.00	\$75,104.70
<b>2018</b>	\$25,000.00	\$35,439.00
<b>2019</b>	\$30,000.00	\$52,298.00
<b>2020</b>	\$48,000.00	
<b>2021*</b>	\$48,000.00	

There are no legal implications. Implementation of changes resulting from this review, including fee structure and the coordination of training, would be managed by the City Clerk's Office.

#### **Advantages:**

- Modernizes Saskatoon's preferred qualifications to match other comparable jurisdictions to attract a qualified and diverse group of candidates.
- Emphasizes the importance of fairness in BOR hearings.
- Recognizes the importance of the statutory assessment scheme.
- Potentially reduces the number of appeals to the AAC.
- Supports continuous improvement.
- Recognizes the need for qualified BOR members and to provide members with the resources to perform their duties.

- Enhanced training offers clarity in Notices of Appeal to the BOR, which informs the record for the AAC and the SKCA.

**Disadvantages:**

- Increased costs associated with increased compensation and enhanced training and resources offered to BOR members.
- Potential difficulty in attracting members with the preferred qualifications.
- May be unnecessary if establishment of a Provincial board of revision is mandated.

**Option 2: Maintain the Status Quo**

This option proposes to make no changes to the current compensation, training and other resources provided to the BOR and maintain the current list of required qualifications. There are no implications financially or legally and this option does not present any implementation challenges. Option 2 is not being recommended for a variety of reasons.

**Advantages:**

- Changes may turn out to be unnecessary if the establishment of a Provincial board of revision is mandated.

**Disadvantages:**

- A Provincial board of revision is not a certainty and therefore no interim solution would be in place.

**Option 3: Hybrid – Amend some of the Variables: Qualifications, Compensation, Training and Resources and Maintain Status Quo of Others**

This option proposes to amend some of the variables discussed in this report to improve the functioning of the BOR and maintain others in their current form. There may be financial implications associated with this option depending on the variables to be amended as described under option 1. Similarly, any implementation issues would be managed by the City Clerk's Office in accordance with City Council's direction.

The advantages and disadvantages of this option are reflected in options 1 and 2 as described above and depend on the variables amended.

**RECOMMENDATION:**

That the Governance and Priorities Committee recommend to City Council that option 1 be pursued:

1. That preferred qualifications advertised for potential appointees to the Board of Revision be amended to include:
  - Previous real estate experience;
  - Previous assessment or property appraisal experience;
  - Previous experience on or with a quasi-judicial or an administrative tribunal;
  - The ability to be fair, open-minded and impartial;
  - The ability to conduct themselves with integrity and consistency;
  - The ability to interpret and apply the relevant statutes and case law to complex scenarios; and
  - The ability to absorb and analyze complex material information and write comprehensive, intelligible decisions.
2. That the compensation of members appointed to the Board of Revision be increased as of January 1, 2021 as outlined in this report.
3. That advertising forums for Board of Revision vacancies be reviewed and expanded at the discretion of the City Clerk's Office.
4. That training options for both Board of Revision members and the Board of Revision Secretary be explored and mandatory training be implemented for 2021 appointments.
5. That resources, including access to legal counsel for members appointed to the Board of Revision and the Secretary to the Board of Revision continue to be offered and the potential to increase access to those resources be further explored.
6. That a process be established for the performance evaluation of appointed Board of Revision members for consideration by the Governance and Priorities Committee in advance of reappointments and to identify potential areas for further training and development.

**RATIONALE**

The compensation, qualifications and resources available to BOR members has not been reviewed in many years. Opting to maintain the status quo leaves Saskatoon at least ten years behind when it comes to the compensation, qualifications and training available to BOR members. The arbiters of complex property tax assessment appeals require knowledge relating to conducting a fair hearing (ie. procedural fairness), other administrative law principles and technical knowledge relating to mass appraisal and standard appraisal methods.

It is important that members of the BOR receive adequate training and resources to conduct efficient and fair hearings. Further, given the expertise expected of BOR members and the demanding number and complexity of tax assessment matters the BOR is required to decide, it is imperative that BOR member qualifications correspond.

Making changes, including to BOR member compensation, is prudent with the goal of hopefully attracting interest from a qualified diverse group. Historically, the level of interest for appointments to the BOR has been low.

Despite that proposed amendments to the Act identify the possibility that the Province will create a Provincial board of revision, information on how this would work for cities and municipalities is scarce and there is no proposed timeline for when a Provincial board may be implemented. Likewise, specific project parameters and timelines have not been set for the joint research project with the University of Saskatchewan. Therefore, even if a Provincial board is implemented or the research project yields helpful information, a review of Saskatoon's BOR in the interim is still necessary.

In light of the increasing amount of appeals and, more specifically, the increasing amount of complex commercial appeals relating to significant tax dollars and the uncertainty surrounding the Provincial board of revision, option 1 is the preferred option being recommended. In the alternative, a review of qualifications and compensation (option 3) in the interim seems appropriate.

