

# THE CORPORATION OF THE TOWN OF CALEDON

## BY-LAW NO. 2018-81

A By-law to establish the Appeal Board, its Rules of Procedure and to repeal By-law 2015-021

WHEREAS Section 23.1 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, permits a municipality to delegate its powers and duties under the Act or any other Act to a body;

AND WHEREAS the Council for The Corporation of the Town of Caledon deems it necessary to establish the Appeal Board to separate its quasi-judicial functions from its legislative and executive functions;

NOW THEREFORE the Council of The Corporation of the Town of Caledon ENACTS AS FOLLOWS:

### **Short Title**

This By-law shall be known as the "Appeal Board By-law".

### **Part 1 - Definitions**

1.1 In this By-law:

"*Agent*" means, in respect of a *hearing*, counsel or licensed paralegal, or any other individual authorized to represent one or all of the parties to the appeal, including the *Town* and/or the *appellant*;

"*Appeal Board*" means the local board established pursuant to this By-law for the purposes of considering appeals with respect to the *Town's* Animal Care and Control By-law and Licensing By-law;

"*Appellant*" means a person that has filed or is filing a Notice of Appeal requesting a *hearing* before the *Appeal Board* in respect of the Animal Care and Control By-law or Licensing By-law and may include an *agent* on behalf thereof;

"*Chair*" means the Chair of the *Appeal Board*;

"*Coordinator*" means an employee of the *Town* who has been assigned to perform the administrative tasks required by the *Appeal Board*, on behalf of the *Town Clerk*;

"*Council*" means the Council for The Corporation of the Town of Caledon;

"*Document*" means written material, files, photographs, maps, plans, surveys, sound recordings, videotapes, and any information recorded or stored by any means;

"*Hearing*" means an appeal hearing before the *Appeal Board*;

"*Member*" means a person appointed by *Council* to preside over the *Appeal Board*;

"*Notice of Decision*" means a written decision made by the *Appeal Board*;

"*Notice of Hearing*" means the notice issued to the parties of the appeal, setting out the date, time and location of the *hearing*;

"*Quorum*" means a majority of the *members* including the *Chair* for the purposes of transacting the business of the *Appeal Board*;

"*Town*" means The Corporation of the Town of Caledon;

"*Town Clerk*" means the Town Clerk for the *Town* or a designate on behalf thereof.

## **Part 2 – Establishment and Appointments**

- 2.1 The Town of Caledon Appeal Board is hereby established.
- 2.2 The *Appeal Board* shall be composed of five individuals who shall be appointed by *Council* through By-law.
- 2.3 In appointing a *member* to the *Appeal Board*, *Council* shall ensure that such individual is not an employee of the *Town*.

## **Part 3 – Schedules**

- 3.1 The Rules of Procedure for the *Appeal Board* are attached as Schedule A to this By-law and form part thereof.
- 3.2 The per diem for the *members* of the *Appeal Board* shall be set out in Schedule B attached to and forming part of this By-law.

## **Part 4 – Transition**

- 4.1 By-law 2015-021 shall be repealed upon this By-law coming into effect.
- 4.2 This By-law shall come into full force and effect on the date of its enactment.

**Enacted by the Town of Caledon Council this 18th day of December, 2018.**

"Allan Thompson"

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Allan Thompson, Mayor

"Amanda Fusco"

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Amanda Fusco, Interim Town Clerk

## Schedule A – Rules of Procedure

### Part 1 – Application of Rules

#### General

- 1.1 These Rules of Procedure apply to all *hearings* before the *Appeal Board* subject to the *Town's Licensing By-law*, *Animal Care and Control By-law*, the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 and any other applicable legislation.
- 1.2 The *Appeal Board* may, at any time, as it deems necessary, dispense with compliance with any rule herein, save and except those prescribed as mandatory by the *Statutory Powers Procedure Act*, R.S.O. 1990, c. s.22 and any other legislation governing the *Appeal Board*.
- 1.3 These Rules of Procedure shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.
- 1.4 Where a party to an appeal has not complied in full with any Rule herein, the *Appeal Board* may:
  - (1) adjourn the proceeding until satisfied that such Rule has been complied with; and
  - (2) take any other step as it considers just and reasonable.
- 1.5 A party to a proceeding may be represented by an *agent*.
- 1.6 The *Appeal Board* may meet monthly or as often as is necessary for the expedient resolution of appeals in accordance with these Rules of Procedure.
- 1.7 *Hearings* shall be held at the Town of Caledon Town Hall at 6311 Old Church Road, Caledon, unless otherwise specified in the *Notice of Hearing*.
- 1.8 The *Coordinator* shall administer oaths and affirmations for the purpose of a *hearing*.

