



MINUTES

PROPERTY STANDARDS COMMITTEE BUSINESS MEETING

THE CORPORATION OF THE CITY OF MISSISSAUGA

FRIDAY, FEBRUARY 3, 2012 – 9 A.M.

COMMITTEE ROOM B

SECOND FLOOR, CIVIC CENTRE

300 CITY CENTRE DRIVE, MISSISSAUGA, ONTARIO, L5B 3C1

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MEMBERS PRESENT:

Stephanie Thomson, Citizen Member (CHAIR)
Tony Jasinski, Citizen Member (VICE CHAIR)
Steve Nanan, Citizen Member
Debbie Willchuk, Citizen Member
Merle Zoerb, Citizen Member

STAFF PRESENT:

Daryl Bell, Supervisor, Compliance and Licensing Enforcement
Crystal Greer, Director of Legislative Services and City Clerk
Ian Masini, Supervisor, Compliance and Licensing Enforcement
Charlene Perrotta, Manager, Prosecutions
Darshana Sachania, Legal Counsel

CONTACT PERSON: Julie Lavertu, Committee Secretary, Property Standards Committee
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CALL TO ORDER – 9 a.m.

The Chair discussed the purpose of the Business Meeting. Committee members discussed various issues and said that they wanted to identify best practices for the following:

- Committee members arriving at least 15 minutes prior to hearings;
- Committee members arriving late and/or leaving early during hearings;
- Chairing meetings in the absence of the Chair;
- The oath used for the Committee's hearings;
- The need to obtain recent photographs of properties considered at hearings from Licensing and Enforcement staff;
- Committee members asking questions through the Chair during hearings;
- The Committee of Revision;
- The term of appointment for Committee members; and
- Printing Notices of Decision during hearings.

Ms. Greer discussed the poor print quality of portable printers and said that the Committee Secretary would print future Notices of Decision via a laser printer in an office area adjacent to the Committee rooms where the Committee's hearings are held. She added that this matter could be discussed again if the latter was unsuccessful.

Mr. Jasinski asked why the draft minutes from the Committee's last Business Meeting on May 30, 2011 did not include a seconder. Ms. Greer noted that only Council Resolutions require a seconder, as per the Council Procedure By-Law. Ms. Thomson requested that the Committee's best practices document be linked to the Council Procedure By-Law.

DECLARATIONS OF DIRECT (OR INDIRECT) PECUNIARY INTEREST

APPROVAL OF AGENDA

Carried as Amended (M. Zoerb)

PRESENTATIONS/ DEPUTATIONS – Nil

MATTERS CONSIDERED

1. Approval of Minutes of Previous Business Meeting

Mr. Jasinski requested that the minutes be amended to replace "recommendation" with "motion," that the motions be listed as "carried" rather than as "approved," and that the

last sentence in Item 1 be moved to the beginning of the second paragraph.

Ms. Greer said that she would investigate the Committee's motion approval process (as Council does not ratify its motions), Chair and Vice Chair appointment process, and Business Meeting processes. Committee members discussed this matter and asked staff to review and revise the Committee's Rules of Practice and Procedure accordingly.

Carried as Amended (T. Jasinski)

2. Best Practices and Proposed Revisions to the Property Standards Committee's Rules of Practice and Procedure

Committee members and staff discussed various best practices and proposed revisions to the Committee's Rules of Practice and Procedure.

Term of Appointment

The Chair asked that staff revise the Rules of Practice and Procedure to state that the term of office for Committee members is four, rather than three, years.

Committee Members Arriving at Least 15 Minutes Prior to Hearings

The Chair suggested that a best practice be implemented whereby Committee members must arrive at least 15 minutes prior to hearings. Ms. Greer asked if Committee members would be precluded from participating in hearings if they did not arrive 15 minutes early.

Committee members discussed the matter, Ms. Greer's comments, and whether this matter should be an unwritten administrative practice or best practice. The Chair requested that this matter be included as a best practice and adjusted as needed.

Committee Members Arriving Late and/or Leaving Early during Hearings

The Chair said that it is inappropriate for Committee members to arrive late and/or leave early during hearings and suggested that a best practice be implemented requiring Committee members to not attend hearings if they arrive late and/or need to leave early.

Ms. Perrotta noted that hearings can proceed in the absence of appellants, that late Committee members should still be able to participate in hearings if they arrive during the early stages of hearings, and that parties present at hearings should not take issue with Committee members occasionally arriving late. Mr. Masini stated that Committee members should notify each other and the Committee Secretary about attendance matters.

