

Staff Report 2020-0206

Meeting Date: June 9, 2020

Subject: Electronic Committee of Adjustment Meetings and Public Participation

Submitted By: Amanda Fusco, Acting Town Clerk, Corporate Services

RECOMMENDATION

That a by-law be enacted to amend Procedural By-law No. 2015-108 to amend the Town of Caledon's governing structure to include a provision to permit local boards to meet electronically, as required; and

That a by-law be enacted to amend Procedural By-law No. 2018-80 to amend the rules governing the Committee of Adjustment to permit electronic meeting procedures.

REPORT HIGHLIGHTS

- The Province of Ontario recently amended the *Municipal Act, 2001* (the "Municipal Act") through the *Emergency Management Act, 2020* to permit, under a municipality's procedural by-law, members of local boards to participate in both open and closed meetings electronically and be counted towards quorum when an emergency has been declared by either the Province or the municipality itself under the *Emergency Management and Civil Protection Act*.
- At the March 24, 2020 Emergency Council Meeting and the April 7, 2020 Special Council Meeting, Council amended its Procedural By-law to permit electronic participation for regular and special Council and Advisory Committee meetings.
- As the COVID-19 pandemic has continued, there is a desire by Staff to consider non-emergency matters to address the business and operations of the Town, including minor variance and consent applications in the *Planning Act* through the form of Committee of Adjustment.
- Neither the Town's Procedural By-law nor the Committee of Adjustment Procedural By-law permits the Committee to meet electronically.
- The Committee of Adjustment has not met since March 11, 2020. The April 15, 2020 hearing and all subsequent meetings since were cancelled due to the COVID-19 pandemic and Town Hall being closed to the public. There are 8 applications for Minor Variances and 1 Consent application pending.
- To ensure the Committee of Adjustment can continue to consider regular business, it is recommended that the Procedural By-law be further amended to permit Local Boards to meet electronically, as required, with modified procedures, governing timing, notice and public participation.

DISCUSSION

The purpose of this report is to seek Council approval for an amendment to the Procedural By-law and Committee of Adjustment Procedural By-law to permit electronic Committee

of Adjustment hearings and establish procedures for public participation during the hearing.

Background

On March 17, 2020 a declaration of emergency was made by the Province of Ontario pursuant to Section 7.0.1 of the *Emergency Management and Civil Protection Act* related to the COVID-19 pandemic. On March 19, 2020 the Province enacted the *Municipal Emergency Act, 2020*, to provide that, during declared emergencies, should they choose to, members of council, local boards and committees who participate electronically in open and/or closed meetings can be counted for the purposes of quorum.

On March 18, 2020 a state of emergency for the Town of Caledon was declared by Mayor Thompson in response to COVID-19.

At an Emergency Town Council meeting held on March 24, 2020, Council passed amendments to the Procedural By-law permitting Town Council to meet electronically during the declared emergency in order to move necessary business forward.

On April 7, 2020 further amendments were made to the Procedural By-law to suspend its Committee of the Whole structure and implement electronic meetings for Council and Advisory Committees with modified procedures, governing timing, notice and public participation.

On April 14, 2020 the Province of Ontario passed Bill 189, the *Coronavirus (COVID-19) Support and Protection Act*, which amended several acts including the *Planning Act*. Ontario Regulation 149/20, Special Rules Related to the Declared Emergency, came into force April 15, 2020 which provides municipalities with the option to process and make decisions on land use planning applications, including minor variance and consent applications, during the COVID-19 emergency.

Electronic Committee of Adjustment Hearings

To assist in moving development projects forward that relate to other application processes, there is a need to consider moving forward with Committee meetings. Several municipalities have conducted virtual meetings for Committee of Adjustment to date, with apparent success. The intent of this report is to recommend that amendments be made to the Procedural By-laws for the Council and Committees and Committee of Adjustment to allow the Committee of Adjustment to meet electronically during the declared emergency in order to advance pending and future applications.

In consultation with the Chair and Members of Committee of Adjustment, there is support for resuming the meetings virtually. Tentatively scheduled dates to hear the initial set of backlogged applications are July 8, 2020 and July 22, 2020.

Virtual Committee meetings can occur in the same manner that Council is currently meeting on the WebEx application platform, which allows for public engagement through home telephone, computer or mobile device. Applicants will be able to present their development proposals to the Committee, staff and the public and then respond to questions/comments from Committee members and registered delegations.

While the technology and legislative amendments permit such meetings, there is still much municipal discretion as to whether to conduct such hearings. Staff have outlined factors that may influence the decision to permit such hearings notably:

- **Public Notice**
 - Typical meeting notices provide options for residents and businesses to access additional information, contact staff, and how to provide written comments by mail or email.
 - Mailed notices can be further modified to include a statement that the hearing will be held via electronic means, how to engage in the process, where to submit questions / comments electronically and how to register as a delegation in order to provide comments directly to the Committee.
 - The Notice will be mailed with enough timing to ensure delivery to affected property owners is well within the *Planning Act* timelines.
 - The agenda will be posted as per the Committee's Procedural By-law, 5 days in advance of the meeting, which will continue to provide all relevant information about the applications scheduled to be heard.

