

**Committee:** Port Colborne Appeals and Property Standards

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**Committee Resource:** Manager of By-law Services

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## **1. Purpose and Mandate**

The City of Port Colborne Appeals and Property Standards Committee (“APSC”) is a quasi-judicial body that hears appeals of by-laws in effect in Port Colborne. The APSC shall hear appeals by property owners or their agents who have received an Order laid under City by-laws. The Committee has the authority to confirm, modify, rescind a Declaration or Order, extend the time for complying with a Declaration or Order under a by-law, or dispose of an appeal via a Consent Order.

## **2. Membership Composition**

2.1 The APSC shall consist of the following voting members:

2.1.1 Four members of the City of Port Colborne’s Council shall be appointed by resolution of Council.

2.1.2 One member shall be appointed from the public at large by resolution of Council.

2.2 The APSC shall consist of the following non-voting members:

2.2.1 At least one non-voting member of staff who shall act as a resource person, recording secretary, and shall provide administrative support to the Committee.

2.2.2 The Mayor is an ex-officio non-voting member of the Committee.

## **3. Citizen Membership Eligibility Criteria**

To facilitate the nomination and appointment of citizen members to the Committee, with the aim of achieving diverse representatives, the following criteria will be considered:

3.1 Residency - Members must be at least 18 years of age and a tenant or owner of land in the City of Port Colborne, or the spouse/partner of such owner or tenant.

3.2 Technical Expertise – Preference may be given to eligible candidates that have the following skills:

3.2.1 Knowledge and prior experience in administrative law;

3.2.2 Ability to carry out a fair and impartial hearing;

3.2.3 Ability to communicate effectively with the public;

3.2.4 Ability to write a clear and concise decision; and

3.2.5 Excellent written and oral communication skills.

- 3.3 Community Representatives - Consideration shall be given to the individual's level of participation and knowledge of legal tribunal governance, land use and real estate experience. The relevance of their interests to the mandate of the Committee will be an important consideration.
- 3.4 Availability - It is imperative that an applicant be able to attend as many Committee meetings as possible and undertake work outside of the regular meetings.

**4. Membership Recruitment**

- 4.1 Membership recruitment will be conducted in accordance with the City's Appointments to Boards and Committees Policy.
- 4.2 The membership on the Committee shall consist of appointments by Resolution of Council.

**5. Term**

Unless otherwise provided for, the term of the Committee shall be the term of the Council. Each member of the Committee shall hold membership until their successor is appointed. In the case of a vacancy for any cause other than expiration of term, the member appointed to fill the vacancy shall hold office for the balance of the term of the member whose place is vacant.

**6. Resignation**

A voting member of the Committee shall cease to be a member of the Committee upon submission of a letter of resignation to the City Clerk or if they are absent from three successive scheduled meetings of the Committee without being authorized to do so by a resolution of the Committee entered in its minutes.

**7. Appointment of Chair and Vice-Chair**

At the first meeting of the new term of the Committee, the members shall appoint, from among their number, a Chair and Vice-Chair.

**8. Role of the Chair**

The role of the Chair is to:

- 8.1 Preside at the meetings of the Committee in accordance with the City's Procedural By-law and keep discussion on topic.
- 8.2 Provide guidance and leadership to the Committee as required.
- 8.3 Ensure that each hearing abides by all rules of procedure and conduct, and that decorum is maintained.

**9. Role of the Vice-Chair**

In the absence of the Chair, the Vice-Chair assumes all functions of the Chair, as required.

**10. Role of Committee Members**

The role of Committee Members is to:

- 10.1 Review appeals in advance of hearings.
- 10.2 Attend all hearings, consider the appeals presented, and make decisions in public regarding the appeals.
- 10.3 Contribute time, knowledge, skill, and expertise to the fulfillment of the APSC mandate.
- 10.4 Provide notification to the Staff Liaison if unable to attend APSC hearings to ensure that quorum will be available.

## **11. Hearings**

- 11.1 All APSC hearings shall be open, and no person shall be excluded therefrom, except for improper conduct or for matters identified in section 239(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25.
- 11.2 APSC hearings are attended by APSC members, City staff, appellants and/or their agent, and any member of the public who wishes to observe or participate in the proceedings.
- 11.3 APSC hearings shall not conflict with the Council approved schedule.
- 11.4 APSC hearings shall take place at a City facility.
- 11.5 All matters proposed to be resolved in a closed hearing must first be approved by the Clerk to ensure a closed session is appropriate.
- 11.6 The Chair shall cause notice of the hearings, including the agenda for the hearings in accordance with the City's Procedural By-law.
- 11.7 Hearings may proceed in person, by conference telephone, by videoconference, or some other electronic technology allowing persons to hear one another, or a combination thereof, at the discretion of the APSC so long as the manner of hearing does not cause a Party to the hearing significant prejudice.

