



CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Planning Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	August 9, 2022
SUBJECT/REPORT NO:	Committee of Adjustment Delegated Authority and Application Fees (PED22167) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Steve Robichaud Director, Planning and Chief Planner Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATION

- (a) That the authority to decide on routine and administrative Consent applications, and Certificates for Cancellation and Validation of Title be delegated to an appointed officer, being the Director of Planning and Chief Planner in accordance with Section 53 and 57 of the *Planning Act*;
- (b) That the By-law to amend By-law No. 07-300, Delegation of Consent Authority and Constituting a Committee of Adjustment as amended by By-law No. 21-151, to provide an increase for the Committee of Adjustment member honorarium and to enable Recommendation (a), attached as Appendix "A" to Report PED22167 be enacted by Council;
- (c) That the By-law to amend By-law No. 12-282 Tariff of Fees, as amended by By-law No. 19-108, attached as Appendix "B" to Report PED22167, to provide for reduced fees for the processing of routine and administrative consents, and associated process changes, be enacted by Council.

EXECUTIVE SUMMARY

Staff have reviewed the workload and process of the Committee of Adjustment to determine ways to streamline “simple” Consent Applications. The *Planning Act* allows the Council of single tier municipality the authority to delegate authority for Consent Applications to the Committee of Adjustment, to a further delegated authority or an “appointed officer.”

This Report outlines the various options for allowing delegated authority for Consent applications based on an analysis of the practices of comparable municipalities and best practice review. Recommendations are included for further delegation of Lease and Easement Consent Applications, as well as Validations and Cancellations to the Director of Planning and Chief Planner.

This report also outlines proposed new fees related to the further delegated authority, a new fee required due to the addition of Cancellations to the *Planning Act* through Bill 276, and an opportunity for reduction in fees through a proposed consolidation for multiple Consent applications on one property.

A request was also made by the Committee of Adjustment members that staff review comparable municipalities to determine if an increase in the honorarium and mileage was warranted. The current honorarium of \$100 per meeting has been in place since 2007. Recommendations are included for an increased honorarium for the Committee members and the current honorarium cost will be covered through the existing Operating Budget for the Committee of Adjustment.

Alternatives for Consideration – See Page 10

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: N/A

Legal: N/A

HISTORICAL BACKGROUND

The *Planning Act* has historically allowed for further delegated authority, however the City of Hamilton has not implemented the permissions. In accordance with Section 54 of the *Planning Act* the delegation of authority can be given to a Committee of Adjustment (current) or to an “appointed officer” identified by position or name for the following consents:

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- Consent Applications in accordance with Section 53;
- Validation Certificate in accordance with Section 57; and,
- Certificate of Cancellation in accordance with Section 53(45).

More recent changes to the *Planning Act* (Bill 276) granted additional delegation authority for Certificate of Cancellation, which took effect on January 1, 2022. As a result of the existing and updated permissions for delegated authority for Consent applications staff identified that it would be beneficial to do a fulsome review of the consent process to identify opportunities to reduce unnecessary delays and alleviate workload issues. Based on a review of best practices for municipalities across Ontario staff have identified opportunities for improving and streamlining the Consent application process.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The City of Hamilton currently delegates authority for the giving of consents, through By-law No. 07-300, as amended by By-law 21-151, to the Committee of Adjustment. The recommendations of this Report include amendments to By-law 07-300 for further delegation of simple Consent Applications to the Director of Planning and Chief Planner.

Council has delegated all of its consent and validation granting authority under the *Planning Act* to the Committee of Adjustment. All Applications for consent under Section 53 and all Applications for Validation under Section 57 are decided by the Committee of Adjustment. These applications can include:

- The creation of a new lot,
- Merging a parcel of land with abutting lands; or,
- Approval of permissions/charges for a part of a property, including:
 - Lease for greater than 21 years;
 - Easement; or,
 - Mortgage/charge.

Consent Applications are reviewed for conformity with the Official Plan, Neighbourhood Plan, Zoning By-law and municipal engineering standards. Public notice of a Consent application is given in accordance with the *Planning Act* by posting a sign on the subject lands, by mail to the immediate surrounding property owners and by email to identified interested agencies. The alternative per the *Planning Act* is Notice posting in a newspaper, this option is not practical for the City of Hamilton Consent Applications.

