



TORONTO STAFF REPORT

April 13, 2006

To: City Council

From: Auditor General

Subject: Auditor General's Review of Certain Applications Before the North York Committee of Adjustment on September 22, 2005

Purpose:

At the meeting of October 28, 2005 City Council adopted a motion to provide for the Auditor General to conduct a review “respecting the processing and hearing of certain applications to the Committee of Adjustment”.

The motion adopted by Council also stated, “the Auditor General provide findings to Council for consideration with the report from the City Solicitor”. The Auditor General was requested to investigate the manner in which this matter was brought before the North York Community Council.

This report responds to City Council's request, summarizes issues identified in our audit and provides recommendations for improvements to Committee of Adjustment processes, procedures and deliberations.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that:

- (1) the following recommendations in the Auditor General's confidential report entitled “Review of Certain Applications Before the North York Committee of Adjustment on September 22, 2005 – In Camera” be adopted:

- "1. The Deputy Secretary-Treasurer of the Committee of Adjustment and other Committee of Adjustment staff refrain from offering advice or guidance in a manner that could be construed as an attempt to influence decisions of the Committee of Adjustment.
2. The Deputy Secretary-Treasurer of the Committee of Adjustment ensure that Committee of Adjustment Pre-Briefing meetings in North York are open to the public. In addition, advance notification to the public of such meetings be communicated in an appropriate manner.
3. The Chair of the Committee of Adjustment ensure that the actions of any individual including Council members and staff attending Committee meetings are consistent with the arm's-length, quasi-judicial nature of the Committee. Any actions compromising this position should be immediately dealt with by the Committee Chair.
4. The Chair of the Committee of Adjustment should clearly indicate during the meeting when a decision on an application is reserved. In addition, information relating to when reserved decisions will be addressed should be communicated to the public.
5. The Chair of the Committee of Adjustment should follow generally accepted rules of procedure and in all cases, clearly and officially signify to all of those in attendance at the meeting when the meeting is adjourned.
6. The Committee of Adjustment, in clarifying its roles and responsibilities, should seek advice from legal staff. The Committee of Adjustment, as a quasi-judicial tribunal operating at arm's-length from City Council, should refrain from seeking advice on its roles and responsibilities from City Council members. In this context and in order to ensure that the Committee of Adjustment clearly understand their roles and responsibilities, the development of a mandatory training program be considered.
7. Committee of Adjustment staff should establish a protocol whereby all appropriate parties, including the public, are notified of Committee decisions in writing at the same time.
8. Committee of Adjustment staff should ensure that the communication of Committee of Adjustment decisions to interested parties and the public is consistent and timely.
9. All Committee of Adjustment meetings should be held in public with proper advance notification. In the event a special meeting to deliberate on a reserved application is required, minutes should be taken, and at least one Committee of Adjustment staff member should be present.

10. The Committee of Adjustment should ensure that once applications are approved and decisions communicated to third parties, revisions should only be considered for typographical errors, errors of calculations or similar errors made in its decision or order.
11. The Chair of the Committee of Adjustment should ensure all applications before the Committee are appropriately tabled, considered and voted on in a manner consistent with the Rules of Procedure established for the Committee.
12. The Committee of Adjustment, as a quasi-judicial tribunal that is required by law to operate at arm's-length from and independently of City Council should not request Community Councils or other legislative bodies to intervene on applications considered by the Committee.
13. The Chief Planner and Executive Director (in consultation with the City Solicitor and the Integrity Commissioner) should develop proposals for Council on a protocol for the handling of complaints against Committees of Adjustment and their members (including identification of the appropriate legislative body or official for the receipt and investigation of complaints).
14. The Chair of the Committee of Adjustment, Committee of Adjustment members and appropriate support staff should ensure that only issues discussed at regular Committee meetings be included in the minutes prior to their adoption. Once prepared, with the exception of minor revisions allowed under the Rules of Procedure, minutes should not be amended.
15. The Chief Planner and Executive Director be requested to report back to City Council on a policy related to financial conditions attached to applications considered by the Committee of Adjustment. Such a policy to address:
 - the appropriateness of current practice;
 - the adoption of a consistent process across the City;
 - the adequacy of controls relating to accounting for financial contributions; and
 - the criteria, including the approval process, relating to the use of such funds."

Background:

At its meeting held on October 26, 27, 28 and 31, 2005, City Council adopted Clause 29 of North York Community Council Report 8 requesting the Auditor General to conduct a review "respecting the conduct of the processing and hearing of certain applications to the Committee of Adjustment." The motion further requested that the Auditor General provide his findings to the City Solicitor and that the City Solicitor report, in consultation with the Integrity Commissioner, directly to City Council as to whether there may be reasons to consider this matter further and, if so, the appropriate procedures under which that further consideration should be carried out.

The motion adopted by Council also stated, "the Auditor General provide findings to Council for consideration with the report from the City Solicitor." The Auditor General was requested to investigate the manner in which this matter was brought before the North York Community Council.

Comments:

This confidential report outlines the results of our review of the processing and hearing of certain applications presented to the Committee of Adjustment. In accordance with Council direction, we have consulted with both the City Solicitor and the Integrity Commissioner in relation to information provided in our report. The City Solicitor and Integrity Commissioner intend to submit reports under separate cover to City Council in relation to their respective findings.

Conclusions:

The objective of this review was to determine whether the Committee of Adjustment and related City staff complied with relevant legislation and City policies, and whether or not opportunities exist to strengthen how the Committee of Adjustment conducts its work.

Our review focused on the North York Committee of Adjustment process related to the three applications in question and did not include a review of the content, reasonableness or technical aspects of the three applications in question.

The confidential report identified certain procedural irregularities relating to the way the Committee of Adjustment dealt with three specific applications. We have discussed these procedural irregularities with the City Solicitor who is reporting separately on the significance of these issues.

Our confidential report also contains specific recommendations in relation to Committee of Adjustment processes, procedures and deliberations.

Our review identified a number of areas requiring improvement. Addressing the recommendations in this report will provide for more effective processing of applications brought before the Toronto Committees of Adjustment.

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