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**Subject:** Ontario Municipal Board Appeals between 2006 to Present

**Prepared by:** Patricia De Sario, Town Solicitor

**Department:** Corporate Services

**Date:** December 5, 2017

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**In accordance with the Procedure By-law, any Member of Council may request that this Information Report be placed on an upcoming General Committee or Council meeting agenda for discussion.**

## **Executive Summary**

This report provides an overview of information relating to planning application appeals to the Ontario Municipal Board from December, 2006 to the present. Over the past ten years, there have been a total of approximately forty-five (45) site specific appeals – seventeen (17) appeals of Committee of Adjustment (“COA”) decisions and twenty-eight (28) appeals of other various *Planning Act* applications.

- The majority of both COA and Council decisions were appealed by the applicant/landowner.
- In COA appeals, the OMB tended to decide in favour of the applicant’s appeal. In other *Planning Act* application appeals, the majority of appeals were settled.
- The majority of appeals to Committee of Adjustment decisions occurred in applications where the decision did not follow staff recommendation.
- Similarly, the majority of appeals relating to other *Planning Act* applications occurred when Council refused the application. In all of these appeals, Council’s decision either did not follow staff recommendation or the decision was made prior to staff making a recommendation to Council.
- External planners were retained for applications wherein the Council or COA decision did not follow staff recommendation and external lawyers were retained where resources or a higher level of expertise were required.

## Background

On May 9, 2017, Council passed a resolution directing staff to prepare a report that would provide Ontario Municipal Board (“OMB”) appeals information from December 2006 to the present. For the purposes of this report, minor variance and consent applications are grouped and identified as Committee of Adjustment (“COA”) applications and approvals, refusals or non-decisions of official plan amendments (“OPA”), zoning by-law amendments (“ZBA”), draft plan of subdivisions or condominiums (“Draft Plans”) and site plan applications are grouped and identified as other *Planning Act* applications. Other *Planning Act* applications also includes appeals in regard to conditions of approval, such as cash-in-lieu of parkland payment. This report deals only with appeals of planning applications that were specific to a property and not appeals that applied to all the lands in the Town, such as appeals to the Town’s Official Plan or Comprehensive Zoning By-law.

Since December 2006, the Town has been involved in approximately forty-five (45) appeals – seventeen (17) appeals of COA decisions and twenty-eight (28) appeals of other *Planning Act* applications. This number is based upon the number of appeals received per *Planning Act* application.

## Analysis

**The majority of both COA and Council decisions were appealed by the applicant/landowner.**

Out of the seventeen (17) COA appeals, two (2) of the appeals were brought by adjoining landowners. In both cases, the appeals were withdrawn. Out of the twenty-eight (28) appeals relating to other *Planning Act* applications, three (3) appeals were brought by residents and one (1) appeal was brought by an adjoining landowner developer. One (1) appeal was settled, one (1) appeal was withdrawn and the other two (2) are still before the OMB. The remaining appeals were brought by the landowner that filed the *Planning Act* application with the Town.

**In COA appeals, the OMB tended to decide in favour of the applicant's appeal. In other *Planning Act* application appeals, the majority of appeals were settled.**

Table 1 identifies the outcome of appeals.

Table 1:

<b>Appeal</b>	<b>Win</b>	<b>Settled</b>	<b>Loss</b>	<b>Withdrawn</b>	<b>Pending*</b>	<b>Total</b>
Committee of Adjustment	3	0	9	5	0	17
Other <i>Planning Act</i> Applications	0	15	5	2	6	28
						45

\*Six (6) appeals are still before the OMB and, therefore, the outcome of those appeals are unknown at this time.

**The majority of appeals to COA decisions occurred in applications where the decision did not follow the staff recommendation.**

Eleven (11) of the COA appeals occurred where the decision did not follow staff recommendation. Table 2 identifies the outcome of appeals based upon staff recommendation and COA decisions.

Table 2:

<b>COA decision does not follow staff recommendation</b>	<b>OMB decision supports staff recommendation</b>	<b>OMB supports COA decision</b>	<b>Appeal withdrawn</b>
11	5	2	4
<b>COA decision follows staff recommendation</b>	<b>OMB supports COA decision and Town staff recommendation</b>	<b>OMB decides against COA decision and staff recommendations</b>	<b>Appeal withdrawn</b>
6	1	4	1

**The majority of appeals relating to other *Planning Act* applications occurred when Council refused the application. In all of these appeals, Council's decision either did not follow staff recommendation or the decision was made prior to staff making a recommendation.**

Table 3 outlines a breakdown of the appeals since 2006 relating to various *Planning Act* applications.