Committee members discussed the matter, the possibility of appellants appealing the Committee's decisions due to the late arrival and/or early departure of Committee members, the Committee's current processes for late arrivals, early departures, and

absences, the impact on quorum of Committee members arriving late and/or leaving early, and the possibility of appellants/Committee members becoming ill during hearings.

Ms. Greer explained that the Committee would need to recess and adjourn a hearing to another day if quorum was lost due to appellants/Committee members becoming ill during hearings and/or having a family emergency.

Chairing Meetings in Absence of the Chair

The Chair discussed Rule 2.02 (2) that enables the Committee to appoint a Committee member as Acting Chair when the Chair is absent. She suggested that a best practice be implemented whereby the Vice Chair chairs hearings when the Chair is absent.

Committee members discussed the Chair's suggestion and noted that, in the absence of both the Chair and Vice Chair, the three remaining Committee members should appoint an Acting Chair from among themselves so that scheduled hearings can proceed.

Appointing Chairs on Annual Basis

The Vice Chair suggested that Rule 2.02 (1) should be amended for the Committee to elect Chairs on an annual basis, rather than for the entire four-year term.

Committee members discussed the Vice Chair's suggestion and stated that it would be a good way to ensure a competent team, that it would enable new Committee members to gain experience chairing hearings, and that all of the Committee's appointed positions should be reappointed on a yearly basis to ensure consistency with the Chair's position.

Ms. Greer said that appointing Chairs on an annual basis may be a more manageable time commitment for many Committee members versus a four-year Chair appointment.

Oath Used for the Committee's Hearings

Committee members discussed the Committee's current oath and whether witnesses could affirm, rather than swear, before the oath, alternatives to the Committee's current oath, the oath used at the Ontario Court of Justice, the possibility of providing oath-related materials to appellants as part of the correspondence issued by the Committee Secretary, and the importance of using neutral, non-offensive wording in oaths. The Vice Chair distributed an alternative to the Committee's oath to Committee members and staff entitled "Oaths to be Administered" for their information.

Ms. Perrotta discussed the Ontario Court of Justice's oath and said that she would share this oath and related affirmations with Committee members and staff. Ms. Greer said that the Committee's Rules of Practice and Procedure would not need to be modified if another oath was used. Ms. Sachania suggested that the Committee's oath be consistent with the one used at the Ontario Court of Justice. Mr. Masini and Mr. Bell said that using

the Ontario Court of Justice's oaths would assist Municipal Law Enforcement Officers who are familiar and comfortable with the Ontario Court of Justice's oaths.

Teleconferencing Committee Meetings/Hearings

The Chair discussed the possibility of teleconferencing Committee meetings/hearings, but noted that this was challenging due to various issues, including privacy.

Recent Photographs of Properties Considered at Hearings

The Chair discussed the importance of the Committee being provided with recent photographs of properties considered at hearings to ascertain whether property owners have acted on Property Standards Orders and the irrelevance of the older, original photographs of properties in the Documents Briefs. She noted that Committee members were previously allowed to visit properties, but that this is no longer permitted.

Committee members discussed the importance of receiving recent photographs of properties considered at hearings prior to, or during, hearings, the need for staff to advise the Committee when they cannot provide them with recent photographs of properties considered at hearings, and the possibility of appellants objecting to recent photographs of their properties being entered and/or not being entered as evidence during hearings.

Mr. Bell discussed the matter and explained that the photographs in the Documents Briefs illustrate the state of properties when Property Standards Orders are issued and that the Committee needs to evaluate Orders in the context of these photographs. He added that Municipal Law Enforcement Officers will take recent photographs, where possible and permitted, and provide them to Committee members prior to, or during, hearings. Mr. Masini asked for clarification on the Committee's timeframe for "recent" photographs.

Committee members asked that photographs be taken one week or less prior to hearings. Mr. Bell said that this timeframe was reasonable for staff and would be communicated to the appropriate staff for future hearings. Ms. Perrotta noted that formal Documents Briefs with the recent photographs may need to be compiled for distribution at hearings.

Ms. Greer and Ms. Perrotta discussed the Committee's concerns that appellants could object to recent photographs of their properties being entered as evidence. Ms. Perrotta suggested that this matter be implemented as a best practice, rather than as part of the Committee's Rules of Practice and Procedure because pictures that are not representative can only be tendered upon conviction. In response to a comment from the Vice Chair, Ms. Sachania stated that the onus is on appellants to introduce recent photographs as evidence during hearings if they think that such materials need to be considered by the Committee.

