



Municipal Director Appointments

Deputation to the Town of The Blue Mountains by Chair, Gavin Leitch and Executive Director, Jennifer Bisley

Council Meeting, January 23, 2023

Purpose

The Blue Mountains Attainable Housing Corporation (BMAHC) requested to speak to Council in view of Council's response to the appointment of Municipal Directors to the BMAHC Board of Directors at the Nov. 28, 2022 Council meeting and Jan 9, 2023 Committee of the Whole meeting.

Our objectives today are to:

1. Provide information on the BMAHC corporate and governance structure as it relates to our relationship with the Town and the role of Municipal Directors.
2. Provide an opportunity for Council to ask questions and share concerns in relation to the appointment of Municipal Directors.

The Corporation

Town Council authorized the creation of BMAHC as a Municipal Services Corporation to provide attainable housing in its March 25, 2013 Council meeting (Town By-Law 2013-16)

- Municipal Services Corporations are subject to O. Reg 599/06 and can only be established to provide a system, service or thing that a municipality itself could provide, in this case the provision of residential housing as a prescribed economic development service.

BMAHC was incorporated by the Town as a corporation without share capital (not-for-profit) under the *Corporations Act (Ontario)* through Letters Patent in 2013.

- The Ontario Not-for-Profit Corporations Act, 2010 (ONCA) took effect on Oct 19, 2021 which requires BMAHC governing documents to be reviewed, updated, and filed in order to be compliant by Oct 18, 2024.

BMAHC By-Laws provide the governance framework and the rules related to Directors and Members.

Directors

- The Board of Directors supervises the management of the affairs of the Corporation.
- The Board of Directors shall consist of nine (9) Directors, two (2) of whom shall be any one of the Mayor, Deputy Mayor or any Councillor of The Town of The Blue Mountains (Municipal Directors) and the remaining seven (7) shall be Public Directors.
- Hybrid model with Municipal Directors bringing a political perspective and Public Directors collectively bringing the necessary skillset to deliver attainable housing.
- All Directors have the same powers and obligations, including fiduciary duties to the corporation and one vote each with matters at Board meetings decided by majority vote.
- Monthly Board meetings with special meetings called as needed. Quorum is five (5).

Members

Two classes of membership:

- I. Municipal Member: The Town of The Blue Mountains is the one Municipal Member. As a corporation, it must authorize a representative to attend the meetings of Members or provide a proxy. Entitled to 45 votes at all meetings of Members.
- II. Members: Maximum of 20 Members, including Public Directors and anyone whose application for admission as member has received approval of the Board. Each member in this class is entitled to 1 vote.

Member Meetings:

- Annual Meeting and General Meetings as required. Quorum is majority of total Member votes.
- Municipal Member has a super majority with two-thirds of the vote.
- Elect directors, consider annual audited financial statements, appointment of auditor, approval of amendments to corporate documents, and any other business requiring member approval as set out in ONCA and BMAHC by-laws.

Questions

1. Why is Council appointing two Municipal Directors to the BMAHC Board of Directors?

It is a matter of compliance and accountability. The by-laws require two Municipal Directors on the Board. This was a requirement of the Town Bylaw 2013-16 that authorized the establishment of the Attainable Housing Corporation and continues to be a requirement in the BMAHC by-laws. By-laws can be changed, but careful consideration should be given to the impact on governance and the relationship between Town Council and BMAHC.

2. Does a Municipal Director have to be Chair?

No. The Chair is elected by the Board of Directors by majority vote, with any Director eligible to stand for election. There is no expectation that a Municipal Director be elected Chair at this time.

3. What is the difference between a Member and a Director?

Members and Directors have different rights and duties as set out in legislation (ONCA) and corporate documents.

Questions

4. Are Municipal Directors also Municipal Members?

No. The Municipal Member is the Corporation of the Town of The Blue Mountains who, as a corporation, must authorize an individual to represent them in person or by proxy at Members' meetings. This individual does not need to be a Council member and should not be a Municipal Director to ensure that there is a clear delineation between the roles of Member and Director and so that Municipal Directors do not have any more power than other Directors. The current request of BMAHC is that Council appoint two Municipal Directors. BMAHC has also suggested to the Town CAO that a Staff Liaison be appointed who can bring any matters to Council that require consideration by the Town as Municipal Member instead of relying on a Municipal Director to do so as was previously done.

5. What does it mean that the BMAHC is an independent corporation when Council has control as Member?

Independence refers to BMAHC being a separate legal entity with Board control over decision-making. This is important for maintaining the corporate veil and liability protection as outlined in the legal memo 'Governance in Housing Corporations', March 31, 2021 by Robins Appleby (pg. 6-7).

Questions

6. Is it a conflict of interest for a member of Council to consider BMAHC matters if they are also a BMAHC Director?

The legal memo 'Governance in Housing Corporations', March 31, 2021 (pg. 8) from Robins Appleby considers this matter. It recognizes that it is sometimes difficult for politicians to wear two hats – that of the director with a fiduciary duty to the corporation and that of the politician who is accountable to their constituents. In such cases, the director must be cognizant of the hat they wear at the board level, and the fiduciary duties that come with the role.

At the council level, when issues related to BMAHC are debated, the Councillor is not considered to be in a conflict of interest merely as a result of a being on the board of BMAHC. In *Aurora (Town) v. Ontario*, the Ontario Superior Court concluded that a council-appointed director of a non-share capital corporation is not deemed to have an indirect pecuniary interest under the *Municipal Conflict of Interest Act* when council is considering a matter related to the corporation.

Request to Council

Through the Town CAO, BMAHC had requested that Council make the following appointments to fulfill its obligations to BMAHC:

1. Authorize two Municipal Directors to the BMAHC Board of Directors.
2. Authorize a Staff Liaison to the BMAHC.

Resources

- BMAHC By-Law 3, May 3, 2021 (<https://www.thebluemountainshousing.ca/bylaw>)
- Legal Memorandum, Governance in Housing Corporations, Mar 31, 2021, Robins Appleby LLP (<https://www.thebluemountainshousing.ca/sites/thebluemountainshousing.ca/files/2021-03/B-1-1-Robins-Appleby-Memorandum-Governance-in-Housing-Corporations-REVISED.pdf>)
- *O. Reg. 599/06 Municipal Services Corporations* (<https://www.ontario.ca/laws/regulation/060599>)
- *Ontario Not-for-Profit Corporations Act*, 2010 (<https://www.ontario.ca/laws/statute/10n15>)



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QUESTIONS?