
Review of Certain Applications Before the North York Committee of Adjustment on September 22, 2005

Portions of this report have been redacted to comply with the provisions of the Municipal Freedom of Information and Protection of Privacy Act and other confidentiality requirements

April 13, 2006

 **TORONTO** Auditor General

**Review of Certain Applications Before the
North York Committee of Adjustment
on September 22, 2005**

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April 13, 2006

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INTRODUCTION

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”. City Council expressed concerns regarding the North York Committee of Adjustment’s processing and hearing of these applications. The motion adopted by City Council provided for the Auditor General’s findings to be provided “to the City Solicitor and that the City Solicitor report in consultation with the Integrity Commissioner, directly to Council on 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 also requested to investigate the manner in which this matter was brought before the North York Community Council.

This report has been reviewed with the City Solicitor and the Integrity Commissioner.

This report outlines the results of our review of the processing and hearing of certain applications presented to the Committee of Adjustment.

Summary of Issues

The issues raised in this report are summarized as follows:

1. Potential Influence of Committee Members by Committee of Adjustment Staff;
2. Potential Influence of Councillors and Related Staff Attending Committee Meetings;
3. Minutes Maintained by the Secretary; Protocol Related to Reserve Decisions; Adjournment Procedures; and Committee Consultation with a Councillor;
4. Unscheduled Disclosure of Committee Decisions in Advance of General Notification;
5. Delay of Public Notification of Committee Decisions;

6. Informal Committee Meetings Held Outside of Public View;
7. Introduction of Unofficial Revised Minutes from Non-public Committee Meeting;
8. Adoption of Revised Minutes by the Committee of Adjustment;
9. Appropriateness of Committee Referral to the North York Community Council;
10. The Manner in which this Matter was Brought before the North York Community Council;
11. Further Revisions to October 6, 2005 Minutes; and
12. Other Issues.

The report is organized in a manner facilitating first an understanding of the chronology of events. Table 1 in the pages that follow provides a brief description of the three applications in question. Table 2 provides a factual chronology of the events as they unfolded without commentary. Further commentary and analysis of the details relating to each event described in Table 2 is then provided in the remainder of the report.

RECOMMENDATIONS

The following is a list of recommendations contained in the report.

- 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

The purpose of this review was to investigate concerns raised related to the processing and hearing of certain applications to the North York Committee of Adjustment. 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 provided for the Auditor General’s findings to be provided “to the City Solicitor and that the City Solicitor report in consultation with the Integrity Commissioner, directly to Council on 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.”

As well, 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 also requested to investigate the manner in which this matter was brought before the North York Community Council.

A review of the content, reasonableness or technical aspects of the three applications in question were not considered as part of our review.

Background on the Committee of Adjustment

The Committee of Adjustment is a quasi-judicial body appointed by City Council and established under the Planning Act, Part V, Land Use Controls and Related Administration. The Planning Act prescribes certain requirements related to the Committee of Adjustment including the powers of the committee, rules of procedure, filing of documents, officers and terms of office.

Section 44 of the Planning Act provides for the establishment of a Committee of Adjustment. Section 45 of the Planning Act sets forth the powers of the Committee of Adjustment as follows:

“The Committee of Adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under Section 34 or 38 of the Planning Act, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee, the general intent and purpose of the by-law and of the official plan, if any, are maintained.”

The Committees operate in panels corresponding to Community Council boundaries. The Committee of Adjustment is comprised of five members consisting of a Chair (non-voting) and four members appointed by members of City Council. The members of the Committee hold office for the term of the council that appointed them.

Committee Responsibilities and Duties

Committee members are bound by a published Code of Conduct and Rules of Procedure. The Committee is required by law to operate at arm's-length from and independent of Council. In fulfilling Committee related duties, Committee members review information packages for upcoming meetings and participate in site visits for applications as appropriate. Committee members also attend agenda pre-briefing meetings and Committee meetings held at Civic Centres.

Committee members may approve applications with or without conditions, or reject applications. When conditions are imposed, they should be reasonably related to variances considered under the application.

The Chief Planner and Executive Director is the appointed Secretary-Treasurer of the Committee. This responsibility has been delegated to a Deputy Secretary-Treasurer.

Councillors appear before the Committee at times to express views on applications of their constituents and to request adjournments of applications in order to consult with affected applicants and formulate positions. As a quasi-judicial tribunal, the Committee of Adjustment must maintain independence from those who appoint them and those who appear before them.

If a Councillor disagrees with a decision made by the Committee of Adjustment, the Councillor may bring a Notice of Motion for Council approval directing the City Solicitor to appeal the Committee's decision to the Ontario Municipal Board.

Background and Chronology related to the Three Applications in Question

Table 1 below provides a brief description of the three applications in question. Table 2 provides a description of the chronology of events relating to these applications.

TABLE 1

Description of the Three Applications in Question

Application #	Address	Description
A0457/05NY	2737 Keele Street	This application was first considered by the Committee of Adjustment in August 2005. A two-phase project, the first phase relating to conversion of a hotel to a residential building approved by the Committee in 2004. The second phase requests a seven storey residential condominium on top of an existing five storey parking garage. The Committee reserved the decision to a later date pending receipt of additional materials requested of the applicant.

Application #	Address	Description
A0724/05NY	231 Olive Avenue	Building of new residence, first considered at September 22, 2005 Committee meeting.
A0693/05NY	0 Bayview Avenue	This application was first considered by the Committee of Adjustment on September 8, 2005 this application requested an increase to the permitted number of residential units and to alter the permitted building terrace lengths and the minimum required parking. The Committee deferred the application to September 22, 2005.

Chronology of Events Relating to Applications in Question

As previously mentioned, Table 2 below provides a description of the events related to the Committee of Adjustment's consideration of the three applications in question.

TABLE 2

Chronology of Events – September 22, 2005 through October 20, 2005

Date	Time	Event	Description
9/22/05	11:00 a.m.	Pre-briefing Meeting	<p>A pre-briefing meeting takes place prior to all scheduled Committee of Adjustment meetings. This meeting is open to the public although in general, members of the public do not attend. Normally, only the Deputy Secretary-Treasurer and Committee members attend the pre-briefing meeting. At pre-briefings, the Deputy Secretary-Treasurer ensures that Committee members are briefed on applications scheduled for consideration that day.</p> <p>During this pre-briefing meeting, a review of key issues relating to all applications on the agenda was conducted by the Deputy Secretary-Treasurer. Among the applications discussed was the 2737 Keele Street application. During these discussions it is alleged and we confirmed that the Deputy Secretary-Treasurer mentioned potential litigation against the City relating to this application.</p>