Consent Applications for new lots and/or easements are often associated with other development Applications (i.e. Zoning By-law Amendment, Site Plan Control or Minor Variance application) which are subject to detailed staff review, Council approval, and may or may not include a public meeting of the Planning Committee (i.e. rezoning

application and/or subdivision application) or Committee of Adjustment (i.e. minor variance).

Currently, there are no statutory requirements pertaining to the time and date for when a Consent Application will be considered by the approval body (i.e. Committee of Adjustment), there is only a timeline for when a Decision must be made, or the applicants have the right to appeal to the Ontario Land Tribunal. In accordance with Section 53(5) of the *Planning Act*, a notice of Application is given at least 14 days before a decision is made unless alternative measures are adopted by Council, in accordance with Section 53(4.3). There are no regulations requiring a public meeting for consents under the *Planning Act* or City of Hamilton Official Plans.

RELEVANT CONSULTATION

Staff contacted several consent granting authorities in Ontario to determine common practice and to review to determine which options may be beneficial to the City of Hamilton.

On June 13, 2022, staff notified the members of the Development Industry Liaison Group (DILG) that staff were reviewing the delegated authority related to specific Consent Applications as well as reviewing fees associated with Consent Applications.

Committee of Adjustment staff also consulted with Legal and Planning staff.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

1.0 Delegated Authority

Staff have evaluated the four options to consider further delegated authority for Consent applications, in accordance with the *Planning Act*. The assessment includes opportunities to reduce review and processing times and reduced application fees.

1.1 Further Delegated Authority for Validations, Cancellations, and “Simple” Consents

The first option would have further delegated authority apply to Validations of Title, the new applications for Cancellation, as well as “simple” Consent applications including:

- Leases,
- Easements, and
- Mortgages/charges.

Validation and Cancellation Applications are largely research and confirmation exercises for staff to demonstrate compliance with the *Planning Act* requirements. There are no requirements for any type of notice or public meeting for either application.

Validations of Title only occur where there has been a contravention of the *Planning Act* during a real estate transaction and are routine administrative matters (e.g. conveyance of a parcel after the Council approved Part Lot Control exemption by-law has lapsed). City of Hamilton typically sees one to two applications per year.

Cancellations were added as part of the *Planning Act* amendments from Bill 276, in effect as of January 1, 2022. The Application allows the owner of a property to cancel a consent that was previously granted. Staff anticipate a similar application number to Validations of Title.

The “simple” Consent Applications are typically more technical in nature and interested members of the public are largely limited to those directly involved (e.g. land owner and those having an interest in the lease/easement). These Applications would not result in the creation of new lots. The requirements of the *Planning Act* with regards to providing notice before a decision is made must be met.

1.2 Further Delegated Authority for all Consent Applications that conform with the Official Plan and applicable Zoning By-law

The second option would have further delegated authority apply to all Consent Applications where the proposed consent conforms with the Official Plan and Zoning by-law.

While there is no requirement for a public meeting or public hearing for Consent Applications, there are requirements for public meetings and public hearings for other *Planning Act* Applications. Having Consent Applications that require additional *Planning Act* approvals processed with a public meeting would enable an open approach for the public and the Applicant. While not holding a public meeting for Consent Applications that do conform with Zoning would help to ensure that a streamlined approach is taken with the Applications.

Consent Applications that would be subject to delegated authority include:

- Severance of a built semi-detached or townhouse dwellings not covered by Part Lot Control; and,
- The creation of new lots or lot additions where the lots conform with the Official Plan and Zoning By-law.

To facilitate this option, Applicants would submit an Applicable Law Review (through Zoning Review team) before the Consent Application and proof of Zoning Compliance for the proposed lots would be required as part of a complete Application. Section 53(3) of the *Planning Act* allows for additional information to be submitted as part of a complete application for a Consent Application. If this option is chosen, the RHOP and the UHOP would need to be amended to require the additional information as part of a complete Application.

