



The Corporation of the Town of Milton

Report To: Council

From: Barbara Koopmans, Commissioner, Planning and Development

From: Glen Cowan, Chief Financial Officer/Treasurer

Date: December 16, 2019

Report No: PD-052-19

Subject: Request for Relief / Waiver of Application Fees

Recommendation: THAT Staff Report PD-052-19 be received for information.

EXECUTIVE SUMMARY

- The Town has received requests from two separate applicants for relief from and/or a waiver of the fees levied in conjunction with the processing of applications under the *Planning Act* in accordance with the Town's current User Fee By-law 071-2019.
- On November 18, 2019, a Notice of Motion was approved through Res. 240-19 where Council directed staff to bring forward a report outlining the basis for the Town's current fees, as well as the impact to the Town that may result from granting relief from or a waiver of those fees.
- This report has been prepared to provide Council with background information regarding the imposition of user fees and considerations arising from granting requests for relief from and/or a waiver of those fees.
- Town staff recommend that User Fee By-law 071-2019 continue to be applied consistently for all users of Town services and therefore this report is being presented for information only. Should Council want to provide some form of relief, suggested alternate motions that would need to be approved by Council have been provided herein.

REPORT

Background



The Corporation of the Town of Milton

imposed upon the general population, the user fee is charged to an individual only when that individual uses the good or service.

The imposition of user fees is governed under multiple statutes. For municipal services where no specific statutory authority is provided, such as community services, licensing, etc., municipalities have the ability to impose fees and charges under Part XII (s. 391) of the Municipal Act. Building permit fees are governed by the provisions of Section 7 under the Ontario Building Code Act. The Town's statutory authority for imposing planning application fees is provided under Section 69 of the Planning Act, R.S.O., 1990, c.P.13.

User fees and service charges are an important source of revenue for the Town, representing \$29.0 million or 21.2% of revenue in the 2019 budget. User fees are an effective method of ensuring that the users of a service assist in cost recovery, thereby mitigating a portion of the pressure on property tax rates. The Town is proactive in its approach to cost recovery through user fees by annually reviewing all rates and adjusting for inflation, changing legislation and market conditions where possible.

Periodically, a comprehensive full costing of services and review of fees is performed using an activity based costing model which attributes processing effort and associated costs from all participating municipal business units to the appropriate user fee service categories.

The most recent Comprehensive User Fee Study, which included a review of planning application fees, was completed in 2016 in association with Watson and Associates Economists Ltd. Through that study, fees were updated to reflect the current cost of providing that service and were approved by Council through CORS-047-16.

Attached as Appendix A and B to this report are two letters the Town has received requesting relief from or the waiving of Planning Act application fees as set out in User Fee By-law 071-19:

Letter Received	Applicant	Appeal to Council
October 21, 2019	Mr. Craig Sharp	Request for relief from Consent to Sever Type 2 fee in the amount of \$3,915.00
October 27, 2019	Mr. Keith Hadlow	Request to waive Minor Variance - Type 2 fee in the amount of \$1,877.00

Discussion

As outlined in the most recent User Fee By-law Update Report CORS-044-19, Council has adopted a user-pay approach with respect to the recovery of costs incurred by the Town in providing a number of programs and services. The implementation of user fees and charges, including those charged for the processing of *Planning Act* applications,



The Corporation of the Town of Milton

provides the Town with an important cost recovery tool and allocates the costs incurred by the Town in delivering programs and services directly to those benefiting from that particular service rather than having those costs paid for through property taxes.

Cost of Services Provided

The *Planning Act*, in addition to regulating the basis upon which fees may be charged, also prescribes the legislative process through which an application must be evaluated in order for any decision to be valid. Generally, the *Planning Act* requires that the application review process involves consultation with internal departments and external agencies, a public consultation process including written notice and often a hearing, which may result in an LPAT appeal. Each application also involves the completion of a technical review and the preparation of comments and/or reports to the decision-making body. Detailed records are required to be maintained in order to document that the legislated requirements have been met. Even where approval authority for a specific application type has been delegated to staff, the mandatory legislative process must still be followed.

In addition to adhering to the above noted legislative requirements, Town staff also provides guidance to applicants in ensuring that application submissions are complete, resolving conflicting comments and addressing issues raised through public consultation. In the case of some applications, the cost of the application fee may exceed the benefit received by the applicant in obtaining the approval. Many of these applications are, however, discretionary in nature. For example, in the case of an application for a minor variance, the Zoning By-law sets out minimum and maximum requirements, providing a property owner with a range within which to design a proposed development. An applicant has discretion to comply with the By-law by modifying a development proposal to ensure compliance, thereby eliminating the need to obtain additional approval.

Furthermore, in the case where an application is refused, the applicant receives no “benefit” from the fees paid. It is therefore important to note that the application fees, as outlined in the *Planning Act*, are not determined on the basis of the value of any benefit received but rather on the basis of the costs incurred by the municipality in processing the application, as determined through the comprehensive user fee study.