Date	Time	Event	Description
9/22/05	2:00 p.m.	Committee of Adjustment Meeting	<p>Four Committee of Adjustment staff members and all five Committee members including members of the public and applicant representatives were present at this meeting. One Councillor (Filion) was also present at the beginning of the meeting.</p> <p>In accordance with past practice and Committee of Adjustment meeting protocol, the adoption of past meeting minutes follows the Declaration of Interest under the Municipal Conflict of Interest Act.</p> <p><u>A0457/05NY (2737 Keele Street)</u></p> <p>The Committee addressed reserved decisions from prior meetings including the 2737 Keele Street application. The Committee considered two staff reports recommending a rejection of the application and a submission from legal counsel representing the applicant supporting the application. The City Planning Manager responsible for the staff reports was also present and answered questions posed by Committee members. The minutes also reflect that a City Councillor (Filion) in attendance, spoke against approval of the application. The Councillor expressed concern related to a perceived lack of public process and questioned the Committee's jurisdiction to rule on an application of its size and significance. Upon conclusion of these reports and deputations, the Committee decided to reserve this application.</p>

		<p><u>A0724/05NY (231 Olive Street)</u></p> <p>Following the consideration of several other applications, the Committee considered an application related to 231 Olive Street. A Councillor's (Filion/Moscoe) assistant present, noted certain errors in the staff report relating to this application and the Committee decided to reserve this application.</p> <p><u>A0693/05NY (0 Bayview Avenue)</u></p> <p>The Committee considered an application related to 0 Bayview Avenue previously reserved on September 8, 2005. A number of persons appeared before the Committee relating to this application including two City Councillors, one representing the ward relating to the application (Shiner), the other representing the adjoining ward (Filion). Staff recommended the approval of the application subject to certain conditions relating to this application. After staff presentations and Councillor deputations, the Committee voted to reserve this application.</p> <p>As both Councillors exited the meeting room (just prior to 7:30 p.m.), both were aware that the Bayview and Keele applications had been reserved. Both provided their respective contact information to staff and requested to be informed of the final Committee action related to the two reserved applications.</p>
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Date	Time	Event	Description
9/22/05	7:30 p.m.	Other critical meeting points	After considering the remaining items on the agenda, Committee meeting minutes indicate that the reserved decisions were taken up again by the Committee. The original minutes do not reflect an official action by the Committee Chair to adjourn the meeting (such as sounding a gavel) however an adjournment time is noted. Our discussions with Committee members, staff and other individuals present indicate that the meeting room was vacated by everyone with the exception of staff and Committee members prior to considering reserved decisions.
		Motions on reserved decisions made, seconded and approved	Minutes indicate two of the three reserved applications described above were discussed in detail (the other, 231 Olive Street, was approved subject to conditions with little discussion) and unanimously approved subject to conditions. The discussions relating to 2737 Keele included discussions concerning the financial contribution appropriate for community benefits. Minutes reflect specific Committee members as motion makers and seconder for each application and unanimous approval.
		Committee authorization to communicate with a City Councillor	██████████ the minutes reflect that the Committee authorized the Chair to communicate in writing to a City Councillor (Filion) to request guidance on the Committee's role in considering applications of this size and nature.
		Adjournment	The minutes reflect adjournment of the meeting at 8:45 p.m.

		<p>Deputy Secretary-Treasurer requests direction from Committee Chair regarding Councillor notification of action.</p> <p>Prior to exiting the meeting room, and after the Committee vote on the decisions regarding the previously reserved applications, the Deputy Secretary-Treasurer informed the Chair that the two Councillors present had requested to be informed of the Committee's decisions on the reserved applications. He then requested direction from the Chair relating to this request.</p> 
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Date	Time	Event	Description
9/22/05	After 8:45 p.m.	Call to Councillors	Deputy Secretary-Treasurer calls both City Councillors and leaves a message indicating that both Keele and Bayview applications were approved with conditions.

Date	Time	Event	Description
9/28/05	Business hours	Telephone call regarding public notification of decisions	Committee Chair telephones Senior Planner and requests information related to notifying applicants and the public of decisions made on September 22, 2005. The Senior Planner informs the Chair that decisions are scheduled for mail notification in accordance with the normal practice on Friday, September 30, 2005.
		Chair requests delaying public notification of decisions	The Chair then requested that decisions made on reserved applications not be mailed on September 30, 2005, stating a desire to announce the decisions made at the upcoming October 6, 2005 meeting. The Senior Planner consulted with the Deputy Secretary-Treasurer and advised the Chair that they would comply with the Chair's request and delay the general notification of Committee decisions. This decision was later confirmed by the Senior Planner by e-mail to the Chair, in response to an e-mail from the Chair.

Date	Time	Event	Description
9/29/05	Business Hours	Meeting between Committee Chair, Chief Planner and Secretary-Treasurer and City Legal Counsel	<p>Committee Chair meets with the Chief Planner and Executive Director and City legal counsel (J. Paton). The Chair expressed the following concerns:</p> <ul style="list-style-type: none"> • staff plans to mail notification of decisions regarding Keele and Bayview when no decision was made regarding these applications; and • [REDACTED]

Date	Time	Event	Description
10/05/05	Evening Hours	Informal Committee Meeting	<p>This informal meeting of Committee of Adjustment members took place at the Committee Chair's business office without notification to the Deputy Secretary-Treasurer and without staff in attendance. The Chair indicated this meeting was called by him to apprise members of his September 29, 2005 meeting with the Chief Planner and City Legal Counsel.</p> <p>Additionally, the Chair also expressed his desire to inform Committee members that the applications in question had not been approved at the September 22, 2005 meeting and were to be reconsidered disregarding any knowledge of potential litigation relating to the Keele application.</p> <p>An e-mail correspondence from one Committee member present to the others dated the same evening indicates that a decision was made at the October 5, 2005 informal Committee meeting to defer both subject applications to North York Community Council. The purpose of the deferral specified in the e-mail was to determine the need for further public input. One Committee member recalled that the main thrust of the motion relating to deferring applications was drafted prior to leaving the October 5, 2005 meeting.</p>

Date	Time	Event	Description
10/06/05	11:00 a.m.	Pre-briefing Meeting	<p>At this pre-briefing meeting, the Committee Chair presents the motion deferring both subject applications to North York Community Council for further public consultation. The Chair had previously contacted legal counsel (J. Paton) just prior to the pre-briefing to seek advice on the motion. City legal counsel indicated that because the request for advice was from the Chair of an independent tribunal, he did not feel comfortable advising him not to go forward with a motion. However, the counsel advised the Chair that the motion was unusual and that it could be challenged.</p> <p>When the Deputy Secretary-Treasurer presented Committee decisions made on September 22, 2005 relating to the Keele and Bayview applications, the Chair informed him that the Committee had convened the day before and made a “new decision”.</p>  <p>The Chair affirmed that a legal opinion had been expressed.</p> <p>The third of three applications reserved and subsequently approved on September 22, 2005 relating to 231 Olive Street was accepted as presented.</p>

Date	Time	Event	Description
10/06/05	2:00 p.m.	Committee of Adjustment Meeting	At this meeting, the Committee approved the revised minutes of the September 22, 2005 meeting. These minutes differed from the original minutes by reflecting the Chair's decision to reserve the three applications with a recommendation to defer both the Keele and Bayview applications to the North York Community Council for community consultation.

