



**RESORT MUNICIPALITY OF WHISTLER**

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## STAFF REPORT TO COUNCIL

**PRESENTED:** December 19, 2023 **REPORT:** 23-126  
**FROM:** Planning - Development **FILE:** 3900-20-2412  
**SUBJECT:** BOARD OF VARIANCE BYLAW NO. 2412, 2023 REPORT

### RECOMMENDATION FROM THE CHIEF ADMINISTRATIVE OFFICER

**That** the recommendation of the General Manager of Climate Action, Planning and Development Services be endorsed.

### RECOMMENDATION

**That** Council consider giving first, second and third readings to “Board of Variance Bylaw No. 2412, 2023”.

### PURPOSE OF REPORT

This report presents “Board of Variance Bylaw No. 2412, 2023” (Proposed Bylaw) for Council consideration of first, second and third readings. The Proposed Bylaw is an update of “Board of Variance Bylaw No. 2100, 2015” (Current Bylaw) which will be repealed and replaced by the Proposed Bylaw.

The Proposed Bylaw has been prepared pursuant to the provincial *Local Government Act* (LGA) and aligned with the RMOW “Land Use Procedures and Fees Bylaw No. 2205, 2022” (Procedures Bylaw) to update definitions, procedures, and requirements for the operation of the Board of Variance (Board). Notable changes include an increase in application fees, adding a refund entitlement and removal of a self-imposed application deadline.

Information Report  Administrative Report (Decision or Direction)

### DISCUSSION

#### Background

The Board is a quasi-judicial body independent from Council whose powers are limited to appeals for minor variances, within their jurisdiction, on the grounds of undue hardship. Operating under the authority of the LGA, the Board rules on requests for minor variances to an applicable bylaw, an exemption from a prohibition of a structural alteration or addition to a building or structure containing a non-conforming use, or an exemption from early termination of a land use contract, where compliance would cause the owner undue hardship. The Board has broad discretion on applications within their jurisdiction when determining whether the variance that is being sought qualifies as minor and whether compliance would cause undue hardship. The most common applications considered by the Board are

for minor variances to “Zoning and Parking Bylaw No. 303, 2015” (Zoning Bylaw) respecting the siting (setbacks), size and dimensions (height) of a building or structure.

Pursuant to sections 536 to 544 and 462 of the LGA, a local government that has adopted a Zoning Bylaw must, by bylaw, establish a Board of Variance, set out the procedures to be followed by the Board and may impose associated application fees.

The RMOW has previously adopted a Zoning Bylaw, established a Board and set out the procedures and associated application fees in the Current Bylaw for the administration of the Board. Pursuant to these regulations, the Board is comprised of three members appointed by Council serving on a volunteer basis for three-year terms.

As the RMOW Planning Department administers other development approval processes for land use and development in Whistler, the Planning Department also provides the staff support required to administer the Board. This support includes receiving and managing applications, notifications, meeting logistics, recording Board decisions, and ensuring records are available to the public.

### **Analysis**

The Proposed Bylaw has been prepared for Council consideration of first, second and third readings. The following section details notable changes and improvements for each section of the Proposed Bylaw in comparison to the Current Bylaw.

### **Definitions**

The Definitions section is updated to account for the recent changes to the RMOW divisions and Planning Department structures, and to align with definitions in the recently updated Procedures Bylaw. These changes will result in more clarity with administering the Board and more flexibility within the Planning Department, which will enable management to utilize staff resources more efficiently and effectively. Changes include:

- removed definitions of “General Manager of Resort Experience” and “Secretary”; and
- added definitions of “Chair”, “Director of Planning”, “Manager of Planning” and “Staff”.

### **Staff**

The Staff (previously Secretary) section is updated to account for historical changes to the RMOW divisions and department structures, and to align with proposed definitions. These changes will result in more flexibility within the Planning Department, which will enable management to utilize staff resources more efficiently and effectively. Changes include:

- changed “duties of the Secretary shall be performed by the Corporate Officer” to proposed “staff shall provide technical support to the Board”.

