

The Corporation of the City of Kenora

By-law Number 34 - 2014

A By-law to establish a Terms of Reference and Rules of Order and Procedure for the City of Kenora Planning Advisory Committee

Whereas Sections 44 and 45 (1), (2), and (3) of the *Planning Act, R.S.O. 1990, c.P.13, as amended*, (the Act) allows a council of a municipality that has passed a bylaw under Section 34 of the Act to constitute and appoint, by by-law, a Committee of adjustment for the municipality, and

Whereas the Council of The Corporation of the City of Kenora has passed a Zoning By-Law under Section 34 of the Act, and

Whereas Council deems it advisable to constitute and appoint a Committee of Adjustment, and

Whereas Section 5(1) of the Act provides that, where the Minister has delegated any authority to a council under Section 4 of the Act, such council may, in turn, by bylaw, and subject to such conditions as may have been imposed by the Minister, delegate any of such authority to a Committee of council, and

Whereas Council deems it advisable to delegate Consent Granting Authority to a Committee of Adjustment which Council has designated such responsibility to the Committee; and

Whereas Section 15.6(1) of the *Building Code Act*, requires that a Property Standards By-Law provides for the establishment of a Property Standards Committee as set out in the *Building Code Act*, and

Whereas Council has passed a Property Standards By-Law, and

Whereas Council deems it advisable and expedient to appoint the Committee of Adjustment as the Property Standards Committee which Council has designated such responsibility to the Committee; and

Whereas Section 238(2) of the Municipal Act 2001 SO 2001 c 25 as amended states that every municipality and local board shall pass a procedure by-law for governing the calling place and proceedings of meetings; and

Whereas pursuant to subsection 54(7) of the Planning Act R S O 1990 c P 13 as amended a delegation of authority made by the Council may be subject to such conditions as the Council by by-law provides; and

Whereas the Council of the Corporation of the City of Kenora deems it expedient to reflect the current practices procedures and statutory requirements of Council and Committees of Council;

Now Therefore the Council of the Corporation of the City of Kenora hereby **enacts as follows:**

1. That Council establishes a Planning Advisory Committee comprised of the duties and responsibilities of a Committee of Adjustment as per requirements set out in The Planning Act.
2. That Council delegates its consent granting authority to the Planning Advisory Committee for purposes of a Committee of Adjustment.
3. That the responsibilities, duties and procedures of the Committee shall be established in accordance with Schedule "A" attached hereto and forming part of this by-law.
4. That the responsibilities and duties of the Committee shall include those of a Property Standards Committee, as per the Building Code Act;
5. That this by-law shall come into force and take effect upon the date of its passing.
6. That By-law Number 209-2010 be and is hereby repealed.

By-law read a First and Second Time this 18 day of March, 2014

By-law read a Third and Final Time this 18 day of March, 2014

The Corporation of the City of Kenora:-

David S. Canfield, Mayor

Heather Lajeunesse, Deputy Clerk

SCHEDULE "A"
To By-law Number 34 - 2014
City of Kenora Planning Advisory Committee

1.0 Establishment. Authority and Purpose

The Council of the Corporation of the City of Kenora establishes a Committee of Adjustment under the authority of Sections 44 and 45 (1), (2), and (3) of the Act, with delegated Consent Granting Authority under the authority of Section 5(1) of the Act, and such authority is executed by the Committee.

The Committee of Adjustment is appointed as the Property Standards Committee as per Section 15.6(1) of the Building Code Act, which forms part of the responsibilities of the Committee.

The purpose of the Kenora Planning Advisory Committee is to oversee the land use development of the City of Kenora, having regard to Provincial Policy, the City of Kenora Official Plan, and the City of Kenora Zoning By-law and to the principles of organized, reasonable development. The Committee is responsible for the duties and responsibilities of a Committee of Adjustment established under the authority of The Planning Act and its regulations, The Statutory Powers Procedure Act, The Municipal Conflict of Interest Act, Building Code Act and The Municipal Freedom of Information and Protection of Privacy Act and the common law concept of natural justice, and any other applicable municipal policies and by-laws.