			<p>According to those interviewed, when taking up the reserved decisions, the Chair read the motion to defer the 2737 Keele application to North York Community Council. When the Chair failed to mention the decision relating to the Bayview application, clarification was sought by the planner representing the Bayview application. The Chair replied that the same decision applied to the Bayview application. According to those interviewed, there were no separate public deliberations or discussions relating to this motion. The minutes reflect that the motion related to both Bayview and Keele was moved and seconded by specific members.</p> <p>In relation to the Olive application, the Committee adopted the motion as approved on September 22, 2005 in relation to the 231 Olive Avenue application.</p> <p>Councillor Shiner was not present at this point in the meeting, but arrived at the conclusion of the meeting, and addressed the Committee. From all accounts, Councillor Shiner chided the Committee members with respect to their actions relating to decisions previously made on September 22, 2005 on the subject applications.</p>
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Date	Time	Event	Description
10/14/05	Business Hours	City Solicitor issues opinion	City Solicitor issues opinion requested by City Clerk regarding the appropriateness of the Committee of Adjustment referral of 2737 Keele and 0 Bayview Avenue applications to the North York Community Council for further community consultation.

Date	Time	Event	Description
10/18/05		North York Community Council Meeting	Councillor Shiner brings forward an in-camera motion related to the Committee of Adjustment's handling and referral of 2737 Keele and 0 Bayview Avenue applications in question. Based on this meeting, the North York Community Council recommended

			<p>the following to City Council:</p> <p>(1) that City Council adopt the recommendations of the North York Community Council contained in the confidential communication (October 19, 2005) from the North York Community Council; and</p> <p>(2) that in accordance with the provisions of the Municipal Act, discussions pertaining to this matter be held in camera, because the subject matter relates to personal matters about identifiable individuals, including municipal or local board employees.</p>
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Date	Time	Event	Description
10/20/05	2:00 p.m.	Committee of Adjustment Meeting	<p>At this meeting, the Chair made several amendments to the October 6, 2005 minutes relating to the Bayview and Keele applications, including:</p> <p>(1) revisions to the movers of the motions to defer applications to the North York Community Council made on October 6, 2005; and</p> <p>(2) adding that a “verbal report of the Chairman on procedural matters” was provided to Committee on October 6, 2005.</p> <p>Original staff minutes of the October 6, 2005 Committee meeting do not reflect such a verbal report.</p> <p>[REDACTED]</p> <p>We understand that the Deputy Secretary-Treasurer was not present at the time the minutes were tabled (and therefore was unable to object to the revisions/additions to the minutes) and approved.</p>

AUDIT OBJECTIVES, SCOPE AND METHODOLOGY

Our audit objectives were 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 Committee of Adjustment process related to the three Committee of Adjustment applications in question and did not include a review of the content, reasonableness or technical aspects of the three applications.

Our audit reviewed processes related to the handling of the three applications in question during the period September 22, 2005 through October 20, 2005. This audit was conducted in accordance with generally accepted government auditing standards.

Our audit methodology included the following:

- review of relevant regulations, directives, policies and procedures, and current Committee of Adjustment practices;
- interviews with appropriate City Councillors, Committee of Adjustment members and staff;
- review of recording, reporting and monitoring requirements;
- benchmarking of other Toronto Committees of Adjustment and the cities of Ottawa and Windsor;
- review of the work conducted by the Internal Audit Division of the City Manager's Office, who conducted a number of interviews in regard to the matter; and
- other procedures as deemed necessary.

This report summarizes findings from our audit work and provides recommendations for improvements to the Committee of Adjustment administrative processes, procedures and deliberations.

AUDIT RESULTS

ISSUE 1: POTENTIAL INFLUENCE OF COMMITTEE MEMBERS BY COMMITTEE OF ADJUSTMENT STAFF

Date	Time	Event	Description
9/22/05	11:00 a.m.	Pre-briefing Meeting	<p>A pre-briefing meeting takes place prior to all scheduled Committee of Adjustment meetings. This meeting is open to the public although in general, members of the public do not attend. Normally, only the Deputy Secretary-Treasurer and Committee members attend the pre-briefing meeting. At pre-briefings, the Deputy Secretary-Treasurer ensures that Committee members are briefed on applications scheduled for consideration that day.</p> <p>During this pre-briefing meeting, a review of key issues relating to all applications on the agenda was conducted by the Deputy Secretary-Treasurer. Among the applications discussed was the 2737 Keele Street application. During these discussions, it is alleged and we confirmed that the Deputy Secretary-Treasurer mentioned potential litigation against the City relating to this application.</p>

Background

City staff assistance to Committee of Adjustment members include:

- Administrative staff specifically assigned to support the Committee, including the Deputy Secretary-Treasurer, and his staff;
- Transportation, Toronto Transit Commission and other City staff depending on the nature of the application;
- Other City Planning staff;
- City legal staff.

The role of the Deputy Secretary-Treasurer as defined in the Committee of Adjustment Panel Members Manual includes:

- Process applications, provide notice, collect fees, schedule meetings, coordinate appeals;
- Provide information and guidance to Committee members related to the conduct of meetings and procedural matters;
- Ensure information received is before the Committee in a timely manner (prior to the meeting).

In addition, the Planning Act provides that the Secretary-Treasurer shall keep on file minutes and records of all applications and decisions as well as all other business of the Committee.

City Planning staff submit staff reports to the Committee relating to applications and make recommendations based on their professional opinion and interpretation of the Planning Act and regulations as well as within the context of the City's Official Plan and Zoning Bylaws. These staff reports form part of the information considered by the Committee. Pre-briefing meetings of the Committee of Adjustment are open to the public.

The Issues in Relation to the September 22, 2005 Pre-briefing Meeting

We interviewed members in attendance at the September 22, 2005 Committee of Adjustment Pre-briefing meeting.

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In any event, the Deputy Secretary-Treasurer has a duty to provide the Committee with facts relevant to the application and its disposition. We confirmed that there was potential litigation against the City in relation to the Keele Street application. However, communicating this information to the Committee of Adjustment for their information could be considered an appropriate responsibility of the Deputy Secretary-Treasurer. Knowledge of potential litigation against the City in relation to a particular application may be significant to Committee deliberations and could result in a request for legal counsel to better inform members prior to making a decision.

North York Committee of Adjustment members are relatively new and had served for approximately one year. The Deputy Secretary-Treasurer has served in his role for a number of years. It is possible that during this time, the role of the North York Deputy Secretary-Treasurer has been one of coaching and guidance. It is also possible that in providing what he thought was “guidance” could have been seen as “attempting to influence” by one or more members of the Committee.

In considering what may have been said by the Deputy Secretary-Treasurer, Committee members could give much weight or no weight at all to the additional information relating to the 2737 Keele application or request further information about the potential litigation. Our

discussions with members indicate the potential litigation information played a minimal part in their original decision to approve the application (on September 22, 2005) or the subsequent change of decision (on October 6, 2005).

The Statutory Powers Procedure Act provides a general codification of common law requirements of procedural fairness that applies to any administrative body including the Committee of Adjustment. The Act addresses procedures related to evidence where the Planning Act is silent. In general, it provides flexibility in terms of admissible evidence for consideration by the Committee. The Act allows the Committee to accept evidence but does not require it to do so. When evidence is submitted, each Committee member considers the nature and relevance of the evidence as deemed appropriate.