## **12. Minutes**

The minutes of all APSC hearings shall be recorded and distributed to APSC members.

The minutes shall be open to inspection in accordance with the *Municipal Act, 2001*, S.O. 2001, c. 25., as amended and such minutes will be posted on the City's website.

## **13. Quorum**

The Chair will call the hearing to order as soon as a quorum is present. Quorum is achieved when a majority of voting members are present. Vacant seats shall count as seats for the purpose of calculating a quorum.

If quorum for a hearing is not present within fifteen (15) minutes of the designated time of commencing the hearing, the Recording Secretary shall record the names of the Members present and the hearing shall stand adjourned until the date of the next scheduled hearing.

## **14. Conflict of Interest**

- 14.1 Each member is responsible for identifying and disclosing their pecuniary interest on any item or matter before Council, or Committee in accordance with the *Municipal Conflict of Interest Act*.
- 14.2 Where a member has any pecuniary interest, direct or indirect, in any matter and is present at a hearing of the Committee at which the matter is the subject of consideration, the Member will, in accordance with *Municipal Conflict of Interest Act*:
- 14.2.1 file a written statement of the interest and its general nature with the Clerk prior to the hearing;
  - 14.2.2 not take part in the discussion of, or vote on any question with respect to the matter;
  - 14.2.3 not attempt in any way before, during and/or after the hearing to influence the vote on the matter.
- 14.3 Where a hearing is not open to the public, in addition to complying with the requirements under the *Municipal Conflict of Interest Act*, the Member will forthwith leave the hearing for the part during which the matter is under consideration.
- 14.4 The Clerk will record the particulars of any disclosure of pecuniary interest made by Members of Committees in the minutes of that hearing and update the Pecuniary Interest Registry. The Registry will be available for public inspection.

## **15. Remuneration**

Members of the APSC shall receive remuneration in the amount of \$60.00 per Property Standards hearing. For all other hearings, members of the APSC shall receive remuneration in the amount of \$45.00.

## **16. Staff Liaison**

The City Clerk or designate shall appoint a Staff Liaison to the APSC. The Staff Liaison will provide administrative, procedural, and technical support to the APSC.

## **17. Terms of Reference**

Any responsibilities not clearly identified within these Terms of Reference shall be the responsibility of the City of Port Colborne staff. Council may, at its discretion, change the Terms of Reference for this Committee at any time. Any changes proposed to these Terms of Reference by the Committee shall be recommended to Council via the City Clerk through a report.

## **18. Applicable Legislation**

- 18.1 The Committee shall operate under the authority of the *Statutory Powers and Procedure Act* and hold hearings that may confirm, modify, or rescind Property Standards and Dog Muzzle Orders or in the case of Property Standards matters, may extend the time for compliance.
- 18.1.1 Section 15.3 of the *Building Code Act*, the City of Port Colborne Procedural By-law, and the APSC Terms of Reference shall apply to all

Property Standards Appeal proceedings from decisions of the Committee.

18.1.2 The Appeals and Property Standards Committee shall adopt Rules of Procedure in accordance with s. 25.1 of the *Statutory Powers Procedure Act* and conduct all hearings in accordance with the provisions of the *Statutory Powers Procedure Act*.

18.1.3 Where these rules do not cover a matter adequately, the Committee may give directions and make any order that is just, subject to any restrictions or rules prescribed by the *Statutory Powers Procedure Act*. If necessary, in the interests of justice, the Committee may dispense with compliance with any rule, except rules prescribed by the *Statutory Powers Procedure Act* or any other Act applicable to the proceeding.

18.2 The following legislation, policies, and rules also apply:

18.2.1 *Statutory Powers Procedure Act*

18.2.2 Procedural By-law

18.2.3 *Municipal Act*

18.2.4 Code of Conduct

18.2.5 Appointment to Boards/Committees Policy

18.2.6 *Municipal Conflict of Interest Act*

18.2.7 Robert's Rules of Order

18.2.8 *Building Code Act*

18.2.9 *Municipal Freedom of Information and Protection of Privacy Act*

## **19. APSC Hearing Procedures**

19.1 An Owner who has been served with an Order, and who is not satisfied with the terms or conditions of the Order, may appeal to the APSC by sending a notice of appeal by registered mail to the Staff Liaison within 14 days after being served with the Order.

