



Date: 2021-12-01

From: Chloe Reaburn, Planner

Subject: Committee of Adjustment Model Review

Report: PL.2021.40

Recommendation

That report PL.2021.40 be received, and

That Council support Option 1 for the Committee of Adjustment structure model to commence with the 2022-2026 Council term, and

That By-law 19-2011 Being a By-law to Establish a Committee of Adjustment and Committee Procedures be updated to reflect the change to the Committee structure and to address any administrative changes as required to bring the By-law up-to-date, and

That the amended model take effect following the new term of Council in 2022.

Background

At the October 6, 2021 Council meeting, staff were directed to prepare an information report reviewing options for restructuring the model of the Committee of Adjustment through an update to By-law 19-2011 Being a By-law to Establish a Committee of Adjustment and Committee Procedures.

This direction was provided by resolution RES2021-181:

That Item 17.2, Notice of Motion regarding the Township of Georgian Bluff's Committee of Adjustment model be deferred; and

That Council direct staff to prepare a report.

Analysis

The Committee of Adjustment (“Committee”) is a quasi-judicial body, which means that it is a Committee having powers and procedures resembling those of a court of law or judge and is obliged to objectively determine facts, draw conclusions and interpret law.

Committee of Adjustment is comprised of not fewer than three members, established under the authority of the Planning Act and its regulations and is subject to the Statutory Powers Procedure Act, the Municipal Conflict of Interest Act, the Municipal Freedom of Information and Protection of Privacy Act and the common law concept of natural justice.

The Committee’s role is to make decisions regarding applications for minor variances and consents under Sections 45 and 53 of the Planning Act, respectively. In addition, the Committee, may upon any such application, grant permission to expand or enlarge legal non-conforming uses and determine whether a particular use conforms with the provisions of the Zoning By-law where the uses of land, buildings or structures permitted in the by-law are defined in general terms. Committee of Adjustment differs from Council in that Committee makes decisions only on minor variance and consent applications, whereas Council makes decisions on zoning by-law amendment applications.

Consent decisions made by Committee must reflect the governing planning documents including the Planning Act, the Provincial Policy Statement, Provincial Plans, the County of Grey Official Plan, the Township of Georgian Bluffs Official Plan, and the Township’s Zoning By-law. Decisions on Minor Variance applications must ensure that the 4 tests of a minor variance have been met. All decisions are subject to appeal at the Ontario Land Tribunal (OLT), formerly known as the Local Planning Appeal Tribunal (LPAT).

By-law 19-2011 Being a By-law to Establish a Committee of Adjustment and Committee Procedures lays out the procedures of Committee of Adjustment. By-law 19-2011 notes the “Terms of Office”:

Members shall be appointed annually. Members of the Committee shall hold office until their successors are appointed, and are eligible for re-appointment, and where a member ceases to be a member before the expiration of his or her term, the council shall appoint another eligible person for the remainder of the term.

The By-law does not specifically address the composition of Committee of Adjustment, however the current Committee of Adjustment is comprised entirely of members of Township Council.

A review of Grey County member municipalities was completed to compare Committee of Adjustment models. Within the County of Grey member municipalities, three different models for the structure of Committee of Adjustment are used: members of Council only, citizen members only, and a hybrid model consisting of both citizen members and Council members.

Of the nine Grey County member municipalities, five municipalities have a Committee of Adjustment comprised of either all citizen members or a hybrid of citizens and Council members.

The hybrid model takes different shapes in each municipality utilizing this structure. For example, in Grey Highlands, Committee of Adjustment is comprised of three council members and two citizens. However, in the Town of the Blue Mountains, Committee of Adjustment was recently expanded to five members including four citizen members and one member of Council. The Town of Hanover appoints all citizen members to comprise Committee, however also appoints one Council representative and one alternative to sit on Committee. One municipality noted that their intent of appointing only members of the public is to reduce the possibility of decisions of Committee becoming political.

In addition, information was collected regarding the operations and procedures of other member municipalities' Committees of Adjustment. The below additional information is provided for consideration.

- Most municipalities in Grey County offer a stipend/per diem per meeting as per their respective Council remuneration policies. The per diem ranges from \$75 - \$111 for a half day meeting. Two municipalities who have only citizen members on Committee offered no remuneration to Committee members. In addition to a per diem per meeting, the Town of The Blue Mountains also noted they pay applicable mileage and reimburse costs associated with Conferences/Training, OACA Memberships and other allowable expenses in accordance with the Town's Corporate Expense Policy.
- The average length of meetings across the municipalities tends to vary from short (1 application, approximately 15-20 minutes) to several hours long. The Town of The Blue Mountains, The Town of Hanover and the City of Owen Sound also appoint Committee of Adjustment members into additional committee(s)

such as the Property Standards Committee, Sign Committee and Line Fences Review Committee.