Pre-briefing meetings of the Committee of Adjustment are open to the public. We noted that pre-briefing meetings are not generally attended by members of the public. There appears to be some inconsistency across the City with respect to the practice of allowing members of the public to attend pre-briefing meetings. The North York Committee of Adjustment, for instance and contrary to the practice of other Committees of Adjustment, does not permit members of the public to attend pre-briefing meetings.

We also noted no public notification or advertisement regarding Committee of Adjustment pre-briefing meeting dates and times. If public participation in the Committee of Adjustment process is to be encouraged, advance notification to the public should be provided.

Recommendations:

- 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.

**ISSUE 2: POTENTIAL INFLUENCE OF COUNCILLORS AND RELATED STAFF
ATTENDING COMMITTEE MEETINGS**

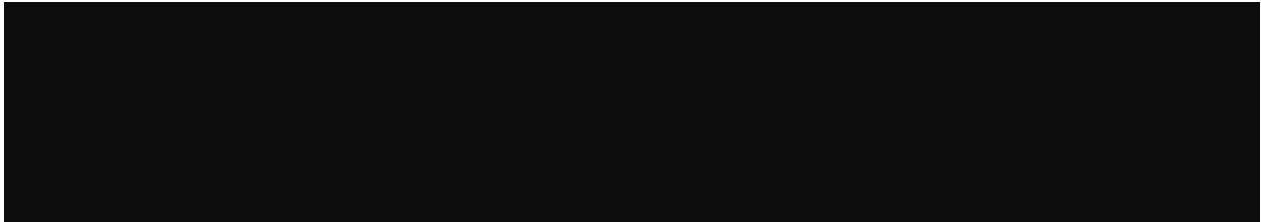
Date	Time	Event	Description
9/22/05	2:00 p.m.	Committee of Adjustment Meeting	<p>Four Committee of Adjustment staff members and all five Committee members including members of the public and applicant representatives were present at this meeting. One Councillor (Filion) was also present at the beginning of the meeting.</p> <p>In accordance with past practice and Committee of Adjustment meeting protocol, the adoption of past meeting minutes follows the Declaration of Interest under the Municipal Conflict of Interest Act.</p> <p><u>A0457/05NY (2737 Keele Street)</u></p> <p>The Committee addressed reserved decisions from prior meetings including the 2737 Keele Street application. The Committee considered two staff reports recommending a rejection of the application and a submission from legal counsel representing the applicant supporting the application. The City Planning Manager responsible for the staff reports was also present and answered questions posed by Committee members. The minutes also reflect that a City Councillor (Filion) in attendance spoke against approval of the application. The Councillor expressed concern related to a perceived lack of public process and questioned the Committee's jurisdiction to rule on an application of its size and significance. Upon conclusion of these reports and deputations, the Committee decided to reserve this application.</p>

		<p><u>A0724/05NY (231 Olive Street)</u></p> <p>Following the consideration of several other applications, the Committee considered an application related to 231 Olive Street. A Councillor's (Filion/Moscoe) assistant present, noted certain errors in the staff report relating to this application and the Committee decided to reserve this application.</p> <p><u>A0693/05NY (0 Bayview Avenue)</u></p> <p>The Committee then considered an application related to 0 Bayview Avenue previously reserved on September 8, 2005. A number of persons appeared before the Committee relating to this application including two City Councillors, one representing the ward relating to the application (Shiner), the other representing the adjoining ward (Filion). Staff recommended the approval of the application subject to certain conditions. After staff presentations and Councillor deputations, the Committee voted to reserve this application.</p> <p>As both Councillors exited the meeting room (just prior to 7:30 p.m.), both were aware that the Bayview and Keele applications had been reserved. Both provided their respective contact information to staff and requested to be informed of the final Committee decisions related to the two reserved applications.</p>
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Background

On September 22, 2005, the Committee considered Application A0693/05NY 0 Bayview Avenue previously reserved on September 8, 2005. Councillor's Shiner and Filion were present. Staff recommended the approval of the application subject to certain conditions. Discussions with staff, Committee members and other stakeholders present confirmed that after a Councillor (Shiner) addressed the Committee, supporting the application, a "heated argument" between the

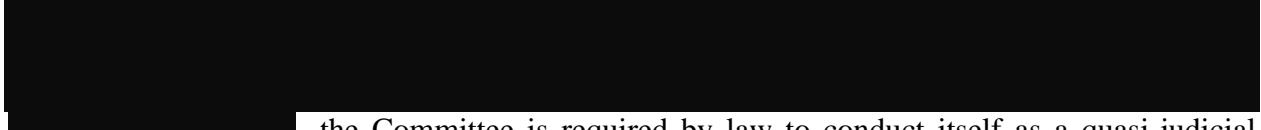
two Councillors took place related to this application. After this, the Committee decided to reserve this application and the Councillors left the meeting.



The Issue in Relation to the September 22, 2005 Event

The Committee of Adjustment is required to operate at arm's length and independent of City Council. In fulfilling its duties, the Committee is required to operate independently and take no instruction or guidance from the municipal council or any other person or body. This however does not preclude a member of council appearing before the Committee, to speak in support or opposition of an application.

Councillors and Council staff are frequently present at Committee meetings.



the Committee is required by law to conduct itself as a quasi-judicial tribunal that is required to operate at arm's-length from and independently of City Council.

It is the responsibility of the Committee Chair to ensure that all such meetings are conducted in a professional and arm's-length manner. Where the conduct of any individual attending a Committee meeting is likely to compromise this protocol, the Chair should take appropriate action.

Recommendation:

- 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.**

ISSUE 3: MINUTES MAINTAINED BY THE SECRETARY; PROTOCOL RELATED TO RESERVE DECISIONS, ADJOURNMENT PROCEDURES AND COMMITTEE CONSULTATION WITH A COUNCILLOR

Date	Time	Event	Description
9/22/05	7:30 p.m.	Other critical meeting points	After considering the remaining items on the agenda, Committee meeting minutes indicate that the reserved decisions were taken up again by the Committee. The original minutes do not reflect an official action by the Committee Chair to adjourn the meeting (such as sounding a gavel) however an adjournment time is noted. Our discussions with Committee members, staff and other individuals present indicate that the meeting room was vacated by everyone with the exception of staff and Committee members prior to considering reserved decisions.
		Motions on reserved decisions made, seconded and approved	Minutes indicate that two of the three reserved applications described above were discussed in detail (the other, 231 Olive Street, was approved subject to conditions with little discussion) and unanimously approved subject to conditions. The discussions relating to 2737 Keele included discussions concerning the financial contribution appropriate for community benefits. Minutes reflect specific Committee members as motion makers and seconders for each application and unanimous approval.
		Committee authorization to communicate with a City Councillor	████████ the minutes reflect that the Committee authorized the Chair to communicate in writing to a City Councillor (Filion) to request guidance on the Committee's role in considering applications of this size and nature.
		Adjournment	The minutes reflect adjournment of the meeting at 8:45 p.m.

