

REQUEST FOR A DECISION



*Economic Vitality Committee
Open Session – March 13, 2024*

To: Councillor Jason LeJeune and Members of the Economic Vitality Committee
From: Ken Forrest, Director of Planning and Development
Date: January 16, 2024
Title: Admin Rprt - planning advisory committee mandate - March 13, 2024.docx

ISSUE:

Council has requested that staff provide advice respecting the mandate and function of the Planning Advisory Committee focusing on measures which would enhance the technical role of the Committee.

RECOMMENDATION:

It is recommended that the Economic Vitality Committee discuss whether it wishes to pursue reform to the mandate and function of the Planning Advisory Committee. If there is desire to implement changes, it is recommended that specific direction be provided to the Director of Planning and Development such that potential amendments to the relevant by-laws can be brought forward for consideration.

SITUATION, BACKGROUND & DISCUSSION:

SITUATION:

At the December 11, 2023 meeting of Council in Committee the following motion was considered:

BE IT RESOLVED THAT the Director of Planning and Development pursuant to section 68(2) of the Local Governance Act be directed to look at proposing amendments to by-laws and the Planning Advisory Committee Constitution that would be required to create an alternate system to move Planning Advisory Committee back to technical decision-making body or other improvements to the process.

CARRIED

Improvements to the internal processes that support growth and development were a goal of the Chief Administrative Officer in 2023. Recently, concern has been expressed with respect to the alignment between Council's planning policies, the Affordable Housing Strategy, and recommendations coming from the Planning Advisory Committee.

BACKGROUND

The *Community Planning Act* requires municipalities providing their own land use planning service to "make a by-law establishing a planning advisory committee." Section 4 of the *Act* sets out the duties and powers of an advisory committee as follows:

- (a) *the powers and duties accruing under the provisions referred to in paragraph 24(1)(a) of the Regional Service Delivery Act, other than the provisions of sections 51 and 125 of this Act that are referred to in that paragraph;*
- (b) *to advise and make recommendations to the council on matters relating to community planning;*

- (c) to give its views to the council on any by-law proposed to be made under this Act, whether or not its views have been requested in accordance with section 110; and
- (d) to exercise the powers and perform the duties relating to community planning that are given to it by this Act or the council.

The City has adopted By-law No. Z-3, A By-law to Establish a Planning Advisory Committee for the City of Fredericton (attached). The By-law is consistent with Section 5 of the *Act* as follows:

- The number of members of PAC is nine (9);
- persons appointed may be Councillors or City staff but the majority shall be other than such members and staff;
- The Committee is required to adopt a constitution and review the constitution annually; and
- The terms of appointments of members must be consistent with the *Act*.

Section 5 of the *Act* requires that a PAC have no fewer than 5 members but no more than 15 members. Members must be appointed and can only be removed by council resolution and a council resolution is also required to appoint the chair and vice-chair (although chair and vice-chair must be elected by committee members as per Section 7 of the *Act*). To be appointed as a member of PAC, an individual must be eligible to vote in municipal elections and must be a resident of the municipality.

Section 6 of the *Act* sets out the terms of office for PAC members. Generally, Council appoints members to a three-year term but must stagger the terms of members such that the terms of one-third of members expire at the end of each year. Maintaining this staggered approach is required when the size of the committee is increased or decreased. The stagger provisions do not apply to members who are councillors or municipal employees.

The PAC has authority to:

As the Decision-Maker

- Prohibit the construction of buildings or structures on a site considered to be marshy, subject to flooding, excessively steep, or otherwise considered unsuitable for development;
- Authorize temporary uses;
- Permit conditional uses if provided for in a zoning by-law;
- Permit variances from a zoning by-law including allowing a use otherwise not permitted if it is sufficiently similar to or compatible with a permitted use;
- Permit quantitative variances from a zoning by-law;
- Permit certain variances from a subdivision by-law;
- Approve street names; and
- Make certain decisions respecting non-conforming uses.

As Advisor to Council

- Make recommendations with respect to the location of streets and the disposition of the public land dedication as part of the subdivision process;
- To give its views to the council on any by-law made under the *Community Planning Act* including by-laws to adopt or amend a municipal plan, a secondary municipal plan, a zoning by-law or a subdivision by-law; and
- To advise or make recommendations on other matters pertaining to community planning.