Table 3:

<b>Type of Planning Application</b>	<b>Council Approval</b>	<b>Council Refusal</b>	<b>Non-decisions</b>	<b>Total</b>
OPAs	1	4	1	6
ZBAs	2	7	1	10
Draft Plans	1	0	4	5
Other*	5	0	2	7
Total	9	11	8	28

\* Other relates to appeals of conditions of draft approval, namely, four (4) appeals of the amount of cash-in-lieu of parkland ("CILP") owing and one appeal of a servicing condition. Three (3) of the CILP appeals were settled and one (1) was withdrawn. The appeal to the servicing condition will be heard by the OMB in January 2018.

As identified in Table 1, the majority of appeals relating to the other *Planning Act* applications resulted in a settlement favourable to both parties.

**External planners were retained for applications wherein the Council or COA decision did not follow staff recommendation and external lawyers were retained where resources or a higher level of expertise were required.**

The majority of appeals were handled by internal staff. However, external planners and lawyers were required for certain appeals, such as Ashlen Holdings Inc. and the Highland Gate redevelopment. In two (2) appeals, external experts, namely an appraiser, hydrogeologists and environmental consultants, were retained.

In total, since December 2006, the Town spent approximately \$94,038.00 in external planner fees, approximately \$146,984.00 in external expert fees and approximately \$808,630.00 of legal fees in regard to OMB appeals.

### **Advisory Committee Review**

None.

### **Financial Implications**

None.

### **Communications Considerations**

None.

### **Link to Strategic Plan**

None.

### **Alternative(s) to the Recommendation**

None.

### **Conclusions**

This report provides an overview and analysis of OMB information since 2006, as requested by Council.

### **Attachments**

Appendix 1 – Appeals to Committee of Adjustment applications

Appendix 2 – Appeals to other *Planning Act* applications

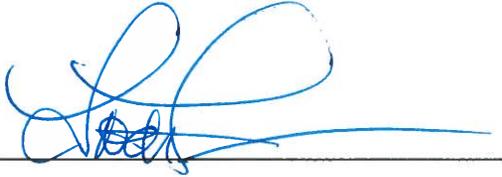
### **Previous Reports**

None.

**Pre-submission Review**

Director of Planning and Development, Manager of Development, Director of Corporate Services and Chief Administrative Officer.

**Departmental Approval**



**Techa van Leeuwen**  
**Director**  
**Corporate Services**

**Approved for Agenda**



**Doug Nadorozny**  
**Chief Administrative Officer**

**Appendix 1 to CS17-027 - Appeals to Committee of Adjustment Applications**

	<b>File Number</b>	<b>Name</b>	<b>Address</b>	<b>Appellant</b>	<b>Type of Appeal</b>	<b>Town Staff Recommendation</b>	<b>External Experts (costs)</b>	<b>External Lawyer (cost)</b>	<b>Results</b>
1	PL120249 (D13-30A-C-11)	2298276 ONTARIO LIMITED and MACDONALD (formerley Brookfield Homes)	Lots 102 and 103, 65M-2805 (126 and 130 Brookview Drive) and Lots 1,2 and 15, 65M-2806 (115, 118 and 119 Stemmie Drive)	Applicant	Refusal of minor variance	Approval of minor variance	N/A	N/A	Allowed by the OMB
2	PL141323 (D13-32-14)	PECHEN, Gerry and Luisa	Lot 23, Plan 65M3219 (251 Willis Drive)	Applicant	Refusal of minor variance	Refusal of minor variance	N/A	\$7,082.39 (OMB) \$20,644.17 (Div'l Ct)	Appeal dismissed
3	PL080195 (D10-01-08)	ONE GILBERT DRIVE INC.	Pt Parklot 6 and 7, Plan 38 (136 Kennedy Street West)	Applicant	Refusal of consent	Approval of Consent	N/A	N/A	Withdrawn
4	PL080996 (D13(06-09)08)				Refusal of minor variance	Approval of minor variance	N/A	N/A	Withdrawn
5	PL070554	LIN, Rui Chan	Part Lots 1 and 2, Plan 36 (72 Kennedy Street West)	Applicant	Refusal of consent	Refusal of consent	N/A	N/A	Allowed by the OMB
6					Refusal of minor variance	Refusal of minor variance	N/A	N/A	Allowed by the OMB
7	PL080245 (D13-12-01)	VITMONT HOLDINGS INC.	Part Lots 7,8, Plan 9 (15160 Yonge Street and 5 Tyler)	Applicant	Refusal of minor variance re: parking spaces	Approval of minor variance	N/A	N/A	Allowed by the OMB
8	PL110568	6768148 CANADA LTD.	Lot 4, Plan 461 (219 Old Yonge Street)	Applicant	Refusal of minor variance	Approval of minor variance	N/A	N/A	Allowed by the OMB

