

Background

On September 17, 2019, the City of Greater Sudbury's Auditor General presented his "Governance Audit of the Downtown Sudbury Business Improvement Area" dated August 30, 2019 to the City's Audit Committee. The Auditor General recommended that, among other things, the City "update its relevant by-laws to identify activities of Downtown Sudbury that fall outside of the Board of Management's legislated mandate".

The "Management Response" from the City agreed with the Auditor General's recommendation and advised that staff would prepare a report for Council's consideration to update the by-law(s) governing business improvement areas.

This report seeks to respond to the Auditor General's recommendation and provides options for Council's consideration.

Legislative Overview

Section 10(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, (the "Act") authorizes municipalities to pass by-laws respecting the governance structure of the municipality and its local boards.

Section 204(1) of the Act provides that the Council of a local municipality may designate an area as a "Business Improvement Area" and may establish a board of management to:

1. oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in that Business Improvement Area, and
2. to promote the Business Improvement Area as a business or shopping area.

There are two (2) Business Improvement Areas (BIA), each with a board of management, in the City of Greater Sudbury:

1. **Central Business District Improvement Area** established by the former City of Sudbury and currently known as "**Downtown Sudbury**"; and
2. **Flour Mill Business Improvement Area** established by the former City of Sudbury.

Each board of management is a corporation as well as a local board of the municipality. Boards of management are comprised of one (1) or more directors appointed directly by the municipality with the remainder of the directors selected by a vote of the members of the BIA and appointed by the municipality.

Downtown Sudbury comprises nine (9) board members who are not members of Council and a maximum of two (2) members of Council whereas the board of the Flour Mill BIA consists of eight (8) non-Council members and one (1) Council member.

Regulation of Local Boards

In addition to its authority to dissolve a board of management under section 214 of the Act, Council may change a local board, such as a board of management, under section 216 of the Act, as to, among other things, the financial and reporting relationship between the municipality and the board, and the restriction or expansion of the mandate of the board.

Discussion

Council has the authority under the Act to dissolve either or both of the boards of management in their entirety under section 214 of the Act or change the board as described in section 216 of the Act, or continue with the boards as they exist now.

There are examples of other municipalities using their authority under the Act to dissolve and make changes to boards of management. In 2000, the City of Sarnia dissolved its “Northgate Business Improvement Area” at the written request of a majority of its members, which is permitted by the Act in addition to the municipality’s authority prescribed by sections 214 and 216 of the Act. The City of Sarnia is currently considering designating an area to be known as the “Downtown Business Improvement Area” and establishing a board of management.

Chapter 19 of the City of Toronto’s Municipal Code, most recently amended in 2017, governs the designation of new and operation of all business improvement areas in the City of Toronto. The City of Toronto has eighty-three (83) business improvement areas under the umbrella of the Toronto Association of Business Improvement Areas. Chapter 19 scopes the mandate of the boards and limits their participation in administrative boards and tribunals like the Local Planning Appeal Tribunal (LPAT), the Committee of Adjustment, and hearings of the Licence Appeal Tribunal and other similar tribunals, unless the board has conducted a general meeting of the membership to obtain approval to participate in a specific hearing, and obtained approval of any related expenditures. The boards are also precluded from passing a resolution or taking a position contrary to any Council-approved policy or decision.

In 2017, the City of Peterborough passed By-law 17-095, “Being a By-law to implement local policies to guide the operation and conduct of existing and new business improvement areas for the benefit of their members and the residents of Peterborough”. Peterborough’s by-law prescribes the mandate of the Board and places certain limitations on the Board’s activities. Peterborough’s by-law is very similar to Chapter 19 of Toronto’s Municipal Code in that it scopes the mandate and activities of its boards to a prescribed list.

Ultimately, BIAs are established by the municipality, and their boards are created by by-law of the municipality. It is within the authority of the municipality to make such changes to those boards as it deems appropriate, including but not limited to requiring more detailed reporting to Council, scoping the mandate and activities of the boards, or dissolution.

Recommendations

Legal Services has reviewed the Auditor General's audit as well as reviewed the applicable legislation and examples from other municipalities, and is proposing two resolutions for consideration by Council, generally:

1. Establishment of a formal reporting relationship between the City, managed by the Economic Development division, and the boards of both BIAs, where the boards would communicate to Council and the public a review of activities undertaken as well as an overview of proposed projects and works by the boards for the benefit of the BIAs. The City's Planning Services staff will continue to provide expertise for items related to Community Improvement Plan programs or other initiatives involving facade improvements, changes to the physical fabric of the BIA area and so on.

Providing the boards with the opportunity to communicate their work plans and successes to Council and the public on a regular basis outside of the budget process strengthens the existing relationship between the parties, and underscores the principles of accountability and transparency. Any activities planned by the BIA board that require City resources for implementation would be required to come forward as requests for support through the City's annual budget process.

2. Through the collaborative development of Memorandum of Understanding for each item, scoping the boards' mandate and activities, to, among other things:
 - oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in each BIA beyond City standard levels provided at the expense of the municipality generally;
 - maintain BIA initiated streetscaping capital assets within each BIA;
 - promote each BIA as a business, employment, tourist or shopping area;
 - offer graffiti and poster-removal services respecting building facades visible from the street, to all BIA member property owners who provide written consent, upon approval of the program by the BIA members;
 - undertake safety and security initiatives within each BIA;
 - undertake strategic planning necessary to address BIA issues;

- advocate to City Council on behalf of the interests of the BIA;
- not spending any money unless it is included in the budget approved by Council;
- not incurring any indebtedness extending beyond the current year without the prior approval of Council;
- not borrowing or lending money;
- not offering or providing support to political candidates or political parties;
- not advertising or paying for advertisements in any political publication;
- not making or funding improvements to private property, with the exception of graffiti and poster-removal initiatives;
- not participating in a hearing before the Committee of Adjustment, or other similar committee, unless the Board has conducted a general meeting of the membership to obtain approval to participate in a specific hearing, and to get approval of any related expenditures;
- not passing a resolution or taking a position contrary to any Council-approved policy or decision or seeking to make itself or its BIA a party or a participant in a hearing before the LPAT or other administrative tribunal without first:
 - sending notice of its intent to hold a general meeting concerning being a party or participant before the LPAT or other administrative tribunal, such notice to include a budget for participation in the hearing;
 - conducting a general meeting of BIA members;
 - presenting the aforementioned budget to the BIA members at the said general meeting; and
 - obtaining support to participate in the hearing from two-thirds of the BIA Members, including two-thirds support for the budget.

Boards of Management are created by Councils for a specific purpose and they deliver important benefits within the designated areas. Both Toronto and Peterborough have delineated the scope of their boards' activities to provide clarity of roles and mandate. These changes would assist the Boards in remaining focused on activities that are aligned with City Council.