By-law No. Z-3 follows the *Act* and requires that the PAC adopt and regularly review a constitution. The Constitution is attached and it articulates the operating procedures of the Committee. Relevant to the specific advice that Council is seeking, the following components of the Constitution are highlighted:

- The Constitution is reviewed by PAC each year in January at its annual general meeting;

- Regular and special meetings are open to the public except that the Chair may hold special in-camera sessions for items of an administrative nature and to receive instruction from legal counsel or City staff;
- The chair has authority to limit public presentations and discussions to ensure business is conducted in a reasonable timeframe;
- Section 22 of the Constitution sets out the Committee's procedure for reviewing applications. The process provides for participation by staff, the applicant, public presenters, and Committee members;
- Providing public notice of applications flows from the Constitution. Notice is given not later than 10 days prior to the meeting to property owners within 100 metres of a property subject to a municipal plan amendment, rezoning, subdivision, or similar use variance application (all processes where PAC is not the decision maker but is acting in a technical and advisory role except for similar use variances);
- Public notice is provided to property owners within 30 metres of a property subject to all other variance applications (where PAC is the decision maker); and
- The public notice indicates the right of those receiving a letter to be heard at PAC.

Fredericton's practice for PAC to provide public notice and extending the right for the public to be heard is not required by the *Act*. Section 56 of the *Act* states that a planning advisory committee *may* choose to give notice (not shall) to owners of land in the neighbourhood of a variance application. Where a PAC chooses to provide notice, the committee is to extend a right for those receiving notice to make representations to the committee.

DISCUSSION

Based on the discussion at Council-in-Committee, staff suggest that a review of the following elements of the mandate and function of the Planning Advisory Committee be undertaken:

- The extent to which PAC should function as a technical and advisory body and the amount of public input required to exercise the role Council desires;
- Composition of the PAC;
- The public notification process; and
- Public participation in the PAC process.

Staff suggest that Council determine the preferred approach to each of these elements to determine if reform to the mandate and function of the Committee is desired.

PAC as a Technical and Advisory Body

The Planning Advisory Committee is a decision-maker for variances. The Development Officer also has authority to make certain variance decisions. The *Community Planning Act* sets out no role for Council in the variance process. Staff are not aware of any concerns from Council or the public with respect to PAC's role in the variance process. It is staff's professional planning opinion that this process works well and no reform is necessary.

Concerns have been expressed with respect to the PAC process when the Committee is making a technical recommendation to City Council on municipal plan amendment, rezoning, and subdivision applications. The role of the Committee is very different when it is acting in a technical and advisory role versus a decision-making role (for variances). The *Act* tasks the Committee with "giving its (emphasis added) views to the council" such that the elected body has the information it requires to make an informed decision. The process begins with an application that is presented with analysis and recommendation from a professional planner in a staff report. PAC receives the application and professional planning report and is assigned the task of giving its views to the council. The legislation views this as an important role. The views of a PAC are so valued that a higher bar is placed before the council when it wishes to adopt a by-law that was not supported by the committee. Section 110(2) of the *Act* states that a by-law that "fails to give effect to the written views of the advisory committee" requires a majority of the members of council vote in favour to successfully make the by-law.

Fredericton's PAC process provides another public hearing and engagement process for an application culminating in either supporting or not supporting the professional staff recommendation. Councillors have expressed a desire for PAC to be more focused on a technical review of applications seeking to improve proposals to add further value. The legislation imagines that it is the job of the elected Council, and not the PAC, to incorporate public input and political judgment into the decision-making process. The concern with significant public involvement in the PAC process is that the views of the committee are no longer primarily technical but instead may primarily reflect public opinion. This is not the role imagined for an appointed technical body and it may be difficult to distinguish between the technical and the political in PAC's recommendations.

There were several occasions in 2023 when a staff recommendation of approval was not accompanied with a recommendation for approval by the PAC. This situation triggers Section 110(2) requiring that the majority of council vote in favour for a by-law to be adopted. New Brunswick's Appeal Board has stated that it is important for a PAC to provide clear reasons for its decisions and recommendations when they differ from the professional planning report. Council may wish to direct PAC to make a process change requiring that Council be provided a written explanation for positions PAC takes on applications that are inconsistent with the staff report. It is difficult for Council to understand the thought process used by the PAC when it is not communicated. Similarly, written reasons should be provided in the PAC minutes when variance decisions are made that vary from the staff recommendation.

Council has expressed a desire for PAC to carefully consider whether additional terms and conditions could be used to mitigate against concerns raised with respect to an application instead of providing a recommendation of denial. Council may wish to communicate this perspective to the Committee for its consideration.