19.2 An Order that is not appealed within the prescribed time frame is deemed to be confirmed.

19.3 If an appeal is taken, the Committee shall hear the appeal and shall have all powers and functions of the officer who made the order and may,

19.3.1 confirm, modify or rescind the order to demolish or repair;

19.3.2 extend the time for complying with the order if, in the Committee's opinion, the general intent and purpose of the by-law and of the Official Plan or policy statement are maintained.

19.3 The Committee may conduct any appeal in electronically, in person, or by a combination of means as it considers appropriate unless a specific form of proceeding is prescribed.

19.4 An electronic hearing must be held as an in person hearing if a party satisfies the Committee that an electronic hearing is likely to cause the party significant prejudice.

19.5 A party who wishes to oppose the proposed form of a hearing or pre-hearing conference must file brief written submissions to the Staff Liaison indicating the party's reasons for objecting to the hearing in proposed form of proceeding and the party's preferred form of hearing before the earlier of,

- 19.5.1 10 days after the document specifying the proposed method of attendance was served on the party; and
- 19.5.2 seven days before the hearing.
- 19.6 The Committee may decide how the hearing will be held based only on the written submissions of the objecting party or may request written submissions from any other party before deciding.
- 19.7 A party or a party's representative must not communicate with the Committee or any member of the Committee about an appeal before the Committee except as permitted by these rules.
- 19.8 Any document may be filed with the Committee by mail or registered mail to the City of Port Colborne APSC Staff Liaison or by e-mail, to the e-mail address of the Staff Liaison specified on the website of the Committee.
- 19.9 Any document that is required to be served may be served,
  - 19.9.1 by e-mail to the e-mail address for service provided by the party or their representative, and service by e-mail is effective on the date the e-mail is sent, except if it sent between 4 p.m. and midnight, in which case it is deemed to be effective on the following day;
  - 19.9.2 by mail or registered mail to the last address for service provided by the party or, if no such address has been provided, to the party's last known address, and service is effective on the fifth day after the document is mailed;
  - 19.9.3 by courier to the last address for service provided by the party or, if no such address has been provided, to the party's last known address, and service is effective on the second day after the courier is given the document;
  - 19.9.4 by personal service,
    - 19.9.4.1 on an individual, by leaving a copy of the document with them;
    - 19.9.4.2 on a corporation, by leaving a copy of the document with an officer, a director or another person authorized to act on behalf of the corporation, or a person at any place of business of the corporation who appears to be in control or management of the place of business;
  - 19.9.5 by alternative to personal service, on an individual, if an attempt is made to effect personal service at an individual's place of residence and for any reason personal service cannot be effected, the document may be served by leaving a copy in a sealed envelope addressed to the individual at the place of residence with anyone who appears to be an adult member of the same household.
- 19.10 Where proof of service is required by these rules, service of a document may be proved by a statement that contains,
  - 19.10.1 the title of the document served;
  - 19.10.2 the date of service, and if by email, the time of service;

- 19.10.3 the manner of service, as prescribed;
  - 19.10.4 the name of the person who served the document; and
  - 19.10.5 the name of the person to whom the document was served.
- 19.11 A party may be self-represented, represented by a lawyer or a paralegal, or a party may be represented by an individual other than a lawyer or a paralegal if the individual is authorized under the *Law Society Act* and its regulations and by-laws to do so and if the party files a signed authorization of representative.
- 19.12 An appellant may withdraw an appeal by advising all parties and the Staff Liaison of their intention to do so in writing at any time prior to the hearing of the appeal.
- 19.13 Subject to any Act or regulation that applies to the proceeding or information contained therein, the Committee may, at any stage of the proceeding, make orders for,
- 19.13.1 the exchange of documents;
  - 19.13.2 the oral or written examination of a party;
  - 19.13.3 the exchange of witness statements and reports of expert witnesses;
  - 19.13.4 the provision of particulars;
  - 19.13.5 any other form of disclosure.
- 19.14 The appellant must serve on every party and file, with proof of service, every document the appellant intends to rely upon at the hearing of the appeal at least 20 days in advance of the hearing.
- 19.14.1 The respondent and any other party must serve on every party and file, with proof of service, every document the respondent intends to rely upon at the hearing of the appeal that is not contained in the documents served and filed by the appellant at least 10 days in advance of the hearing.
- 19.15 At the hearing of an appeal, the order of presentation must be regulated as follows, unless the hearing panel directs otherwise:
- 19.15.1 The respondent may make an opening address only for the purpose of introducing the order or decision under appeal.
  - 19.15.2 The appellant may make an opening address.
  - 19.15.3 The respondent may make an opening address.
  - 19.15.4 The appellant may call evidence.
  - 19.15.5 When the appellant's evidence is concluded, the respondent may call evidence.
  - 19.15.6 When the respondent's evidence is concluded, the respondent may then make a closing address, followed by the closing address of the appellant.