#### Jurisdiction

- 1.9 The *Appeal Board* shall hear appeals pursuant to the following *Town By-laws*:
  - (1) Licensing By-law; and
  - (2) Animal Care and Control By-law.

### Part 2 – Tenure of Members

#### Term

- 2.1 The *member's* term on the *Appeal Board* shall coincide with the term of *Council* that appointed him or her, or until such time as their successor(s) are appointed.

- 2.2 A *member* shall not be appointed for more than 3 consecutive terms of *Council* (for a total of 12 years). Any interim appointments are not to be included in the consideration of the total term of appointment of the *member*.

### **Vacancies of the Appeal Board Members**

- 2.3 Subject to Section 2.4 of these Rules of Procedure, a vacancy on the *Appeal Board* shall occur if a *member* is absent for 3 successive meetings of the *Appeal Board* without confirmation from *Council*.
- 2.4 A *member* who is unable to carry out his/her duties through illness or otherwise shall provide a note to the *Town Clerk* advising of the absence and the anticipated date of return. The *Town Clerk* shall notify *Council* and *Council* shall then confirm the absence or deem the seat vacant. Upon *Council's* confirmation, a *member* may be absent from his/her seat for 3 successive meetings of the *Appeal Board* from the date of his/her notice of illness or otherwise.
- 2.5 In an election year, if a vacancy should occur on the *Appeal Board*, the seat may remain vacant until *Council* is completing its membership appointment for the new term.
- 2.6 *Members* requesting a temporary leave of absence or intending to resign from the *Appeal Board* should provide adequate written notice to the *Coordinator* prior to such action.

### **Part 3 – Appeal Board Chair**

- 3.1 At its first meeting, the *members* shall appoint one *member* as the *Chair*.
- 3.2 When the *Chair* is absent the *Appeal Board* shall appoint another *member* to act as *Chair* for that meeting.
- 3.3 The *Chair* will:
- (1) call the *hearings* to order;
  - (2) preside over the appeals heard by the *Appeal Board*;
  - (3) enforce the observance of order and decorum during all *hearings*;
  - (4) give direction to the *Coordinator* and *Town Staff*; and
  - (5) direct the administrative duties and functions of the *Appeal Board*.
- 3.4 If the *Chair* resigns, either as *Chair* or as *member*, before the end of the term, the remaining *members* of the *Appeal Board* shall appoint another *member* as *Chair* for the balance of the current term, or until a successor is appointed.

### **Part 4 – Appeal Board Requisites**

#### **Quorum**

- 4.1 A majority of the *members* must be present to achieve *quorum* for a *hearing*.

- 4.2 If no *quorum* is present 30 minutes after the time appointed for the commencement of the *hearing*, the *Coordinator* shall cancel the *hearing* and shall reschedule the *hearing* in accordance with these Rules.
- 4.3 Notwithstanding Section 4.1, when the number of *members* who refrain from participating in debate of a matter, or voting by reason of having declared an interest according to the provisions of the *Municipal Conflict of Interest Act*, leaves a remaining number of *members* that does not make *quorum*, the remaining *members* will be deemed to constitute *quorum*, provided that not less than two 2 *members* remain present to continue the *hearing*.

### **Voting**

- 4.4 All actions taken by the *Appeal Board* shall be voted on and the decision made by majority vote.
- 4.5 *Members*, including the *Chair*, may vote on all motions and other questions submitted at a *hearing*.
- 4.6 In the case of a tie vote, the motion or question shall be deemed to have been lost.

### **Part 5 – Record of Hearings**

#### **Electronic Record**

- 5.1 The *Coordinator* shall record by electronic method the *hearings* of the *Appeal Board*.
- 5.2 Other than the *Coordinator*, no person shall take or attempt to take a photograph, motion picture, audio recording or other record capable of producing visual or aural representations by electronic means or otherwise at a *hearing* before the *Appeal Board* that is open to the public, without the *Appeal Board's* consent.