Specific discussion with respect to PAC's role in the subdivision process is necessary. Fredericton's process has been confusing to the public for many years because public notification with respect to subdivision creates the impression that feedback is being sought on all elements of the subdivision application. There is far less discretionary power associated with subdivisions than there is with municipal plan amendments and rezonings. Provided that a subdivision proposal is consistent with the Subdivision By-law and does not require variances, there is no discretion with respect to the subdivision proposal itself. The only matters that require a decision by council is whether to accept ownership of streets in the proposed locations and the disposition of the public land dedication. These are very technical decisions and just as the *Community Planning Act* does not provide for public engagement on subdivision applications at the Council level, there is really no reason for such engagement to take place at the PAC level either. Even if Council chooses not to pursue broad reform, it may be desirable to proceed with changes related to subdivision.

PAC Composition

Fredericton's PAC has had 9 members for several decades. Municipal staff have not served on the Committee in the past. The only change to PAC composition over the years has been with the number of council members serving on PAC. Four councillors have been members of the PAC in the past but this was reduced to three in 2015.

The City puts out a call to citizens to serve on PAC. The only qualifications mandated in the *Community Planning Act* are eligibility to vote in municipal elections and being a resident of the municipality. The City's advertisement does ask that those applying to serve on the PAC outline any expertise or experience they have in land use planning.

The most significant challenges in recent years have been:

- Attracting a sufficient quantity of applicants willing to serve on the Committee;
- Attracting candidates with appropriate land use planning experience while also representing the diverse nature of our community;
- Discussion respecting the right number of councillors to serve on PAC;
- Discussion on whether providing some form of compensation should be provided for serving on PAC.

Staff are of the view that having 9 members of PAC has generally served the community well. If Council wishes to reduce the number of councillors on PAC, staff recommend that Council consider reducing the number of citizen members in proportion or that consideration be given to whether senior staff member(s) should serve on the Committee instead of councillors. If Council wishes PAC to have a more technical role, it would be appropriate to discuss what Council would view as optimum PAC composition. Staff believe it is important to have councillors on PAC. Historically, councillors played an important role in helping to communicate the Committee's views respecting an application at the Council table, particularly given that PAC's views have not been communicated in writing. Staff also believe it advantageous to have councillors or staff on PAC to bring more awareness of Council's adopted policies and regulatory positions. If PAC is focused on its technical role going forward, it would likely be even more important that committee members have skills, expertise, and experience in land use planning or related fields.

Remuneration of PAC members is not common practice in New Brunswick among the major municipalities. Staff are aware that the City of Dieppe pays PAC members \$50 per meeting and Saint John provides \$15 per meeting (\$20 per meeting for the chairperson). Compensation is common at the regional service commission level where more travel is required to participate in meetings. Unless Council believes that compensation would help address recruitment for committee members, staff do not see a need for change at this time.

Public Notification of Applications

Fredericton provides public notice of planning applications as follows:

- For municipal plan amendments and rezonings, notice is provided to property owners within 100 metres of the subject property and advises that written or oral representations can be made to both the PAC and Council at the hearing of objections;
- For subdivisions, notice is provided to property owners within 100 metres of the subject property and advises that written or oral representations can be made to PAC but not to Council as there is no hearing of objections for subdivision applications;
- For similar use variance applications, notice is provided to property owners within 100 metres of the subject property and advises that written or oral representations can be made to PAC. PAC is the decision maker for similar use variance applications; and
- For other variances, notice is provided to property owners within 30 metres of the subject property for applications where PAC is the decision maker and generally to directly impacted property owners where the Development Officer is the decision maker.

Fredericton's notification radius for variances has not generally been a subject of previous concern and no changes are recommended.

As outlined previously, Council may want to consider whether PAC should be directed to discontinue providing notification for subdivision applications. Notice is not required, it is generally not provided in other New Brunswick communities, PAC only has a very limited role in reviewing some elements of street and land for public purposes vesting, and there is no hearing of objections at the Council level.

For plan amendments and rezoning, Fredericton's 100 metre notification radius matches practice in Moncton and Saint John (though Saint John provides staff with flexibility to enlarge the notification area in some situations). Fredericton's notification letter is very similar to Saint John's but differs from the letter in other New Brunswick communities in that there is an invitation to provide comment at both the PAC and Council level. In most New Brunswick communities, the letter only advises of the ability to engage with council through the hearing of objections process. The Town of Rothesay provides the public with an opportunity to provide written feedback only prior to the PAC meeting with responses appended to the professional staff report in addition to the council hearing process.

Public Participation in the PAC Process

Finally and closely related to notification is determining what the right of amount of public participation is in the PAC process. In staff's view, no changes need be considered with respect to the variance process.

PAC is the decision maker for variance applications and public involvement in the decision-making process makes sense and Fredericton's practices have worked well.