Any responsibilities of the Members of the Kenora Planning Advisory Committee/Committee of Adjustment/Property Standards Committee (hereinafter referred to in this document as "the Committee") not clearly identified within the Terms of Reference shall be in accordance with legislation as outlined in the above paragraph.

2.0 Roles and Responsibilities

The Committee is quasi-judicial body and advisory Committee to Council on some issues and is a decision-making body on other issues.

2.1 The Committee considers:

1. To act as the Committee of Adjustment and receive, process and make decisions on application for variances from the provisions of the Zoning By-law, to permit extensions, enlargements or variations of existing legal non-conforming uses as per the Planning Act.
2. To act as the Land Division Committee and receive, process and make decisions on applications for consent, to an owner of land who wishes to sell, convey or transfer an interest "part" of their land (i.e. creation of a new lot, lot addition, easement), per the Planning Act.
3. To act as the Land Division Committee and receive, process and make decisions on applications for 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.
4. Per Ontario Regulation 353/02, Schedule 3, to act as the Land Division Committee to receive, process and make decisions on Applications for Plans of Subdivision and Plans of Condominium per section 5(1) and section 51 of the Planning Act, in consideration of City Staff recommendations.
5. To issue a "Certificate of Validation";
6. To make recommendations to Council on applications to amend the Zoning By-law;
7. To recommendations to Council on Official Plan Amendments as per the Planning Act.
8. To act as the Property Standards Committee, per the requirements of the Ontario Building Code Act and hear appeals such as required pursuant to the City of Kenora Property Standards By-law.

9. To carry out site inspections of subject properties as required/appropriate.
10. To receive, process and make recommendations to Council on any land or land use –related requests received by the City over which Council has approval authority.
11. To recommend policies and procedures regarding land development and land use to Council for possible implementation.
12. To maintain close liaison with Council through the Property and Planning Department of the City of Kenora.

2.2 The Chair shall:

- Preside at all Committee hearings and meetings and exercises authority and performs duties as required
- Provide guidance and leadership to the Committee in the completion of its mandate
- Enforce on all occasions the conduct of the Members
- Expel any person for improper conduct
- Preserve order and decorum and decides questions of order, subject to an appeal to the Committee by a Member and in the absence of the Chairperson, the Vice Chair, or Presiding Officer, shall have the same authority as the Chairperson while presiding at the meeting

2.3 The Vice Chair shall:

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

2.4 All Members shall:

- Review applications sent to them in advance of the meeting
- Visit the site of each application prior to the meeting
- Attend the Committee hearings, consider applicant comments and make decisions in public regarding applications
- Contribute time, knowledge, skill and expertise to the fulfillment of the Committee's mandate.
- Declare where a pecuniary interest or possible pecuniary interest exists

2.5 All Members of the public shall:

Respect the decorum of the Committee and shall refrain from public outbursts shouting or behaviour intended to disrupt the debate discussion and or general proceedings of the Committee The Chair may request that a member s of the public vacate the meeting room if their behaviour is deemed to be disruptive to the business at hand The Chair may unilaterally suspend the meeting until order is restored in the meeting room

3.0 Membership

3.1 The Committee shall be comprised of five (5) to seven (7) members appointed by resolution of the City of Kenora.

3.2 The members appointed to the Committee shall be members of the public and residents of the City of Kenora.

4.0 Term of Office

Members of the Committee shall hold office for the term of the council that appointed them.

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.

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

The advertising of vacancies and appointments to the Committee will be in accordance with the policies adopted by Council from time to time.

4.1 Recognition of Retiring Members

Retiring members will receive a letter of appreciation on behalf of the Mayor and Council at the end of their term if they are not reappointed, or if they voluntarily retire from their position on the Committee.

5.0 Quorum

Where a Committee is composed of three members, two members constitute a quorum, and where a Committee is composed of more than three members, three members constitute a quorum

5.1 Vacancy not to impair powers

A vacancy in the membership or the absence or inability of a member to act does not impair the powers of the Committee or of the remaining members.

6.0 Officers of the Committee

The Chairperson, Vice-Chair and other positions shall be elected annually from the membership of the Committee.

The Chairperson and Vice-Chair of the Committee shall also be the Chairperson and Vice-Chair of the Committee of Adjustment and Property Standards Committee.

