



REPORT

Board Meeting

MEETING DATE: September 1, 2022
REPORT: C.1 Legal Memorandum on the Recording of Board Meetings
AUTHOR: Jennifer Bisley, Executive Director

A. Recommendation

THAT The Blue Mountains Attainable Housing Corporation engage Robins Appleby to provide a memorandum outlining legal and related considerations related to the recording of Board meetings with an estimated budget of up to \$ _____ plus HST.

B. Background

A review of meeting policies was initiated at the direction of the Board in late 2021. An initial discussion was held with the Board at the January 6, 2022 Board meeting as agenda item [C.2 Meeting Procedures Policy](#).

A report with preliminary recommendations was subsequently provided to the Board at the May 5, 2022 meeting as agenda item [C.1 Board Meeting Policy and Procedures](#). The final slide of the presentation outlines some considerations with respect to the practice and use of meeting recordings, with the following recommendation:

“To enable directors to effectively conduct business while still being open and transparent, it is recommended that recordings are not posted to the website as long as the public has the option to attend meetings as observers, that verbal reports are limited, and meeting materials are posted to the website.”

The Board passed the following resolution at the meeting as recorded in the [minutes](#):

THAT The Blue Mountains Attainable Housing Corporation endorse in principle the recommendations in the presentation C.1 Board Meeting Policy and Procedures and instruct staff to bring a final policy for Board consideration at a future meeting.

A final policy has not yet been completed by staff for Board consideration due to other priorities, including the Gateway project.

Councillor Hope provided two notices of motion the refer to our meeting records that were put before Council at the August 18th Special Meeting of Council. Please refer to agenda items F.2.1 and F.2.2 on the Council Meeting [Agenda](#) which also includes a link to the meeting recording. The meeting minutes which serve as the official record of the meeting are not yet available.

Councillor Hope provided a further notice of motion to be put before Council at the August 29th Meeting of Council ([Agenda](#)) as item G.2.1 :

The Council of the Town of The Blue Mountains requests that The Blue Mountains Attainable Housing Corporation provides a link on its website of its archived and future video recordings of its Board meetings, as has been its practice prior to 2022. This request does not include video recording links to BMAHC closed meetings.

Also see the Executive Director's public comment at the August 18th Special Meeting of Council available at this [link](#) and attached to this document.

C. Analysis

As a member of the BMAHC, Council may make requests or suggestions for consideration by the Board for its decision and response. However, the Board is already considering the legal, governance and practical issues of recording meetings and how the recordings are used and disclosed.

Given Councillor Hope's notices of motion, the Executive Director consulted with legal counsel, Robins Appleby, who advised that it is recommended that the Corporation does NOT post its meeting videos online due to liability and other legal concerns. Accordingly, a fee proposal for a memorandum outlining legal and related considerations related to the recording of Board meetings has been requested from Robins Appleby.

D. Financial Impact

The budget for the proposed legal memorandum will be available at the Board meeting. The 2022 budget includes \$10,000 for legal fees unrelated to the Gateway Project of which \$2,500 is unallocated.

BMAHC has the option of requesting that the Town provide a grant for the cost of preparing the legal memorandum should the resolution of August 29th be passed.

Attachments: BMAHC Executive Director, Public Comment, August 18th Special Meeting of Council



PUBLIC COMMENT

August 18th, 2022 Town of The Blue Mountains [Special Meeting of Council](#)

My name is Jennifer Bisley. I am the Executive Director of The Blue Mountains Attainable Housing Corporation and my comments are related to agenda items F.2.1. and F.2.2., Councillor Hope's Notices of Motion.

First, I would ask Council to be mindful that the Corporation is a related but separate entity to the Town and accordingly, is subject to different legislation, bylaws, and policies.

Our starting point is the Corporations Act – not the Municipal Act. As a municipal services corporation, we are also subject to Ontario Regulation 599/06, the Municipal Conflict of Interest Act and MFIPPA – the Municipal Freedom of Information and Protection of Privacy Act.

The Town has distinct relationships with the Corporation as a member and as a funder.

As member, Council delegates a representative to attend or provide a proxy for annual and general meetings. Individual Council members do not have any special status to direct the corporation and its staff unless they are an authorized representative or a director. However, Council as member may make requests or suggestions for consideration by the Board for its decision and response at anytime.

As funder, each party's obligations are set out in loan and other agreements, and in the case of in-kind support, a Memorandum of Understanding.

With that in mind, I would like to offer the following comments specific to F.2.1

The motion states "*there was no correction made available to the members of the public who attended the Board meeting.*" For clarity, our meetings are not livestreamed and no members of the public were in attendance or had viewed the video recording.

In terms of our process to deal with corrections, the Executive Director would issue a written correction to everyone in attendance and to the Board. This was done on July 12. The written correction must also be provided to anyone who would view the recording. Board director Soever also issued an apology for misspeaking.

Accordingly, from the Housing Corporation's perspective, the record has been corrected and this matter has been dealt with.

With respect to the motion F.2.2 that Council request the recording of the Board meeting through the Town Clerk.

I would like to clarify that the Corporation does not have an issue with members of the public, including individual Council members, viewing recordings. We recognize that under MFIPPA, every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless exempt or for vexatious and frivolous reasons.

Previously, meeting recordings were posted on the website. Following an initial review of our meeting policies and procedures in January, questions about consent regarding the use and disclosure of recordings and the purpose in posting them were raised as there was no policy to provide guidance on those matters.

We are currently working on filling that policy gap to include policies and procedures that would enable us to provide access in a way where control is retained by the Corporation in order to mitigate the risk of recordings being misused.

Our procedure when a request is made to access a video is to explain why they are no longer available on the website and to offer alternatives if appropriate, such as a transcript, which was done in this case. If alternatives are not acceptable, or if the request is overly broad, we ask them to submit a FOI request so we can consider how to provide access in each situation.

In the case of an individual Council member, as was also done in this case, we advise them of a second option to make a request through a Council resolution. It would appear that this is the option being pursued through this resolution.

I hope that helps to provide additional context for those agenda items.