



Town of Newmarket

Agenda

Appeal Committee

Continuation of November 23, 2022 Appeal Committee Meeting

Date: Wednesday, December 7, 2022
Time: 4:00 PM
Location: Electronic VIA ZOOM
See How to Login Guide

Note: The November 23, 2022 Appeal Committee meeting agenda is found [here](#).

Pages

1. Notice

Should either Party fail to attend the hearing, it will proceed in the absence of that Party.

2. Additions & Corrections to the Agenda

3. Items

- 3.1 Personal Wellness Establishment Business Licence Appeal - Application BL - 2022-00150, Top Health Center

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Note: Newmarket Appeal Committee Rules are attached. [Business Licence 2020-31](#), as amended is linked.

- In accordance with the Newmarket Appeal Committee Rules, unless directed otherwise, a hearing shall be conducted in the following order:
 - Opening Statement of the Town;
 - Opening Statement of the appellant may proceed immediately thereafter, or at the conclusion of the Town's case;
 - The Town's witness(es);
 - Opening statement of the appellant, if not already done, followed by the Appellant's witness(es);
 - Reply evidence, if any, by the Town.
 - Closing statements of the Town followed by the

Appellant.

The following information is attached for the Committee's review:

- i. Updated Joint Document Book, Application BL 2022-00150, Top Health Center

3.2 Personal Wellness Establishment Business Licence Appeal - Application BL 2022-00134, VIP RMT Wellness Center

- In accordance with the Newmarket Appeal Committee Rules, unless directed otherwise, a hearing shall be conducted in the following order:
 - Opening Statement of the Town;
 - Opening Statement of the appellant may proceed immediately thereafter, or at the conclusion of the Town's case;
 - The Town's witness(es);
 - Opening statement of the appellant, if not already done, followed by the Appellant's witness(es);
 - Reply evidence, if any, by the Town.
 - Closing statements of the Town followed by the Appellant.

The following information is attached for the Committee's review:

- i. Updated Joint Book Document, Application BL 2022-00134, VIP RMT Wellness Center

4. Adjournment

TOWN OF NEWMARKET
APPEAL COMMITTEE RULES

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1. DEFINITIONS

1.1 In these Rules:

“Appeal Committee” or “Committee” means the committee established by the Town of Newmarket on June 23, 1980, authorized to hear appeals from decisions made under Town By-Laws;

“By-Law” means any by-law from which the Appeal Committee has authority to hear appeals;

“Chair” means the Chair of the Appeal Committee;

"Committee Administrator" means the Town Clerk or designate providing administrative assistance to the Appeal Committee.

“Document” includes any handwritten or typed document or record, sound recording videotape, file, photograph, map, and any other electronic information that can be shared;

"Electronic hearing" is a hearing conducted by telephone or through such other electronic technology as permits all participants to the proceeding and the Member to simultaneously hear, or hear and see, one another;

"Hearing" is any step in the proceeding presided over by the Appeal Committee, which may be conducted in person, in writing, or electronically as the Appeal Committee determines to be appropriate;

"Party" means the Town, an appellant, applicant, licensee, or respondent and/or any person whom the Appeal Committee determines shall have status as a party in accordance with any applicable By-Law;

2. INTERPRETATION TO ACHIEVE JUST & EXPEDITIOUS RESULT

2.1 These Rules shall receive such fair and liberal interpretation as will best ensure the most expeditious, just, and least expensive determination of every proceeding on its merits.

2.2 If a party fails to comply with any Rule or procedural order the Appeal Committee may take any steps it considers just.

3. RULES TO APPLY TO ALL HEARINGS

- 3.1 These Rules apply to all the proceedings of the Appeal Committee in the exercise of its statutory power of decision, as defined in the Statutory Powers Procedure Act, R.S.O. 1990, c.S.22, as amended.
- 3.2 The Appeal Committee may exercise any of its powers under these Rules or applicable law on its own initiative or at the request of any party.
- 3.3 These Rules apply to the extent they do not conflict with a statute or a By-Law that applies in the exercise of the Appeal Committee's statutory powers of decision.
- 3.4 These Rules apply to a proceeding of the Appeal Committee on or after the date of their enactment.
- 3.5 Where procedures are not provided for in these Rules or the Appeal Committee determines it is appropriate to grant an exception to these Rules, the Appeal Committee may do what is necessary and permitted by law to justly and effectively adjudicate matters before it.

4. CALCULATING TIME REQUIREMENTS

- 4.1 In calculating time under these Rules or a procedural order, except where a contrary intention appears:
 - a. All references are to calendar days;
 - b. Reference to a number of days between two events shall be counted by excluding the day on which the first events happens and including the day on which the second event happens;
 - c. Where the time for doing an act under these Rules or under an order expires on a holiday, the act may be done on the next day that is not a holiday; and
 - d. A document sent after 4:00 p.m. or at any time on a holiday, being all weekends or statutory holidays established by the province, or on a day the offices of the Town are closed, shall be deemed to have been received on the next day that is not a holiday or when the Town offices reopen.
- 4.2 The Appeal Committee may extend or abridge any time prescribed in these Rules or established by a procedural order during a proceeding on such terms as it considers just and reasonable.