The Secretary-Treasurer of the Committee shall be an employee of the City of Kenora. Appointment of the Secretary-Treasurer shall be made by By-law.

The Chairperson (or Vice-Chair in their absence) of the Committee shall act as liaison to Council through the Property and Planning Department.

A list of appointments of the Committee (Chairman, Vice-Chair applicable) shall be provided to City Council annually.

7.0 Meetings

The Committee shall meet monthly, on a day and time to be determined by the Committee, or more often at the call of the Chairperson. The schedule of the monthly meetings shall be established by the members at the first regular meeting of the Committee, annually.

- a) Special meetings may be called, if an Applicant has provided the appropriate fee, or as required in the cases of property standards appeals.
- b) All meetings shall be open to the public and no person shall be excluded except for improper conduct except as indicated in part c)
- c) All deliberations of the Committee shall be in open session and members of the public, including the applicant, authorized agent, applicant's representative and any respondents may be present during any such deliberations with the exception of those items which may be discussed in closed session in accordance with Section 239 of the Municipal Act 2001 R S O 2001 c 25 as amended

7.1 Absences

Members of the Committee, who are unable to attend the regular monthly meeting, are required to report their absences to the Secretary-Treasurer and Chair.

8. Code of Conduct (*Municipal Act, Planning Act, Statutory Powers Procedure Act*)

Committee 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

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

8.1 When present at meeting 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 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 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
- Shall leave the room and remain absent from it at all times during consideration of the matter.

8.2 When absent from meeting 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 comply with the requirements listed above, at the first Committee hearing attended by the Member after the hearing at which the matter was considered.

8.3 Disclosure to be recorded in minutes

Every declaration of interest and the general nature thereof shall be recorded in the minutes of the meeting by the Secretary-Treasurer of the Committee.

Notwithstanding the above, the Municipal Conflict of Interest Act shall apply to all members of the Committee.

8.4 Municipal Freedom of Information and Protection of Privacy Act

Committee 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 personal information is used solely for the processing of the application.

9.0 Voting

9.1 No Vote by Ballot

No vote shall be taken by ballot or by any other method of secret voting, and every vote so taken is of no effect.

- (a) The manner of determining the decision of the Committee on a motion shall be at the discretion of the Chair Person and is done by way of a show of hands, standing or otherwise.

9.2 All Members present are required to vote when a question is put forth, unless:

- a) Such Member has made a Declaration of Interest under the Municipal Conflict of Interest Act, and therefore the Member shall "abstain" from voting; or
- b) In the interest of making an informed decision such Member was not in attendance at a previous meeting(s) at which the integral components of the subject application were discussed
- c) All voting shall be made by a show of hands. All members of the Committee are entitled to vote and each member shall have one vote.

- d) A vote shall be taken at the direction of the Chair on each motion duly moved and seconded.
- e) The Chair shall announce at the meeting, the decision of the Committee
- f) Voting shall continue on each motion put forward by Committee members until a clear and deliberate decision is made by a majority vote on a motion.
- g) With respect to applications before the Committee, when a question is put and a member who is present and not otherwise prevented by Statute from voting does not vote, his vote shall be recorded in the negative.
- h) A decision shall not be made as a result of a tie vote. A new motion should then be presented until one is carried by a majority of the members.
- i) Committee members concurring with the decision of the Committee shall sign the decision at the Meeting.

10.0 Decision

No decision of the Committee on an application is valid unless it is concurred in by the majority of the members of the Committee that heard the application, and the decision of the Committee, whether granting or refusing an application, shall be in writing and shall set out the reasons for the decision, and shall be signed by the members who concur in the decision.

10.1 Minor Variances

The Zoning By-law regulates how land and buildings are used and where buildings and structures can be located. This by-law also specifies lot sizes and dimensions, parking requirements, building heights and other regulations necessary to ensure proper and orderly development. However, sometimes it is not possible or desirable to meet all of the requirements of the Zoning By-law. In that case, a property owner may apply for approval of a minor variance. A minor variance provides relief from a specific zoning by-law requirement, excusing a property owner from meeting the exact requirements of the bylaw.