1.3 Further Delegated Authority for all Uncontested Consent applications

The third option would be that the further delegated authority apply for all uncontested Consent Applications. This would involve all Consent Applications being circulated as required by the *Planning Act* and if any responses with concerns, or in opposition of the application were received, the Application would proceed to the Committee of Adjustment for decision. If the Consent is uncontested, the “appointed officer” would be able to proceed with a decision.

This option may have the effect of prolonging the process of obtaining a decision on a Consent Application. The Application would need to be circulated as per the *Planning Act* to staff, surrounding property owners, all interested parties and agencies as required and the appointed officer. If comments received for the Application are in opposition of the Application, consideration of the consent would need to be added to the next available Committee of Adjustment agenda. Committee of Adjustment members would need enough time to review the applications and comments before the hearing. It would also be best practice to allow those who provided comments the opportunity to attend the hearing, along with the Applicants.

This option would also lead to some uncertainty among Applicants as they would not know which process they would be going through until the Application has been circulated and comments are received.

1.4 Further Delegated Authority for all Consent Applications

The fourth option would be that further delegated authority be given for all Consent Applications. This would involve one process for all consents where notice is given in accordance with the *Planning Act*, however the decision on whether to grant consents would be at the sole discretion of the appointed officer.

This option would have the effect of removing all Consent Applications and the public from a public process. While the *Planning Act* allows for further delegated authority to an appointed officer for all Consent Applications without a public meeting, it has been the practice of the City of Hamilton, through the Committee of Adjustment, to allow residents to participate at a public meeting to consider a Consent Application.

1.5 Recommendation

That Delegated Authority By-law No. 07-300, as amended by By-law No. 21-151 be amended to further delegate authority for Validations of title, Cancellations, and “simple” Consent Applications (e.g. easements mortgages, etc.) to an appointed officer and that the “appointed officer” shall be the Director of Planning and Chief Planner.

2.0 Fees

In 2019, the City of Hamilton conducted a comprehensive review of Planning Application fees (Report 19-002 (PED19015(a)), passed by Council on May 9, 2019. Consent Applications were not included in this review. During the review for further delegated authority it was noted that there may be opportunities to reduce the fees associated with Consent Applications, where further delegated authority is being considered. The reduction of fees could be considered for leases and easements as no changes to lot dimensions (including frontage and area) are granted with these Application types.

Section 69 of the *Planning Act* establishes the authority for a municipality to establish a Tariff of Fees. The fees charged must reflect the cost to process a Development Application. There is no impact to Development Charges and Parkland Fees with Consent Application fees.

Additionally, as a result of Bill 276, a new fee must be added for the review of Cancellation Applications.

2.1 Cancellation Application Fee

Currently there is no fee for a Cancellation Application. This is an Application type that was only recently enacted as a result of changes to the *Planning Act* under Bill 276 (in effect as of January 1, 2022). Staff are anticipating a similar workload and review process to a validation Application based on the requirements for submission as required by the *Planning Act* Section 53(45-49). The City of Hamilton received approximately one to two validation Applications per year. As such a similar fee would be desirable.

Recommendation: That By-law No. 12-282, as amended by By-law No. 19-108, be updated to include the Cancellation Application fee of \$475 (2022 rate) and increased with inflation.

2.2 Lease and Easement Application Fee

Due to the limited impact of Consent Applications for leases and easements, a reduction in fee may be possible, if the approval function is delegated to the Chief Planner. As no new lot lines are being created and no changes to the property are typically contemplated with these applications. This results in a lesser review time due to the limited impact on the property and surrounding uses.

The current fee for a consent for a fully serviced lot is \$2,985, with additional fees related to the processing of applications on lands serviced by well/cistern or septic systems. A new fee for Lease and Easement Applications may be possible at approximately two-third the fully serviced lot rate, due to the reduced staff review time associated with these applications, processing fees would also be reduced if these applications were decided upon by an appointed officer. No additional fees would be required for properties with well/cisterns or where no sanitary sewers exist, as these are not typically reviewed where no lot line adjustments are made.

Recommendation: That By-law No. 12-282, as amended by By-law No. 19-108, be updated to include the new fee for consents for leases and easements be \$1,990 (2022 rate) and increased with inflation.