	<p>Deputy Secretary- Treasurer requests direction from Committee Chair regarding Councillor notification of action.</p>	<p>Prior to exiting the meeting room, and after voting on the decisions regarding the reserved applications, the Deputy Secretary-Treasurer informed the Chair that the two Councillors present had requested to be informed of the Committee's decisions on the reserved applications. He then requested direction from the Chair relating to this request.</p> 
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Background

1. Observations related to Original Minutes

The Secretary of the Committee maintains minutes of proceedings at each hearing. The original minutes maintained by the Secretary are written in a mix of short and long hand. They are clear, neat and concise, and indicate the meeting date, members attending and staff present. Additional information provided in meeting minutes include action taken on each application with conditions stipulated upon approval, and names of motion movers and seconders. Minutes also provide detailed and clearly documented evidence of referrals and reservations of applications as well as the time of meeting adjournment.

Our review of the original minutes of the September 22, 2005 meeting indicated observations similar to that noted above. Minutes clearly indicated that the meeting adjourned at 8:45 p.m. after the three reserved decisions were taken up and approved. The minutes also clearly indicate

that the three previously reserved decisions were approved with conditions and included both the names of the mover and seconder along with details of conditions attached.

2. Protocol related to Reserved Applications

Section 45 (6) of the Planning Act, relating to the Hearing states that the hearing of every application shall be held in public and upon hearing the “committee may adjourn the hearing or reserve its decision”.

Committee of Adjustment Deputy Secretary-Treasurers for other districts (within the City of Toronto) indicated that reserved decisions are not practiced in the West and East districts and are rarely made in the South District. Reserved decisions are occasionally made in the North District.

In general, there are two circumstances when the practice of reserving a decision is appropriate:

- when additional information is necessary, the decision is reserved and placed on the agenda for a subsequent meeting; and
- when discussion results in opposition to an application, and the Committee decides not to make a decision at that time. These reserved decisions are postponed to later in the same meeting or to a subsequent meeting.

It appears that the applications reserved on September 22, 2005 were in the second category.

There appears to be no protocol for advising applicants and other interested parties when a reserved decision will be considered. In relation to the applications initially reserved on September 22, 2005, the decision to reserve was made with no indication by the Chair regarding when the three reserved items would be considered. Both Councillors interviewed indicated an expectation that a decision would be made shortly and wished to be advised of the outcome.

Committee members and the Deputy Secretary-Treasurer (and staff) differed on whether the portion of the September 22, 2005 Committee meeting related to deliberations on the reserved applications were public or not. The Deputy Secretary-Treasurer and his staff believe this portion of the meeting was public. We reviewed examples of reserved applications in the past where the Committee of Adjustment made decisions on applications initially reserved and deliberated after all other agenda items were heard. In all instances reviewed, decisions made on items initially reserved have been recorded as official decisions attributable to the public meeting of the day.

Recommendation:

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.**

3. Adjournment of Meeting

During our review, we attempted to obtain evidence related to when Committee meetings adjourn and the action taken to adjourn meetings.

The agenda for this and other meetings of the Committee of Adjustment indicate the meeting start time as 2:00 p.m. on every second Thursday. However, there is no indication on the agenda as to the meeting end time. In addition, our interviews confirm that no official adjournment action took place (such as the sounding of a gavel), and that an official adjournment action was not practiced at any City of Toronto Committees of Adjustment.

There is no direct or indirect reference to when Committee meetings adjourn in the Rules of Procedure. However the Rules of Procedure state, “The hearing shall commence at the times recommended” and “will continue until the agenda is complete”. As previously mentioned, the Secretary’s original minutes for the September 22, 2005 meeting clearly indicated “Meeting

Adjourned 8:45 p.m.” However, according to those interviewed no formal words were spoken or action taken to officially adjourn the meeting.

In our discussions with Deputy Secretary-Treasurers of other City of Toronto Committees of Adjustment, Committee chairs do not indicate an official meeting adjournment, verbal or otherwise. Those interviewed indicated, “meetings are adjourned when they end”. They indicated that as long as the Committee Secretary records minutes, motions continue to be made and voting continues to take place, the meeting is in session. At the September 22, 2005 meeting, the three applications originally reserved were deliberated by the Committee, minutes continued to be taken on these deliberations, motions were made and seconded to approve all three applications with conditions outlined, and voting took place.

In our view, the meeting adjourned at 8:45 p.m. subsequent to decisions having been made on the three applications in question.

Recommendation:

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.**

4. Adopting Motion to Consult with a Councillor

██████████ the minutes reflect that the Committee authorized the Chair to communicate in writing to a City Councillor (Filion) to request guidance on certain types of applications, brought before the Committee. However, according to a March 2005 opinion issued by the City Solicitor to the Chair of the Committee of Adjustment, “City Councillors should communicate directly with the Committee of Adjustment only at scheduled, public hearings of applications. This is the best and surest way of preventing accusations that Councillors have an “inside track” or special opportunity to communicate with and influence the Committee”. Further, the City Solicitor states “...I would recommend that you would not proceed with meetings with individual councillors.”

We support the City Solicitor's opinion relating to communication between Committees of Adjustment and Councillors. Furthermore, we believe that if such guidance was required by the Committee that it should have been sought from legal counsel.

There appears to be no evidence that the Chair acted on the Committee's authorization to communicate with the Councillor as directed.

Recommendation:

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.**

ISSUE 4: UNSCHEDULED DISCLOSURE OF COMMITTEE DECISIONS IN ADVANCE OF GENERAL NOTIFICATION

Date	Time	Event	Description
9/22/05	After 8:45 p.m.	Call to Councillors	Deputy Secretary-Treasurer calls both City Councillors on their respective telephones and leaves a message indicating that both Keele and Bayview applications were approved with conditions.

Background

The Councillors were advised of the Committee decision prior to the decision being communicated to the public. Committee of Adjustment Staff indicated during our review that notification to City Councillors regarding Committee decisions is often provided by Staff members prior to general notification of Committee decisions. In addition, the Committee decision was withheld from the applicant representative waiting outside the Committee room for decision results.

The Issue in Relation to the September 22, 2005 Call to Councillors

Current policies and procedures do not prohibit staff from notifying selected individuals regarding the results of Committee decisions in advance of general disclosure. However, in the interest of fairness, equity and general disclosure, all appropriate parties, including the public, should be notified in writing of Committee decisions at the same time.

Recommendation:

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.**

ISSUE 5: DELAY OF PUBLIC NOTIFICATION OF COMMITTEE DECISIONS

Date	Time	Event	Description
9/28/05	Business hours	Telephone call regarding public notification of decisions	Committee Chair telephones Senior Planner and requests information related to notifying applicants and the public of decisions made on September 22, 2005. The Senior Planner informs the Chair that decisions are scheduled for mail notification in accordance with the normal practice on Friday, September 30, 2005. Chair requested delaying public notification of decisions The Chair then requested that decisions made on reserved applications not be mailed on September 30, 2005, stating a desire to announce the decisions made at the upcoming October 6, 2005 meeting. The Senior Planner consulted with the Deputy Secretary-Treasurer and advised the Chair that they would comply with the Chair's request and delay the general notification of Committee decisions. This decision was later confirmed by the Senior Planner by e-mail to the Chair, in response to an e-mail from the Chair.

