

APPENDIX D

 The Corporation of the Town of Oakville PROCEDURE Committee of Adjustment Appeals	Procedure Number G-GEN-007-004	Page: 1 of 6
	Parent Policy No.: G-GEN-007 Author: Legal Department Authority: Council	
Section: Governance Sub-Section: General	Effective Date: 2013 Dec 16 Review by Date: <i>5 years from Council/CAO approval date</i>	Replaces/Last Modified:

Purpose statement

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

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 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 Services 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 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 by 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 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, 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.

If a substantive position needs to be taken, then the town position at any such Hearing shall be the same as taken 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.

4. Where the COA refuses an application recommended for approval 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 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 as to changes in the Application which are proposed by the Applicant and/or the Appellant or other Party which, if approved by LPAT, could have negative implications or ramifications for the town, such as those described in section 3. If a substantive position needs to be taken, then the town position at any such Hearing shall be the same as taken 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.
5. Where the COA approves an application contrary to the Planning Services department recommendation, the Legal department, when recommended by the Planning Services department or by the Mayor or Ward councilors shall, prior to the expiry of the statutory appeal period, launch an appeal to LPAT based on the Planning Services department recommendation to the COA, and as soon as reasonably possible thereafter report confidentially to Council. When the Legal department confidential report comes forward, Council can either ratify and instruct staff to continue with the appeal on behalf of the town, or direct the Legal department to withdraw the appeal.

6. Where the COA approves an application recommended for approval by Planning Services department staff but has failed to impose conditions on the approval as requested by town staff, the Legal department shall launch an appeal requesting LPAT to impose the conditions concerned and confidentially report to Council. When the Legal department confidential report comes forward, Council can either ratify and instruct staff to continue with the appeal on behalf of the town, or direct the Legal department to withdraw the appeal.
7. Where the COA approves an application recommended for approval by Planning department staff, but has made an error in law, legal staff shall launch an appeal requesting LPAT to correct the error at law and confidentially report to Council. When the Legal department confidential report comes forward, Council can 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 refuses an application where Planning Services department staff did not support the application and the Applicant appeals the decision, the Legal department and the Planning Services department shall attend the Hearing to request that LPAT refuse the Application based on the Planning Services department staff position before 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.
9. In other unique or unusual situations that may arise from time to time, the Legal department shall confidentially report to Council seeking instructions from Council as to whether it wishes the town to participate in an appeal at LPAT and if so, on what basis.

Criteria

The criteria listed below are to be used to guide Council when the Legal department seeks instructions in respect of a 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*;
2. Where in the case of a consent request, the COA Decision is not in keeping with the requirements of the *Planning Act* related to consents and subdivisions;
3. 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 consent, 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 consent is granted by the LPAT; 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 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 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.
3. Subject to paragraph 4 below, before finalizing and bringing a settlement forward for approval by LPAT, the proposed settlement shall first be approved by the Mayor and the Ward Councillors.
4. Despite paragraph 3, 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, 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 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 on behalf of the town and the applicant, with such evidence as Town staff can provide.

Procedure G-GEN-007-004, Committee of Adjustment Appeals

6. Where a settlement is negotiated and is to be brought before LPAT 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 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 for approval. The 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 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 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 a LPAT 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 the Legal department in connection with COA decisions, there would 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 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.

Once Council provides instructions to the Legal department, although the report of the Legal department remains confidential, a public Council resolution shall be 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 that the town will be 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 this procedure and associated policy.