

Committee of the Whole Report

DATE: Tuesday, April 02, 2019

WARD(S): ALL

**TITLE: PROCEDURAL BY-LAW FOR THE CITY OF VAUGHAN
COMMITTEE OF ADJUSTMENT**

FROM:

Nick Spensieri, Deputy City Manager, Corporate Services

ACTION: DECISION

Purpose

To seek approval of a By-law to establish procedures for the City of Vaughan Committee of Adjustment, substantially in the form of the Draft Committee of Adjustment Procedural By-law in Attachment #1.

Report Highlights

- In May 2017, a formal review process with respect to Committee of Adjustment procedures was initiated by the Office of the City Clerk following Royal Assent of Bill 68, which ushered in an enhanced municipal accountability framework for all municipalities and local boards in Ontario.
- To improve the quality of public administration, the procedural by-law will provide a governance structure that will be used to guide staff and citizen appointees in the execution of their statutory duties.
- The By-law will reduce the likelihood of procedural errors and will establish a consistent process to be observed in all proceedings of the Committee.

Recommendation

1. That a By-law be enacted to establish procedures for the City of Vaughan Committee of Adjustment, substantially in the form found in Attachment #1.

Background

The Committee of Adjustment (“the Committee”) is appointed by Council to consider development applications for Minor Variance and Consent under the jurisdiction of the *Planning Act*. The Committee is composed of five (5) citizen appointees who sit for the duration of the term of Council, or until the next Committee is appointed.

The Committee, while a local board of the City, is also considered a quasi-judicial body tasked with adjudicating a statutory process. Considering this, the Committee must conduct itself in accordance with the Statutory Powers and Procedure Act (SPPA), the Municipal Conflict of Interest Act (MCIA) and must apply the Principles of Natural Justice, to ensure that an applicant receives a fair and unbiased hearing before a decision is made that will affect them.

The Committee, being a tribunal governed by the SPPA, has the power to determine its own procedures and practices. These rules and practices must be consistent with the SPPA and with other governing Acts, including the City’s Procedural By-law governing Council and Committees of Council (By-law 7-2011).

Research & Consultation

In May 2017, a formal review process with respect to Committee procedures was initiated by the Office of the City Clerk following Royal Assent of Bill 68, which ushered in an enhanced municipal accountability framework for all municipalities and local boards in Ontario. This process included a review of the Committee’s Rules of Procedure & Conduct of Meetings which was established on July 8, 1987. It was determined through this review that many of the provisions contained in the procedural document did not align with current practice.

A comparison study was conducted on Committee of Adjustment practices and procedures in the Greater Toronto Area. Municipal by-law’s for Ajax, Brampton, Caledon, Markham, Mississauga, Milton, Oakville and Uxbridge were reviewed to compare Council approved procedures relating to the execution of the Committee’s statutory duties.

The By-law was prepared in consultation with the Office of the City Clerk and the Office of the City Solicitor to ensure consistency with established processes and applicable law.

As part of the review, a copy of the draft By-law was provided to the 2014-2018 Committee (as appointed by Council) on November 15, 2018 for review and comment. Feedback received, where appropriate, has been incorporated into the By-law.

Previous Reports/Authority

Committee of Adjustment has been established by Council pursuant to the *Planning Act*, R.S.O. 1990, c.P. 13, as amended;

The *Municipal Act, 2001*, S.O. 2001, c. 25 requires that every municipality and local board shall pass a procedure by-law for governing the calling, place and proceedings of Meetings.

Analysis and Options

The average number of applications before the Committee each year, computed from 2011-2018, is 393 (42 Consents/351 Minor Variances). Table 1.1 provides an annual breakdown of applications received.

Based on this data, the Committee and staff interact with hundreds of citizens each year, including the applicant, their agents and the public. To improve the quality of public administration, the Procedural By-law will provide a governance structure that will be used to guide staff and citizen appointees in the execution of their statutory duties. The By-law will also reduce the likelihood of procedural errors and will establish a consistent process to be observed in all proceedings of the Committee.

