

**ONTARIO MUNICIPAL BOARD
APPEALS OF COMMITTEE OF ADJUSTMENT DECISIONS
STANDING INSTRUCTIONS**

Recommendation

The Commissioners of Legal and Administrative Services & Planning recommend that the following standing instructions be provided regarding City Staff attendance at Ontario Municipal Board Hearings for appeals of Committee of Adjustment decisions for minor variances and consents.

1. Appeal of a Committee of Adjustment approval where City Staff have no objections or are in support: That staff be directed to attend Ontario Municipal Board Hearings in support of the Committee of Adjustment Decision, (subject to 4 below);
2. Appeal of Committee of Adjustment refusal where City Staff support the refusal: That staff be directed to attend Ontario Municipal Board Hearings in support of Committee of Adjustment Decision, (subject to 4 below).
3. If a Committee of Adjustment decision is contrary to the staff position: That staff attend Ontario Municipal Board Hearings only to request conditions, if any, should an application be approved.
4. Where a Committee of Adjustment decision in Categories 1 and 2 does not have significant impacts or broader implications, or where the parties are represented by lawyers and/or planners; That staff attend Ontario Municipal Board Hearings only to request conditions, if any, should an application be approved.
5. If a revised proposal or a settlement proposal is submitted and staff and the parties have no objections; Staff advise the Ontario Municipal Board that the City supports the revised or settlement proposal.

Economic Impact

There is no economic impact as a result of this report.

Communications Plan

N/A.

Purpose

The purpose of this report is to seek Council's standing instructions regarding appeals of Committee of Adjustment decisions to the Ontario Municipal Board.

Background - Analysis and Options

The *Planning Act* provides that Decisions by the Committee of Adjustment and conditions imposed by the Committee may be appealed to the Ontario Municipal Board. It has been the longstanding practice to provide a report to Council prior to each OMB Hearing to seek instructions regarding Legal and Planning staff attendance at the Hearings, once scheduled.

The OMB schedules hearings and provides 30 days notice. With the new Committee and Council meeting schedule, and the summer and holiday hiatuses, standing instructions would allow the

City to facilitate the OMB when the Board is scheduling hearings particularly regarding length of hearings when the City's participation would be known. This may result in speedier resolutions of appeals for residents.

Currently, there are significant, lengthy OMB Hearings which have been scheduled to the end of June 2009. There are 6 OMB Hearings of Committee of Adjustment appeals scheduled in February and March. While the City has retained external counsel on two of the lengthy matters, the Solicitor/Litigation is assisting with the preparation of and reviewing comments, reports and witness statements of City staff and external consultants to keep costs down. It is a more cost effective use of City staff time to attend the matters with significant planning issues for the City.

The appeals fall into four main categories. In Category 1, City Departments have no objections and Planning Staff are in support of minor variance and consent applications, and the Committee of Adjustment approves the applications. Appeals may be filed by neighboring owners for various reasons. Category 2 are instances where City Staff are not in support and the Committee of Adjustment refuses the applications, which are then appealed by the applicant. In both examples, Council has historically directed City Staff to attend OMB Hearings in support of the Committee's decisions. These two examples comprise the majority of appeals over the past years.

An example of variances having broader impacts are those which could set precedents for areas or where Council has set a particular standard, such as lot coverage and front yard setbacks in R1V zones. Another example would be severance applications when staff indicate a plan of subdivision is necessary, or that a matter should proceed by way of zoning by-law amendment, rather than minor variance.

The issue of broader implications is generally a planning matter, and would be determined by the Commissioner/Director of Planning in consultation with the Legal Services Dept.

In Category 3, two instances here involve (1) Planning or other staff are not in support and the applications are approved, (2) Planning Staff are in support and the applications are refused. Council has historically directed staff to attend and take no position, but request conditions, should the OMB deal with the appeals resulting in the approval of the applications.

Category 4 involves matters from Categories 1 and 2, but deals with circumstances when the City's interests in the matter before the OMB are minimal, as no public interest or issue is involved, and in those circumstances, attendance is not necessary.

When the decision of the Committee of Adjustment is clearly dealing with a variance or consent request that has no material impact on area wide or City wide issues or interests, or where the appeal relates to a dispute between neighbors, the City need not attend the Hearing. One example would be a very small (4 to 6 inches) side yard variance, or a variance for an air conditioner.

There are also a number of cases where both the applicants and appellants are represented by lawyers and/or have planning consultants. In these cases, unless there is a significant impact or broader implications, City legal and planning staff need not attend. The Board can request a City representative attend the hearing if it has a question. City legal staff have always advised sitting Board Members that staff are available to provide assistance to the Board if the Board has a question. In Category 4 cases, staff would attend the Hearing to request conditions, if any, in the event the variance/consent is allowed.

There are instances where a revised proposal or settlement proposal may be submitted to settle an appeal. If there is City Staff support for such a settlement proposal, and other parties involved in the appeal are in support, Council has also usually directed that the OMB be advised the City supports the settlement. It would be appropriate that the standing direction in Recommendation 5

be given as well, as such proposals are usually just prior to the Hearing and there may not be a Council meeting prior to the Hearing to obtain instructions on the settlement.

Presently, the Legal Services Department provides a list of upcoming Ontario Municipal Board matters which is revised as Prehearings, Motions, and Hearings are scheduled. This list would now be accompanied by a short memo providing information regarding each Committee of Adjustment appeal (location, nature of appeal, standing instructions) for Council's information.

Staff will report on matters requiring further direction or the provision of legal advice to Council as authorized by Section 239 (c) (e) of the *Municipal Act*. Particular applications may result in direction to attend depending on the circumstances. Council will also be advised of the outcome of each matter after the Hearing, as is the present practice.

Relationship to Vaughan Vision 2020

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Regional Implications

None.

Conclusion

Standing instructions will allow potential appellants to take the City's position into account when deciding whether to appeal. This may result in frivolous appeals not being filed.

The provision of standing directions regarding Ontario Municipal Board appeals of Committee of Adjustment decisions will facilitate efficient and effective use of staff time, and will afford applicants and the public with knowledge of the City's position when they start the process. The recommended standing instructions reflect Council's historical practice in providing direction to staff regarding attendance at OMB Hearings.

Attachments

None

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Respectfully submitted,

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