

Report Back on Committee of Adjustment Mediation Pilot Program

Date: May 23, 2018

To: Executive Committee

From: Acting Deputy City Manager, Cluster A; Interim Deputy City Manager, Cluster B

Wards: All

SUMMARY

This report provides a summary and evaluation of the Committee of Adjustment (CoA) mediation pilot program (MPP), which ran for one year from February 2017 to the end of January 2018.

The primary objective of the MPP was to determine whether mediation, as part of the CoA process, would reduce the number of appeals of minor variances and consent applications to the Toronto Local Appeal Body (TLAB). Staff also reviewed whether mediation reduced time and costs to the City and to other involved parties. The program was developed and administered by staff from Court Services, City Planning, Strategic and Corporate Policy, City Manager's Office and Legal Services.

The program ran in the Toronto & East York, Etobicoke York, North York and Scarborough Districts at a cost of \$127,489. Mediation sessions were voluntary and at no cost to participants, and were conducted by third party professional mediators and planners.

Seventy-eight mediations took place as part of the MPP. Initially, mediations were scheduled to a future date, resulting in applications taking longer to be heard by a CoA panel. The low number of initial participants (8) was attributed in part to this additional time commitment. Adjustments were made to provide for same day mediation sessions, which generated greater interest in the program.

Approximately 10% of the mediated applications were appealed to the TLAB. This appeal rate is generally consistent with the average appeal rate of CoA applications. Given the relatively low number of mediations conducted under this program, there is insufficient data to conclude whether or not a permanent mediation program would ultimately result in fewer appeals.

Although the response to the program was relatively low, surveys of both the vendors and participants in the program demonstrated some positive feedback on the benefits of

mediation for improving communication between parties and educating parties on land use planning and decision making processes at the City.

Given the low response rate and the costs associated with the program, staff are not recommending that the MPP continue. However, vendors and the parties that responded to a survey encouraged creating opportunities for dialogue between parties early in the process, and investing in enhanced education and communication on the City's land use planning decision-making process which may result in greater benefit than a formal mediation program.

There have been ongoing improvements made to CoA including additional staffing resources to help process a growing number of applications; implementation of testing of livestreaming panel hearings in the Toronto & East York District, and e-service improvements and active applications access through the CoA website. Further investing in these improvements would better build upon the positive results of the MPP, rather than implementing a permanent mediation program as part of the CoA process.

RECOMMENDATIONS

The Acting Deputy City Manager, Cluster A and Interim Deputy City Manager, Cluster B recommend that:

1. Executive Committee receive this report for information.

FINANCIAL IMPACT

The budget for the MPP was \$200,000. Of this amount, \$160,000 was allocated for remuneration of the third party mediators and planners, \$24,000 was for Court Services staff for the administration of the program, and \$16,000 was for training and evaluation. A total of \$127,489 of the allocated budget was spent. \$102,373 was spent on third party mediators and planners, \$24,000 on administration of the program, and \$1,116 on print and signage costs. Each mediation session cost an estimated \$1,634.

The Program's current funding allocation for education and communication can be leveraged and refocused to meet the recommended objective by enhancing education and encouraging early dialogue and communication between applicants and interested parties. Therefore no additional funds are required to achieve this outcome.

The interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY

At its meeting on March 31 and April 1, 2016 City Council adopted with amendments "Follow-Up Report on a Local Appeal Body (LAB) for Toronto", and approved a one-year Mediation Pilot Project on a city-wide basis with respect to minor variance and consent applications and directed the City Manager in consultation with the Director, Court Services, to report to the Executive Committee one year after the implementation of the Mediation Pilot Project with an evaluation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX13.1>

COMMENTS

The Mediation Pilot Program (MPP) evaluated the benefits of mediation in resolving disputes relating to minor variance and consent applications adjudicated by the CoA and to determine if fewer matters would be appealed.

Overview of the MPP

The MPP was administered by Court Services from February 2017 to the end of January 2018. Mediation sessions were conducted for minor variance and consent applications being considered by CoA panels in Etobicoke York, Scarborough, North York and Toronto & East York. Mediation was voluntary and held at no cost to the applicant or other affected parties disputing an application.

Mediations were conducted by professional third party mediators with a third party professional planner. City staff, through an open procurement process, selected a roster of three professional mediators and two professional planners to conduct the mediations.

Information about the MPP was posted on the CoA website, as well as CoA customer service counters. The public was provided with information about the MPP through media/press releases, Chairs' messaging of the program at CoA hearings, and information on Notices of Hearing.

