

Attachment 1 – Confidential Information

Auditor General’s Supplementary Report Regarding “Review of Certain Applications Before the North York Committee of Adjustment on September 22, 2005 – In Camera”

Date:	January 26, 2007
To:	City Council
From:	Jeff Griffiths, Auditor General, Auditor General’s Office

CONFIDENTIAL INFORMATION

Meetings with Council Members

On June 20, 2006, the Auditor General notified by e-mail all members of City Council of his intent to meet with interested Councillors regarding issues or concerns related to his report on the “Review of Certain Applications Before the North York Committee of Adjustment on September 22, 2005 – In Camera”. The Auditor General received eight responses from City Councillors requesting a meeting. Interviews were conducted with each of these Council members. We have the following comments as a result of these meetings.

At our meeting with Councillor Filion, the Councillor expressed concerns with comments contained in the Auditor General’s report, which stated, “that staff recollect and 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”. Even though no communication took place between the Committee and Councillor Filion, we were advised by Councillor Filion that the reason why the communication was directed to him was solely due to his role as Chair of the Planning and Transportation Committee as well as his role on the preparation of a Planning and Transportation Committee Report entitled “Improving the Planning Process Agenda”. We have also been advised by members of the Committee of Adjustment that this, in fact, was the reason for communicating with Councillor Filion.

Our interviews with a number of other Councillors identified concerns in relation to what they perceived as a less than arm’s-length relationship by a member of Council with a member of the Committee of Adjustment, North Panel. We have been assured by the Council member in question and the Committee member that such a relationship does not exist. We have not pursued this matter further.

Our meetings with Council members produced no further information impacting the facts and analysis contained in the Auditor General’s April 13, 2006 in camera report to City Council.

Meetings with Members of the Committee of Adjustment

On July 17, 2006, the Auditor General met with one of the members of the Committee of Adjustment, North Panel to discuss the confidential report. Subsequently, on July 21, 2006 the Auditor General met with all members of the Committee of Adjustment, North Panel. At this meeting the Auditor General provided a verbal overview of the contents, issues, analysis and recommendations contained in the April 13, 2006 in camera report to City Council. Committee members were provided with a copy of the Auditor General's April 13, 2006 in camera report after agreeing in writing to a confidentiality undertaking in accordance with advice provided by the City Solicitor.

At the meeting of July 21, 2006, Committee members expressed a number of initial concerns related to the Auditor General's report. Further, it was agreed that the Committee would review the report in detail, at their convenience, and, at a later date, communicate specific concerns to the Auditor General.

The Committee of Adjustment corresponded with the Auditor General in a letter dated September 6, 2006 indicating that a detailed response to the Auditor General's report was forthcoming. Subsequently, the Committee provided the Auditor General with two additional reports, both undated entitled "Corrections to Report Content" and "Chronology of Events Related to Auditor General's Report of April 13, 2006 Re the Committee of Adjustment – North Panel". These reports were received by the Auditor General on Friday, September 15, 2006. The covering letter accompanying these reports (also undated) requested a further meeting with the Auditor General the "following week". The Auditor General, as requested by the Committee, met with all members of the Committee of Adjustment on Wednesday, September 20, 2006. This particular discussion focused on the detailed content of the report of the Auditor General along with the written responses of the Committee.

Finally the Auditor General met with the Committee of Adjustment on January 23, 2007 in order to review, in draft form, the contents of this supplementary report. The review of this report was undertaken in consultation and on the advice of the City Solicitor as long as the members undertook to sign a confidentiality agreement which they did. During our review of this report a number of issues were raised by the Committee. Certain of these issues resulted in minor revisions to the original supplementary draft report.

It is my understanding that the Committee is in general agreement with the content of the recommendations contained in the report of the Auditor General dated April 13, 2006 except for recommendation 9 which states that "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". One member of the Committee expressed the view that the "Committee can have special meetings without the requirement for staff or minutes". We have not pursued this matter.

In connection with the recommendations, the Committee did however, express concerns relating to the context in which the recommendations were reported. While the recommendations were crafted to have relevance to all of the Committees of Adjustment at the City, the Committee was of the view that as they were raised in a report relating to the North York Committee of Adjustment they had applicability to the North York Panel only. This is not the case and in fact this matter was clarified at the City Council meeting when the original report was initially discussed.

Information relating to the meetings with the Committee of Adjustment and with staff is outlined in the following paragraphs.

General Overview Relating to the Processing of the Three Applications in Question

The major issue in the report resulting from the Auditor General's review "respecting the processing and hearing of certain applications to the Committee of Adjustment" centres around whether or not the Committee of Adjustment at its September 22, 2005 meeting made binding decisions on three specific applications in a public meeting. All other issues and subsequent events, both from a staff perspective and the Committee's perspective emanate from this one particular event.

