

Presented To:	Audit Committee
Presented:	Tuesday, Sep 17, 2019
Report Date	Friday, Aug 30, 2019
Type:	Managers' Reports

Request for Decision

Governance Audit of the Downtown Sudbury Business Improvement Area

Resolution

THAT the City of Greater Sudbury approves the recommendations as outlined in the report entitled "Governance Audit of the Downtown Sudbury Business Improvement Area", from the Auditor General, presented at the Audit Committee meeting on September 17, 2019.

Signed By

Auditor General
Ron Foster
Auditor General
Digitally Signed Aug 30, 19

Relationship to the Strategic Plan / Health Impact Assessment

This report aligns with the strategic goal of attracting, developing and retaining business within the City.

Report Summary

This report provides recommendations to clarify the Downtown Sudbury BIA's oversight roles and responsibilities as well as its practices to monitor the organization's performance. It also recommends that the City update its bylaws to clarify its expectation that the Downtown Sudbury BIA will operate within its legislated mandate.

Financial Implications

None

Governance Audit of the Downtown Sudbury Business Improvement Area

August 30, 2019
Final Report



1. ORGANIZATIONAL BACKGROUND

The *Municipal Act, 2001* indicates that a local municipality may designate an area as an improvement area and establish a Board of Management to oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally; and to promote the area as a business or shopping area.

Once an improvement area is established, all those within the area that pay property tax are automatically included in the membership and contribute to the budget of the Board of Management that is financed by a levy on municipal property taxes on the members in the area. A Board of Management is exempt from income taxes under the Income Tax Act.

The Sudbury Metro Centre was established in 1977 as a Board of Management for the improvement of the area known as the Central Business District of the City of Sudbury in accordance with the *Municipal Act, 1970*, and By-Law 77-76 of the Corporation of the City of Sudbury. The Sudbury Metro Centre became known as the Downtown Sudbury Business Improvement Area, and more recently, as Downtown Sudbury.

In accordance with section 204(2) of the *Municipal Act, 2001*, Downtown Sudbury is a self-funded corporation that is a not-for-profit organization to which businesses in the area defined as the “C-M” district under Zoning By-law 62-192 (The Area), jointly contribute and raise funds for programs and activities that promote business and improve The Area.

By-law 2010-229 indicates that the Board of Management shall consist of 9 persons qualified as Non-Direct Council Appointees and a maximum of 2 and no less than 1 persons qualified as Direct Council Appointees. Other than a Member of Council, a person appointed to the Board must be: assessed with respect to rateable property in The Area that is in a prescribed business property class and be on the last returned assessment roll; or be a tenant of property in The Area who is, under a lease, required to pay all or part of the taxes of the property; or nominated by those persons referred to above. The Executive Committee, which is elected by the Board, is given the authority to transact the business of the Board between meetings and to ensure issues that arise are communicated to the Board.

The initial focus of the Board of Management was on a streetscaping program and a campaign to promote awareness to businesses and services within the downtown. In the late 1980s, it promoted major programs such as the Downtown Community Improvement Plan, the Downtown Development Action Plan and the Strategic Plan for Sudbury Metro Centre, and initiated the Downtown Farmers’ Market. In the 1990s, it completed a Downtown Strategic Plan and focused on development issues such as housing and the Farmer’s Market and continued to promote The Area following the amalgamation that formed the City of Greater Sudbury.

In 2012, Downtown Sudbury completed the Downtown Master Plan in partnership with the City of Greater Sudbury to promote the importance of having a strong and vibrant downtown. In 2016, Downtown Sudbury developed a Strategic Plan with objectives for special events, marketing, municipal liaison, downtown environment, economic development, member advocacy and organizational effectiveness.

2. GOVERNANCE REVIEW: APPROACH & EXECUTION

This governance audit was completed based on the assessment framework detailed in the *Practice Guide to Auditing Oversight* (“*Practice Guide*”) published by the Canadian Audit & Accountability Foundation.

2.1 Approach

The audit focused on the oversight structures and systems in place including examining the:

- Structure and mandate of Downtown Sudbury;
- Definition of roles and responsibilities of Downtown Sudbury;
- Oversight exercised by the Board over its respective areas of responsibility; and
- Oversight exercised by other government bodies over Downtown Sudbury.

2.2 Scope

The scope of the audit of included activities from January 1, 2016 to August 15, 2019.

2.3 Objectives & Assessment Criteria

The key objective of this audit was to assess the effectiveness of the design of oversight structures and processes. As such, the audit was not specifically designed to assess whether the oversight processes are operating as designed and/or the outcomes generated by these oversight processes are appropriate. The table below sets out the review objectives and related assessment criteria.

Audit Area	Objectives	Assessment Criteria
Overall Oversight Framework	To determine whether the structures and processes established for the organization set the framework for effective oversight	The governance structure and mandate of the organization are sufficient and appropriate to provide a framework for effective oversight
Oversight Roles	To determine whether the board (or governing body) has clear oversight roles and responsibilities and a clear mandate to carry out specific oversight functions	The oversight body and its committees and members have clearly defined oversight roles and responsibilities
Performance Monitoring	To determine whether the board (or governing body) has put in place adequate systems and practices to monitor the organization’s performance in meeting its established objectives	The oversight body has established a performance management framework for the organization Performance targets and pertinent indicators are in place to enable the oversight body to monitor properly organizational performance
City Oversight	To determine whether the City/other oversight bodies has established a clear framework for the oversight of the organization	The City (or other oversight body) has defined and communicated its expectations with regard to organizational performance and the reporting thereof

2.4 Execution

The audit was completed based on the following key activities:

- **Documentary Review:** Relevant documentation was collected and reviewed in relation to objectives and assessment criteria;
- **Interviews:** Interviews were conducted with the Co-Chairs of the Board of Directors and Executive Director of Downtown Sudbury as well as with the Acting Director of Economic Development of the City of Greater Sudbury; and
- **Informal Benchmarking:** Limited, informal benchmarking analysis was completed based on available documentation and stakeholder input.

