

**CITY OF VAUGHAN**

**EXTRACT FROM COUNCIL MEETING MINUTES OF JUNE 25, 2013**

Item 26, Report No. 32, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on June 25, 2013.

**26**

**FENCE HEIGHT EXEMPTION PROCESS**

**The Committee of the Whole recommends:**

- 1) That the recommendation contained in the following report of the Commissioner of Legal & Administrative Services/City Solicitor, Director of Legal Services and the Acting Director of Enforcement Services, dated June 18, 2013, be approved; and**
- 2) That the new process be reviewed in one year and a report provided on the results of the review.**

**Recommendation**

The Commissioner of Legal & Administrative Services/City Solicitor, Director of Legal Services and the Acting Director of Enforcement Services, recommend:

1. That the proposed fence height exemption process and criteria set out in this report be approved;
2. That By-law 80-90 (as amended by By-law 208-2007) be further amended to give effect to the matters outlined in this Report; and
3. That the cost recovery fee to be charged to applicants for appeals to a Hearings Officer be \$100.

**Contribution to Sustainability**

Not applicable.

**Economic Impact**

The budget amount, for Hearings Officers' services is \$500. per day, which is paid out of Enforcement Services annual budget. A cost recovery fee for fence height exemption appeals that are heard by the Hearings Officer is recommended to be \$100. It is estimated that the number of appeals for fence height exemptions that would be heard annually by the Hearings Officers would be approximately fifteen (15) which would consist of three days of hearings (five per day).

**Communications Plan**

An information sheet will be developed for the public and staff which will be attached to the Application for Fence Height Exemption form, in addition to being placed on the Enforcement Services' page of the City's official website.

**Purpose**

This Report is to seek Council approval to establish a process and criteria for the consideration of fence height exemption requests from the public.

Due to the fact that the majority of fences are installed in the summer months when Council does not sit regularly and in order to streamline the fence height exemption process, staff are recommending that the authority to grant fence height exemptions be made in accordance with a

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set of criteria and authority be delegated to the Director of Enforcement Services for all fence height exemption requests that satisfy the criteria set out in this Report, with an appeal process being delegated to the Hearings Officer(s).

#### **Background - Analysis and Options**

Council, at its meeting of June 26, 2012 (Report 25, Item 36), directed staff to review the current policy with respect to the process for fence height exemptions and report back to Council.

Currently, Enforcement Services staff investigate fence height violations that come to the City's attention primarily by way of complaint or through pool permit inspections. Homeowners in violation of the height requirement contained in the City of Vaughan's Fence By-law 80-90, receive a notice of violation which requires that they comply with the provisions of the Fence By-law or seek a fence height exemption. Similarly, homeowners proposing fences higher than that permitted in the By-law may submit fence height exemption applications in advance of construction.

The Fence By-law restricts residential fence heights to 6 feet in rear and side yards and 4 feet in front yards. In June 2007, Council enacted By-law 208-2007 to delegate authority to the Director, Enforcement Services to grant exemptions to the height restrictions in rear yards up to 7 feet and in front yards up to 5 feet. Where fencing exists or is proposed with heights over 7 feet in rear and 5 feet in front yards, the approval authority to grant exemptions lies with Council.

The majority of fence height exemption applications to date have been heard by Council. From 2007 through 2012, there were 68 fence height applications, 18 were approved by the Director Enforcement Services and forty-nine (49) or approximately 70% of these applications were heard by Council, as the heights requested were above that of the delegated authority granted to the Director of Enforcement Services.

#### **Current Process**

In 2006, the Province amended Section 23.2 of the *Municipal Act* to permit municipalities to delegate minor quasi-judicial (similar to a judge's) decisions to persons known as Hearings Officers. In 2009, Vaughan appointed its first Hearings Officers. Their powers are set out in the *Statutory Powers Procedure Act* and Ontario Regulation 333. The Hearings Officer is an independent neutral third person, under a per diem contract to Vaughan. The Hearings Officer's decision is final and there is no appeal to Council.

In order to facilitate fence height requests, the following process is currently followed:

1. The homeowner makes application for a fence height exemption.
2. Enforcement staff conduct a neighbourhood review of existing fences to determine if there are fences in the immediate vicinity of similar height and design.
3. The homes in the immediate vicinity (within a 60 metre radius) are advised via letter to the homeowner(s) of the Application and invited to submit comments.
4. Enforcement staff prepare a recommendation report and submit it to the Director of Enforcement Services, along with all pertinent information with respect to the Application.
5. In the event that a consensus is achieved between neighbours directly impacted and all other criteria for approving the application are met, a letter is sent to the Applicant and copied to the Ward Councillor and the Building Department advising of the granting of the exemption.

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##### Proposed Process

It is proposed that authority be granted to the Director of Enforcement Services for all applications for fence height exemptions and to the Hearings Officers for appeals. The following criteria would be applicable to the Applications for fence height exemptions:

1. In situations where the height of the fence exceeds the maximum permitted height in the By-law for either front and/or rear yard fencing and the polled homeowners are in concurrence with the request, only if directly affected; or
2. In situations where safety of the area may be compromised due to a change in grade between properties where a 6 foot fence would not be effective in preventing access to a swimming pool or other water feature. In this circumstance, a fence must be higher than 6 feet when measured from top of grade to maintain the safety requirement for a swimming pool fence. An example where this would be applied is when there is a property that has a 36" retaining wall on the property line. A 6' (six foot) fence would not meet the safety requirements when constructed next to a 3' (three foot) retaining wall as the fence measured from the high side of the retaining wall would only be 3' (three ft.) tall and would not meet the safety requirements for a swimming pool fence. Therefore the swimming pool fence must be built to a minimum height of 7' (seven feet) to allow for a 4' (four foot) high fence measured from the top of the retaining wall.
3. Impact on neighbourhood is to be considered, including the following factors:
  - Height of adjacent fences (history of fence height exemptions previously granted/refused in the immediate area);
  - Length of time the fence has been in place;
  - Impact to adjoining property owners, enjoyment of their own property
  - Impact on potential sight lines;
  - Safety (is there a swimming pool or open excavation etc.);
  - Esthetics of the area.

Should the recommendation for fence height exemption be denied by the Director of Enforcement Services and the Applicant wishes to appeal, the Application will be brought before a Hearings Officer for final decision on the matter.

Property owners with existing fences that are in violation of the Fence By-law and whose fence height exemption Applications have been denied by the Director of Enforcement Services and are not appealed to the Hearings Officer, or are denied at the appeal before the Hearings Officer will be required to comply with the requirements of the Fence By-law through enforcement.

The Delegating Powers & Duties Policy provides for Council to delegate its legislative and administrative authority for the efficient management of the Corporation.

In order to facilitate the delegation of authority, Section 3.5 of By-law 80-90 requires amendment as follows:

- a) The Director of Enforcement Services may grant an exemption to the fence height requirements where an application for a fence height exemption is not disputed by a neighbour directly affected by the placement of the fence or in cases where safety of a pool enclosure or other water feature is jeopardized due to changes in grade between two properties;
- b) The Hearings Officer may, upon application by an owner of the land, grant an exemption from the fence height restrictions.

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**Relationship to Vaughan Vision 2020/Strategic Plan**

This report is in keeping with Vaughan Vision in that it speaks to providing effective and efficient delivery of services.

**Regional Implications**

Not applicable

**Conclusion**

The new process for dealing with fence height exemptions will improve customer service and allow for a more efficient, timely and streamlined service delivery. The proposed delegation to the Director of Enforcement and the Hearings Officers are in accordance with the City's Delegation of Powers & Duties Policy.

**Attachments**

Not applicable

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