

Staff Report



Corporate Services Department

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REPORT TO: Finance and Corporate Services Committee

DATE OF MEETING: August 14, 2023

SUBMITTED BY: Amanda Fusco, Director Legislated Services/City Clerk, 519-741-2200 ext. 7809

PREPARED BY: Dianna Saunderson, Manager, Council and Committee Services / Deputy Clerk, 519-741-2200 ext. 7278

WARD(S) INVOLVED: N/A

DATE OF REPORT: July 15, 2023

REPORT NO.: COR-2023-320

SUBJECT: Approval of Terms of Reference - Committee of Adjustment and Property Standards Appeal Committee

RECOMMENDATION:

That the Terms of Reference for the Committee of Adjustment attached as Appendix 'A' to Corporate Services Department report COR-2023-320 be approved; and,

That the Terms of Reference for the Property Standards Appeal Committee attached as Appendix 'B' to Corporate Services Department report COR-2023-320 be approved; and further,

That the Clerk be directed to include the approved Terms of References into the City's Policy manual and number them sequentially as per the existing number sequence.

REPORT HIGHLIGHTS:

- The purpose of this report is to establish a Terms of Reference for Committee of Adjustment and Property Standards Committee.
- The purpose of the Terms of Reference is to provide greater transparency, accountability and guidance to the operational processes and procedures related to the Committees.
- This report supports the delivery of core services.

BACKGROUND:

The City currently has four Quasi-Judicial Committees/Tribunals, two that meet regularly which include the Committee of Adjustment and Property Standards Appeal Committee and two that meet infrequently which include the Licensing Appeal Tribunal and Dog Designation Appeal Committee. All four Quasi-Judicial Committees render decisions based on various legislations, including but not limited to, the Statutory Powers of Procedure Act, the Planning Act, the Building Code and the Municipal Act. The term "quasi-judicial tribunal" refers to a body created by law with a mandate to settle matters in an impartial manner by applying rules of law without regard

for expediency or administrative policy. The Committee of Adjustment and Property Standards Committees render decisions on applications or appeals received based on regulations outlined in the Planning Act and Building Code Act, using the regulated guidance for hearing procedures as outlined in the Statutory Powers of Procedure Act. Both the Committee of Adjustment and Property Standards Committee are long-standing committees that have operated relatively successfully for numerous years under the support and guidance of staff in Legislated Services, Legal, Planning, Transportation Services and By-law Enforcement but would benefit from greater transparency and accountability from an approved Terms of Reference. The Terms of References are intended to confirm and define Committee procedures, provide clear expectations for the recruitment and qualification of its' members and to ensure all members of the Committees are captured clearly under the City's Code of Conduct.

REPORT:

Committee of Adjustment:

The Committee of Adjustment (the 'Committee') is an administrative, statutory tribunal which derives its jurisdiction and authority from the Planning Act, R.S.O. 1990, c. P.13 (the 'Planning Act'), which enables City Council to establish one.

Specifically, the Committee of Adjustment is intended to hold public hearings for the purposes of considering and making decisions with respect to:

- Minor Variances from the provisions of the Zoning By-law;
- Permissions, which include with enlargements or extensions of a structure that may be legally non-conforming, or a change in non-conforming use;
- Consents; and
- Leases in excess of 21 years, Validation of Title and Power of Sale.

The City of Kitchener Committee of Adjustment considers upwards to 250 applications annually, with no limit to the number of applications that can be considered monthly. Failure to appoint resident members to Committee of Adjustment would default consideration of the applications to Council.

The Committee's composition is 5 members who are scheduled to attend every meeting with the current term being approved for two years ending November 14, 2024. It should be noted that staff have always continued to review best practises with regards to the Committee and have amended procedures as necessary to make the Committee more effective and accountable, within the prescribed legislation. Some of the changes over past years include but are not limited to:

- amending the rotation schedule to have 5 members attend all meetings rather than 3;
- including Committee of Adjustment applications on the City's Open Data portal making information more accessible to the public;
- amending meeting procedures to have staff present a summary of each application and an overview of the staff recommendation prior to the Committee's consideration;
- providing notice to the applications through the newspaper, the website (multiple locations), mailed notices and signs on subject properties;
- providing specific application details on an updated lawn sign (launching Q3 2023); and,
- livestreaming the meetings to make them more accessible to the public.

