Date: August 13, 2019
To: Mayor Andy Mitchell and Council Members
From: Jeannette Thompson, Planner
Subject: Committee of Adjustment Composition
Status: For Direction

Recommendation

That the report of the Planner regarding the options for composition of the Committee of Adjustment be received for information; and

That Council provide direction with regard to the intended composition of the Committee of Adjustment considering the information and options presented herein; and

That, should Council wish to change the current composition of the Committee of Adjustment, that staff be directed to prepare a report outlining the timing and resourcing to manage such a change, which would include items such as:

- Process to appoint Committee of Adjustment members,
- Agenda package information and circulation,
- Timing and frequency of Committee of Adjustment meetings,
- Committee of Adjustment reporting to Council,
- Staff support, meeting logistics,
- Training plan for committee members.

Information

Council has requested that staff prepare a report to review the option of a Committee of Adjustment which includes public appointments as opposed to all Council members serving in this capacity. To that end, the following report will provide Council with information related to the role of the Committee of Adjustment, the legislated authority under which the Committee of Adjustment operates; best management practices; and an overview of the composition of the committees in other municipalities throughout Ontario, including area municipalities and their experiences.

Legislative Authority and Role of the Committee of Adjustment

The Committee of Adjustment is a quasi-judicial tribunal appointed by Council. It derives its jurisdiction from the Planning Act and its function is to:

- Consider and make decisions on applications for minor variances from the provisions of the Township’s zoning by-law; and
• Consider and make decisions on applications for permission, which deal with the enlargement or extension of a building or structure that is legally non-conforming, or a change in non-conforming use.

Under the Planning Act (Section 44) Council is provided with the authority to appoint a Committee of Adjustment. The Committee can be comprised of Council members, members of the public or a combination thereof. As per Section 44 (1) of the Planning Act, a Committee of Adjustment for the municipality must be composed of no fewer than three members. The Act provides for committee members who are not Members of Council to be appointed for the term of the Council. Members of Council serving as committee members are to be appointed annually.

Best Management Practices

The Ontario Association of Committee of Adjustment and Consent Authorities (OACA) states that the Committee of Adjustment is an authority delegated by Council that is intended to operate as a quasi-judicial body, under the Planning Act.

OACA recommends that the Committee of Adjustment be composed of public appointees only. As the committee is a quasi-judicial body, decision making is intended to be politically neutral and having non-elected members serve on the Committee supports this principle. In other words, once the Council has appointed the Committee members, it has no authority to direct the Committee or its individual members on how to deal with an application before it. This nuance may not be well understood by members of the public or applicants, and this can make the role of a Council Member on the Committee of Adjustment difficult. Municipal Council does have the right to appeal a decision of the Committee of Adjustment. The appeal would be heard by the LPAT similar to any other appeal received.

Staff reached out to an area Planners group from Peterborough County, City of Peterborough, City of Kawartha Lakes, and Haliburton County to gather information with respect to following:

1. What is the composition of the Committee of Adjustment?

The majority of municipalities within the Province of Ontario have committees made up of five (5) members and are composed of a mix of Council members and public appointees. Some jurisdictions have three (3) members and some have seven (7) members.

Locally, most committees are comprised of five (5) members. Typically, the composition being one (1) or two (2) Council members with the remaining members being public appointees. However, some municipalities (eg. the City of Peterborough) are composed entirely of pubic appointees.
2. **What are the pros and cons of the committee composition?**

Staff at various municipalities report that having public appointees ensures that the quasi-judicial nature of the committee is achieved. It was also noted that having a Council member on the committee is helpful, as Council members understand procedural matters and are typically familiar with the Township’s Zoning By-law. It was noted however that some municipalities did have difficulties in finding citizens well qualified and interested in serving on the committee. It was indicated that some Committees do not meet on a set schedule, which can make scheduling difficult.

3. **How does the committee report decisions to Council?**

Typically, the Committee of Adjustment reports to Council via committee minutes. Some committees report annually with a summary of statistics (i.e. number of variances, types of variances, total number granted / refused). In some jurisdictions Council receives the agenda package for information and staff will report separately to Council if they feel Council should appeal a decision of the committee.