For the Committee to approve this type of application, the Planning Act requires that Members must be satisfied that the application meets all of the following four tests:

- Is considered to be a minor change from the Zoning requirements (an evaluation of impact rather than a numerical value)
- Is desirable for the appropriate development or use of the land, building
- Maintains the general intent and purpose of the Official Plan and
- Maintains the general intent and purpose of the Zoning By-law.

10.2 Legal Non-Conforming Uses

Legal Non-Conforming Uses are uses of property that met all of the requirements of the Zoning By-law (and any other requirements) when they were established but no longer comply because the zoning requirements have changed. To ease the hardship this change could place on a property owner, the Committee can consider applications for extensions or enlargements of buildings or uses that no longer comply with the Zoning Bylaw as well as applications for a change from one legal non-conforming use to another use.

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

- The non-conforming use was officially permitted before the current Zoning By-law was approved
- The non-conforming use has continued, uninterrupted since that time
- The extended or enlarged building or use is located entirely within the original property limits
- In the case of a change in use, that the proposed use is similar to or more compatible to the new uses permitted by the Zoning By-law.

10.3 Land Division – Consent/Subdivision/Condominium Description

For the Committee to approve this type of application, the Planning Act requires that Members have regard to the following:

- Effect on health, safety, convenience, accessibility of persons with disabilities and welfare of present and future inhabitants of the municipality
- Effect on matters of Provincial interest, including:
- Protection of ecological systems and agricultural resources
- Conservation and management of natural resources and mineral resource base
- Conservation of features of significant architectural, cultural, historical, archaeological or scientific interest
- Supply, efficient use and conservation of energy and water
- Adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems and minimization of waste
- Orderly development of safe and healthy communities
- Accessibility for persons with disabilities to all facilities, services and matters to which this Act applies
- Provision and distribution of educational, health, social, cultural and recreational facilities
- Provision of a full range of housing and employment opportunities
- Protection of financial and economic well-being of the Province and municipalities
- Co-ordination of planning activities of public bodies and resolution of planning conflicts involving public and private interests
- Protection of public health and safety and appropriate location of growth and development
- Protection of public health and safety and appropriate location of growth and development
- Promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians
- Whether the proposal is premature or in the public interest and whether it conforms to the City of Kenora Official Plan and adjacent plans of subdivision
- Suitability of the land for the purposes for which it is to be subdivided, number, width, location, grades, elevations and adequacy of proposed roads and roads linking proposed roads with the established road system
- Dimensions and shapes of the proposed lots, restrictions or proposed restrictions on the land to be subdivided or the buildings and structures to be erected and restrictions on adjoining land
- Conservation of natural resources and flood control, adequacy of utilities, municipal services and school sites, area of land to be dedicated for public purposes, extent to which the proposal optimizes available supply, means of supplying, efficient use and conservation of energy,
- Interrelationship between the proposal and site plan control matters relating to any development, if the land is located within a designated site plan control area.

Any application approval may be subject to such terms and conditions as the Committee considers reasonable and advisable.

11.0 Deputations

Any person desiring to present information or speak to the Committee at an Open Meeting shall have an opportunity to do so at the commencement of the meeting as provided under “Deputations” on the Agenda, and at the time announced by the Chair Person. Such persons shall have not more than five (5) minutes to address the Committee and no debate on any subject shall be engaged in by either the Committee or the person.

- a) Communications, including a petition, designed to be presented to the Committee and filed with the Secretary Treasurer shall be legibly written or printed, shall not contain any obscene or improper matter or language and shall be signed and dated by at least one person.

It shall include an address and telephone number where return correspondence or contact is to be directed and shall become part of the public record of the meeting at which it is received

- b) Petitions designed to be presented to the Committee and filed with the Secretary Treasurer shall contain original signatures and all information on the petition including names addresses and telephone numbers shall become part of the public record of the meeting at which it is received.
- c) Communications or petitions to be printed on an agenda shall be delivered to the Secretary Treasurer no later than 4:30 pm on the Wednesday of the week prior to meeting. If in the Secretary Treasurer's opinion the communication petition is of a time sensitive nature the Secretary Treasurer may bring forward such communication petition for the Committee's consideration after the aforementioned deadline.

12.0 Curfew

The Committee shall adjourn no later than the hour of ten (10) o'clock in the evening, unless otherwise ordered by a unanimous vote of members present.