Procedural matters not governed by this By-law will continue to be governed by the provisions of the City's Procedural By-law governing Council and Committees of Council (By-law 7-2011), or its successor.

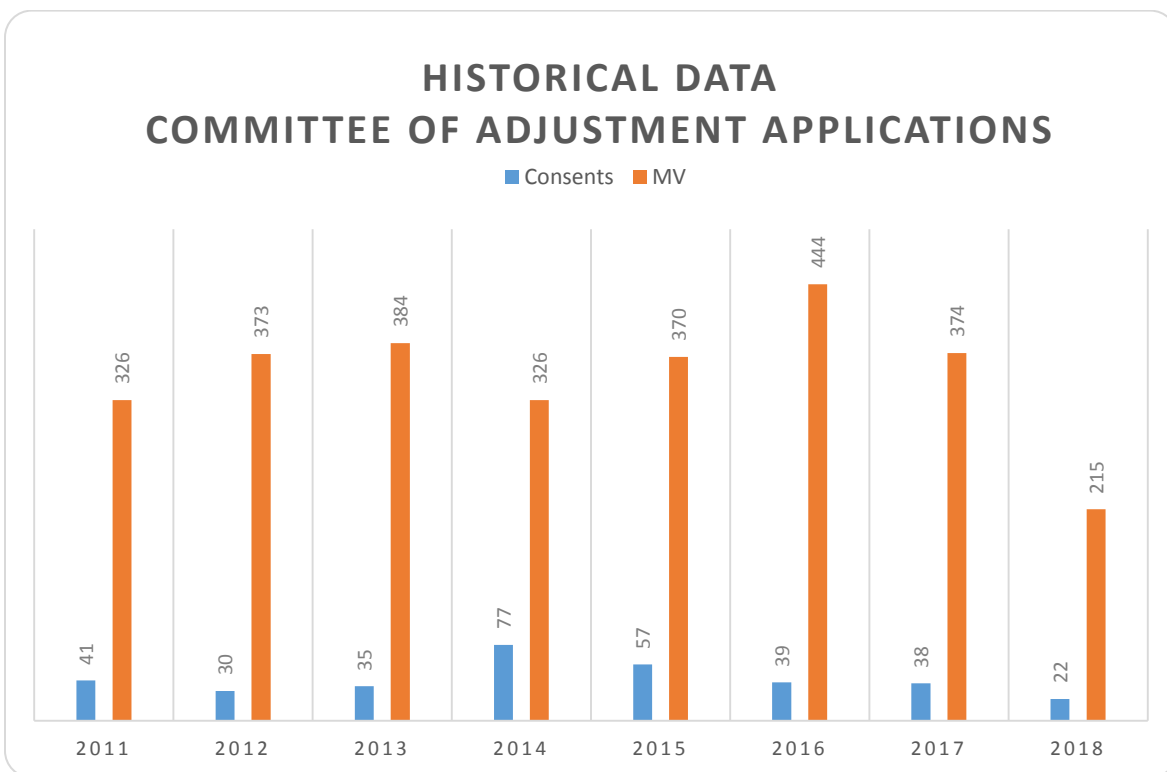


Table 1.1: Historical Data

Summary of By-law Provisions

**General reference to legislative requirements, where applicable, have been provided.*

Part 1: Definitions

Part 2: Application

Part 3: Meetings - General

- Calling of Meetings (**Planning Act, Municipal Act and SPPA*)
- Composition (5 Members, as appointed by Council)
- Election & Role of the Chair (**Planning Act*)
- Quorum (**Planning Act, MCIA*)
- Conflict of Interest (**MCIA*)

The provisions under Part 3, provide discretion for the Secretary Treasurer to call meetings of the Committee of Adjustment in accordance with the Act. Meetings are established to ensure that applicant submissions are scheduled in a timely fashion which may, from time to time, require rescheduling to accommodate religious holidays, quorum and the number of applications being processed. In addition, statutory requirements must be taken into consideration which require applications for minor variance to be heard within thirty (30) days. Currently, meetings generally occur every two weeks.