Extending Property Standards Orders

The Vice Chair discussed extending Property Standards Orders, whether these types of

decisions must be made by the Committee during hearings, and the need for staff to advise the Committee when extending Orders is the main issue at hearings. He added that, during previous hearings where appellants requested extensions, the Committee briefly heard from Prosecutions staff and appellants and did not consider any evidence.

Mr. Bell and Ms. Perrotta discussed the Vice Chair's concerns and said that only the Committee is authorized to grant appellants more time to comply with Orders and that hearings still need to be held to extend Orders. Ms. Sachania said that she would examine the Committee's processes for extending Orders and whether any changes are required.

Property Standards Order Appeals by Occupants

Ms. Greer said that staff recently received an appeal from a property occupant who is the adult child of the property owners and discussed the possibility of amending Rule 3, as there are concerns that adult children may not be acting on behalf of their parents.

Committee members discussed the matter and the possibility of adult children improperly acting for their parents, the *Building Code's* relevance to this matter, the possibility of property owners formally designating their adult children to act on their behalf, and the need for property owners to provide documents designating their children to act for them.

Mr. Bell discussed situations where adult children of aging parents have Power of Attorney and, as such, are legally able to act on behalf of their parents. He recommended that Rule 3 be amended to clarify this situation and prevent future issues and problems.

Order of Property Standards Committee Hearings

Ms. Greer discussed a recent court decision in Hamilton where it was suggested that, in particular situations, appellants should present their evidence first, followed by the municipality. She said that reversing the Committee's order of hearings could be more expedient for the City. Ms. Perrotta discussed Ms. Greer's comments and discussed the advantages and disadvantages of the Committee's current order of hearings. She added that Roberto Zuech, a former Legal Counsel assigned to the Committee, and Douglas Meehan, Manager of Compliance and Licensing, had reviewed this matter.

Committee members discussed Rule 13 on hearing procedures and suggested that it be revised for greater clarity and to enable hearings to proceed more smoothly. Ms. Perrotta said that any revisions to Rule 13 would need to include technical information.

Chicken Enclosures in Backyards

Mr. Zoerb discussed chicken enclosures in backyards and asked whether the Committee would be receiving Property Standards Order appeals regarding this matter at a future hearing. Mr. Bell responded that chicken enclosures in backyards are not permitted in the City, fall under another by-law, and, as such, would not come before the Committee.

Brief, Two-Page Version of the Committee's Rules of Practice and Procedure

The Vice Chair discussed the following possible revisions to the brief, two-page version of the Committee's Rules of Practice and Procedure:

- Everyone present at hearings should identify themselves at the beginning of hearings for Committee members and the Record of Proceeding and, if the Appellant objects to someone being present, this should be raised at this time;
- Item 4 – This is contrary to Rule 12.06 and should be deleted, as the Committee Secretary prepares a Record of Proceeding. As well, Rule 12.06 should be revised whereby no one can record the proceedings except the Committee Secretary.
- Item 12 – The Committee does not need to swear in witnesses. This language needs to be cleaner and should be revised accordingly.
- Item 13 – The representative and appellant need to be determined. One individual should be the appellant and the others should be representatives or witnesses.
- Item 18 – Prosecutions staff should summarize the City's case at the end of the hearing in a closing argument.
- Item 20 – Replace the text with "Announce to the parties present that the Committee will be recessing and will return to consider the matter."

Ms. Greer said that the Committee's hearings are public and, as such, anyone can attend even though they may make other people uncomfortable. She said that she would review the Vice Chair's suggestion for the Committee to have tools at their disposal to deal with individuals who appellants object to being present during their hearings.

Ms. Perrotta discussed the *Statutory Powers Procedures Act* and the use of witnesses and representatives. She suggested that it may be useful for the Committee to ask appellants at the beginnings of hearings to identify their representatives and witnesses. In response to a question from Ms. Greer, Ms. Perrotta discussed verbatim reporters at hearings and said that there is no legal responsibility for the City to allow verbatim reporters at hearings.

Committee members discussed the importance of knowing the names of everyone present at hearings, the use of witnesses at hearings, the lack of rules regarding further rebuttals, Rule 7 regarding motions, the lack of evidence-based training for Committee members regarding Rule 11 and general Property Standards-related training for Committee members, and the need for Committee members to declare conflicts of interest as needed.

Ms. Sachania, Ms. Greer, and Ms. Perrotta discussed Rule 7 and its purpose and usage.

During discussion about the lack of evidence-based training for the Committee regarding Rule 11, the Vice Chair distributed six documents to Committee members and staff entitled "Assessing Credibility," "Factors Governing the Weight of Evidence," "Administrative Guidelines: Administrative Law," "Administrative Guidelines: The Weighing of Evidence," "Evidence," and "The Law of Evidence."

