



## The Corporation of the Municipality of Red Lake

### COMMITTEE OF ADJUSTMENT

#### Terms of Reference

#### **PART A**

##### Purpose

The Committee of Adjustment is a quasi-judicial body with the authority delegated to it by the Council of The Corporation of the Municipality of Red Lake, under the provisions of the *Planning Act*, to hold public hearings and make decisions on applications submitted to the Planning Department.

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 shall be appealed to the Ontario Municipal Board.

##### Mandate

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

- Grant Minor Variances from the provisions of the Zoning By-Law pursuant to Sections 44 and 45(1), (2) and (3) of the *Planning Act*,
- To permit extensions, enlargements or variations of existing legal non-conforming uses;
- Give 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)
- Give 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;
- Consider and make decisions on applications for Validation of Title and Power of Sale.

##### Operation

The Committee of Adjustment is responsible for the observance and protection of applicable planning law, and with protecting the rights of the individuals affected by the decisions made.

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 of those who desire 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.

Operation - continued.

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

Meetings

Committee of Adjustment public hearings are at the call of the Secretary-Treasurer, in consultation with the Chair, on an as required basis. When called, the public hearing is held once monthly in the Council Chambers, Municipal Office.

Reporting

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*

Minutes are circulated to Council for their information.

The Committee may make recommendations on issues within their Terms of Reference that warrant Council's consideration.

Organization

The Committee is composed of six (6) members appointed by resolution of Council.

Members appointed to the Committee of Adjustment will be the same members appointed to the Property Standards Committee.

Council members do not reside on the Committee of Adjustment.

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 Office

The term of new appointments is for a maximum of four (4) years, commencing with the term of new Council, the first Monday in December after a municipal election and expiring November 30th in an election year. Pursuant to Section 45(4), members of the committee shall hold office until their successors are appointed, and are eligible for reappointment, and, where a member ceases to be a member before the expiration of his or her term, the council shall appoint another eligible person for the unexpired portion of the term.

Member Eligibility/Application/Appointment/Vacancies

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

### Absenteeism

Members who are unable to attend hearings are required to report their absence to the Secretary 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. The Chair shall discuss their commitment with any members having continuous "excused absences", and may recommend replacement 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 six (6) Members appointed to the Committee of Adjustment, the **quorum** is three (3) members.

For the purposes of the six (6) members appointed to the Committee of Adjustment, the **majority** is the majority of members present at the hearing.

Voting is by simple majority on the application. A tie vote means the application is refused.

### Duties and Responsibilities

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

Code of Conduct*Municipal Act, Planning Act, Statutory Powers Procedures Act*

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.

**"Revised January 2013"**

Administrative Support Staff

Secretary-Treasurer (Planner) (Non-Voting)

Recording Secretary (Executive Secretary) (Non-Voting)

Chief Administrative Officer (Resource Person) (Non-Voting)

Other Items of Reference

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 Open and Transparency and Accountability By-laws/Policies of the Municipality of Red Lake.

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

No honorarium will be paid to members.

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, Official Plan and Zoning By-Law.

Applications - continued.

c) Legal Non-Conforming

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 that the day the By-Law as 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 down for an extended period of time, it loses its non-conforming status)

d) Validation Certificates

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 in 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.

## **PART 5**

### Code of Conduct for Council Appointed Board Members

1. Members shall attend and actively participate in all hearings.
2. Members shall not interfere with the operational decisions and responsibilities of the day to day operation of the municipal workforce.
3. Members are encouraged to undergo any training that may be provided for them through the Ministry of Municipal Affairs and Housing.
4. Members shall keep confidential any information disclosed or discussed at a meeting which is closed to the public.
5. Members shall discharge their duties loyally, faithfully, impartially and according to the Municipal Act or any Regulation, Rule or By-Law.
6. Members shall not use their office to advance their interests or the interests of any person or organization with whom or with which they are associated.

## **PART C**

### 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.