Background

In general, public disclosure of Committee decisions is made no later than 10 days of the Committee meeting. During the course of our review, we determined that timely notification practices are in place and designed to inform applicants, interested parties, planners, related staff and Councillors of Committee decisions. Timely notification of Committee decisions provide applicants and others, with information required to proceed with further action related to their respective projects. These notification practices also provide applicants and other affected parties with an opportunity to prepare an appeal in a timely manner in the event of an unfavourable Committee decision.

Our discussions with other Committee Deputy Secretary-Treasurers indicated that Committee decisions are made public by mail communication to parties included on a written notification list. The notification list includes applicants, interested parties, planners, related City staff, Councillors and their assistants. Notification occurs at varying times and through different methods after the meeting adjourns. For example, the general practice in the South District is to e-mail a “Results Listing” within one hour of meeting adjournment.



The Issue in Relation to the September 28, 2005 Telephone Call

The Committee Chair's request to delay notification of the Committee's decision was not in keeping with the long-standing practice of providing notification within 10 days of the meeting. Regardless of the reason for such requested delays, notification of Committee decisions should be disclosed in a systematic manner promoting timeliness, transparency and efficiency.

Recommendation:

- 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.**

The Chair's consultation with the Chief Planner and Secretary-Treasurer.

Date	Time	Event	Description
9/29/05	Business Hours	Meeting between Committee Chair, Chief Planner and Secretary-Treasurer and City Legal Counsel	<p>Committee Chair meets with the Chief Planner and Executive Director and City legal counsel (J. Paton). The Chair expressed the following concerns:</p> <ul style="list-style-type: none">• staff plans to mail notification of decisions regarding Keele and Bayview when no decision was made regarding these applications; and• [REDACTED]

No comments related to this particular meeting.

ISSUE 6: INFORMAL COMMITTEE MEETINGS HELD OUTSIDE OF PUBLIC VIEW

Date	Time	Event	Description
10/05/05	Evening Hours	Informal Committee Meeting	<p>This informal meeting of Committee of Adjustment members took place at the Committee Chair's business office without notification to the Deputy Secretary-Treasurer and without staff in attendance. The Chair indicated this meeting was called by him to apprise members of his September 29, 2005 meeting with the Chief Planner and City Legal Counsel.</p> <p>Additionally, the Chair also expressed his desire to inform Committee members that the applications in question had not been approved at the September 22, 2005 meeting and were to be reconsidered disregarding any knowledge of potential litigation relating to the Keele application.</p> <p>An e-mail correspondence from one Committee member present to the others dated the same evening indicates that a decision was made at the October 5, 2005 informal Committee meeting to defer both subject applications to North York Community Council. The purpose of the deferral specified in the e-mail was to determine the need for further public input. One Committee member recalled that the main thrust of the motion relating to deferring applications was drafted prior to leaving the October 5, 2005 meeting.</p>

Background

During our interviews, City Legal staff indicated that meetings outside the public arena such as that held on October 5, 2005 are similar to those of an independent tribunal. As such, it is their opinion that the Committee of Adjustment has the right to meet outside the public arena to discuss pending applications. According to the City Solicitor, informal meetings conducted outside the "public eye" are permissible as long as no new information or material is introduced.

Also, with the exception of Committee staff such meetings should not include any other party such as Councillors, residents and applicants.

Discussions with other Committee Deputy Secretary-Treasurers (within the City of Toronto) indicate that all meetings of the Committee including pre-briefings are open to the public and that Committee members do not meet outside the public arena to deliberate on applications or make decisions.

The Issue in Relation to the October 5, 2005 Informal Committee Meeting

In conducting non-public meetings, Committee members risk the perception that information, materials and discussions considered during deliberations are not suitable for public disclosure. Committee members must be seen as independent in both fact and appearance to sustain the credibility of the public they serve. Once the independence and credibility of members serving the public is eroded, their effectiveness in serving the public is compromised.

Our survey of Deputy Secretary-Treasurers representing other Committees of Adjustment (both outside and within the City of Toronto) indicated that they are unaware of any meetings held outside of the scheduled meetings of their respective Committees of Adjustment. It appears that in the North district, the practice of meeting outside of regularly scheduled meetings commenced on October 5, 2005, with the deliberations and decisions relating to the applications subject to this review. Our discussions with members did not indicate any meetings prior to October 5, 2005.

As previously mentioned, a quasi-judicial body conducting deliberations without the introduction of new material or influences by outside parties is permissible. However, our review indicated that relating to these particular applications, a decision previously approved and recorded in a public meeting on September 22, 2005 (with staff present) was overturned and a motion reflecting a different Committee decision was drafted at a non-public meeting held on October 5, 2005. What influenced members to reverse a previous decision approved in a public setting remains unknown. We have been unable to obtain e-mail correspondence exchanged by

Committee members prior to the informal October 5, 2005 meeting. However, we reviewed an e-mail summarizing the decisions made at this meeting. As there were no outside witnesses, the private meeting held on October 5, 2005, has opened the door to questions and concerns related to procedures and decisions regarding the applications in question.

Recommendation:

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.**

ISSUE 7: INTRODUCTION OF UNOFFICIAL REVISED MINUTES FROM NON-PUBLIC COMMITTEE MEETING

Date	Time	Event	Description
10/06/05	11:00 a.m.	Pre-briefing Meeting	<p>At this pre-briefing meeting, the Committee Chair presents a motion deferring both subject applications to North York Community Council for further public consultation. The Chair had previously contacted Legal counsel (J. Paton) just prior to the pre-briefing to seek advice on the motion. City Legal counsel indicated that because the request for advice was from the Chair of an independent tribunal, he did not feel comfortable advising him not to go forward with a motion. However, the counsel advised the Chair that the motion was unusual and that it could be challenged.</p> <p>When the Deputy Secretary-Treasurer presented Committee decisions made on September 22, 2005 relating to the Keele and Bayview applications, the Chair informed him that the Committee had convened the day before and made a “new decision”.</p> <p>[REDACTED]</p> <p>The Chair affirmed that a legal opinion had been expressed.</p> <p>The third of three applications reserved and subsequently approved on September 22, 2005 relating to 231 Olive Street was accepted as presented.</p>

Background

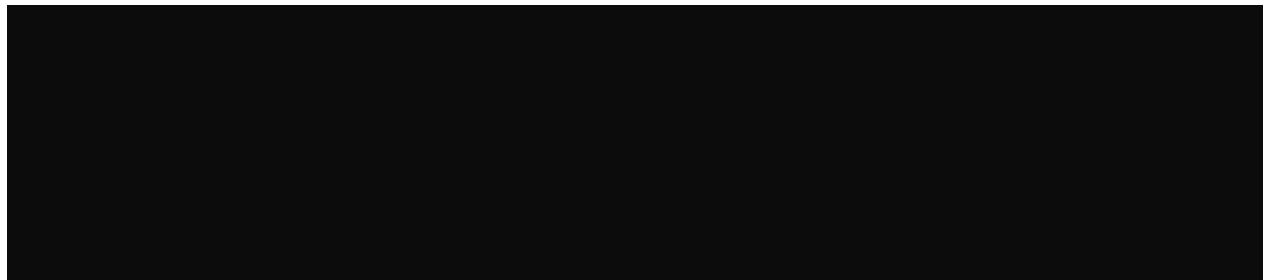
Committee Rules of Procedure state that the Committee may at any time correct a typographical error, error of calculation or similar error made in its decision or order. In conducting our review, we noted several corrections requested by the Chair not of the type noted above. A brief description follows.

