

COMMITTEE OF THE WHOLE - DECEMBER 1, 2008

DEPUTATION - MS. VICKI KOMAR REQUEST FOR REFUND OF COMMITTEE OF ADJUSTMENT FEES

Recommendation

The Commissioner of Legal and Administrative Services and City Solicitor, in consultation with the City Clerk and Director of Enforcement Services, recommend that Ms. Komar-Apreda's request for reimbursement of fees and other costs be refused.

Economic Impact

There is no economic impact as a result of this report should Council adopt the staff recommendation.

Communications Plan

Ms. Komar-Apreda will be advised of Council's decision.

Purpose

To respond to Council's direction for a report.

Background - Analysis and Options

Ms. Vicki Komar-Apreda appeared before Committee of the Whole on June 3, 2008 to request a refund of fees paid to the City of Vaughan relating to an arbour she had built on her property at 357 Cunningham Drive in Maple.

In October 2007, the City received a complaint about the arbour. Upon investigation, it was determined that the arbour was constructed with an interior side yard setback of 0 m. whereas, based on its height of 3.13 m, the Zoning By-law requires a minimum interior side yard setback of 3.13 m.

Ms. Komar-Apreda has stated that prior to building the arbour, she sought information from the Enforcement Services Department as to whether any by-law applied to the construction of arbours. She claims that she was told that no such by-law existed and that it was not until after the arbour was erected that she was advised by the Building Standards Department that the arbour did not comply with Zoning By-law 1-88. The Director of Enforcement Services has advised that Ms. Komar-Apreda inquired regarding trees on the property.

A notice was sent to the property owners in January 2008 advising that the structure be removed or that an application to the Committee of Adjustment be made. The owners applied to the Committee of Adjustment for a minor variance. At the Committee of Adjustment meeting on March 27, 2008, the variance was refused.

On April 16, 2008, Ms. Komar-Apreda filed an appeal of the Committee of Adjustment's decision to the Ontario Municipal Board.

On June 3, 2008, the deputant was requested to submit a detailed request for reimbursement in writing to the City Clerk. At its meeting on June 11, 2008, Council referred the matter to staff for review and a report to be provided to a future Committee of the Whole.

Ms. Komar-Apreda submitted a formal request for refund of fees in a letter to the City Clerk dated June 9, 2008. She requested the following:

1. The variance (Committee of Adjustment) and appeal (OMB) fees:
 $\$635.00 + \$275.00 = \$910.00$
2. The cost of the arbour once removal confirmed:
 $\$2,400.00 + \text{GST } (\$144.00) = \$2,544.00$
3. the cost of "removal" of the arbour: TBA
4. the cost of any plantings lost as a result of the removal of the arbour: TBA

The Ontario Municipal Board heard Ms. Komar-Apreda's appeal on July 3, 2008. Pursuant to Council direction, staff attended in support of the Committee of Adjustment's refusal of the variance. During the hearing, the appellant amended her application and agreed to reduce the height of the arbour to 2.5 m and remove the lattice panels along the side of the arbour facing the adjacent property owner. Based on this, the OMB allowed the appeal and permitted the minor variance subject to conditions as per the amendment.

Following the hearing, Ms. Komar-Apreda wrote to the OMB to advise that she could not meet the conditions agreed to at the hearing. She requested that the Board permit the arbour to remain at its originally constructed height, with the existing lattice panels to be replaced with "much more open constructed lattice". The Board did not acknowledge this request in its formal Decision which was issued on August 5, 2008.

An Enforcement Services officer inspected the property in October 2008 and confirmed that the arbour has been removed in its entirety.

In a subsequent e-mail to staff, Ms. Komar-Apreda re-iterated her request for reimbursement of her fees for the Committee of Adjustment and OMB appeal but indicated that she was "willing to overlook the cost of any loss to plantings". No amount has been provided for the cost of removal of the arbour.

The Committee of Adjustment fees are set by by-law at \$635.00 for a residential variance. The key test for fees is reasonableness and Council may reduce or waive a fee if Council is satisfied it would be unreasonable to require payment.

Of the fee paid for the OMB appeal, \$125.00 is forwarded to the Board and \$150.00 represents the City's costs to process the appeal.

Relationship to Vaughan Vision 2020/Strategic Plan

This report is consistent with the priorities previously set by Council.

Regional Implications

None.

Conclusion

City staff do not recommend a reduction or waiver of the fees in this case or reimbursement of any other costs requested by Ms. Komar-Apreda.

Attachments

None.

Report prepared by:

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Respectfully submitted,

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Commissioner of Legal and Administrative Services
and City Solicitor