9	PL100407 (D13-07-10)	ZVER, Julie and Joe	Part of Lots 3 and 4, Plan 9; 87 Temperance Street	Applicant	Refusal of minor variance	Approval of minor variance BUT Council supported refusal	\$10,798.41 (Planner)	\$3,613.34	Dismissed by the OMB
10	PL140532 (D13-08-14)	BUTYLKIN, Janusz	Lot 278, Plan 514 (67 Child Drive)	Applicant	Refusal of minor variance	Approval of minor variance	N/A	N/A	Dismissed by the OMB
11	PL090257 (D13-11-07)	697028 Ontario Limited (Westhill Redevelopment)	Part of Lots 10 and 11, 65M- 2655, Parts 1, 2, 5 & 6, 65R- 31001	Applicant	Refusal of Minor Variances	Refusal of Minor Variances	\$18,857.36 (Planner) \$141,820.99 (Other experts)	\$502,900.32	Allowed by the OMB
12	PL090266 (D13-43-08)		Part of Lots 10 and 11, 65M- 2655, Parts 3, 4 & 7, 65R- 31001		Refusal of consent	Refusal of consent			Allowed by the OMB
13	PL140787 (D13-11-14)	AURORA SMALL ENGINE REPAIR INC. (YRCP 797)	Unit 27, YRCP797 (305 Industrial Parkway South)	Neighbour	Approval of minor variance	Approval of minor variance	N/A	N/A	Withdrawn
14	PL141016 (D13-25-14)	NEWELL	Part Lot 162, Plan 246 (8 Kennedy Street East)	Applicant	Refusal of Minor Variance	Approval of minor variance	N/A	N/A	Allowed by the OMB
15	PL081541 (A- 50-08)	WROBLEWSKI, Derek and Mariola	Lot 87, 65M-3657 (29 Calmer Crescent)	Applicant	Refusal of minor variance	Approval of minor variance	N/A	N/A	Allowed by the OMB
16	PL081559	NARDUZZI	125 Ridge Road	Neighbour	Approval of minor variance	Approval of minor variance	N/A	N/A	Withdrawn
17	PL131357	COMMUNITY LIVING YORK SOUTH	19 Wethersfield Court	Applicant	Refusal of minor variance	Approval of minor variance	N/A	N/A	Withdrawn

**Appendix 2 to CS17-027 - Appeals to other *Planning Act* Applications**

	<b>File Number</b>	<b>Name</b>	<b>Address</b>	<b>Appellant</b>	<b>Type of Appeal</b>	<b>Town Staff Recommendation</b>	<b>External Experts (costs)</b>	<b>External Lawyer (cost)</b>	<b>Results</b>
1	PL090286 (D09-03-08)	P.A.R.C.E.L. INC.	Part Block A and Block B, M-42, Part 3, 65R-5870 (south west corner of Elderberry Trail and Yonge Street)	Applicant	Refusal of OPA	N/A - public planning meeting	N/A	N/A	Settled
2	PL090286 (D14-14-08)				Refusal of ZBA				Settled
3	PL081315	York Catholic District School Board	59 Industrial Parkway North and 250, 260, 270, 280, 282, 286, 290, 294 and 298 Wellington Street West and Lots 14-24 and Part Lots 8-11, 13, 25-28, Part Centre and Mill Streets, Plan 231 and Part Lot 105, Plan 246	Applicant	Amount of CILP	N/A	\$5,163.32 (Appraiser)	N/A	Settled
4	PL141259 (D12-03-2A)	PANDOLFO, Cathy, Giuseppe, Laurie and CAMPIONE, Cathy	Lot 8 and Part of Lots 20 and 21, Plan 132 (OPA 34 lands), (14070 Yonge Street)	Resident	Approval of Draft Plan of Subdivision	Approval of Draft Plan of Subdivision	N/A	\$4,610.68	Settled
5	PL090363	VITMONT HOLDINGS INC.	Part Lots 7,8, Plan 9 (15160 Yonge Street and 5 Tyler)	Applicant	Non-decision of Site Plan application	N/A	N/A	N/A	Allowed by the OMB
6	MM080033	ST. JOHN'S ROAD DEVELOPMENT CORP.		Applicant	Amount of CILP	N/A	N/A	\$14,182.57	Settled