The Committee of Adjustment is regulated by the Planning Act and the Statutory Powers of Procedure Act, where applicants and interested parties to the applications are to be provided the opportunity for a fair hearing and the Committee is then diligent in their consideration of the application(s) in accordance with the requirements of the Planning Act. The Committee is provided training on the regulations outlined in the Act prior to their term on the Committee and are provided additional training throughout the term as required. For each Committee meeting Planning Staff provide detailed reports outlining the policies and regulations associated with each application, including a recommendation on whether the application(s) should be approved or refused. Planning Staff and Transportation Staff are in attendance to help present the applications, the staff recommendation and respond to questions from the Committee to assist members in rendering their decisions.

As a result of the approval and implementation of *Bill 23, More Homes Built Faster Act 2022*, unlike Zoning By-law Amendments and Official Plan Amendments, Committee of Adjustment decisions are appealable by specified people only, to the Ontario Land Tribunal. Previously, appeal rights were not limited to a specified person. The data below details the number of applications considered by the Committee and the number of instances where an appeal has been received.

Minor Variances	Applications Considered	Appeals Received
2016	134	0
2017	126	0
2018	136	2
2019	134	1
2020	105	1
2021	144	1
2022	144	1
2023* as of 05-2023	62	2

Consent	Applications Considered	Appeals Received
2016	120	1
2017	49	0
2018	127	1
2019	77	1
2020	48	0
2021	67	3
2022	60	0
2023* as of 05-2023	20	1

*The Minor Variance Appeals received in 2023, the Planning Department recommended refusal of the applications and the Committee supported the staff recommendation.

Property Standards Committee:

The Property Standards Committee is appointed by Council pursuant to the provisions of the Building Code Act to deal with matters related to the municipality's Property Standards By-Law. Specifically, the Property Standards Committee hears appeals from property owners or occupants with respect to an order served by a Municipal Law Enforcement Officer in cases where the owner or occupant are dissatisfied with the terms and conditions of the order. The Committee has all the powers of the enforcement officer and may confirm the order, modify, or quash it, or may extend the time for compliance.

The Property Standards Committee is regulated by the Building Code Act and the Statutory Powers of Procedure Act, where only those that are interested parties to the appeal, would be permitted to participate in the hearing. The Committee is responsible for providing a fair hearing and the Committee is then diligent in their consideration of the application(s) in accordance with the requirements of the Building Code Act. The Committee is provided training on the regulations outlined in the Act prior to their term on the Committee and are provided additional training throughout the term as required.

For each meeting By-law Enforcement staff and the Appellant are parties to the hearing process and provided the opportunity to present a case related to the Order to Comply and the property's compliance with the City's Property Standards By-law. As part of the hearing both the Appellant and Enforcement staff have the opportunity to provide summations including making a request to the Committee for their preferred decision. The Committee deliberates and renders a decision. Pending the situation, the Committee may seek advice from Legal Services prior to rendering a decision.

The Property Standards Committee's decisions are appealable to Superior Court. A summary has been provided to highlight the number of appeals received, including a summary of the decisions that were appealed to Superior Court.

Year	Appeals Received	Decision Appeal
2016	12	0
2017	12	0
2018	15	0
2019	12	0
2020	14	0
2021	15	0
2022	10	0
2023 <i>as of 05-2023</i>	4	0

General Comments

The proposed Terms of References are intended formalize meeting expectations for members, staff, applicants, and interested parties to the hearings. They are intended to provide a clear understanding related meeting format and the members responsibilities when rendering a decision. They also address an identified gap that ties the members to the City's Code of Conduct and provide further guidance related to perceived bias, and options afforded to them when considering applications or appeals, as the decisions rendered by the Committee are judicial in nature. It is important to note similar to Council, staff would not be in a position to provide advice on potential conflicts, as the responsibility would rely solely with the individual member(s).

Establishing a Terms of Reference for the two Committees would provide for greater accountability and transparency and is a general best practice.

The Licensing Appeal Tribunal and Dog Designation Appeal Committee are not being recommended for a Terms of Reference through this report. Staff are still reviewing options related to those Committees and intend on reporting back through a future report to address those hearings through a different procedure.

STRATEGIC PLAN ALIGNMENT:

This report supports the delivery of core services.

FINANCIAL IMPLICATIONS:

Capital Budget – The recommendation has no impact on the Capital Budget.

Operating Budget – The recommendation has no impact on the Operating Budget.

COMMUNITY ENGAGEMENT:

INFORM – This report has been posted to the City's website with the agenda in advance of the council / committee meeting.

PREVIOUS REPORTS/AUTHORITIES:

- *Municipal Act, 2001*
- *Planning Act*
- *Statutory Powers of Procedure Act*
- *Building Code Act*

APPROVED BY: Must be the CAO or a General Manager

ATTACHMENTS:

Attachment A - Terms of Reference Committee of Adjustment

Attachment B - Terms of Reference Property Standards Appeal Committee