13.0 Honorarium

An honorarium shall be established by Council. Payment shall be twice annually, after the June meeting and after the December meeting.

14.0 Agenda

The meeting agenda and supporting documents shall be circulated to the Committee members by electronic mail. If a Committee member requests, the meeting documents shall be caused to be delivered by regular mail for receipt in excess of 72 hours prior to the meeting.

The Committee shall deal with business matters in the following order:

- (i) Call meeting to order
- (ii) Declaration of Interest
- (iii) Adoption of minutes of previous meeting
- (iv) Correspondence relating to applications before the Committee
- (v) Other correspondence
- (vi) Considerations of Applications for Minor Variance
- (vii) Considerations of Applications for Land Division
- (viii) Old Business
- (ix) New Business
- (x) Adjournment

15.0 Accounting

The Committee budget forms part of the Property and Planning Departmental budget. All financial commitments of the Committee, including provision for Committee Members to attend training, workshops and conferences, are processed through the Property and Planning Department in keeping with City policies.

15.1 Request for refund of fees

Requests, made in writing by an Applicant/Agent from whom payment was originally received by the Planning Department, shall be eligible for a 10% refund within one year of the application date and after the preparation of the staff report but prior to consideration of the application by the Committee, and 80% of the amount if the notice of the application has not been given.

15.2 Request for deferral:

A request for deferral of a hearing date must be made before the Committee, during the time allotted for the public meeting to consider the application(s). If the request for deferral is made by the application, an extra fee shall be charged. The Committee shall generally permit a one year period for re-scheduling of a hearing date but may schedule a specific date if necessary.

16.0 Minutes

Minutes of the Committee shall be recorded by the Deputy Secretary Treasurer or Secretary Treasurer of the Committee and shall be prepared for distribution within five (5) days of the meeting date. Minutes shall be posted on the City's portal/webpage, after adoption, and circulated to the Clerk for Council's information, and filing.

17.0 Staff Support

Requests for access to documentation, reports and support materials required by the Secretary-Treasurer shall be directed to the Secretary-Treasurer.

The Property and Planning Department, Operations Department, and Emergency Services Department, including the Planning staff and Chief Building Official shall act as Resource Staff to the Committee, as required.

Administrative Support Staff

- Secretary-Treasurer (non-voting position)

Responsible for all Committee administrative duties.

- Minute-Taker (non-voting position)

Responsible for the recording of and distribution, to the Secretary-Treasurer, of minutes/records, notices etc.

- Departmental Representatives / Planners (non-voting position)

Act as subject matter experts and provide information to assist the Committee in reaching decisions.

18.0 Reporting Relationships

The Committee reports to Council through the Property and Planning Department. The liaison for resource staff to the Committee shall be the Secretary-Treasurer.

The Committee shall work closely with the resource staff but shall not have direct line authority over the staff. It is acknowledged, however, that there shall be occasions when the Chairperson of the Committee must direct the Secretary-Treasurer to carry out work.

19.0 Reporting to City Council

While the Committee is an autonomous body, any recommendations to Council shall be made by the Committee in standard agenda format, through the Property and Planning Department, for consideration and recommendation by the Committee of the Whole. Majority and minority opinions may be recorded for the advice and consideration of the Committee and Council.

Reports for consideration by Council and/or minutes of the Committee shall be submitted to the Secretary-Treasurer's office for processing and distribution to Council, or in accordance with the City's Procedural By-law. Reports submitted by the Committee for Council's consideration shall be processed through the Property and Planning Department and Committee of the Whole, or in accordance with the City's Procedural By-law and then placed on the agenda for Council, with recommendations from both the Committee and Committee of the Whole being forwarded to Council.

20.0 Confidentiality

The members of the Committee shall be bound by the Municipal Act as it relates to confidentiality, closed sessions and any other requirements under the Act which pertain to the conduct of officials. The members are bound by the Municipal Conflict of Interest Act as it relates to conflict of interest. The members are bound by the Planning Act as it relates to all matters relating to their delegated duties.

21.0 Regular Review of this Authority

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

This review may be initiated by City Council, at its discretion, or by the Committee upon written request to City Council.