

## REPORT

### PLANNING AND DEVELOPMENT COUNCIL MEETING

MEETING DATE: JULY 6, 2015

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**FROM:** Legal Department

**DATE:** June 18, 2015

**SUBJECT:** Update on Committee of Adjustment Appeals Processes

**LOCATION:** Town wide

**WARD:** Town wide

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#### RECOMMENDATION:

That the procedural approach regarding appeals of Committee of Adjustment decisions set out in the Legal Department report dated June 18, 2015, be adopted and the Town Solicitor be instructed accordingly.

#### KEY FACTS:

The following are key points for consideration with respect to this report:

- On June 10, 2013, the Legal Department reported to Council on the procedures for receiving advice from and providing instruction to legal counsel regarding Committee of Adjustment (“Committee”) appeals. Council adopted criteria for making decisions on those appeals.
- This report updates Council on the implementation of that report and proposes additional procedures to provide an efficient use of internal resources while still protecting for the range of options available to Council for decisions of the Committee.
- In particular, where no staff concerns were raised with respect to applications brought to the Committee, unless further or other concerns are subsequently raised, this report recommends removing the reporting requirement for these types of appeals. Instead, it is recommended that Council instruct the Town Solicitor to take no position regarding the outcome of such appeals except to ensure that any recommended conditions are applied.
- Future reports on other types of appeals will continue to be brought to Council for consideration and instructing the Town Solicitor.

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## **BACKGROUND:**

In June 2013, Planning and Development Council was presented with a Legal Department report regarding the appeals process for appeals from Committee of Adjustment decisions. Council resolved to have regard to certain criteria in appeals of Committee decisions. For reference, see Appendix A for the June 2013 report.

As a result, for each appeal of a Committee decision, the Legal Department brings forward a confidential legal report seeking instructions from Council regarding Town participation in the hearing consistent with those criteria. The report outlines the nature of the appeal and seeks instructions as to whether the Town Solicitor should support or oppose the Committee's decision, or take no position. This was a formalization of a longer standing process and in the two years since that report, there have been 22 appeals of Committee decisions that have been handled under this process.

Of those appeals, three were initiated by the Town pursuant to procedures set out in the 2013 report; in these three cases, issues related to the proposals were raised by staff yet the Committee nevertheless approved the applications. Under those circumstances, and upon recommendation by staff, appeals were filed on behalf of the Town and instructions on those matters were then sought from Planning and Development Council.

Five of the appeals were related to circumstances where staff did not support the applications and the Committee subsequently refused the applications. In those cases, the applicant appealed to the Ontario Municipal Board and, after seeking instructions from Council, the Legal Department proceeded to oppose those appeals.

However, the majority of the appeals (14 out of 22 appeals) came about in circumstances where staff had no concerns with the applications but either the applicant appealed the Committee's denial, or a third party (often a neighbour) appealed the approval. In the last two years, Council has typically resolved to take no position on these types of appeals, other than to direct that any recommended conditions are applied. These instructions are consistent with the legal recommendations and the May 2013 report criteria.

## **COMMENT/OPTIONS:**

The Legal Department has monitored and reviewed the current practice of reporting to Planning and Development Council on each appeal received. As a result of that ongoing review, it is recommended that the reporting process be streamlined to

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reduce the number of reports necessary in response to appeals which do not typically raise concerns or have broader impacts or Town-wide implications, while still providing a process to raise concerns before Council in atypical cases.

As noted above, the majority of reports are currently coming about in the context of a staff-supported minor variance application. Where these types of applications are refused by the Committee or are appealed to the Ontario Municipal Board by a third party, this typically represents a localized dispute for which staff has not raised concerns about Town-wide implications and for which the onus is on the applicant to advocate for its applications.

Therefore, removing the need for reporting on these types of appeals would streamline internal reporting processes and conserve staff resources while, as discussed below, having little impact on Council's options should there be a desire to intervene.

Through the Secretary-Treasurer of the Committee, Council receives notice of each application made, as well as a copy of the decisions of the Committee after its meeting. No change is proposed to be made to this process and, should there be any concern with an application or decision made, a councillor may raise an issue with the Legal Department.

In the event that such a concern was raised about a specific decision, the Legal Department takes steps to protect the Town's interests in the matter and bring a report seeking instructions. For example, where a councillor or a Town department raises concerns with a Committee decision with the Town Solicitor, the Legal Department may file a protective appeal or contact the Board to request status in the appeal. This would then be followed by a report to Council seeking instructions. This has been and will continue to be the method of addressing these atypical situations.

The Legal Department also reports to Council on appeals in many other circumstances, such as:

- On appeals by the applicant where staff did not support the application and the Committee denied the application.
- On appeals where there were staff concerns, however Committee approved the application.
- On appeals of conditions applied to granted applications.
- And on other unique situations that arise from time to time.

It is not proposed to change this reporting process, and these types of reports will continue to be brought forward for Council's consideration.

By passing the recommended resolution, Council will be instructing the Town Solicitor as follows:

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- To continue preparing reports consistent with the criteria set out in the May 13, 2013 report of the Legal Department;
- That where Committee approves an application supported by staff, that Council take no position regarding third party appeals of such a decision;
- That where Committee refuses an application supported by staff, that Council take no position regarding applicant appeals of such a decision, other than to instruct the Town Solicitor to ensure that any staff-recommended conditions be applied in any approval; and
- That, despite the foregoing, in cases where additional concerns are raised, that the Town Solicitor be directed to take any action necessary to protect the Town's interests in the matter and prepare a legal report for Council's consideration.

#### **CONSIDERATIONS:**

##### **(A) PUBLIC**

Members of the public continue to be provided notice and have an opportunity to provide submissions on minor variance or severance applications to the Committee. The public's ability to participate in the process continues when a matter is appealed to the Board whose processes allow for public notice and participation. The recommended procedures provide a consistent position in respect of the decisions in which no concerns are raised by staff, yet continue to allow Council to appeal or intervene where concerns are raised. Adopting this practice helps to maintain transparency in the process for the public.

##### **(B) FINANCIAL**

Appeals to the Board from Committee decisions are typically handled by internal staff with no additional budget implications; however, adopting these procedures will reduce the number of reports necessary and allocate internal resources more efficiently.

##### **(C) IMPACT ON OTHER DEPARTMENTS & USERS**

The Commissioner of Community Development has reviewed this report.

##### **(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS**

This report addresses the corporate strategic goal to:

- be accountable in everything we do

##### **(E) COMMUNITY SUSTAINABILITY**

This issue impacts the pillar of economic sustainability through the appropriate use of internal and external resources.

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**APPENDICES:**

Appendix A – June 2013 Legal Report

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