19.15.7 Where the respondent calls no evidence after the conclusion of the appellant's evidence, the appellant may make a closing address, followed by the closing address of the respondent.

19.15.7.1 Where a party is represented, the right to address the hearing panel, examine witnesses and otherwise call evidence must be exercised by the party's representative.

19.16 A witness called to give testimony at an in person or electronic hearing must take an oath or make an affirmation, and the members of the Committee have the authority to administer the oath or affirmation.

19.17 A witness called to give testimony at an in person or electronic hearing is entitled to be advised by a legal representative as to their rights, but such legal representative may take no other part in the hearing without the consent of the hearing panel.

19.18 Where an in-person hearing is closed to the public, the witness's legal representative is not entitled to be present except when that witness is giving evidence.

19.19 The decision of a majority of the members of the hearing panel is the Committee's decision.

19.19.1 The hearing panel may reserve its decision following a hearing.

19.19.2 The hearing panel must give its final decision and order, if any, in any proceeding in writing signed by each of the members of the hearing panel.

19.19.3 The Committee must give reasons for a final decision in writing if requested by a party during the hearing and may give reasons in writing in any event.

19.19.4 A member of the hearing panel may give dissenting reasons if reasons are given by the majority of the hearing panel.

19.20 The staff liaison must serve each party who participated in the hearing, or the party's representative, a copy of the Committee's final decision or order, including the reasons if any have been given, by mail or e-mail.

## **20. Pre-Hearing Conference**

20.1 All pre-hearing conferences shall be held in accordance with the *Statutory Powers Procedure Act*, as amended.

20.2 The Committee may at any time, on their own initiative or at a party's request made to the staff liaison, direct that a pre-hearing conference be held with respect to any pending hearing.

20.3 A request for a pre-hearing conference by a party may be made by email to the staff liaison, with copies to the other parties.

20.4 A pre-hearing conference will be conducted by a single member of the Committee assigned by the Chair.



- 20.5 The representatives for the parties, if any, must appear at the pre-hearing conference and, unless the member orders otherwise, the parties must also participate.
- 20.6 A party who requires another person's approval before agreeing to matters related to the hearing must, before the pre-hearing conference, arrange to have ready telephone or other immediate communication to the other person throughout the conference.
- 20.7 The purposes of a pre-hearing conference are to consider,
- 20.7.1 the settlement of any or all issues;
  - 20.7.2 the simplification of the issues;
  - 20.7.3 facts or evidence that may be agreed upon;
  - 20.7.4 the dates by which any steps in the proceeding are to be taken or begun;
  - 20.7.5 any other matter that may assist in the just and most expeditious disposition of the hearing.
- 20.8 The staff member conducting a pre-hearing conference at which the parties attempt to settle the issues in the proceeding must not preside at a subsequent hearing in the proceeding, unless the parties consent.
- 20.9 A pre-hearing conference must be conducted by phone or video conference unless the member conducting the pre-hearing conference directs otherwise.
- 20.10 The staff member conducting the pre-hearing conference may make such orders as the staff member considers necessary or advisable with respect to the conduct of the proceeding.
- 20.11 If the parties agree to resolve all the issues in the appeal, the staff member conducting the pre-hearing conference shall direct the hearing date to be vacated.
- 20.12 At the end of a pre-hearing conference, the staff member conducting a pre-hearing conference must prepare a memorandum summarizing,
- 20.12.1 the issues remaining in dispute;
  - 20.12.2 the matters agreed on by the parties;
  - 20.12.3 any evidentiary matters that are considered relevant; and
  - 20.12.4 information relating to the scheduling of the remaining steps in the proceeding.
- 20.13 The matters discussed at a pre-hearing conference must not be disclosed to others, including the hearing panel, until after the proceeding has been finally disposed of, except as disclosed in the memorandum under section 20.12.