Given the quasi-judicial nature of the Committee, and applicable legislation, Part 3 provides that all meetings are to be open to the public. To ensure that closed meetings do not occur, except for permitted circumstances, as provided in the *Municipal Act*, general provisions have been included to guide the Committee in this regard.

Additional provisions in Part 3 provide for the election and appointment of Chair and Vice Chair, quorum as required by the *Planning Act*, and ensure declarations of interest comply with the MCIA.

Part 4: Meeting Procedures

- Order of Committee Business
- Introduction of Applications on the Agenda
- Public Participation

Established meeting procedures of the Committee have been incorporated into Part 4 of the By-law to ensure that the dispatch of business items, including the disclosure of pecuniary interest, are expedited by the Chair in a consistent and efficient manner. Part 4 also establishes process with respect to public participation to ensure fair and equal treatment of submissions before the Committee.

Part 5: Conduct at Hearings (**SPPA, MCIA, Code of Conduct as approved by Council*)

- Member Conduct
- Public Conduct

The Committee operates in a quasi-judicial manner, similar to a court of law. Evidence is introduced, the merits of the application are weighed, and the Committee renders a decision based on the facts presented. Considering this, Part 5 of the By-law provides for member conduct during a hearing and ensures that members do not discuss the merits of the application, or any matter in connection with an application, with any individuals prior to a hearing which may impact their ability to render an impartial

decision. In addition, the Committee must also adhere to the Code of Conduct, as approved by Council.

Part 6: Decisions (**Planning Act, SPPA*)

To ensure that decisions are made in accordance with the *Planning Act* and formal meeting procedures, Part 6 provides for a consistent voting process with respect to rendering a decision to approve, refuse or adjourn an application. Additionally, this section guides the Committee to ensure that decisions made comply with statutory requirements.

Part 7: Motions & Voting

Appointed Committee members must understand the process of making motions to ensure that no decision is accepted without the opportunity for discussion and a vote. The intention of Part 7 is not to comprehensively cover motion and voting procedures (as per Robert's Rules of Order et al.) as this can be communicated by the Secretary Treasurer, but to ensure that the Committee and the public understand the following:

- a) implication of a failed motion
- b) how to motion / vote on related applications
- c) the impact of abstention from voting
- d) voting rights of the Chair in the event of an even number of members; and
- e) clarification that a tie vote will be deemed a refusal as the majority of the members did not concur (as per the *Planning Act*).

Part 8: Public Oral & Written Submissions

In addition to being provided a staff report, which includes comments received from the public, staff and external agencies, the Committee must review a number of addendums to their reports prior to the hearing. To accommodate processing of addendum items (which include distribution to the applicant, staff and the Committee) and to permit adequate review time, a deadline of 12:00 p.m. on the day of the scheduled hearing date has been established. This deadline ensures that submissions are given fair and equal consideration and contributes to the Committee's ability to render an informed decision.

Part 9: General

- Site Visits (**The applicant, as part of the application process, grants permission to members and staff to enter upon the subject land for inspection purposes.*)
- Absenteeism & Vacancy

While staff, acting in an advisory capacity, provide technical review and comment, members can also conduct a site visit to obtain additional context of an application and the surrounding properties. While general procedures have been developed to assist the Committee, the By-law highlights that members shall not discuss amongst themselves or with the applicant or any other interested individuals, any merits of the application or any matter in connection with the application during the site visit. In addition to consistency with member conduct provisions contained in Part 5, provisions relating to the site visit support impartial decision making, discourage bias and endorse fair hearing practices.

Provisions relating to absenteeism and vacancy are consistent with the City's Procedural By-law governing Council and Committees of Council (By-law 7-2011).

Part 10: Administration

- Application Submission
- Fees (**City of Vaughan By-law for Fees & Charges under the Planning Act for Committee of Adjustment Applications*)
- Errors (**SPPA*)
- Inactive Files
- Minutes & Records (**Planning Act*)
- Remuneration (**Honorarium By-law 88-2009*)

Administrative provisions contained within Part 10 of the By-law have been applied to functions that require consistent practices to ensure fair, accountable and transparent service delivery.

