

# Committee of Adjustment Appeals

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## Purpose statement

To provide direction respecting appeals of the town's Committee of Adjustment decisions to the provincial ~~Local Planning Appeal Tribunal (LPAT)~~ Ontario Land Tribunal (OLT).

## Scope

This procedure applies to Council and all staff in the consideration of appeals of decisions of the Committee of Adjustment (COA).

## Procedure

1. Whenever a decision of the COA is appealed to ~~LPAT~~ the OLT on behalf of the town by the Legal department, the Legal department will bring forward a confidential report seeking instructions from Council regarding town confirmation or withdrawal of the appeal and, if confirmed, town participation in the hearing.
2. Where the Director of Planning ~~& Development Services~~ ("Planning") or a member of Council makes a request for a town appeal prior to the expiry of the statutory appeal period, the Legal department shall file an appeal on behalf of the town. When the Legal department confidential report comes forward, Council ~~can~~ shall either ratify and instruct staff to continue with the appeal on behalf of the town, or direct the Legal department to withdraw the appeal. Planning staff or a Member of Council requesting an appeal shall provide the Legal department with the reasons for the appeal, in order that such information may be included in the appeal and the confidential report.

3. Where the COA approves an application ~~recommended for approval~~not objected to by the Planning department ~~staff~~, but there is a third party appeal, then the Legal department and the Planning department, as necessary, shall attend the Hearing to request ~~LPAT~~the OLT to impose any applicable conditions if the COA Approval is upheld. Town staff should only take a substantive position on the appeal if changes in the application are proposed by the Applicant and/or the Appellant or other Party, which, if approved by ~~LPAT~~the OLT, could have negative implications or ramifications for the town, such as:
  - a significant impact on town-wide issues or interests of the town;
  - an undesirable precedent with respect to the interpretation of the official plan and/or zoning by-law;
  - calling into question or undermining the interpretation of the official plan and/or zoning by-law; and/or,
  - an error at law.
4. If a substantive position needs to be taken, then the town position at any such Hearing shall be the same as taken by the Planning department before the COA, or if the application is changed, then as instructed by the Planning ~~Services~~ department. In this situation, no report to Town Council is necessary to authorize the actions by the Legal department and the Planning ~~Services~~ department under this paragraph.
5. Where the COA refuses an application ~~recommended for approval~~not objected to by the Planning department ~~by Planning department staff~~, but the applicant appeals such a decision, then the Legal department and the Planning ~~Services~~ department, as necessary, should attend the Hearing to request ~~LPAT~~the OLT to impose any applicable conditions if the COA refusal is overturned. In such circumstances, town staff should only take a substantive position on the appeal if subpoenaed by the Appellant or if called by the ~~Town~~town as to changes in the Application which are proposed by the Applicant and/or the Appellant or other Party which, if approved by ~~LPAT~~the OLT, could have negative implications or ramifications for the town, such as those described in section 3 above
6. If a substantive position needs to be taken, then the town position at any such Hearing shall be the same as taken by the Planning department before the COA, or if the application is changed, then as instructed by the Planning ~~Services~~ department. In this situation, no report to Town Council is necessary to further authorize the actions by the Legal department and the Planning ~~Services~~ department under this paragraph.
7. Where the COA approves an application ~~contrary to~~not in keeping with the Planning ~~Services~~ department ~~recommendation~~objection(s), the Legal department, in consultation with the Planning ~~Services~~ department shall, prior to the expiry of the statutory appeal period, launch an appeal to ~~LPAT~~the OLT based on the Planning

~~Services~~ department ~~recommendation-objection(s)~~ to the COA, and as soon as reasonably possible thereafter report confidentially to Council. When the Legal department confidential report comes forward, Council ~~can~~shall either ratify and instruct staff to continue with the appeal on behalf of the town, or direct the Legal department to withdraw the appeal.

8. Where the COA approves an application ~~recommended for approval~~not objected to by Planning ~~Services~~ department staff but ~~has failed~~fails to impose conditions on the approval as requested by town staff, the Legal department shall launch an appeal requesting ~~LPAT~~the OLT to impose the conditions concerned and confidentially report to Council. When the Legal department confidential report comes forward, Council ~~can~~shall either ratify and instruct staff to continue with the appeal on behalf of the town, or direct the Legal department to withdraw the appeal.
9. Where the COA approves an application ~~recommended for approval~~not objected to by Planning department staff, but ~~has made~~makes an error in law, legal staff shall launch an appeal requesting ~~LPAT~~the OLT to correct the error at law and confidentially report to Council. When the Legal department confidential report comes forward, Council ~~can~~shall either ratify and instruct staff to continue with the appeal on behalf of the town, or direct the Legal department to withdraw the appeal.
10. Where the COA refuses an application ~~where Planning Services department staff did not support the application in keeping with the Planning department objections(s)~~, and the Applicant appeals the decision, the Legal department and the Planning ~~Services~~ department shall attend the Hearing to request that ~~LPAT~~the OLT refuse the Application based on the Planning ~~Services~~ department ~~staff position before objection(s) to~~ the COA, and to impose any applicable conditions if the COA refusal is overturned. No report to Town Council is necessary to further authorize the actions by the Legal department and the Planning department under this paragraph.
11. In other unique situations that may arise from time to time, the Legal department shall appeal the COA Decision prior to the expiry of the statutory appeal period and/or confidentially report to Council, as the case may be, seeking instructions from Council as to whether it wishes the town to participate ~~in an appeal at LPAT~~in the OLT proceedings and if so, on what basis.

## Criteria

The criteria listed below ~~are to~~shall be used to guide Council when the Legal department seeks instructions in respect of a ~~Town~~town-initiated appeal of a COA decision.