Adjustments to Committee Minutes of September 22, 2005

Our review confirmed that past practice in the North District would have resulted in staff minutes reflecting approval of the originally reserved three applications subject to conditions reflected in the original minutes of September 22, 2005. Normal reporting practices would have resulted in public disclosure of September 22, 2005 Committee decisions on Friday, September 30, 2005. This however did not occur as a result of the Chair's request to hold decisions on the applications in question as discussed earlier.

The Issue in Relation to the October 6, 2005 Pre-briefing Meeting

The Committee Secretary's original version of the September 22, 2005 minutes clearly indicate a motion, a second and a vote to approve the originally reserved applications. The decision to revise the original minutes to reflect a different outcome was [REDACTED] not within the Chair's authority. According to those interviewed, changes to minutes of previous Committee meetings had never occurred before and if deemed necessary, would require a consultation with Legal staff on the substance of the revision. Legal counsel was not consulted regarding the substance of the revision, only the procedural aspect of introducing revised minutes.



Recommendation:

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.

ISSUE 8: ADOPTION OF REVISED MINUTES BY THE COMMITTEE OF ADJUSTMENT

Date	Time	Event	Description
10/06/05	2:00 p.m.	Committee of Adjustment Meeting	<p>At this meeting, the Committee approved the revised minutes of the September 22, 2005 meeting indicating the applications in question were reserved. These minutes differed from the original minutes by reflecting the Chair's decision to reserve the three applications with a recommendation to defer both the Keele and Bayview applications to the North York Community Council for community consultation.</p> <p>According to those interviewed, when taking up the reserved decisions, the Chair read the motion to defer the 2737 Keele application to North York Community Council. When the Chair failed to mention the decision relating to the Bayview application, clarification was sought by the planner representing the Bayview application. The Chair replied that the same decision applied to the Bayview application. According to those interviewed, there were no separate public deliberations or discussions relating to this motion. The minutes reflect that the motion related to both Bayview and Keele was moved and seconded by specific members.</p> <p>In relation to the Olive application, the Committee adopted the motion as approved on September 22, 2005.</p>

		Councillor Shiner was not present at this point in the meeting, but arrived at the conclusion of the meeting, and addressed the Committee. From all accounts, Councillor Shiner chided the Committee members with respect to their actions relating to decisions previously made on September 22, 2005 on the subject applications.
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Background

The Committee of Adjustment Rules of Procedure per the Municipal Act state, “The hearing and decision of every application shall be made in public”. These rules further state, “the panel shall make a decision in public at the hearing on each application and that decision, which may include conditions, shall be in writing and state the reasons for the decision”. As previously mentioned, a quasi-judicial body conducting deliberations without the introduction of new material or influences by outside parties is permissible.

The Issues in Relation to the October 6, 2005 Committee Meeting

The issues related to the October 6, 2005 adoption of Committee of Adjustment meeting minutes include:

- No public deliberation or discussion regarding the introduction of the revised motions prepared and tabled by the Chair; and
- Disparate treatment of the three applications in question. The original motion on the Keele and Bayview applications was unofficially rescinded and revised. However, the Committee of Adjustment accepted the Olive application with the September 22, 2005 vote to approve. In effect, the Committee did not re-vote on the Olive Street application. This is a clear indication that Committee members were fully aware that the vote taken at the conclusion of the September 22, 2005 was a binding vote taken during a public meeting.

Recommendation:

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.

ISSUE 9: APPROPRIATENESS OF COMMITTEE REFERAL TO THE NORTH YORK COMMUNITY COUNCIL

Date	Time	Event	Description
10/14/05	Business Hours	City Solicitor issues opinion requested by City Clerk regarding the appropriateness of the Committee of Adjustment referral of 2737 Keele and 0 Bayview Avenue applications to the North York Community Council for further community consultation.	

Background

At the October 6, 2005 meeting, the Committee of Adjustment voted to refer the 2737 Keele and 0 Bayview Ave applications to the North York Community Council to consider whether or not these applications should receive further community consultation. The motion referring these applications to the North York Community Council read as follows:

“....that the application be DEFERRED to allow North York Community Council to consider whether or not a community consultation meeting or meetings should be held to obtain more public input on the proposed variances, and should it be decided to hold a public meeting, to arrange the date, time, location, and send out appropriate notices including newspaper advertising for such meeting. It would be suggested that a third party facilitator run the meeting and that a report on such meeting(s) be prepared for consideration by Community Council and the Committee of Adjustment. Community Council may consider the cost of such meeting(s) be borne by the applicant. Should this process not be completed by November 30, 2005, the Committee of Adjustment will rehear the matter on December 1, 2005.”

(1) The Issue in Relation to Referring Revised Motions related to 2737 Keele and 0 Bayview Avenue to the North York Community Council

When presented with the motion described above, the City Clerk's Office requested an opinion from the City Solicitor regarding the appropriateness of the Committee of Adjustment's request to the North York Community Council to hold a community meeting on a pending application. On October 14, 2005, the City Solicitor issued her opinion. The following is an excerpt from the Solicitor's opinion:

"The Committee of Adjustment is constituted by City Council. The Committee of Adjustment is a quasi-judicial tribunal that is required by law to operate at arm's length from and independently of City Council.

It is not in keeping with this arm's length, independent relationship for the Committee of Adjustment to request the North York Community Council to carry out or cause to be carried out public consultation in connection with an application before the Committee of Adjustment.

It would be legally appropriate, therefore, for the Chair to refuse to include communications containing such requests on the agenda for a meeting of the North York Community Council."

As a result of this legal opinion, the motion was not brought forward to North York Community Council.

(2) The Issue in Relation to the Wording of the Motion

As indicated earlier [REDACTED], the motion noted above was drafted by the Chair in a non-public setting. We noted the motion wording was similar to that included in a report dated September 29, 2005 to Planning and Transportation Committee from the Planning and Transportation Sub-Committee on "Improving the Planning Process" (authored by

Councillor Filion). The similarities taken from this report relate to developing criteria for the use of professional facilitators for community meetings for some applications, and coverage of the cost of using such professional facilitators.

The aforementioned report was a public document by October 5, 2005 at the time the motion was brought forward by the Chair for consideration by the Committee. As such, there would be no restrictions to formulating a motion based on its contents. However, the report was not part of the information available to the Committee at its meeting on September 22, 2005 when the applications were originally reserved and taken up again. However, it may have been used by the Chair to formulate changes to the original motion outside the public arena.