#### **Minutes of Appeal Board Hearings**

- 5.3 The *Coordinator* shall prepare minutes of the *hearing* without note or comment.
- 5.4 The minutes of the *hearing* shall include the *Notice of Decision* of the *Appeal Board*.
- 5.5 Where a *hearing* is open to the public, every declaration of a pecuniary interest, and the general nature thereof, made pursuant to Section 12.3 shall be recorded in the minutes of the meeting by the *Coordinator*.
- 5.6 Where a *hearing* is not open to the public, every declaration of a pecuniary interest made pursuant to Section 12.3, but not the general nature of that interest, shall be recorded by the *Coordinator* in the minutes of the next meeting that is open to the public.

### **Part 6 – Notice Requesting an Appeal**

- 6.1 An appeal is commenced by the filing of a Notice of Appeal in the form approved by the *Town Clerk*, in accordance with the provisions of the Licensing By-law or Animal

Care and Control By-law as applicable.

6.2 A complete Notice of Appeal shall include:

- (1) a copy of the decision or order giving rise to the appeal;
- (2) a statement setting out the grounds for the appeal;
- (3) the name, telephone number, email address and address for service of the *appellant* and/or the *agent* on behalf thereof;
- (4) the original signature of the *appellant* and/or *agent* on behalf thereof;
- (5) a notice regarding accommodations respecting language, visual or audial impairment or otherwise; and
- (6) payment of the non-refundable appeal fee as set out in the *Town's Fees By-law*.

6.3 A complete Notice of Appeal shall be received by the *Town Clerk* before the close of business, being 4:30 p.m., on the last day the appeal may be filed and such Notice of Appeal shall only be provided by personal delivery, regular or registered mail.

6.4 Where a Notice of Appeal is not complete, the *Town Clerk* shall refuse the Notice of Appeal and shall inform the *appellant* of the material required in order to complete the Notice of Appeal.

6.5 If a Notice of Appeal is received after the appeal deadline the *Town Clerk* shall refuse the Notice of Appeal and shall advise the *appellant* in writing that:

- (1) the appeal is denied based on the late filing; and
- (2) the decision or order under appeal is final and binding.

## **Part 7 – Preparation for a Hearing**

### **Scheduling of Hearing**

7.1 Within 60 days of receipt of a complete Notice of Appeal by the *Town Clerk*:

- (1) the *Coordinator* shall contact the *members* to advise them of the Appeal and to confirm *quorum* for the next *hearing* date; and
- (2) the *Coordinator* shall schedule a *hearing*, and shall give reasonable notice to the required parties.

7.2 The *Notice of Hearing* shall contain:

- (1) the date, time, location and purpose of the *hearing*;
- (2) a reference to the statutory authority under which the *hearing* will be held; and
- (3) a statement that if the *appellant* does not attend at the *hearing*, the *Appeal Board* may proceed in the *appellant's* absence and the *appellant* will not be entitled to any further notice in the proceeding.

## **Agenda**

- 7.3 The *Coordinator* shall compile an agenda for each *hearing* to include all appeals to be dealt with at that *hearing* date.
- 7.4 The *Coordinator* shall provide a copy of the agenda for each *hearing* to the *members* and counsel for the *Appeal Board* at least seven 7 days prior to the *hearing* date with the exception of where a lesser amount of time is deemed sufficient and/or necessary in the discretion of the *Town Clerk*.
- 7.5 A copy of the agenda may be posted to the *Town's* website.

## **Book of Evidence**

- 7.6 The *Coordinator* shall prepare a book of evidence for each appeal to be distributed to the required parties.
- 7.7 A copy of the book of evidence for each *hearing* shall be provided to the *members* and counsel for the *Appeal Board* prior to or on the date of the *hearing*.

## **Withdrawal of Appeal**

- 7.8 An appeal may be withdrawn prior to the *hearing* date by filing a letter of withdrawal with the *Town Clerk* as soon as reasonable.
- 7.9 If the *Town Clerk* receives a withdrawal of appeal prior to the *hearing* date, notice of cancellation of that particular *hearing* shall be sent to all persons who received the *Notice of Hearing*.

## **Effect of Non-Attendance at a Hearing**

- 7.10 Where a *Notice of Hearing* has been given to a party and the party does not attend at the *hearing*, the *Appeal Board* may proceed in the absence of the party and the party is not entitled to any further notice in the proceeding.