**Options**

**Option 1 – Status Quo**
Traditionally within the Township of Selwyn, the Committee of Adjustment has been composed of members of Council. A consent agenda format was implemented which has proved to be efficient and effective in managing the Committee’s consideration of applications. Meetings are scheduled prior to Council meetings and this format is efficient in terms of staff and Council availability and the ability to live stream meetings. Members of Council are also familiar with the meeting process and the Township’s Zoning By-law.

**Option 2 – Appoint 5 Public Members to Committee of Adjustment**
Appointing public appointees aligns with OACA’s goal to ensure political neutrality in decision making. Scheduling an additional monthly meeting, managing livestreaming and timing of meetings (day-time vs. evening etc…) would need to be considered from a resourcing perspective. In addition, recruiting, retaining and training members will require support and resourcing. Members will need to be familiar with committee procedures, roles and responsibilities, the Planning Act, and the Zoning By-law. Any questions directed to Council members from the public or applicants must be deferred to the Committee of Adjustment. Should Council not agree with a decision of the Committee of Adjustment it may need to consider appealing the Committee’s decision.
Option 3 - Appoint 4 Public Members and 1 Council Member to Committee of Adjustment

Appointing a majority of members of the public will support OACA’s goal of political neutrality. Having a member of Council on the Committee would provide the Committee with experience on meeting procedures, the Planning Act and the Zoning By-law. The issues outlined in Option 2 surrounding resourcing, meeting livestreaming, member training, questions and appeal apply to Option 3 as well.

Should Council wish to move forward with changing the composition of the Committee of Adjustment to include public appointees, it is recommended that the following be considered:

- The Committee of Adjustment be composed of five (5) members.

  Going to a committee of three (3) members may prove more difficult in terms of meeting quorum requirements.

- That at least one member of the Committee of Adjustment be a Council member.

  Given the feedback provided by different municipalities, it appears that having at least one member of Council sit on the committee is beneficial as he / she can assist the committee members in the procedural nature of the committee. As well, Council members tend to be more familiar with the Township’s Zoning By-law and would be able to offer insight related to the Zoning By-law.

  Given that the potential public appointees would be unfamiliar with planning policies, processes and procedures, it would be important to provide training opportunities for the committee members. OACA has a number of training opportunities available on-line and through in-person courses. Further, OACA hosts yearly conferences / symposiums that would also provide for training opportunities. It is recommended that the Township become a member of OACA to ensure that these training opportunities are available.

- That the Committee be required to report decisions to Council through the committee minutes.

  This appears to be the simplest and most efficient means by which to ensure that Council is aware of decisions being made by the committee.

- That Committee of Adjustment meetings be held no more than two weeks prior to regular Council meeting.
Holding the committee meeting, no more than two (2) weeks prior to a regular Council meeting will ensure that Council has had an opportunity to review the meeting minutes prior to the prescribed 20 day appeal period expiring.

If Council wishes to move forward with consideration of changing the composition of the Committee of Adjustment to include public appointees, it is recommended that staff be directed to bring back a report outlining resourcing and logistics to manage an additional monthly meeting as well as a draft Terms of Reference that would address:

- Process to appoint Committee of Adjustment members,
- Agenda package information and circulation,
- Timing and frequency of Committee of Adjustment meetings,
- Committee of Adjustment reporting to Council,
- Staff support and training of committee members.

**Financial Impact**

Presently, the Committee of Adjustment is remunerated. If the committee remains as a five (5) member committee, there would be no additional remuneration costs.

However, Council would need to consider budgeting for such items as OACA membership fee, training for committee members, and fees / costs associated with members attending conferences / symposiums, and mileage costs and staff resources to support additional meetings.

**Environmental Impact**

The recommendation in this report has no environmental impact.

**Strategic Plan Reference**

Achieve excellence in governance and service delivery

**Attachment**

None.

---

**Jeannette Thompson**
Prepared By: Jeannette Thompson, Planner

**Robert Lamarre**
Reviewed By: Robert Lamarre, Manager of Building & Planning

**Janice Lavalley**
Reviewed By: Janice Lavalley, CAO