7	PL110415 (D14-17-06)	DANIELS LR CORPORATION	Part of Lot 25, Con. 2, EYS (south east corner of St. John's and Bayview) = Plan 65M-4309 Residential Condo Phase 1 = YRCP1233 Residential Condo Phase 2 = YRCP1259	Resident	Approval of ZBA	Approval of ZBA	N/A	N/A	Withdrawn
8	PL030997 (D09-04-00, D07-03-00A)	NUGGET CONSTRUCTION (Westhill Redevelopment)	Part of Lot 12, Concession 2, and Part of Lots 11 and 12, Concession 3, being Part 1, Plan 65R-15508, Part 2, Plan 65R-11866 and Parts 1 and 2, Plan 65R-9264	Applicant	Refusal of OPA	Approval of OPA	\$18,857.36 (Planner) \$141,820.99 (Other experts)	\$502,900.32	Allowed by the OMB
9					Refusal of ZBA	Approval of ZBA			Allowed by the OMB
10					Non-decision of condo application	N/A			Allowed by the OMB
11					PL080014 (19T-88105)	Non-decision of subdivision application			N/A
12	MM140072	LEBOVIC ENTERPRISES LTD.		Applicant	Amount of CILP	N/A	N/A	N/A	Withdrawn
13	PL120766 (D09-03-11)	GRILLS, Alan and Janet	Block 55, 65M2660 and Lot 2, Plan 379 (Wellington Street West)	Applicant	Refusal of OPA	Approval and Passing of Bylaw	N/A	N/A	Settled
14	PL120767 (D14-14-11)				Refusal of ZBA	Approval and Passing of Bylaw			Settled
15	PL070941 (L12-01-07)	FRANKFIELD ESTATES INC. (formerly Schickedanz Bros.)	Plan 65M-3931 (Elderberry Hill)	Applicant	Amount of CILP	N/A	N/A	N/A	Settled
16	PL100652	ICBL 5231-10	15064, 15074 & 15086-15088 Yonge Street, 101, 103 & 107 Temperance Street, 16 Reuben Street and Lane	Owner	Passing of Interim Control By-law	Passing of Interim Control By-law	N/A	N/A	Settled
17	PL151051	2419059 Ontario Inc.	497 Wellington Street West	Applicant	Refusal of ZBA	N/A - public planning meeting	N/A	\$23,598.93	Settled
18	PL150967				Non-decision of Site Plan application	N/A			Settled

19	PL151160 (OPA-2015-01)	HIGHLAND GATE DEVELOPMENTS INC.	21 Golf Links Drive	Applicant	Non-decision of OPA	N/A	\$42,543.68 (Planner)	\$219,131.79	Settled
20	PL151161 (ZBA-2015-02)				Non-decision of ZBA	N/A			Settled
21	PL151162 (SUB-2015-01)				Non-decision of draft plan of subdivision	N/A			Settled
22	PL160781 (OPA-2015-03)	ASHLEN HOLDINGS	Part of Lots 15 & 16, Registered Plan 166 (13859, 13875 & 13887 Yonge Street)	Applicant	Refusal of OPA	Approval of OPA	\$21,838.57 (Planner)	\$40,078.14	OPEN
23	PL160782 (ZBA-2015-08)				Refusal of ZBA	Approval of ZBA			OPEN
24	PL161018 (SUB-2015-04)				Non-decision of draft plan of subdivision	N/A			OPEN
25	PL170650	1428420 ONTARIO INC.	22 and 26 Centre Street	Applicant	Refusal of ZBA	N/A - public planning meeting	N/A	N/A	OPEN
26	PL170685	GROSSI, Nunzio	7, 15 and 19 Cousins Drive	Applicant	Refusal of ZBA	N/A - public planning meeting	N/A	N/A	Settled
27	PL170810	2352107 ONTARIO INC.	1588 St. John's Sideroad	Neighbour	Draft plan condition	Draft plan condition	N/A	\$TBD	OPEN
28	PL170912	AURORA UNITED CHURCH	15186 Yonge Street, 55, 57 & 57A Temperance Street	Resident	Approval of OPA	Approval and Passing of Bylaw	N/A	N/A	OPEN