- Municipalities tended to note that there was not a significant uptake in interest from public members to participate in Committee of Adjustment, however it was never expressly noted as an issue affecting how Committees are structured.
- The Planning Act sets out the requirements for the Term of Office. Section 44(3) states that the members of the Committee who are not members of a municipal council shall hold office for the term of the council that appointed them and the members of the committee who are members of a municipal council shall be appointed annually.

The Ontario Association of Committees of Adjustment and Consent Authorities (“OCA”) suggests in their training materials that citizen members should remain at “arm’s length” from Council as much as possible, and Councillors who have been appointed to Committee try to be objective when hearing applications in order to maintain the Committee’s integrity and avoid decisions of political will. As a quasi-judicial body, the core principles of natural justice apply:

1. The Right to be Heard;
2. The Rule Against Bias.

The above noted principles enshrine the duties on the decision-making body to allow affected parties to reasonably present their case, and to act fairly, listen to arguments and make decisions free from bias. Failure to follow the natural principles of justice may invalidate decisions or make decisions vulnerable to appeal.

When a Committee of Adjustment is comprised solely of members of Council, it may be perceived that there is a conflict between the political nature of Council and the duty of Committee of Adjustment to remain unbiased. As such, the below options are presented for consideration as alternatives to the current model in place:

- **Option 1 (Recommended):** Hybrid Committee model consisting of Council members and citizen members;
- **Option 2:** Committee comprised of citizen members only;
- **Option 3 (No Change):** Committee remains comprised of Council members only.

Option 1 is recommended for two primary reasons. First, it is recommended because by including Council members on the Committee, they can contribute knowledge of local context, however the integrity of decisions is safeguarded by including apolitical members in the decision-making process.

Second, this option allows interested citizens to apply for a position on the Committee while protecting against the possibility of not receiving enough interest from the public to form a citizen-only Committee. In the event that no interest is expressed from the public in joining the Committee of Adjustment, then the model may be reviewed at the next term or through formal request.

It is also important to recognize that Councillors have busy schedules and commitments to other Committees at which their presence may be better utilized.

Changes to the Committee structure would be in place for the first Committee of Adjustment meeting under the newly elected Council, which is scheduled for December 13, 2022. Staff would need direction from the current members of Council to commence the citizen recruitment process beginning on November 1, 2022. This stage of the process would be limited to a request for applications from citizens interested in sitting on the Committee. The applications received would be presented to the 2022-2026 term of Council to appoint as members of the Committee of Adjustment. This process will also determine the number of Councillors needed on the Committee.

Financial Impact

Currently, Council receives remuneration as a per diem based on duration of the meeting as per By-law 2018-086 Being a by-law to adopt a Council Remuneration Policy and to repeal By-law 53-2014. It is expected that no change in remuneration would occur with any of the presented options.

Every year, Committee of Adjustment members receive training through the Ontario Association of Committees of Adjustment and Consent Authorities at the expense of the Township, which is not expected to change with any of the presented options.

Strategic Priorities

The 2020-2024 Strategic Plan encourages transparency and improved communication with ratepayers, stakeholders, and neighbouring municipalities. Incorporating citizen members in the Committee of Adjustment may effectively separate the interests of Council and Committee and Adjustment and improve transparency of decision-making with respect to development.

“1. Improve Communication, Collaboration and Transparency

The Township of Georgian Bluffs wishes to become more transparent and improve communication with all ratepayers, stakeholders, and neighbouring municipalities. Communication is key in all aspects of Township governance and service.”

Conclusion

The models of surrounding municipalities’ Committees of Adjustment provide examples of a future possible model of the Township of Georgian Bluffs Committee of Adjustment. Currently, there is no prevailing Committee of Adjustment model within Grey County municipalities on which to benchmark best practices, however based on the principles of natural justice, there is justification for review of the current model used on the Township of Georgian Bluffs.

Staff recommend introducing, at the start of the next term of Council, a hybrid model of Committee of Adjustment incorporating both Council representatives and citizen members. Staff also recommend updating By-law 19-2011 Being a By-law to Establish a Committee of Adjustment and Committee Procedures to reflect the change to the Committee structure and to address any administrative changes as required to bring the By-law up-to-date.

Supporting Documentation

- Township of Georgian Bluffs By-law 19-2011 Being a By-law to Establish a Committee of Adjustment and Committee Procedures

Respectfully Submitted:

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Planner

Report Approval Details

Document Title:	PL.2021.40 Committee of Adjustment Model Review.docx
Attachments:	- CoA By-law 19-2011.pdf
Final Approval Date:	Nov 25, 2021

This report and all of its attachments were approved and signed as outlined below:

Jenn Burnett, Senior Planner

Brittany Drury, Clerk / Interim CAO