Recommendation:

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.

**ISSUE 10: THE MANNER IN WHICH THIS MATTER WAS BROUGHT BEFORE
THE NORTH YORK COMMUNITY COUNCIL**

Date	Time	Event	Description
10/18/05	9:30 a.m.	North York Community Council Meeting	Councillor Shiner brings forward an in-camera motion related to the Committee of Adjustment's handling and referral of the three applications in question. Based on this meeting, the North York Community Council recommended the following to City Council: (1) that City Council adopt the recommendations of the North York Community Council contained in the confidential communication (October 19, 2005) from the North York Community Council; and

			(2) that in accordance with the provisions of the Municipal Act, discussions pertaining to this matter be held in camera, because the subject matter relates to personal matters about identifiable individuals, including municipal or local board employees.
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Background

At the North York Community Council meeting of October 18, 2005 Councillor Shiner brought forward an in-camera motion. Prior to bringing forward the in-camera motion, Councillor Shiner had contacted the Integrity Commissioner (on October 11, 2005) with a view to filing a complaint related to the Committee of Adjustment's handling and referral of the three applications in question. The Integrity Commissioner informed Councillor Shiner that he would seek legal advice on whether he had jurisdiction over Committees of Adjustment and their members. After consulting with the City Solicitor, the Integrity Commissioner was informed that in the City Solicitor's opinion, he had no jurisdiction over Committees of Adjustment and their members. The Integrity Commissioner informed Councillor Shiner (on October 17, 2005) of the City Solicitor's opinion. He also informed Councillor Shiner that there was no formal complaint mechanism in place, and any such issues could probably only be raised with City Council.

At the North York Community Council meeting of October 18, 2005 issues related to Councillor Shiner's motion were discussed with Legal counsel present. The Director, Community Planning, North District and the Deputy Secretary-Treasurer, Committee of Adjustment were specifically requested to answer questions related to the facts pertaining to the 2737 Keele Street and 0 Bayview Avenue applications that took place between September 22, 2005 and October 6, 2005 to inform the Council. These discussions took place in-camera. Based on this meeting, the North York Community Council recommended the following to Council:

- that City Council adopt the recommendations of the North York Community Council contained in the confidential communication (October 19, 2005) from the North York Community Council; and

- that in accordance with the provisions of the Municipal Act, discussions pertaining to this matter be held in camera, because the subject matter relates to personal matters about identifiable individuals, including municipal or local board employees.

The Issue in Relation to the October 18, 2005 Event

As discussed earlier, two Councillors (Filion and Shiner) were informed that the 2737 Keele and 0 Bayview Avenue applications had been approved by the Committee of Adjustment on September 22, 2005. This information was provided by the Deputy Secretary-Treasurer. The Deputy Secretary-Treasurer believed that he was acting in accordance with the directive received on the evening of September 22, 2005 from the Committee Chair.

It appears that once Councillor (Shiner) was informed that the 2737 Keele and 0 Bayview Avenue applications had been approved on September 22, 2005, then subsequently rescinded and revised on October 6, 2005, he questioned the Committee's handling of the process. The basis for the Councillor's concern was the Committee's authority to first approve an application in accordance with the Committee's Rules of Procedure, then subsequently rescind and revise the previous vote in a manner not in compliance with these rules.

Prior to bringing the matter forward to the North York Community Council, Councillor Shiner consulted with the Integrity Commissioner to seek assistance in pursuing his concerns. The Integrity Commissioner informed the Councillor that no formal mechanism appeared to exist to address concerns related to Committee of Adjustment actions. However the Integrity Commissioner also stated that any such issues could probably only be raised with City Council. In view of the fact that matters brought to Council typically come through Committee and the North York Community Council is a Committee of Council, Councillor Shiner brought the matter forward in-camera to the North York Community Council.

Recommendation:

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).**

ISSUE 11: FURTHER REVISIONS TO OCTOBER 6, 2005 MINUTES

Date	Time	Event	Description
10/20/05	2:00 p.m.	Committee of Adjustment Meeting	<p>At this meeting, the Chair made several amendments to the October 6, 2005 minutes relating to the Bayview and Keele applications, including:</p> <p>(3) revisions to the movers of the motions to defer applications to the North York Community Council made on October 6, 2005; and</p> <p>(4) adding that a “verbal report of the Chairman on procedural matters” was provided to Committee on October 6, 2005.</p> <p>Original staff minutes of the October 6, 2005 Committee meeting do not reflect such a verbal report.</p> <p>In addition, according to those at the October 20, 2005 meeting interviewed, contrary to Rules of Procedure for the Committee noted earlier, the Committee Chair postponed the adoption of the minutes of the October 6, 2005 meeting, introduced the revisions and adopted the revised minutes part way through the meeting, in between agenda items. We understand that the Deputy Secretary-Treasurer was not present at the time the minutes were tabled (and therefore was unable to object to the revisions/additions to the minutes) and approved.</p>

Background

At the October 20, 2005 meeting, the Chair made several amendments to the October 6, 2005 minutes relating specifically to the 2737 Keele and 0 Bayview Avenue applications. Changes were made to the movers of the motions to defer applications to the North York Community Council made on October 6, 2005. In addition, the October 6, 2005 minutes were further amended to add that a “verbal report of the Chairman on procedural matters” was provided to the Committee on October 6, 2005. Original staff minutes of the October 6, 2005 meeting clearly indicate names of movers and seconders to motions related to 2737 Keele and Bayview applications. As well, the Secretary’s minutes of October 6, 2005 do not reflect that the Committee Chair provided a verbal report on procedural matters.

The Issue in Relation to the October 20, 2005 Committee Meeting

The Rules of Procedure for the Committee state that the Deputy Secretary-Treasurer is responsible for preparing the minutes of each hearing and that the panel will review and adopt the minutes of the previous hearing prior to considering the current agenda. However, at the October 20, 2005 meeting, the Committee Chair postponed the adoption of the minutes of the October 6, 2005 meeting indefinitely, and re-introduced the adoption of the minutes at a later point in the meeting, at which time, the minutes were adopted with the changes requested by the Chair.

The reasons as to why the Chair made changes to the minutes noted above are unknown.



Recommendation:

- 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.**

ISSUE 12: OTHER ISSUES

During the course of our audit, we identified a concern that requires further review and deliberation. In certain cases, we noted that the North York Committee of Adjustment occasionally imposes financial conditions as a part of the approval process. We understand that, although this is a common practice in the North and South Districts, it does not exist in either of the East and West Districts. A review of this matter was outside the scope of this audit. Nevertheless, our audit identified the apparent lack of controls related to the negotiation, collection and recording of such amounts. In this context, we suggest that this matter be forwarded to the City Manager's Office for review and subsequent reporting back to City Council.

Recommendation:

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.**

CONCLUSION

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 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 report also contains specific recommendations in relation to Committee of Adjustment processes, procedures and deliberations. Addressing the recommendations in this report will provide for more effective processing of applications brought before Toronto Committees of Adjustment.