Establishing Fees to Recover The Cost of Service

Setting and applying consistent fees promotes a framework of equity across all applicants. It also allows for ease of administration and application of the By-law, thereby reducing the overall costs to the Town and the public. In the case of certain fees, multiple tiers are provided by the Town to reflect the varying level of cost associated with each application type. This is the case for both severance and minor variance fees, which in 2019 were differentiated as shown below:



The Corporation of the Town of Milton

2019 Fees per By-law 071-2019		
	Type 1	Type 2
Consent to Sever	\$5,273.00	\$3,915.00
Minor Variance	\$7,207.00	\$1,877.00

In an effort to improve efficiency both in terms of timing and costs, staff regularly monitors and reviews processes and introduces changes as may be required and appropriate to improve value for applicants, while continuing to comply with all legislative requirements. In this way, staff endeavors to ensure that continuous improvements are implemented and application fees remain reflective of the costs incurred by the Town in processing the applications received. Through the comprehensive review, processing time for each type of application is analyzed and, where reductions in staff time or other process efficiencies have been realized, the cost savings are generally passed on to the users through a reduction in the fee. This was evidenced through the 2016 study which recommended not only increases but also reductions to certain *Planning Act* application fees, reflecting current processing time and costs.

Points of Clarification

In order to support Council in its consideration of this matter, a couple of points of clarification with respect to the submissions attached to this report are appropriate.

- With respect to the first request submitted by Mr. Hadlow, it should be noted that throughout the review process, Town staff utilized the site statistics submitted by applicants and his representative. In this particular case, the dimensions for the existing detached garage provided for site plan review were less than the actual size of the building. As a result, the overall coverage calculation provided was lower than the actual coverage. This lower calculation complied with the Zoning By-law. Subsequently, in conjunction with the building permit application, new drawings were submitted. These new drawings were based on a survey and provided the actual dimensions of the existing detached garage. However, the new drawings excluded certain elements (covered porches) of the proposed dwelling in the lot coverage calculation provided. It was, therefore, not until staff reviewed the actual floor plans that the discrepancy in lot coverage was identified.
- With respect to the second submission by Mr. Sharp, it should be noted that the fee of \$125 applied by Conservation Halton reflects the Authority's standard fee for a clearance/no objection letter where no site visit is required. It is not, in fact a fee reduction. Further, staff notes that, regardless of the complexity of an application, the legislative requirements must be fulfilled in order for any decision to be valid. The Town's fees are reflective of the costs incurred in adhering to those requirements and are not determined on the basis of the value of the land involved.



The Corporation of the Town of Milton

Recommendation

It is the recommendation of staff that the rates set out in the User Fee By-law 071-19 continue to be applied consistently for all users. As such, this report has been written to be received for information only. It is through a consistent application of the fees that the overall cost of providing that service will be recovered from those requesting the services in accordance with the Town's historical user-pay approach.

Alternatives Available to Council

Section 69(2) of the *Planning Act* provides a municipal council or a committee of adjustment with the discretion to reduce or waive such fees where they are satisfied that it would be unreasonable for the applicant to be required to pay the fees set out in the By-law. The *Planning Act* does not provide further direction with respect to the determination of what might constitute "unreasonable". Section 69 (3) of the Act also provides applicants with an ability to pay any required fees under protest, and then appeal the levying of that fee or the amount of the fee to the Local Planning Appeal Tribunal (LPAT) within 30 days of payment.

Should Council determine it to be unreasonable for the applicant to be required to pay the entirety of the fees set out in the By-law, Council could consider the following motions:

- THAT in accordance with the authorities provided in Section 69(2) of the Planning Act, the Consent to Sever - Type 2 fee in the amount of \$3,915 that is applicable for the severing of lands from PIN 24965-0092 be reduced to \$_____.
- THAT in accordance with the authorities provided in Section 69(2) of the Planning Act, the Minor Variance - Type 2 in the amount of \$1,877 that is applicable for the variance required at 62 Miles Street be reduced to \$_____.

Financial Impact

As determined through the 2016 User Fee study, and adjusted for inflationary increases since that time, the average cost of processing a Consent to Sever - Type 2 application and Minor Variance - Type 2 application is \$3,915 and \$1,877 respectively. The levying of these fees in accordance Town's User Fee By-law 071-19 provides for the recovery of these costs from the applicants as opposed to their recovery from the Town's property tax base.

Respectfully submitted,

Barbara Koopmans, MPA, MCIP, RPP, CMO
Commissioner, Planning and Development



The Corporation of the Town of Milton

Troy McHarg
Commissioner, Corporate Services / Town Clerk

For questions, please contact: Barb Koopmans, MPA, MCIP, RPP, Phone: Ext. 2301
CMO

Attachments
Appendix 1: Letter from Keith Hadlow dated October 27, 2019
Appendix 2: Letter from Craig Sharp dated October 21, 2019

CAO Approval
Andrew M. Siltala
Acting Chief Administrative Officer

October 27, 2019

Dear Mayor and Members of Council

I am writing this letter to request that the fees for the Variance I have to go through be waived due to the following circumstances. I applied for a building permit for [REDACTED] January 2017 I received a list of information required, Grading survey etc. The only thing wanted from zoning at the time was a survey with the proposed building and the lot coverage. This was completed by Engineer VanHarten. Heritage approved the plan on February 9, 2017. On December 12, 2017 zoning requested the original survey showing the house to be demolished, which was supplied. On January 10, 2018 the final note from zoning said that the permit will be issued upon completion of the demolition of the existing house. All the information that I was given said I am, under the 25% lot coverage.