Throughout our discussions and meetings with the Committee of Adjustment the position of the Committee unequivocally is that the latter part of the September 22, 2005 meeting (from approximately 7:45 p.m. to 8:45 p.m.), during which the three applications in question were discussed, was a private meeting. Further, because it was a private meeting, no decisions on any applications were officially made. The Committee has stated that deliberations undertaken during the private portion of the meeting were in fact "an expression of intent". The Committee indicated that this expression of intent was to be voted on at the next public meeting of the Committee. The "expression of intent" at that time was to approve the three applications in question.

Contrary to the position of the Committee of Adjustment, it is the contention of all staff attending the meeting, including the Deputy-Secretary Treasurer, the Secretary to the Committee, the Senior Planner and the Assistant Planner that the meeting of September 22, 2005, including the portion of the meeting which the Committee viewed as being private, (from approximately 7:45 p.m. to 8:45 p.m.) was in fact a public meeting.

Written notes prepared by the recording secretary indicate that the applications in question were approved with formal motion makers and formal seconders. These written notes were subsequently transcribed into draft minutes. The Committee, however, has indicated that "no minutes for the period after 7:45 p.m. are relevant because no public meeting was in progress".

Staff was of the view that the actions of the Committee, in taking up applications previously reserved from earlier in the meeting, were not unusual and, in fact, had on one occasion been done by this Committee previously. This Committee had, on a previous occasion, approved one such reserved application during the later part of the meeting. Further, it was a practice for previous Committees on occasion to conduct business in this manner.

The Committee however, further indicated that on “5 previous occasions the Committee had made the decision in the subsequent public meeting following private discussion”.

During our meetings with the Committee, we provided them with the background explanation supporting staff’s view of the characterization of the September 22, 2005 meeting. At least one member of the Committee understood why staff would hold the view that the meeting in question was a public meeting. Nevertheless, irrespective of the circumstances surrounding the staff’s view of the meeting, the Committee’s position continues to be that the meeting was a private meeting and, as a result, no decisions were made.

The question as to whether or not the September 22, 2005 meeting was a public meeting is at the very heart of this issue. The subsequent actions of both the Committee of Adjustment and staff are consistent with their respective views on the nature of the meeting.

While both parties maintain their respective positions, it is clear that at the very least a miscommunication between both parties took place. This miscommunication has led to ongoing debate and disagreements, as well as significant time and cost to resolve.

Conclusions:

In this supplementary report, we have presented certain comments relating to the additional interviews and consultations with “affected members of Council, the Committee of Adjustment, North York Panel and City Staff” as directed by City Council on June 14, 2006.

The following comments are restricted to circumstances surrounding events on September 22, 2005 and specifically relate to whether or not the deliberations occurring during that time were part of a public meeting where specific decisions were in fact made.

Staff continue to believe that the decisions made on September 22, 2005 related to the applications in question were binding decisions made in public. This view continues to be held in spite of subsequent explanations provided by members of the Committee of Adjustment.

The opinion of staff regarding their position is based on the following relevant information:

- Written notes taken on September 22, 2005 by the Secretary to the Committee of Adjustment and subsequent draft “minutes” indicate that the secretary was clearly under the impression that the Committee was meeting in a public forum. Further, her notes indicate approval by the Committee of the applications in question. These written notes and the subsequent draft “minutes” indicate the name of the motion makers and motion seconders in regard to the decisions on the applications in question;
- staff present at the Committee meeting have advised us that [REDACTED] clearly asked Committee of Adjustment members if their vote was final and complete and the Committee responded affirmatively; [REDACTED];

- staff has also advised us that when requesting direction from the Committee Chair on whether or not to provide the result of the Committee's decision on the applications in question to Councillors Filion and Shiner, the Committee Chair indicated in the affirmative. [REDACTED];
- we were informed by staff during our follow-up review that voting as an "expression of intent with a formal motion, seconder and a vote has never been done before" during meetings subsequent to a Committee of Adjustment meeting or at pre-briefing meetings. As such, staff at the time processed the Committee of Adjustment's decision on these applications as though they had been approved in a public forum; and
- staff has advised us that there was no indication or direction given to them that the Committee of Adjustment meeting was adjourned at a specific point in time and that discussions occurring after that point were private discussions and not for public consumption. Staff could not recollect if direction was given to close the doors to the meeting room but, in any event, they would view the closing of the meeting room doors as irrelevant as the doors are routinely closed on a regular basis even when meetings are clearly public. The fact that members of the public were not present has no relevance to whether the meeting was public or not.

Our meetings with the Committee of Adjustment clearly indicate that they have a different viewpoint on certain of these matters and in this context their perspective is as follows:

- The Committee very clearly is of the opinion that the vote taken during the meeting of September 22, 2005 was "part of deliberation and not an official decision". The Committee further indicated that "a formal vote was taken that the Committee understood to be an expression of interest and the formal discussion would be rendered at the next meeting";
- staff "had explicitly closed the doors to ensure that the Committee had privacy. The ensuing discussion was clearly private deliberations of the Committee"; "It should be noted as well that no members of the public were present during our deliberations after 7:45 on September 22 2005. This surely supports the committee's understanding that the meeting was not a public session";
- on five separate occasions in discussing a number of reserved applications subsequent to a public meeting the "Committee had made the decision in the subsequent public meeting following private discussion";
- "The entire minutes issue relates to the facts of the events after 7:45 on September 22, 2005 meeting. Minutes should reflect the events that occurred in the public meeting. From the Committee standpoint no 'minutes' for the period after 7:45 are relevant because no public meeting was in progress"; and

- in regards to the “reasons why the initial decision of the Committee of Adjustment was changed” it is the view of the Committee that no decision was changed because no decision was made at the September 22 2005 meeting.