The level of public participation in PAC's deliberations on municipal plan amendments, rezonings, and subdivisions should be a function of the desired emphasis on technical review and public participation. For subdivision applications, Council may wish to take the view that public participation in subdivision applications does not assist PAC in fulfilling its advisory duties to council given the very limited jurisdiction that ultimately exists for council. For plan amendments and rezonings, provincial legislation requires public engagement as part of the council process so the remaining question for council to answer is the extent to which public feedback at the PAC level helps PAC fulfill its duty to council in providing its technical views on these applications.

One option for Council to consider is discontinuing the practice of including public engagement as part of PAC's technical role in evaluating plan amendment and rezoning applications and instead moving to a requirement for mandatory pre-application engagement for significant applications. Engagement earlier in the process encourages public dialogue when an application is in its formative stages. The engagement is more solutions-oriented and less combative. Instead of the public establishing positions with respect to the application, this type of process invites a more collaborative approach. To be successful, it would require applicants and citizens to enter the process respectfully and sincerely, avoiding hardened positions. All parties would have to be willing to engage in a constructive dialogue instead of an adversarial one. The question that would need to be asked is whether such an approach would have good likelihood of success.

Path Forward

There are many paths forward for Council respecting changes to the planning process. Council may wish to start to narrow the path it wishes to take and then seek further advice from staff to find the most appropriate way to proceed. To assist Council in its decision making, an approach to PAC reform for each potential focus is provided to stimulate discussion.

	PAC Primarily Technical	PAC as a Public Engagement Tool
<i>PAC Composition</i>		
Number of Members	9	9
Land Use Planning Knowledge	More important	
Plans and Policy Understanding	Improved education needed	Improved education needed
Council/Staff as Members	More important	
Member Compensation	Not recommended	Not recommended

	PAC Primarily Technical	PAC as a Public Engagement Tool
<i>Public Notification of PAC Application Review</i>		
Variances	Yes	Yes
Municipal Plan Amendments	No	Yes
Rezonings	No	Yes
Subdivisions	No	No
Notification Radius	No changes recommended	No changes recommended

	PAC Primarily Technical	PAC as a Public Engagement Tool
<i>Changes to the PAC Process</i>		
Pre-Application Engagement	Required for major applications	Not required
Meetings Open to the Public	Yes	Yes
PAC Agenda	Decision making applications first, then advisory role	Decision making applications first, then advisory role
Public Presentations to PAC	Variations only	Variations only
Written Comments to PAC	Variations only	Variations, plan amendments, rezonings, not subdivisions
Written Views/Reasons When PAC Position Differs from Staff Recommendation	Required	Required

FINANCIAL: There are no financial considerations associated with this matter. The City Treasurer was not specifically consulted with respect to this administrative report.

LEGAL: There are no direct legal considerations associated with this matter, but the City Solicitor has reviewed the content of this report to ensure accurate communication of the relevant legislation. If City Council chooses to implement Planning Advisory Committee reform, it is likely that amendments to By-law No. Z-3 will be required.

COMMUNICATIONS: There are no communication considerations associated with this matter. Neither Corporate nor Strategic Communications was consulted with respect to this administrative report. If Council chooses to implement Planning Advisory Committee reform, then it would be appropriate to implement a communication program to educate the public on the changes.

CLIMATE LENS: Does this proposal move the City of Fredericton closer to its greenhouse gas (GHG) emissions reduction targets of 50% reduction by 2030 and net-zero by 2050 in line with the City's Corporate Energy & Emissions Plan and/or Community Energy Emission Plan?

- Moves us towards GHG reduction targets
- No change in GHG emissions
- Moves us away from GHG targets but there are trade-offs with other Council or Municipal Plan priorities (*identify which priorities*)

Does this proposal improve the City of Fredericton's resilience to the impacts of climate change in line with our Climate Change Adaptation Plan?

- Moves us towards climate resilience
- No change in resilience
- Moves us away from climate resilience but there are trade-offs with other Council or Municipal Plan priorities (*identify which priorities*)

SPOKESPERSON: Ken Forrest

Prepared by: Ken Forrest, MCIP RPP
Director of Planning and Development

Approved by: Steven Hart
Chief Administrative Officer

/Attachments

- (1) By-law No. Z-3, A By-law to Establish a Planning Advisory Committee for the City of Fredericton
- (2) Planning Advisory Committee Constitution

Report Approval Details

Document Title:	planning advisory committee mandate.docx
Attachments:	- Bylaws-Zoning-Z3.pdf - PAC CONSTITUTION.doc
Final Approval Date:	Mar 7, 2024

This report and all of its attachments were approved and signed as outlined below:

**No Signature - Task assigned to Hart, Steven was completed by delegate
Degrace, Sara**

Hart, Steven