- **Public Participation / Delegations**
 - Members of the public who wish to speak at the Hearing shall be required to complete and submit a delegation request form up to the day prior to the hearing. Delegates shall provide a phone number and name (the name of the delegate will become part of the public record).
 - If available, delegates shall be required to submit their intended speaking notes for circulation to members of the Committee, in the event their delegation is interrupted. Any correspondence submitted will form part of the public record and appended to the minutes.
 - Delegates shall participate in the electronic Hearing by telephone.
 - Town Staff will begin calling delegates 15 minutes prior to the commencement of the application they have registered for, in the order they appear on the agenda and delegates will appear on the online video conference with their name included as listed on the agenda.
 - Once a delegate is connected to the conference, Town Staff will welcome the delegate and advise them that their microphones will be muted, and they will be placed on hold until their item is ready to be heard.
 - If no answer is received on first call attempt, a second call attempt will be made once all other registered delegates have been called.
 - Once all second call attempts have been completed, if no answer is received on a second call attempt, time permitting before the commencement of the meeting, only one further call attempt shall be made.

- Town Staff shall advise the Chair and Secretary-Treasurer of any delegates who could not be reached.
- Applicants/Agents shall participate via electronic meeting with video camera turned on, unless technological concerns exist and then shall participate in the electronic Hearing by telephone.
- **Appeals**
 - Normally, the *Planning Act* provides timeframes by which Committee hearings must occur and decisions must be made, failing which applicants can appeal the applications to the Local Planning Appeal Tribunal (LPAT).
 - Under the new O. Reg. 149/20, the statutory timeframes to hold hearings and make decisions are suspended. If there was no decision on an application prior to April 15, 2020, then there is no statutory requirement to hold a hearing and make a decision for the duration of the declared emergency.
 - As a result, the Committee is permitted to meet and make decisions during this time, but is not required to. Once the declared emergency is over, normal timeframes will resume.
 - If the Committee does proceed to make a decision during the declared emergency, the usual *Planning Act* notice obligations and statutory appeal timelines (20 days for Consents and Minor Variances) will apply to the decision.
 - If there are no appeals of the Committee's decision, the decision comes into effect.
 - However, if there is an appeal of the decision within the 20 days, the decision does not come into effect. Instead, O.Reg 149/20 suspends the timeline for the Town to prepare a record and forward the appeal to the LPAT until the end of the declared emergency. The LPAT is not currently processing new appeals.
 - If the Committee makes a decision on an application, a Notice of the decision must be circulated which outlines the process for appealing a decision. An appellant must complete the form prescribed by the LPAT (available on their website) and submit it by mail with associated fees. If an appeal is received staff will handle the intake with precaution as it relates to the pandemic.
 - As the LPAT requires the filing fee to be paid by certified cheque or money order payable to the Minister of Finance, it is not possible to accept appeals electronically at this time. Town LPAT filing fees will be accepted electronically.
- **COVID-19 Influences**
 - Some municipalities that have held electronic meetings and considered matters under the *Planning Act* have faced criticism from residents and the media that technological limitations and a lack of public gathering place for discussion could prevent residents from feeling like they've had their voices heard.

- Some residents may feel that they are not able to be engaged in such processes if they are otherwise managing health, employment or familial pressures.
- Consideration of what is urgent and essential may be subjective.

Proposed Committee of Adjustment Procedural By-law Amendments

The following is a summary of the proposed changes that would form the By-law amendment:

- Definition of “Electronic Hearing” provided;
- Definition of “Hearing” updated;
- Amending Part 5 Quorum to reflect that any member of the Committee may participate in an Electronic Hearing and be counted for the purpose of establishing quorum;
- Amending Part 6 Hearing Procedures and Voting to permit electronic hearings during a declared emergency and to clarify procedures regarding voting and public participation.

Receiving Electronic Applications

Committee of Adjustment application forms are nearing completion to accept new and deferred applications electronically (online). In addition to the electronic process, staff are revising content on the application form and manuals to assist in the transition and outline any changes to the previous process. Moving forward, the applicant will complete the online application and upload all associated material. The application form will be provided to the Secretary-Treasurer for receipt, review and processing. The Secretary-Treasurer will contact the applicant to receive payment of the required fee prior to the processing of the application, and confirm completeness.

During the COVID-19 office closure, staff continue to work with potential applicants by receiving draft applications. If Council determines it is appropriate to move forward with Committee hearings during the declared emergency, staff will advise applicants of upcoming hearing dates through August and September and submission deadlines as they are determined. Staff note the draft applications received have been reviewed in the existing format. If it is determined that all applications are to be submitted electronically then staff will contact the potential applicants and advise (electronic application submission will become mandatory for the September 2020 hearing).

If supported, the electronic public participation process proposed in this report for Committee of Adjustment can be applied for future Public Planning meetings held under the *Planning Act*, expected to resume in the Fall.

FINANCIAL IMPLICATIONS

There are no immediate financial implications associated with this report.

COUNCIL WORK PLAN

Subject matter is not relevant to the Council Workplan.

ATTACHMENTS

Schedule A: Proposed By-law Amendment to Procedural By-law 2015-108, as amended

Schedule B: Proposed By-law Amendment to Committee of Adjustment Procedural By-law 2018-80