2.3 Concurrent Consent Application Fees

From time to time, concurrent Consent Applications are made. This is typically done with one new lot in the centre of a property and two retained lots on either side (see Sketch A in Appendix “C” attached to Report PED22167). Occasionally, applications are made for more lots, through concurrent applications, more than one Consent Application on the same property. This is commonly referred to as “checker boarding.”

The additional review and processing time required for concurrent Consent Applications, on fully serviced lands, can be reduced with some changes to processing. Due to amendments to the *Planning Act* through Bill 276, both retained lands and severed lands are able to have certificates (upon request) provided once all conditions have been fulfilled. Currently, Consent Applications will have one certificate issued for the severed lands, while the retained lands would not receive a certificate. This process could change so that the fee remains the same for one retained land and two new lots (see Sketch B in Appendix “C” attached to Report PED22167), while a reduced fee could be applied to each additional new lot created. This additional per lot fee would be similar to other lot creation *Planning Act* Applications, including Plan of Subdivision and Plan of Condominium.

These types of applications are typically submitted by homeowners or small-scale developers and help to create low density residential development opportunities in the urban area. Currently, for each additional related consent, a separate file and report

must be created. Concurrent review and processing enables staff to review related applications as a whole and provide consolidated reports and proposed conditions.

If a concurrent Consent Application (see Sketch C in Appendix “C” attached to Report PED22167) is applied for at the same time as another Consent Application, the administrative processing times can be reduced, enabling a reduced processing fee at approximately two-third the fully serviced lot rate.

Recommendation: That By-law No. 12-282, as amended by By-law No. 19-108, be updated to include the new fee for concurrent Consent Applications. The Consent Application fee for one retained lot and up to two new lots per lands remains unchanged. The Consent Application fee for each additional lot created on fully serviced lands will be \$1,990 (2022 rate) and increased with inflation. Concurrent Consent Applications must be made at the same time to benefit from the reduction in fees, amendments to Consent Applications would not be eligible for the reduction.

3.0 Committee of Adjustment Honorarium

During the course of the review for further delegated authority it was also noted that the honorarium that Committee members receive has not been amended since 2007 (\$100 per meeting). Committee members also brought this to the attention of staff earlier this year. The Committee of Adjustment members, at their February 17, 2022 Meeting, passed a motion directing staff to review comparable municipalities to determine if a request for an increase in the honorarium and mileage rate for Committee of Adjustment members was warranted.

Staff have contacted comparable municipalities and have determined that other municipalities with similar application submissions have increased honorariums for Committee of Adjustment members. The lowest honorarium per meeting was \$175 per meeting and the highest being \$355 per meeting. Some municipalities also provide an additional honorarium for the Chair of each meeting. Comparable municipalities reviewed were City of Brampton, City of Mississauga, City of Ottawa and City of Toronto.

Staff have also reviewed the request for an increase in mileage for Committee of Adjustment members. Staff could not find any comparable municipalities that had a special mileage rate for Committee members, all other municipalities included reimbursement cost at the same rate as the municipal policy.

The honorarium cost is incorporated into the Consent and Minor Variance application fees and the Committee of Adjustment operates in a 100% cost recovery model. There are no levy impacts associated with the proposed changes.

Recommendation: That Delegated Authority By-law No. 07-300, as amended by By-law 21-151 be further amended so that Section 3 (a) shall read “Payment of \$250 per meeting attended; and..” And that the mileage remains unchanged.

4.0 Administrative Changes

If further delegated authority is granted for Consent Applications, there will also need to be updates to the application forms to reflect the changes. This would include clarity about which process was applicable, applicable application fee and identify what additional information, if any, is required for specific Consent Applications.

ALTERNATIVES FOR CONSIDERATION

Should Council not grant further delegated authority for Consent Applications the current approval authority and application processes will be maintained which may result in unnecessary delays, administrative burdens and financial risk to the City of Hamilton.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

Built Environment and Infrastructure

Hamilton is supported by state-of-the-art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report PED22167 - Draft By-law to Amend By-law No. 21-151

Appendix "B" to Report PED22167 - Draft By-law to Amend By-law No. 19-108

Appendix "C" to Report PED22167 - Concurrent Consent Application Sketch

JS:sd