The Corporation of the Municipality of Red Lake

Committee of Adjustment
Terms of Reference

Purpose

The Committee of Adjustment (COA) is an appointed body established under the authority granted by the Province of Ontario pursuant to Section 44 (Committee of adjustment), of the Planning Act, R.S.O. 1990, CHAPTER P.13 (Planning Act) for the purpose of holding public hearings and to make decisions on applications submitted to the Municipality.

The Committee makes a final decision much in the same way a Tribunal or other formal hearing panel, that is not reviewable by Council or any other local body. Any appeal from a decision of the Committee of Adjustment may only be appealed to the Ontario Land Tribunal.

Mandate

Under the *Planning Act*, the Committee of Adjustment is authorized to render decisions on:

- Variances from the provisions of the Zoning By-Law pursuant to Section 45 of the *Planning Act*;
- Extensions, enlargements or variations of existing legal non-conforming uses pursuant to Section 45 of the *Planning Act;*
- Consent to an owner of land who wishes to sell, convey or transfer an interest "part" of their land (creation of a new lot, lot addition, easement) pursuant to Section 53 of the *Planning Act*;
- Consent when the terms of an agreement, such as a lease, easement or mortgage commits the land to a use for a period in excess of 21 years pursuant to Section 53 of the *Planning Act;*
- Applications for Validation of Title and Power of Sale pursuant to Section 57 of the *Planning Act;*
- *Applications for Cancellation of a Consent.*

Functions and Duties of the Committee of Adjustment

Application Review

- Review and make decisions on applications for Minor Variances, requests to permit extensions, enlargements or variations of existing legal non-conforming uses, consent applications (creation of a new lot, lot additions or easements), pursuant to Sections 22 (Request for an amendment and Section 34 (Zoning By-laws) of the Planning Act and conduct public meetings (hearings) as delegated by Council for such applications based on recommendations from staff and / or the Municipal Planning Consultant.

- Inspect the properties subject to application review as required. (Note: the Committee shall not meet on-site together as that constitutes a meeting of the Committee.)

Operation

The COA shall follow the appropriate procedures detailed in the Planning Act, Municipal Act, Municipal Conflict of Interest Act and Municipal Freedom of Information and Protection of Privacy Act which will govern the operation of the COA.

The Committee of Adjustment is responsible for the adherence to and protection of applicable planning law and for protecting the rights of individuals affected by its decisions. This includes adherence to applicable matters under the Planning Act, the Provincial Planning Statement and the Municipality's Official Plan.

The common law principles of natural justice require the Committee of Adjustment to ensure that individuals affected by their decisions have their equivalent of "a day in court". The Committee must also satisfy legal requirements concerning notice, public hearings, calling those who wish to be heard in favour of or against the application, notice of decisions, and recording of proceedings.

The legal procedures detailed in the Planning Act, Municipal Act, Statutory Powers Procedures Act, Municipal Conflict of Interest Act and Municipal Freedom of Information and Protection of Privacy Act govern the Committee of Adjustment.

The Committee of Adjustment is guided by planning policies, and controls established by Council through the Zoning By-Law, Official Plan, Provincial Planning Statement, 2024 and Planning Act.

Meetings

COA meetings are held once monthly, or more often at the call of the Chair or at the call of the Secretary Treasurer, in the Council Chambers, Municipal Office. The regular schedule of monthly meetings shall be established annually in consultation with the Committee members at the first regular meeting of the year. Meetings shall generally be held on the second Tuesday of the month. Where there are no business or planning matters, staff will cancel the meeting and advise members accordingly.

All meetings shall be conducted in accordance with the Municipality of Red Lake Procedural By-Law.

Reporting

Minutes of the COA shall be recorded by a Recording Secretary.

The Secretary-Treasurer shall keep on file minutes and records of all applications and the decisions thereon and of all other official business of the committee, and Section 253 of the Municipal Act, applies with necessary modifications to such documents pursuant to Section 44 (10) of the Planning Act.

Approved Minutes shall be forwarded to the Clerk for inclusion on the next available Council agenda.

Organization

The COA shall be composed of seven (7) members appointed by resolution of Council, of which one (1) member is a member of Council.

Pursuant to Section 45 (7), the members of the committee shall elect one of themselves as chair, and, when the chair is absent through illness or otherwise, the committee may appoint another member to act as acting chair.

Term of Appointment

The members of COA who are not members of a municipal council shall hold office for the term of the Council that appointed them and the members of the committee who are members of a municipal Council shall be appointed annually.