Ms. Perrotta and Ms. Greer discussed the Committee's request for evidence-based training and general training and said that they would review this matter. Ms. Greer discussed the Mississauga Appeal Tribunal (MAT), another quasi-judicial body, and said that MAT has an external lawyer who offers its members information and training.

Rule 13.12 Regarding Committee Decisions

Mr. Zoerb discussed Rule 13.12 regarding Committee decisions and suggested that the Committee's decisions should always be written, rather than verbal. Mr. Masini requested that the Committee's decisions include clear timeframes and dates and times, rather than open-ended decisions, as the inclusion of detailed information was helpful for staff.

Committee members discussed recent Committee decisions and the importance of including dates and times in their decisions.

Handwritten Documents from City Staff Submitted at Hearings

Mr. Zoerb noted that City staff sometimes submits handwritten documents to the Committee and asked for clarification about the procedures in such cases.

Mr. Masini responded that all evidence is provided to the Committee and that some of it may be handwritten in some situations. Ms. Greer added that such evidence could include the Municipal Law Enforcement Officer's handwritten notes pertaining to their inspections of the properties considered at hearings.

The Chair requested that staff advise the Committee if they are doing something improperly so that these matters can be addressed promptly. Ms. Perrotta said that staff is reviewing their processes vis-à-vis the Committee so there may be changes in the future.

Cost of Property Standards Order Appeals

Mr. Zoerb discussed appeal fees and how many Property Standards Orders are issued by the City versus how many appeals are heard by the Committee on an annual basis.

Mr. Masini said that less than one percent of Orders come before the Committee and discussed the types of residents who are usually issued Orders. He noted that Municipal Law Enforcement Officers issue Orders for legitimate reasons and that the Committee's hearings enable appellants to express their concerns in a timely and proactive manner.

Committee members discussed appeal fees and the possibility of revising these fees in the context of the current economic recession, the possibility of Committee members foregoing their honorariums and decreasing appeal fees accordingly, and the possibility of the City charging appeal fees based on the economic circumstances of appellants.

Ms. Greer stated that the goal of Orders is to obtain compliance as much as possible.

Committee Structure Rationalization Process

The Chair noted that Oakville recently eliminated several Advisory Committees and asked whether the City is reviewing its current Committee structure.

Ms. Greer discussed the City's Governance Committee and its mandate which includes reviewing Committee structures and processes. She explained that the City Manager's Office is doing a Council and Committee Review that includes examining the City's Standing, Advisory, and Quasi-Judicial Committees. Ms. Greer said that, as part of this process, the Governance Committee will review the practices of other municipalities, the resourcing needs of Committees, and the City's Strategic Plan vis-à-vis its Advisory Committees so that Committees can operate as effectively and efficiently as possible.

Property Standards Committee's Documents Briefs

Ms. Perrotta discussed the Documents Briefs provided to Committee members by Prosecutions staff for hearings. She indicated that these documents are bound, expensive and time-consuming for staff to assemble, and may be provided in binders in the future.

Motion

That the following seven documents, distributed by Tony Jasinski, Vice Chair and Citizen Member, Property Standards Committee, to Committee members and staff during the Committee's Business Meeting on February 3, 2012 be received:

- "Oaths to be Administered";
- "Assessing Credibility";
- "Factors Governing the Weight of Evidence";
- "Administrative Guidelines: Administrative Law";
- "Administrative Guidelines: The Weighing of Evidence";
- "Evidence"; and
- "The Law of Evidence."

Carried (S. Nanan)

3. Appointments to the Committee of Revision

Committee members discussed the Committee of Revision's role and Ms. Lavertu provided a brief overview about this Committee.

Committee members appointed Mr. Jasinski, Mr. Nanan, and Ms. Willchuk to the City of Mississauga's Committee of Revision for the 2010-2014 term of office.

Motion

That Tony Jasinski, Steve Nanan, and Debbie Willchuk, Property Standards Committee Citizen Members, be appointed to the City of Mississauga's Committee of Revision for the 2010-2014 term of office or until successors are appointed, in accordance with the *Ontario Municipal Act, 2001*, as amended, and Regulation 586/06.

Carried (M. Zoerb)

OTHER BUSINESS – Nil

DATE OF NEXT MEETING – To Be Determined

Committee members discussed their availability for upcoming Hearings and Business Meetings.

ADJOURNMENT – 11:29 a.m. (D. Willchuk)