### **Meeting Procedures**

The Meeting Procedures section is updated to account for historical and well-established practices of the Board and associated staff administration. These changes will result in staff being able to administer Board applications in tandem with other work priorities while preventing conflicts with Council meetings. Changes include:

- changed the day of the meeting from the last “Tuesday” of each month to “Monday”.

### **Application Requirements (Fees and Notification Sign)**

Most notably, the Application Requirements section is updated to provide a considered and equitable application fee (not updated since 2015), title search fee (service provided by request) and refund entitlement, based on the procedural steps associated with processing applications. The proposed fee increase is consistent with the estimated average cost calculation methodology used to increase the other development application fees contained in the recently updated Procedures Bylaw. These changes will result in adequate recovery of all costs incurred by the RMOW for application processing, administration, notification, inspection, and meetings required for the administration of the Board by Planning Department staff.

This section is also reorganized/reformatted and updated to align with notification sign requirements in the updated Procedures Bylaw. These changes will result in consistent, accessible and readable notification signs to community members. Changes include:

- increased application fees from \$800 to proposed \$4,000;
- added a \$35 title search fee per PID (if requested);
- added a refund entitlement of “25 per cent of the application fee”;
- changed “information sign” to proposed “notification sign”; and
- reorganized/reformatted notification sign requirements.

Staff note that although the RMOW is obligated under section 536 of the LGA to allocate funds for the operation of the Board, Board members are volunteers and are not entitled to receive compensation for their duties. The application fees collected pursuant to section 462 of the LGA are to recover average costs incurred by the RMOW for administrating Board applications.

Section 462 of the LGA establishes that a local government may, by bylaw, impose fees for an application to a Board of Variance, and further requires, that fees related to applications and inspections must not exceed the estimated average costs of processing, inspection, advertising and administration that are usually related to the type of application or other matter to which the fee relates.

### **Application and Notification Procedures**

The procedures section is updated to account for historical changes to the RMOW divisions and department structures, and to account for historical and well-established administrative procedures of the Board. These changes will result in increased flexibility within the Planning department, which will allow staff to administer Board applications equitably and effectively in tandem with other work priorities, and further enable management to utilize staff resources more efficiently. Changes include:

- clarified and reorganized procedural steps related to receiving applications, staff report, public notification, Board meeting agenda, written submissions received in advance of the meeting, and Board meeting procedures.

Most notably, this section has removed a (self-imposed, not legislated) 35-day deadline whereby a Board application may have been prioritized over other work in staffs’ queue to determine if the application was complete and could proceed to the following meeting of the Board. Staff found that the 35-day timeline was insufficient to accommodate the procedural steps (application reviews, interdepartmental referrals, requests for revisions to application materials as a result of incomplete applications, preparation and distribution of staff reports, meeting agendas and packages, public

notification, receipt and collating public comments) required in advance of the scheduled Board meeting. Changes include:

- removed “if an application is delivered to the Secretary at least 35 days before the date of a scheduled meeting of the Board, the Board shall consider the application at that meeting”.

### **Conflict of Interest**

The Proposed Bylaw introduces a new section with respect to conflict of interest to support Board members self-determination of a conflict of interest. Further, to provide procedural guidance to the Board to be taken if a conflict of interest arises. These changes will result in procedural clarity and fairness as, unlike Council, sections 100 and 101 of the *Community Charter* (relating to conflict of interest) are not applicable to the Board.

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## **POLICY CONSIDERATIONS**

### **Relevant Council Authority/Previous Decisions**

The Proposed Bylaw is consistent with sections 536 to 544 and 462 of the LGA. Specifically, section 536 of the LGA establishes that a local government that has adopted a Zoning Bylaw must, by bylaw, establish a Board of Variance and section 539 establishes that a local government must, by bylaw set out the procedures to be followed by the Board of Variance.

