

Ombudsman Toronto Enquiry Report

Enquiry into a Complaint about Committee of Adjustment Notice Procedures

March 7, 2017

Complaint Summary

1. The complainant contacted us by email on June 8, 2016.
2. He explained that his next door neighbour had started building a two-storey rear addition to their home. The complainant was unaware that his neighbour would be building this addition.
3. After contacting the City, the complainant discovered that several months before, the neighbour had applied to the Committee of Adjustment (Etobicoke York District) for a number of minor variances required to build the addition.
4. The Committee of Adjustment had held a hearing in January, 2016, at which they approved the minor variances.
5. Staff from the Committee of Adjustment advised the complainant that due to a computer error, they had not mailed him notice of his neighbour's minor variance application. They had also failed to notify 19 other homeowners nearby.
6. He complained that the neighbour's addition will block some of his windows, and the neighbour's balcony will look directly into his backyard, reducing privacy. He told us that had he known about his neighbour's application, he would have appeared at the hearing to oppose it.

Steps Taken

7. We made inquiries with staff at the Committee of Adjustment. They advised that 77 properties should have received the notice, but 20 properties, including the complainant's, did not. Staff were unaware of this issue until the complainant raised his complaint with them.
8. Staff explained that in order to generate the notices, they use Geographic Information Systems ("GIS") software to generate a list of all addresses within 60

metres of the subject property. This "send to" list is then deposited into their IBMS¹ software, which staff use to generate the notices.

9. Staff could not explain why 20 properties were not captured by this process. To test the system, they recently recreated the "send to" list. All 77 properties were properly captured this time.
10. They contacted the City's Information & Technology Division, but they were unable to identify what had gone wrong.
11. Staff also advised that the period to appeal the Committee's decision had passed, and they did not have the authority to revoke or alter this decision.
12. We made additional inquiries with staff in the City's Information & Technology Division. They advised that they had also regenerated the "send to" list and it captured all the properties this time, including the complainant's.
13. They also checked to see if the underlying data had changed: i.e., if the complainant's property wasn't included on the original "send to" list because his address wasn't in their database at that time. Staff determined that there had been no changes to the underlying data. The complainant's address should have been captured.
14. Staff in the Information & Technology Division could not provide a technical explanation for what had happened, and stated there was no other further analysis they could do.
15. Committee of Adjustment staff informed us that upon realizing what had happened, they sent letters to the complainant and the 19 other homeowners who had not received notice of the application, apologizing for the error and committing to review their notice protocol to avoid this sort of error in the future.

Analysis and Issues Identified

16. We applaud the action Committee of Adjustment staff took to acknowledge and take responsibility for the error. The decision to do this was a positive one, demonstrating a respect for transparency and accountability to the public.
17. However, we are concerned that the City failed to meet its obligation to provide notice to the complainant, and to several other property owners, before the hearing.
18. The City's notification system for Committee of Adjustment applications must comply with provincial law.

¹ IBMS is the Integrated, Business process and workflow Management software System, also known as AMANDA.

19. The City has adopted one of the options available under Regulation 200/96 of the *Planning Act*: staff provide notice "by personal service or ordinary mail to every owner of land within 60 metres of the area to which the application applies,"² together with posting a notice that is "clearly visible and legible from a public highway or other place to which the public has access."³
20. The notice is designed to ensure that potentially affected residents can make their views known about an application. In the case at hand, the complainant alleges that, because he did not receive notice of the application, he was unable to exercise his right to challenge his neighbour's application.
21. We recognize that there are several ways that individuals may become aware of an application, including via the posted notice on the property, or through the City's online Application Information Centre. However, this does not absolve the City of its obligation to ensure that neighbouring residents are advised directly, which did not happen in this case.
22. Furthermore, City staff have been unable to identify why they did not send notices to the complainant and 19 other properties.
23. We were advised that staff have been instructed to ensure they are diligent in checking the "send to" lists to identify any discrepancies. However, staff cannot guarantee that a similar error will not happen again.

Ombudsman Recommendations

24. In consideration of the information gathered through this Enquiry, we make the following recommendations:
 1. The Committee of Adjustment (all districts) should monitor the applications it processes to identify any other instances where the "send to" list does not properly generate.
 2. The Committee of Adjustment should report back to my office on its findings after three months, and again after six months. Following this, we will be better able to determine if this issue has systemic implications, and if further action is required.

Response of the Committee of Adjustment

25. The Committee of Adjustment has reviewed a draft copy of this report and has agreed to implement our recommendations.

² Regulation 200/96 of the *Planning Act*, "Minor Variance Applications," s. 3(2)1.

³ Regulation 200/96 of the *Planning Act*, "Minor Variance Applications," s. 3(2)2.

Follow-Up

26. Ombudsman Toronto will follow up with the Committee of Adjustment if the Committee fails to report back after three and six months pursuant to recommendation 2.

(Original signed)

Susan E. Opler
Ombudsman