Refund of Application Fees

All applications are subject to the City's By-law for Fees and Charges under the Planning Act for Committee of Adjustment Applications.

Upon the submission of an application and required fee, staff will begin a formal review. During this process, it may be identified by staff that a request for relief from the City's Zoning By-law or consent under the *Planning Act* is not required, or at any point, the applicant may decide to withdraw their application for a variety of reasons (i.e. not supported by staff or the Committee etc.).

To close their file, an applicant will submit a request in writing and in many cases, will include a request for a full refund of their application fee. In these instances, staff would like to apply a fair and consistent approach to providing refunds that also supports recovery of processing costs. To address this, the By-law has identified 4 stages of processing, which support refunds based on the percentage of work completed on a file.

| Stage | Request | Refund (% of Fee) |
|-------|--|----------------------|
| 1 | If request for Application withdrawal is received prior to Staff/Agency Circulation (typically 5-7 days after submission): | 90% |
| 2 | If request for Application withdrawal is received after Staff/Agency Circulation but prior to Public Notice being issued: | 70% |
| 3 | If request for Application withdrawal is received after issuance of Public Notice but prior to the scheduled Public Meeting: | 25% |
| 4 | After Public Meeting: | 0% |

Stage 1:

Application is reviewed for complete submission requirements, set up in AMANDA and a full review by the Building Standards Department with respect to confirming variances and Zoning By-law requirements is completed.

Stage 2:

In addition to stage 1, the application has been circulated for review to staff (i.e. Planning, Development Engineering etc.) and agencies. During this stage, Planning and Development Engineering staff complete their review and meet with Committee of Adjustment staff to confirm recommendations of approval/refusal/adjournment. After this internal meeting, the applicant will be given an opportunity to adjourn their application to address any issues or requests for additional information, if required.

Stage 3:

In addition to stages 1 & 2, Committee of Adjustment staff circulate public notice to all residents within 60 metres of the subject land (in accordance with the *Planning Act*) and review and consolidate all comments received into a comprehensive report pertaining to the application. This report is provided to the applicant, their agents, the public and the Committee and is made available on the City's website.

Stage 4:

In addition to stages 1, 2, & 3, a decision to approve, refuse or adjourn the application is made by the Committee.

The Secretary Treasurer shall only be authorized to approve a refund of the Consent or Minor Variance Application Fee in accordance with Section 10.3 of the By-law.

Adjournment Fees

The inclusion of an adjournment fee was incorporated into the City's By-law for Fees and Charges under the Planning Act for Committee of Adjustment applications in 2017 as part of the Development Services Fee Structure Review. The fee recovers the costs

associated with re-processing an application (to a subsequent agenda) on the direction of the applicant.

The fee becomes applicable when an applicant is provided an opportunity (from staff) to adjourn an application, prior to the issuance of public notice in order to address issues/staff concerns and/or requirement for outstanding information. Should an applicant wish to proceed to a hearing in light of recommendation, and the application requires adjournment after the issuance of public notice, an adjournment fee (to reschedule the application to a subsequent agenda) is applicable.

In cases where an applicant has not been provided with a recommendation to adjourn prior to the issuance of public notice and an issue arises with their application, the By-law provides that the Secretary Treasurer can waive the fee.

Financial Impact

There are no financial impacts associated with this report.

Broader Regional Impacts/Considerations

There are no regional impacts/considerations associated with the report.

Conclusion

A Procedural By-law governing the Committee of Adjustment is being proposed to ensure compliance with applicable legislation and to promote consistency in the performance of statutory duties.

For more information, please contact: Christine Vigneault, Manager of Development Services & Secretary Treasurer to the Committee of Adjustment.

Attachment

1. Draft Committee of Adjustment Procedural By-law

Prepared by

Christine Vigneault, Manager of Development Services & Secretary Treasurer to the Committee of Adjustment, Extension 8332.