2.5 Audit Standards

We conducted our audit in accordance with Generally Accepted Government Auditing Standards which require that we adequately plan for the audit; properly supervise audit staff; obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions; and prepare audit documentation related to the planning, conducting, and reporting for each audit. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit.

For further information regarding this report, please contact Ron Foster at extension 4402 or via email at ron.foster@greatersudbury.ca

3. OBSERVATIONS

The following section sets out the key observations which generally relate to the design of the oversight structures and processes in place with respect to Downtown Sudbury. However, observations related to the operation of these structures and processes are noted in italics where relevant.

3.1 Overall Oversight Framework

The oversight framework is generally effectively designed and the governance structure and mandate of the organization are sufficient and appropriate to provide a framework for effective oversight. For example:

- a) The mandate of Downtown Sudbury is documented within the Board Member Manual and most recent strategic plan from 2016.
- b) The mandate of the Board is clearly defined in the Organizational Manual.
- c) The Executive Committee has a clearly defined mandate.

3.2 Oversight Roles & Responsibilities

The oversight roles and responsibilities of the board are set out within the Organizational Manual but the expectations for the Executive Director are not clearly defined in a job description.

- a) The Job descriptions for the Chair, Vice-Chair and Treasurer are included in the Organizational Manual.

- b) The Organizational Manual includes a statement of responsibility of the individual board members.
- c) Downtown Sudbury provides orientation training to new board members.
- d) The board prepares an annual budget and work plan with the assistance of the Executive Director.
- e) The board is responsible for reviewing and approving all reports to Council including annual financial statements and annual budgets.
- f) *The board does not conduct an annual performance appraisal of the Executive Director.*

3.3 Performance Monitoring

The board has established systems and practices to monitor the performance of the organization and to assess the extent to which its established objectives have been achieved. For example:

- a) The Strategic Plan was developed with the input of the previous board and includes specific initiatives to support the objectives for seven different pillars.
- b) The board receives and reviews a monthly reporting package from the Executive Director that includes progress on major projects in the work plan.
- c) The board receives periodic updates showing actual results versus the annual budget.
- d) The Chair and Executive Director report on progress against the short, medium and long-term initiatives within the annual work plan at monthly board meetings.
- e) The board reviews progress against the objectives within the 2016 strategic plan on an annual cumulative basis.
- f) The board receives regular updates regarding progress towards the objectives within the Downtown Master Plan.

3.4 City Oversight

While the City has established a general framework for the oversight of the organization which includes the review and approval of annual budget and annual audited financial statements of Downtown Sudbury, a number of opportunities for improvement were identified.

- a) The City was aware that the 2018 budget included a \$20,000 contribution to support appeals of the City's decision to locate a new arena on the Kingsway. In fact, staff recommended to the Finance and Administration Committee in May 2018 that the City of Greater Sudbury approve all of the proposed 2018 budget but for the part which includes the \$20,000 allocation to fund an appeal to the Local Planning Appeal Tribunal. Due to the ambiguous nature of the legislated mandate of Downtown Sudbury, the Finance and Administration Committee voted to approve its entire budget for 2018. Council ratified this decision at their next meeting.

- b) The City was not aware until recently that the board of Downtown Sudbury had allocated another \$20,000 from its reserve fund in September 2018 to support these appeals.
- c) In April 2019, Sudbury Downtown filed an application with the Superior Court of Justice to quash several City by-laws that pertain to plans for the City's new arena.
- d) In August 2019, Sudbury Downtown instructed its solicitor to withdraw its application.

4. FINDINGS AND RECOMMENDATIONS

The audit assessed the effectiveness of the design of oversight structures and processes. As noted above, the audit was not specifically designed to assess whether the oversight processes are operating as designed and/or the effectiveness of the outcomes generated by these oversight processes.

Based on the results of the audit, the oversight structures and processes with respect to Downtown Sudbury are effectively designed. Notwithstanding, some concerns have been identified along with responses from the Board of Downtown Sudbury and the City of Greater Sudbury.

- 1) The Board is not responsible for preparing the annual performance appraisal of the Executive Director.

On behalf of the Board, the Co-Chairs should complete an annual performance appraisal for the Executive Director to identify both accomplishments and areas for improvement.

Management Response from Downtown Sudbury

The Executive agrees with your recommendation and further recommends that this review be undertaken in the fall which will coincide with the Board's annual Budget/Work Plan preparation. Further, this should be included in the overall Board 'Organization Manual' and also include that the Executive Director also conduct similar reviews of any additional staff. It was also noted that these reviews should be a two-way discussion with Staff having the opportunity to provide feedback to the Board.

- 2) The City's oversight duties include monitoring the activities of Downtown Sudbury to ensure they align with its legislated mandate which is set out in the *Municipal Act, 2001*.

Since the sections of the *Municipal Act, 2001* that describe the legislated mandate of Board of Management for a Business Improvement Areas are somewhat ambiguous, the City should update the City's relevant by-laws to identify activities of Downtown Sudbury that fall outside of its legislated mandate.

Management Response from City of Greater Sudbury

We agree. Staff will prepare a report with recommendations for Council's consideration to update bylaw(s) governing business improvement areas. This will be part of 2020 work plans, with a report to Council no later than the fourth quarter of 2020.