A town appeal should generally be confirmed and the Legal and Planning ~~Services~~ departments directed to attend the hearing in one or more of the following circumstances:

1. Where in the case of a minor variance request, the COA Decision is not in keeping with any one of the four tests ~~for a successful minor variance~~ under subsection 45 (1) of the Planning Act and/or not consistent with the current Provincial Planning Statement(s) and/or not in conformity with any current provincial plans;
2. Where in the case of an application under subsection 45 (2) of the Planning Act , the COA Decision is not in keeping with any of the applicable tests for consideration of the application concerned under subsection 45 (2) of the Planning Act and/or not consistent with the current Provincial Planning Statement(s) and/or not in conformity with any current provincial plans ;
- 2-3. Where in the case of a severance request, the COA Decision is not in keeping with the requirements of the Planning Act related to consents and subdivisions;
- 3-4. Where the issues raised on appeal could have significant negative broader impacts or town-wide implications;
4. ~~Where the COA's decision is not in keeping with the general intent and purpose of Council's approved official plan and/or zoning by-law;~~
5. Where the COA's decision could set an undesirable precedent with respect to the interpretation of the official plan and/or zoning by-law, and/or call into question or undermine the proper interpretation of the official plan and/or zoning by-law;
6. Where the COA's decision, in the case of a severance, does not provide for the infrastructure, services, facilities, and other matters that are necessary for the creation of the new lot or lots concerned;
7. Where the COA has failed to impose conditions requested by staff, which are considered necessary if the ~~variance or severance~~application concerned is granted by the LPATOLT; and/or,
8. Where the COA has made an error in law.

## Settlements

1. As a general rule, in any appeal situation where the ~~Town~~town is involved, the Legal department, the Planning ~~Services~~ department, and any other appropriate staff, are encouraged and permitted to seek settlements that satisfactorily address the town's concerns.

2. When any appeal report is sent to Council, one of the standard recommendations shall be to authorize the Director of Planning & Development or designate and the Town Solicitor or designate to negotiate a settlement if at all possible in keeping with the town position on the particular ~~severance or variance request application~~.
3. Subject to paragraph 4 below, before finalizing and bringing a settlement forward for approval by ~~LPAT~~the OLT, the proposed settlement shall first be approved by the Mayor and the Ward Councillors.
4. Despite paragraph 3, town staff are permitted to negotiate and support settlements they believe are in keeping with the town position ~~approved by Council~~, before or at a hearing in front of the ~~LPAT~~OLT, when there is insufficient time to first show and obtain prior approval of the proposed settlement from the Mayor and the Ward Councillors. On those occasions, staff shall inform the Mayor and the Ward Councillors of the settlement as soon as reasonably possible thereafter.
5. Where a settlement is negotiated and is to be brought before ~~LPAT~~the OLT for approval, the Legal department, where there is no known opposition from neighbours or citizens to the settlement, may present the proposed settlement, including any amended application, to ~~LPAT~~the OLT on behalf of the town and the applicant, with such evidence as ~~Town~~town staff can provide.
6. Where a settlement is negotiated and is to be brought before ~~LPAT~~the OLT for approval, the Legal department, where there is known opposition by neighbours or other citizens to the applicant's proposal despite the proposed settlement, will not present the proposed settlement, including any amended application, to ~~LPAT~~the OLT on behalf of both the town and the applicant. Rather, the Legal department is to make it clear in such situations that it is the applicant's responsibility to prepare any amended application and present the settlement and the amended application to ~~LPAT~~the OLT for approval. The ~~Town~~town will only consent to the settlement and proposed amended application.
7. To encourage the negotiation of a mutually satisfactory settlement, the Legal department is authorized, when such a settlement is reached, to indicate to the applicant, where time is of the essence to the applicant, that at the applicant's option, the applicant may wish to file a new ~~second variance request~~ application reflecting the settlement to replace the original application, at the reduced fee for such applications in the town's Tariff of Fees and Charges. If the applicant pursues that option, the Legal department shall request the applicant as part of the settlement to consent to the town appeal on the first application being allowed, and the first ~~variance request~~application being dismissed if the second application is approved by the COA with no appeals filed. If the applicant does

not wish to utilize this “second application” approach, then the applicant may choose to wait for the hearing date before LPAT the OLT on the original application, where the original application can be amended in keeping with the settlement and approved as amended.

## Accountability and Transparency

Legal advice on the issue of the position of the town in respect of an LPAT OLT hearing, or consideration of an appeal, is a matter subject to solicitor-client, as well as litigation privilege. As such, the confidential reports of the Legal department in accordance with this procedure are appropriately considered in a meeting or part of a meeting of Council that is closed to the public in accordance with subsection 292(2) of the Municipal Act, 2001.

In the case of confidential reports of from the Legal department in connection with COA decisions, there would need be no separate or additional public report, but in most cases both the Council agenda and any Council resolution to resolve into closed session would should identify the specific COA decision and property that is at issue and the subject of the confidential legal report.

This would provide notice should any member of the public wish to delegate to Council concerning same.

Once Council provides instructions to the Legal department, although the report of the Legal department shall remains confidential, a public the Council resolution shall be made public and recorded in the minutes with the application and property identified.

Where the Council direction is to participate in or proceed with an appeal, the Legal department will advise the LPAT OLT that the town will be participating in the OLT proceedings including being in attendance at a hearing based on the public resolution of Council.

## References and related documents

*Municipal Act, 2001*

## Definitions

~~“COA” means Oakville Committee of Adjustment~~

~~“LPAT ” means the Local Planning Appeal Tribunal.~~

## Responsibilities

The Town Solicitor or designate shall be responsible for ensuring compliance of with this procedure and associated policy.