It is clear that the sequence of events emanating from the September 22, 2005 meeting represent a clear misunderstanding or a miscommunication between staff and members of the Committee of Adjustment. There continues to be disagreement on the nature of the September 2005 meeting and this matter will continue unresolved. Based on our discussions and meetings with the Committee of Adjustment, it is our view that there was no intent to misrepresent the events that occurred at the September 2005 meeting. Likewise, while there may have been procedural irregularities in regard to how the communication of what happened at the meeting were made to Council members immediately subsequent to the September 22, 2005 meeting, staff conducted themselves in a manner consistent with past practice.

The implementation of the recommendations contained in our report dated April 13, 2006 will ensure that any irregular procedural past practices will be discontinued. In particular, if proper and consistent protocol was followed in connection with the communication of decisions to Councillors at the same time as decisions are communicated to members of the public, the events which followed the September 22, 2005 meeting would have been avoided. The communication of the actions of the Committee to Members of Council immediately after the meeting is at the heart of this matter.

Further information related to our findings, conclusions and recommendations is available in our report of April 13, 2006.

Finally, it should be noted that certain concerns in regards to how this review was conducted were raised [REDACTED] and also again during our subsequent follow-up work. Comments on each of these concerns are as follows:

- 1) It was indicated to Council [REDACTED] that the Auditor General was not involved in the initial interviews with Members of the Committee of Adjustment. It is assumed that the intent of this comment was to indicate that this matter did not receive the appropriate level of attention and due diligence. This is incorrect. At any one point in time there are a significant number of ongoing audits taking place in the Auditor General’s office and it should be understood that the Auditor General does not get involved nor is it possible to get involved in the detailed day to day conduct of all ongoing audits. The Auditor General’s involvement depends on the audit risk, the importance of the area being audited, the issues identified, the experience of staff involved in the audit, and other audit priorities. In any event, the manner in which audits are conducted is the responsibility of the Auditor General. Finally, in the preparation of this supplementary report the Auditor General was involved in eight interviews with Council members, four separate interviews with staff, one interview with a member of the Committee of Adjustment and three separate interviews with Members of the Committee of Adjustment.

2) Concerns have been raised that initial interviews with the members of the Committee were conducted by staff from the Internal Audit Division and not by staff of the Auditor General's Office. In regard to this matter initial issues raised in connection with the Committee of Adjustment process were originally directed to the Internal Audit Division. Interview notes prepared by internal audit staff were subsequently evaluated and relied on by staff of the Auditor General's office. The concerns raised [REDACTED] centre around the independence of the Internal Audit staff due to the fact that they report to the City Manager. It should be noted that internal audit staff conducting the initial interviews with members of the Committee of Adjustment were auditors with professional auditing and accounting qualifications and many years experience. Both of the auditors involved in this review received their training in the private sector and in the Auditor General's Office. In addition, the reliance by the Auditor General on the work of other auditors is generally accepted practice provided for by Section 6390 of the Canadian Institute of Chartered Accountants Policies and Procedures. Finally if there were questions and concerns around the independence of staff from the internal auditor's office this matter would have been dealt with by the Auditor General.

3) Concerns have been raised [REDACTED] in connection with the role of the former Director of Internal Audit in this review and his attendance at a Committee of Adjustment meeting when the Chief Planner was present. Presumably this issue has been raised to question the Director's independence. The former Director of Internal Audit is again a professional accountant with many years of audit experience including a number of years as a Director in the Auditor General's office. The issue of his independence has not been of concern to the Auditor General.

It should also be noted that all audits conducted by the Auditor General's Office are completed in accordance with Government Auditing Standards. These Standards require that the Auditor General receive an external independent quality control review every three years. One of the purposes of this external review is to ensure that the work conducted is appropriate to support audit reports issued. In February 2006, a review was conducted on the Auditor General's Office and the results of this review were presented to City Council. In summary, the review team issued an "unqualified opinion" on the work conducted by the Auditor General, which is the highest rating attainable in such a review. Furthermore, among the positive comments included in the review, the report stated that the Auditor General's Office "policies and procedures far exceed what is required under government auditing standards."

In conclusion, the recommendations included in our previous report will be of benefit in regard to improving the administration of the Committee of Adjustment process. However, the recommendations made are relatively straightforward and should have been developed internally as a best practice. From an audit perspective, there is little "added value" in such a review having been conducted by the Auditor General's Office considering other audit priorities at the City. While we fully appreciate City Council's prerogative to add to the Auditor General's annual work plan, such additions are at the expense of other priority projects.