MPP Process

At the CoA hearings, the panel Chair advised applicants and interested parties about the pilot. They were invited, with their agents, to register with City staff if they were interested in mediation as a possible means to settle a dispute on the application prior to being heard by the CoA panel.

At the beginning of the program, mediations were scheduled for a future date, and the application either with or without revisions was considered by the CoA panel at that later date. Because interested parties had to wait for the mediation, and then return to the CoA panel for the application to be heard, staff noted this might have resulted in a lack of interest as few mediations (8) took place using this approach.

In order to generate more interest in the program, City staff adjusted the process for scheduling mediations. With the same-day process, a third party planner and mediators from the roster would be present at the CoA hearing to allow mediation sessions to occur on the day of the hearing. Time allowing, the application would also be considered by the CoA panel on the same day, post mediation. These adjustments, along with several months of information dissemination, generated significantly higher interest in the program, with 70 mediations taking place (between the period of July 2017 and January 2018) using this approach.

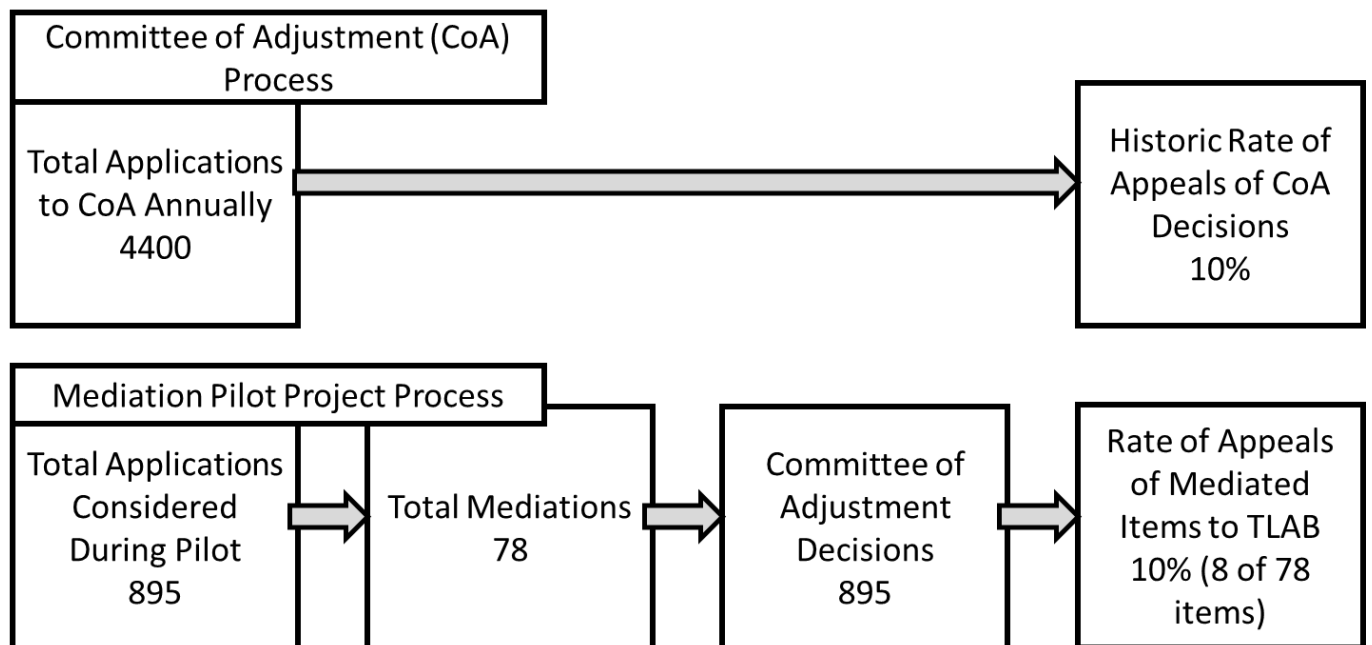
With either approach, all mediated items, regardless of the outcome of the mediation, were required to go back to the CoA panel for consideration and decision.

Outcomes of the MPP

One of the objectives of the MPP was to determine if mediation would reduce the number of appeals to the TLAB. The historic rate of appeals of CoA decisions to the appeal authority is 10%, based on data collected for selected years. The appeal rate of applications that had been mediated as part of the MPP was 10%.

Figure 1 provides an overview of the number of agenda items considered and the corresponding rate of appeal to the TLAB.