## **Part 8 – Filing Documents**

- 8.1 If an *appellant* intends to make use of any *documents* as evidence at the *hearing*, the *appellant* shall provide 10 copies of each item by personal delivery, regular or registered mail and such items shall be required to be received by the *Town Clerk* to allow for three full business days prior to the *hearing* date and, for further clarification, the *hearing* date shall not be included in the three day period.
- 8.2 The *Coordinator* shall distribute copies of the *appellant's documents* to the required parties.
- 8.3 The *appellant* shall include with the *documents* a statement of his or her address, telephone number, email address and the name of the proceeding to which the *documents* relate.

## **Part 9 – Adjournments**

- 9.1 A *hearing* may be adjourned at the discretion of the *Appeal Board* upon its own motion or upon the motion of a party where that party satisfies the *Appeal Board* that the adjournment is required to permit an adequate *hearing* to be held.
- 9.2 In deciding whether to grant an adjournment, the *Appeal Board* may consider one or more of the following factors:
- (1) the sufficiency of the reasons advanced for the request to adjourn;
  - (2) the timeliness of the request;
  - (3) the resources of the *Appeal Board*;
  - (4) the prejudice to the parties;
  - (5) whether any adjournments have been granted previously;
  - (6) the consent of the parties; and
  - (7) any other relevant factor.
- 9.3 The *Appeal Board* may grant adjournments on such terms and conditions as it considers advisable.
- 9.4 The *Appeal Board* may, in its discretion, refuse an adjournment even though the parties consent.

## **Part 10 – Legal Advice to Appeal Board Members**

- 10.1 *Members* of the *Appeal Board* participating in a *hearing* shall not have taken part, before the *hearing*, in any communication directly or indirectly in relation to the subject-matter of the *hearing*, with any person, or with any party or *agent*, except upon notice to and with opportunity for all parties to participate, but the *Appeal Board* may seek legal advice from counsel to the *Appeal Board* and, in such case, the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

## **Part 11 – Witnesses**

### **Order for Witness Statements**

- 11.1 The *Appeal Board* may order a party to the *hearing* to provide witness statements or summary of the evidence witnesses will give, including expert witnesses.

### **Rights of Parties to Examine Witnesses**

- 11.2 A party-to a proceeding may, at a *hearing*:
- (1) call and examine witnesses and present evidence and submissions; and
  - (2) conduct cross-examinations of witnesses at the *hearing* to the extent reasonably required for a full and fair disclosure of all matters relevant to the issues in the *hearing*.



## **Summons to Witness**

- 11.3 The *Appeal Board* may issue a summons to a witness on its own initiative or upon request of a party in accordance with the *Statutory Powers Procedures Act*, R.S.O. 1990, c. S.22.

## **Abuse of Process**

- 11.4 The *Appeal Board* may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.
- 11.5 The *Appeal Board* may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.
- 11.6 The *Appeal Board* may exclude from a *hearing* anyone, other than a person licensed under the *Law Society Act*, R.S.O. 1990, c. L.8 appearing on behalf of a party or as an *agent* if it finds that such person is not competent to properly represent or to advise the party or witness or does not understand and comply at the *hearing* with the duties and responsibilities of an advocate or adviser.

## **Part 12 – Hearing Procedures**

### **Opening Procedures**

- 12.1 The *Chair* shall call the *hearing* to order and read an opening statement outlining the procedure and format of the *hearing* process.
- 12.2 The *Chair* will read out the proceedings listed on the agenda.

### **Declaration of Pecuniary Interest**

- 12.3 Where a *member* has any direct or indirect pecuniary interest, pursuant to the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50, in any proceeding that is before the *Appeal Board*, the *member* shall:
- (1) prior to any consideration of the appeal, disclose the interest and the general nature thereof;
  - (2) recuse him or herself from the *hearing* of that appeal;
  - (3) not attempt in any way whether before, during or after the *hearing* to influence the decision of the *Appeal Board*;
  - (4) where a part of a *hearing* is not open to the public, immediately leave that part of the *hearing* if the matter regarding the pecuniary interest is under consideration;
  - (5) at the *hearing*, or as soon as possible afterwards, file a written statement of the interest and its general nature with the *Coordinator*; and
  - (6) disclose the pecuniary interest at the next meeting which they attend, if the pecuniary interest was not disclosed by reason of the *member's* absence from the *hearing*.