Council maintains the right to rescind appointments where Council deems it to be in the best interest of the Municipality.

Members are eligible for reappointment. Where a member ceases to be a member before their expiration of their term, Council may appoint another eligible person for the unexpired portion of the term.

No honorarium will be paid to members.

Member Eligibility/Application/Appointment/Vacancies

In accordance to the "Appointments of Citizens to Boards & Committees" Policy.

Absenteeism

Members who are unable to attend meetings are required to report their absence to the Secretary and Secretary-Treasurer prior to the hearing date and/or time. Members having three (3) consecutive unexcused absences shall be deemed to have resigned from the Committee, and shall be replaced through the member appointment process.

Quorum

Pursuant to Section 44 (5) of the *Planning Act*, it states that "where the committee is composed of three (3) members, two (2) members constitute a quorum, and where a committee is composed of more than three (3) members, three members (3) constitute a quorum".

For the purposes of the seven (7) Members appointed to the Committee of Adjustment, the **quorum** is three (3) members.

For the purposes of the seven (7) members appointed to the Committee of Adjustment, the **majority** is the majority of members present at the hearing.

For example:

- If three (3) members present, 2 votes decide
- If four (4) members present, 3 votes decide
- If five (5) members present, 3 votes decide
- If six (6) members present, 4 votes decide
- If seven (7) members present, 4 votes decide

Voting is by simple majority on the application. A tie vote means the motion to approve an application is lost.

Duties and Responsibilities

<u>Chair</u>

- Presides at all public meetings and exercises authority and performs duties as required.

- Provides guidance and leadership to the committee in the completion of its mandate.
- Ensures that decorum is maintained at each meeting and that rules of procedure and conduct are observed.

Acting Chair

- Acts in the Chair's absence and assumes the roles and responsibilities of the Chair.

Members

- Attend hearings, consider applications, agency and public comments and make decisions in public regarding applications.
- Attend site inspections for properties subject to application review as required.

Administrative Support Staff

- Secretary-Treasurer (Chief Administrative Officer or Designate) (Non-Voting)
- Recording Secretary (Executive Assistant or Designate) (Non-Voting)
- Planning Coordinator and/or Municipal Planning Consultant (Non-Voting)

Agenda

The Secretary-Treasurer shall arrange to have the agenda prepared. Any items for inclusion on the agenda must be submitted to the Secretary-Treasurer, through the Planning Coordinator by 4:30 p.m. the Wednesday of the week immediately preceding the PAC meeting. Insofar as practicable, agendas, along with supporting material shall be prepared and emailed or made available to COA members on Thursday prior to the week in which the COA meeting is scheduled.

Agendas along with supporting material shall be posted on the Municipal website on the Friday prior to the week in which the COA meeting is scheduled.

Applications

a) Minor Variances

For the Committee to approve this type of application, the *Planning Act* requires that the members must be satisfied that the application meets all of the following four (4) tests:

- Whether the variance is minor
- Whether the variance is desirable for the appropriate development or use of the land
- Whether the general intent and purpose of the Zoning By-Law is maintained
- Whether the general intent and purpose of the Official Plan is maintained

b) Consents

For the Committee to approve this type of application, the Committee must be in the opinion that the application conforms to the provisions of the *Planning Act* including Section 51(24), the Provincial Planning Statement, the Official Plan and Zoning By-Law.

c) Expansion to a Legal Non-Conforming Use

For the Committee to approve this type of application, the *Planning Act* requires that the members must be satisfied that:

- The building was constructed in accordance with all the regulations in effect when it was built
- The present use is the same as that prohibited by the Zoning By-Law as of the day the By-Law was passed, or the present use was previously permitted by the Committee of Adjustment
- The present use has been continuous from the date of its legal commencement to the date of application to the committee (a regular seasonal closing is allowed, but if a non-conforming use closes for an extended period, it loses its non-conforming status)

d) Validation Certificates

The Committee will need to be satisfied the application for the validation certificate has been made in good faith and the circumstances surrounding the non-registered lot are legitimate.

e) Cancellation Certificates

The Committee will need to be satisfied that the certificate will result in an appropriate and positive planning outcome that is aligned with the Municipality's Official Plan and Zoning By-law.

Ontario Regulation 144/95 requires that in considering an application, the Committee of Adjustment members shall have regard to matters prescribed under Subsection 51(4) being whether the application is physically suitable, compatible with the surrounding land uses, premature etc.