Figure 1 - Items Considered and Appeal Rates during MPP



Vendor Reports

The third party mediators and planners participating in the MPP were each asked to evaluate the program and include feedback on the benefits of mediation, overall impact on CoA decisions, suggested improvements and challenges they encountered during

the program. The following observations are from the five vendors, with an average of approximately 15 mediations per vendor.

The feedback from the vendors was mostly positive, and included the following observations:

- The mediation sessions assisted in generating a greater understanding of the issues at hand and less acrimony between parties.
- The sessions provided an educational opportunity for participants to learn more about the planning and municipal decision-making process.
- By providing information to the parties, many of the files became undisputed, therefore reducing the amount of time that a panel spent on considering the application.
- Participants were better able to focus on issues that were pertinent to the process and within the scope of a panel's authority.

As part of the feedback, the vendors also brought forward some suggestions for improvements to the program and challenges that they encountered. These included:

- Inconsistent messaging about the MPP from CoA Chairs.
- Paperwork could be streamlined and more user friendly.
- Limited resources for administration of the program resulted in challenges with booking rooms and use of equipment.

Participant Surveys

After each mediation session, participants were provided with a survey to assist in evaluating their experience with the MPP. Of the 384 participants in the program, 93 completed and submitted a survey - a response rate of 24%. Questions focused primarily on their level of satisfaction with the program overall, as well as satisfaction with the mediators and planners and the information provided about the program.

In general, the feedback from participants was consistent with the feedback from the vendors - that the pilot provided an opportunity to learn more about the land use planning process, to identify matters relevant to the CoA process and to improve communication with their neighbours.

Resource Impact of Administering MPP

Staff resources were limited and existing staff resources were leveraged along with summer student and temporary staff to deliver the program to the public. Existing resources dedicated to MPP were not charged to the delivery of the pilot program.

Staff developed program materials; provided financial management; procurement of qualified vendors; facility room booking; supervision, project management, media relations and strategic communication in delivering the pilot program services.

When mediations were scheduled to later dates, the mediation required a higher level of coordination with multiple individuals and vendor availability.

When mediations were scheduled on the same day, mediation required a staff person to attend the CoA hearings; provide information on the program to the public; and coordinate same day mediation sessions with mediators and planners. As CoA hearings are held concurrently across the city, more than one staff person was required to support the mediations. There was no predictability to the number of people who would participate in the same day mediation. Same-day mediation results varied from zero mediation requests to seven mediation held within the same day. Court Services staff also managed contract obligations with third party mediators and planners.

There was considerable effort spent in securing meeting room space for the pilot program and arranging agreeable locations/dates for parties to participate in mediations.

To properly resource a mediation pilot program, a dedicated staff person for each CoA panel and a dedicated program lead or supervisor to support frontline service delivery as well as financial administration will be required. Dedicated meeting room space, a formalized process for mediation within the CoA rules of practice and procedure, professional mediators and planners.

Mediation as a Tool for Resolving Disputes and its Place in the Planning Process

Mediation can be an effective method of resolving disputes as it can help parties identify issues, encourage flexibility for parties to consider different options, and provide an opportunity for enhanced communication. It is a common dispute resolution tool in fields such as family law, workplace disputes and the insurance industry, however, it is not as common in land use planning. The effectiveness of mediation can depend on a number of factors, including the openness and willingness of the parties to participate, the number of parties involved and whether the outcome of the mediation is binding.

Although participants and vendors reported some positive feedback of the program, the uptake in the MPP was relatively low, despite adjustments to promote the program more effectively and allow for same day mediation sessions. In addition, although the low numbers make it challenging to draw firm conclusions on the effectiveness of mediation in reducing the number of appeals, in the case of the MPP, the appeal rate of the mediated applications was unchanged from the historic appeal rate of CoA applications.

Staff measured the effectiveness and success of the mediation program against the following objectives:

- Reduce costs to the City and to applicants;
- Reduce the amount of time for applicants to have their applications heard;
- Reduce the number of appeals to the TLAB;
- Promote communication and education on the City's land use planning decision making process.

On the objectives to reduce time, cost and appeals, the program was less successful, however due to the low participation rate, it is difficult to definitely measure these outcomes.

Additionally, because the outcomes of the mediation sessions in this program were not binding, anyone who participated in the mediation could still appeal the CoA's decision to the TLAB. Also, any party to an application, who chose not to participate in the mediation, could appeal the item to TLAB.

The program did demonstrate some success in improved communication and education of parties involved, leading to the finding that the positive outcomes of the program may be better delivered through ongoing efforts to improve the CoA process, particularly by encouraging early dialogue and communication between applicants and interested parties.

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