### **Amend the Qualifications of the BOR**

As noted throughout this report, BOR members are considered to be experts in assessment-related matters by higher courts and tribunals in Saskatchewan. Amending the qualifications to attract candidates with backgrounds and skillsets suited to property tax assessment appeals is intended to ensure that quality decisions are rendered, respecting the rules of procedural fairness, other administrative law principles, mass appraisal and standard appraisal methods.

By heightening the preferred qualifications in conjunction with raising compensation, the goal of this recommendation is to attract candidates with knowledge and backgrounds suited to property tax assessment appeals.

Further, given the significant financial implications at stake in property tax assessment matters, it would be prudent to establish a mechanism whereby concerns or the performance of appointed members may be evaluated. The Governance Subcommittee will explore evaluation possibilities and investigate the best mechanism to bring forward such information to GPC prior to consideration of reappointments. Such information would also serve to identify areas of further training or development that should be offered.

### **Increase the Compensation Offered to BOR Members**

Compensation for BOR members was set by City Council on February 17, 2009. BOR members receive a nominal annual salary (Chair only) and a *per diem* for hearing days or half days. Some time for preparation, deliberation and decision writing is also offered, as discussed between the BOR Chair, the decision writer and potentially the BOR Secretary. If the City adopts an increased payment structure, it may attract a more diverse and qualified array of candidates to sit on the BOR.

This recommendation keeps the existing payment structure of the BOR but aims to modernize the amounts to keep in step with other jurisdictions and the cost of living. The recommended increases in salary adjust the 2009 salaries set by City Council for inflation and round them up to the nearest hundred dollar value. The remuneration, as charted below, is what is being recommended by the Governance Subcommittee:

<b>Member</b>	<b>Annual Salary</b>	<b>½ day</b>	<b>Full day</b>
Chairperson	\$4,300.00	\$160.00	\$320.00
Panel Chair	\$2,200.00	\$160.00	\$320.00
Member	N/A	\$160.00	\$320.00

The recommended *per diem* amount reflects the going rate in other jurisdictions and incorporates that amount into Saskatoon's structure which provides a salary and a *per diem*. As the additional duties of the Chairperson and Panel Chair are compensated through the annual salary, the *per diem* is the same for each category of BOR member.

At this time, it is not recommended to switch to a solely *per diem* structure. Given the potential for a Provincially-appointed board of revision, it may be prudent to wait on consideration of a complete overhaul. Likewise, this report is not recommending changes to how the BOR is currently compensated for deliberation or decision writing. Once the research project is complete or the Provincial strategy is known, more permanent changes may be recommended.

### **Require Training and Offer Increased Resources to BOR Members and the BOR Secretary**

Providing adequate training to the BOR would help remedy board and appeal-related issues. While the Province of Saskatchewan does not require any Provincial training for BOR members, the City could impose training requirements and engage independent professionals including an appraiser and a lawyer who practices in the municipal or administrative realm to provide training. Likewise, the BOR members have access to independent legal counsel who might also be engaged to provide training. While independent counsel has sporadically been utilized in the past, there appears to be no consistent training program offered.

In addition to providing training for BOR members when they are appointed, ongoing resources are required to assist the BOR in carrying out its duty. Often, novel legal issues arise during a hearing, which require advice from a lawyer. While the BOR has

legal representation, it appears to be a resource that is underused because of budget constraints.

Likewise, more formalized training for the BOR Secretary would be beneficial in order to acquire the technical knowledge related to property tax assessment to adequately fulfill their duties, particularly in respect to their role in determining the adequacy of Notices of Appeal. If adequate resources and continuous development are not in place, there is the risk that the property tax appeal process will be undermined to the detriment of taxpayers and the City.

This recommendation asks City Council to approve the recommendation that training be enhanced and mandatory as organized by the City Clerk's Office.

### **ADDITIONAL IMPLICATIONS/CONSIDERATIONS**

Proposed amendments to the Act regarding the creation of a Provincially-appointed board of revision may result in significant changes to the assessment appeals scheme currently in place. The Governance Subcommittee will continue to monitor the status of the changes and report back as necessary. Likewise, further information and recommendations may be brought forward on completion of the joint research project.

### **COMMUNICATION ACTIVITIES**

If adopted, communication will be required surrounding the implementation of mandatory BOR member and Secretary training, in addition to the compensation scheme. The City Clerk's Office will coordinate any such communications.

### **PUBLIC NOTICE**

Public Notice pursuant to Section 3 of Policy No. C01-021, Public Notice Policy, is not required.

### **APPENDICES**

1. Confidential – Solicitor/Client Privilege
2. Jurisdictional Scan – Qualifications, Compensation, Training and Resources

#### Report Approval

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