Subsection 54 (6.1) of the *Planning Act* provides that the Committee of Adjustment in exercising its authority in issuing Certificates of Validation must comply with the requirements of Subsection 45(8) of the Act. The decision must be concurred by a majority of the members of the Committee that heard the application and the decision of the committee, whether granting or refusing, shall be in writing, set out their reasons for the decision and be signed by the members who concur in the decision.

Legislation

Committee of Adjustment decisions will be made at a public hearing. All information pertaining to an application will be presented at the hearing and all discussion on the specifics of an application will take place at the hearing.

Municipal Conflict of Interest Act

Members may have pecuniary conflict of interest as they have decision-making ability. Members should be cognizant of conflict of interest or perceived conflict of interest in terms of issues which may serve to benefit them personally.

i) a) When present at a hearing at which matter considered

Where a member, either on their own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a Committee of Adjustment public hearing at which the matter is considered, the member:

- Shall, prior to any consideration of the matter at the hearing, disclose the interest and the general nature thereof;
- Shall not take part in the discussion of, or vote on any question in respect of the matter;
- Shall not attempt in any way whether before, during or after the hearing to influence the voting on any such question.

b) When present at a "closed" hearing at which matter considered

Where a hearing is not open to the public, in addition to complying with the requirements set out above, the Member shall forthwith leave the hearing or the part of the hearing which the matter is under consideration.

ii) When absent from hearing at which matter considered

Where the interest of a member has not been disclosed by reason of the member's absence from the hearing, the member shall disclose the interest and the general nature thereof, and comply with the requirements listed above, at the first hearing attended by the member after the hearing at which the matter was considered.

iii) Disclosure to be recorded in the minutes

Every declaration of interest and the general nature thereof shall be recorded in the minutes of the hearing.

Municipal Freedom of Information and Protection to Privacy Act

Members will act to protect the privacy of individuals with respect to personal information contained in application forms and information circulated to the Committee and to ensure that the personal information is used solely for the processing of the application.

Other Items of Note

Except as otherwise provided in the Terms of Reference, all other procedural matters respecting the calling, place and proceedings of meetings shall be governed under the Municipal Procedural By-Law. Where there is a contradiction between the Terms of Reference in terms of hearing procedure rules, the Municipal Procedural By-Law and applicable legislation shall prevail.

The Committee of Adjustment is subject to the Accountability Open and Transparency By-Law/Code of Conduct for Members of Council, Local Boards and Committee Policy of the Municipality of Red Lake.

Terms of reference shall be reviewed during the term of each Council or more frequently, as required.

Code of Conduct and general expectations

- Members shall attend and actively participate in all hearings.
- Members shall not interfere with the operational decisions and responsibilities of the day to day operation of the municipal workforce.
- Members are encouraged to undergo any training that may be provided
- Members shall keep confidential any information disclosed or discussed at a meeting which is closed to the public.
- Members shall discharge their duties loyally, faithfully, impartially and according to the *Municipal Act* or any Regulation, Rule or By-Law.

- Members shall not use their appointment to advance their interests or the interests of any person or organization with whom or with which they are associated.

Public Hearing Procedure

1. The Chair shall read the application to be heard.

2. The Secretary-Treasurer shall read any correspondence that has been received relating to the application.

3. The Chair will ask the applicant or the agent on behalf of the applicant if they would like to speak. It is expected that the applicant generally provide a brief outline of their request/proposal. This should be kept to 10 minutes or less.

4. All interested parties are then allowed to express their objections, concerns, or comments. This should be limited to 10 minutes per person. Written correspondence can be submitted to the Secretary-Treasurer at the Municipal office any time prior to the meeting.

5. The applicant is then allowed to respond to concerns raised by the public.

6. The Chair asks members if they have any questions to direct at the applicant.

7. The applicant is given the opportunity to respond to the Committee of Adjustment.

8. The Chair then asks for a motion from the members and the application is either approved or denied, or may be deferred depending on the circumstances.

9. The Chair will read aloud the decision of the Committee of Adjustment.

NOTE: No member of the Committee of Adjustment shall be permitted to take their seat and participate in the hearing of an application once the hearing for that application has commenced.

If there have been a series of adjournments that reconvened through a final decision, only those members who have been present throughout the full series of public hearings may participate in the final decision.

Members must not discuss the matter under consideration with members of the public or the applicant outside of the hearing room, or they may potentially have to disqualify themselves from the balance of the hearing process and participation in the final decision.