- 12.4 A copy of each written statement filed in accordance with Section 12.3 (5) and a copy of each declaration recorded pursuant to Sections 5.5 and 5.6 shall be kept in the registry maintained for the *Appeal Board*.

### **Motions**

- 12.5 The *Appeal Board* will hear motions regarding any *hearing* listed on the agenda.
- 12.6 The *Appeal Board* will hear motions for adjournment requests prior to the commencement of any *hearing*.
- 12.7 If a party brings a motion regarding a proceeding not listed on the agenda, the *Appeal Board* may decide to hear the motion at that time or order that it be brought at a later date.

### **Order of Presentation**

- 12.8 Subject to any motions previously adopted by the *Appeal Board*, the *Chair* will indicate that the *Appeal Board* will now hear the first appeal on the agenda.
- 12.9 The *Chair* requests that the parties to an appeal identify themselves, including any witnesses who intend to give evidence on behalf of either party to the appeal.
- 12.10 The *Town's agent* may make an opening statement.
- 12.11 The *appellant* may make an opening statement.
- 12.12 The *Town's agent* is requested to present the decision or order to which the appeal applies, related evidence and witnesses.
- 12.13 The *appellant* may cross-examine each of the *Town's* witnesses and the *Town's agent* may re-examine those witnesses.
- 12.14 The *members* may ask questions of any witness, through the *Chair*.

### **Appellant's Presentation of the Appeal**

- 12.15 The *appellant* may present evidence with respect to the appeal of the decision or order.
- 12.16 The *Appeal Board* will allow the *appellant* to complete their presentation before asking any questions, unless clarification is required before the presentation is completed.
- 12.17 The *Appeal Board* may, through the *Chair*, ask questions of the *appellant* or any of his or her witnesses to clarify any evidence presented.
- 12.18 The *Town's agent* may cross-examine the *appellant* or his or her witnesses and the *appellant* may re-examine those witnesses.

### **Other Representations; Right of Reply**

- 12.19 After the *appellant's* presentation, the *Appeal Board* will hear from anyone else who wishes to make representations before the *Appeal Board* pertaining to the matter.

12.20 Persons giving evidence are subject to questions by the *Appeal Board*, the *appellant* and the *Town's agent*.

12.21 The *Town's agent* has the right of reply on matters which could not have been anticipated prior to hearing the *appellant's* evidence.

### **Closing Statements**

12.22 At the conclusion of all evidence presented, both parties are entitled to make final submissions to the *Appeal Board*.

## **Part 13 – Appeal Board Decision**

### **Decision Process**

13.1 The *Appeal Board* may recess at any time to consider its final decision or any interim decision during the *hearing*.

13.2 If the *Appeal Board* requires, it may move into closed session upon adoption of the required motion, to deliberate and/or to draft a *Notice of Decision* or to consult with counsel for the *Appeal Board*. The *Appeal Board* shall give a written decision or may reserve its decision.

13.3 If the decision is reserved the *Chair* will advise the *appellant* that the *appellant* will be notified by registered mail of the *Appeal Board's* decision.

13.4 The decision of the *Appeal Board* is final and binding.

### **Notice of Decision**

13.5 The *Coordinator* will forward notice of the *Appeal Board's* decision within 5 days of the making of the decision to all persons who received a *Notice of Hearing* and to everyone who appeared before the *Appeal Board* at the *hearing*.

13.6 The *Notice of Decision* shall be signed by all *members* of the *Appeal Board* that took part in the *hearing* and shall contain written reasons to support the decision.

13.7 The *Notice of Decision* shall contain a record of the proceedings, compiled by the *Coordinator*, which shall include:

- (1) list of persons who provided submissions;
- (2) list of witnesses and for whom they testified;
- (3) any interlocutory orders made by the *Appeal Board*; and
- (4) all *documents* and evidence filed with the *Appeal Board*, subject to any limitations expressly imposed by any other Act.

### **Schedule B – Honourarium to Members**

1. With the exception of the *Chair*, each *member* who participates in a *hearing* date under this By-law shall be paid an honorarium of \$27.50 per day.
2. The *Chair* who participates in a *hearing* date under this By-law shall be paid an honorarium of \$30.00 per day.