Further, section 462 of the LGA establishes that a local government may, by bylaw, impose fees for an application to a Board of Variance, and further requires, that fees related to applications and inspections must not exceed the estimated average costs of processing, inspection, advertising and administration that are usually related to the type of application or other matter to which the fee relates.

[January 12, 2016: Administrative Report No. 16-003](#), Board of Variance Bylaw and Process Update. This report presented the Current Bylaw for Council consideration of first, second and third readings. The bylaw repealed and replaced “Board of Variance Bylaw No. 1528, 2002” and introduced a fee increase, requirement for a notification sign and process improvements for more streamlined Board processes. Bylaw adoption was on January 26, 2016.

### **2023-2026 Strategic Plan**

The 2023-2026 Strategic Plan outlines the high-level direction of the RMOW to help shape community progress during this term of Council. The Strategic Plan contains four priority areas with various associated initiatives that support them. This section identifies how this report links to the Strategic Plan.

#### **Strategic Priorities**

- Housing

*Expedite the delivery of and longer-term planning for employee housing*

- Climate Action

*Mobilize municipal resources toward the implementation of the Big Moves Climate Action Plan*

- Community Engagement

*Strive to connect locals to each other and to the RMOW*

- Smart Tourism

*Preserve and protect Whistler's unique culture, natural assets and infrastructure*

Not Applicable

*Aligns with core municipal work that falls outside the strategic priorities but improves, maintains, updates and/or protects existing and essential community infrastructure or programs*

### **Community Vision and Official Community Plan**

The Official Community Plan (OCP) is the RMOW's most important guiding document that sets the community vision and long-term community direction. This section identifies how this report applies to the OCP.

The recommended resolution included within this report is consistent with the goals, objectives and policies included within "Official Community Plan Bylaw No. 2199, 2018", specifically the following growth management and economic viability policies:

- Maintain cost-effective and efficient delivery of infrastructure and services.
- Support the user-pay approach to municipal services while taking into consideration affordability measures and the policies of this OCP.
- Emphasize resourcefulness across the municipality while delivering cost-effective and affordable service excellence.

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### **BUDGET CONSIDERATIONS**

There are no atypical budget considerations associated with this report. Municipal staff conducted the majority of the work to implement the recommendations of this report, with some legal support. The work is accounted for in the Planning Department's operating budget.

The proposed new increased application fee is based on the estimated average costs of processing, inspection and administration related to processing this type of application consistent with the requirements of the LGA.

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### **LÍLWAT NATION & SQUAMISH NATION CONSIDERATIONS**

The RMOW is committed to working with the Lílwat People, known in their language as *L'il'wat7úl* and the Squamish People, known in their language as the *Skwxwú7mesh Úxwumixw* to: create an enduring relationship; establish collaborative processes for Crown land planning; achieve mutual objectives; and enable participation in Whistler's resort economy.

The Proposed Bylaw will apply to the Lílwat Nation and the Squamish Nation to the extent that they own property in Whistler.

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### **COMMUNITY ENGAGEMENT**

Level of community engagement commitment for this project:

Inform     Consult     Involve     Collaborate     Empower

Community engagement and consultation is not required. However, staff have informed the current Board members of the Proposed Bylaw and after Council's consideration, staff will communicate the Proposed Bylaw via the RMOW website and an email to the Canadian Home Builders Association - Sea to Sky chapter requesting they circulate to their members.

If adopted, the applicable application forms will be updated accordingly and the RMOW website will be updated to ensure all changes related to the Board process are reflected in the information provided to the public.

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## REFERENCES

"Board of Variance Bylaw No. 2412, 2023" (included in Council Package).

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## SUMMARY

This report presents "Board of Variance Bylaw No. 2412, 2023" for Council consideration of first, second and third readings.

The Proposed Bylaw has been prepared pursuant to the LGA. It incorporates and updates the relevant sections of the Current Bylaw, to update definitions, procedures, and requirements for the operation of the Board, and repeals and replaces the Current Bylaw.

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## SIGN-OFFS

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