From this point, my task was to complete the requirements of the building department. By August 29, 2018 the permit was ready to be issued upon demolition of the existing house. [REDACTED] was tenanted at the time so the permit was put on hold. I did not want to do foundation work in the winter time.

Now the tenant is gone, the house is demolished. I go to move forward with the permit and was told that it would be ready in 3 days. A week and a half goes by so I follow up. I find out that there is now a zoning problem. I get an email stating that I am all of sudden 1.6% too big and have to go through a variance, when last I was under 25% and everything was fine. My goal the whole time was stay under the 25% lot coverage requirements. So to continue with the project and get the permit I now had to state that I am going to demolish the existing garage which I wanted to keep.

As a summary, I followed the guide lines. Permit ready to be issued August 2018, no variance. September 2019 permit issued with condition of demolition of garage. Now I am being forced to go through a variance with no option of making changes to the original plans due to timing an cost.

To be told that a variance is needed, during the issuing of the permit is the reason I am requesting that the fees be waived. Meet the criteria one year and not meet the criteria the next year having made no changes to plans.

Thank you for your consideration

Keith Hadlow

October 21, 2019

RE: Appeal to Council

Mr. Mayor and Council Members;

I am submitting this letter in the form of an appeal to Council to review an Application for Consent regarding a severance and transfer of land from an adjacent farm property to my property.

I reside at [REDACTED] which is a one acre property located [REDACTED] [REDACTED] and have resided at that location since 1983. At the time of purchase I was provided with a lot plan which provided me with a layout of my property boundaries with a rural neighbour to my immediate west, a farm property (Christmas tree farm) to my south and east and a road allowance to my east and north. From that date until recently I made a rough assumption of where the lot boundaries were using the road location as a guide and maintained my property (grass cutting, tree planting, landscaping) based upon that sketch. This has not been an issue with either "neighbour" for the past 36 years we have resided here – and it is still not an issue today.

Last year, Brad Clements, who owns [REDACTED] had a survey carried out which included a clear identification of the various property lines that border my property. Once completed, Mr. Clements contacted me to advise that the lot boundaries differed from what I had obviously been assuming for all these years and that some of the trees, landscaping and grass that I had been maintaining actually fell inside of the north and eastern edge of his farm property. I had not realized the extent of the road allowance and thereby misinterpreted the lot boundaries. Since there was considerable landscaping and mature trees that had been added to this property, Mr. Clements agreed to sell this small triangle of land (see attached survey) to me at a nominal price as a means to formalize what had been in practice for 36 year. This represented a piece of farm land approximately 0.06 acres in size (less than a tennis court)

I was very interested in pursuing this offer, so I contacted my lawyer who referred me to a Planning Consultant by the name of Jennifer Lawrence. Ms. Lawrence guided me through the initial stages of the process, arranging for an additional survey highlighting the parcel of land in question and then guiding me through the documentation required to make the submission to the Planning Department for approval. I was at that time that she identified the costs involved with such a submission.

I was then informed that I was required to submit 20 copies of this application along with cheques in the amounts of \$3915 and \$ 1117.02 payable to the Town of Milton and Region of Halton respectively. Shortly after that I was also informed that Conservation Halton would also be looking for \$ 2090 to review my request as well for a total of \$ 7122.02. This amount represents over 150% of the selling price for the parcel of land in question.

I contacted Conservation Halton who were very understanding of the situation. After a brief review they informed me that because of the simplicity of the severance and transfer involved, their fee for review would be reduced to \$ 125. I then approached Milton Planning, first via Ms. Lawrence and then directly and was told there was no opportunity to reduce the fees involved.

After reviewing the situation with Mr. Clements, I contacted the Mayor's Office who were very helpful but unable to alter the outcome regarding the fees involved. They then suggested this avenue of appeal to council.

Please understand my frustration and the futility I am encountering for attempting to formalize something that has been in effect in practice for 36 years. There are no planned changes ever intended for this additional property. It merely moves a lot line over an insignificant amount to properly encompass my lot as it has been maintained for all the years. I fully understand, appreciate and respect the guidelines under which the Planning Department is making this ruling. However, I have great difficulty understanding and accepting how such an insignificant adjustment to two adjacent lot lines can require and involve so much administration and cost.

I would ask that you review this request and give consideration to reduced charges more appropriate to the scale of this submission.

Sincerely,

Craig Sharp



cc. Brad Clements