5. EXCHANGE OF DOCUMENTS

- 5.1 The Appeal Committee may require any party or the Committee Administrator to provide any document to any party or person in any of the following ways, or in any combination thereof by:
- a. personal service by delivering the document to a person;
 - b. regular or registered mail to the person's last known address;
 - c. courier to the person's last known address;
 - d. fax to the person's last known fax number, with consent of that person;
 - e. e-mail to the person's last known e-mail address; and/or
 - f. as directed by the Appeal Committee.
- 5.2 Documents provided by personal service or by courier are served on the day that they are delivered.
- 5.3 If a document is sent by regular or registered mail, it is deemed to be received five days after mailing.
- 5.4 A document sent by e-mail to the person's last known e-mail address is deemed to be received on the day it is sent.
- 5.5 The Appeal Committee may direct the Committee Administrator or any party to confirm that documents have been sent or received by the person to whom they were sent, including, if appropriate, providing proof satisfactory to the Appeal Committee that documents were sent or received in accordance with these Rules.

6. COMMUNICATIONS WITH THE APPEAL COMMITTEE

- 6.1 All communications shall be directed to the attention of the Committee Administrator. The Committee Administrator shall distribute the communications as appropriate to other parties, including the Town's representative on any given appeal.
- 6.2 Subject to evidence to the contrary, where a document is physically received, the "receipt date stamp" shall be deemed to be the date of filing.

- 6.3 Subject to evidence to the contrary, where the Committee Administrator has no record of receipt of a document alleged to be filed, the documents shall be deemed not to have been filed.

7. DOCUMENTS TO BE USED AT A HEARING

- 7.1 Subject to a different direction from the Committee Administrator, the Appeal Committee or Chair, a party must provide a copy of the document(s) to all other parties and the Committee Administrator no less than five (5) days before the hearing.
- 7.2 Where a party fails to deliver copies of any documents in advance of the hearing in accordance with these Rules, they may make submissions to the Appeal Committee at the hearing to explain why the Committee should consider the documents or may file them later, on consent of the parties and Chair. The party should bring five (5) copies of any documents it wants the Appeal Committee to consider or, where the hearing is being held electronically, email the documents to the Committee Administration for further distribution.
- 7.3 The Appeal Committee may make any documents received and considered by it available to the public upon request, subject to any order of the Appeal Committee.
- 7.4 Every document filed for the purposes of a hearing shall:
- a. Contain legibly written text, printed or typed, and include legible page numbers; and/or
 - b. If an electronic record, be delivered in a commonly available electronic format, such as PDF, with a file name identifying the Appeal Committee File Number.

8. REQUEST FOR APPEAL

- 8.1 A request for an appeal shall be in accordance with an applicable By-Law and in accordance with any appeal form, if any, provided for by the Town. In addition to any requirements of the applicable By-Law, each appeal request shall include:
- a. The name of the appellant;
 - b. Full contact information for the appellant, being address, phone number and if available email address and fax number;

- c. If represented, the name and full contact information for the representative;
- d. If there is a need for
 - i. accommodations or accessibility requirements in accordance with the *Human Rights Code* or the *Accessibility for Ontarians with Disabilities Act*, in which case the Town shall make arrangements;
 - ii. a hearing in French, in which case the Town shall make arrangements;
 - iii. language interpretation services, in which case the party calling a witness that requires a translator must provide the interpreter and demonstrate the qualification of the interpreter to faithfully conduct the translation. The Appeal Committee may adjourn a proceeding if it becomes apparent during the hearing that the interpreter is not capable of performing the required service.

9. WITHDRAWING A REQUEST FOR AN APPEAL HEARING

- 9.1 An appeal may be withdrawn at any time by delivering a notice of withdrawal to the Committee Administrator or at any time during a hearing.
- 9.2 If an appeal is withdrawn, the decision or order, as the case may be, is affirmed.

10. DATE AND MANNER OF HEARING

- 10.1 The Committee Administrator shall set the date and time of the hearing.
- 10.2 The manner of hearing shall be determined at the discretion of the Committee Administrator, subject to an order of the Appeal Committee otherwise.
- 10.3 Unless for a procedural matter, the Appeal Committee shall not hold the hearing electronically if a party satisfies the Appeal Committee that holding an electronic hearing is likely to cause significant prejudice to the party. A request for an in person hearing shall be made in writing within five (5) days of the notice of hearing and shall be disposed of in writing. The request shall provide reasons which demonstrate that significant prejudice will result from an electronic hearing.

11. FAILURE TO ATTEND HEARING

- 11.1 Where an appellant is properly notified of a hearing does not attend the hearing, the Appeal Committee shall proceed to hear the appeal in the absence of the appellant.
- 11.2 Prior to proceeding, the Appeal Committee shall stand down for 15 minutes.

12. ADJOURNMENT REQUEST

- 12.1 Requests to adjourn a hearing shall be made in writing to the Committee Administrator with copy to the other parties. The matter will be rescheduled to a new date unless a party objects, in writing, with reasons for the objection. If there is an objection, the Chair shall consider and dispose of the request in writing. The Chair may impose any conditions as considered appropriate.

13. PROCEDURAL ORDERS AND CONFERENCES

- 13.1 At the request of a party or on its own initiative and at any stage of the proceeding, the Appeal Committee may make such procedural orders as it considers just and necessary for the conduct of a hearing.
- 13.2 The Appeal Committee may amend any procedural order at any time during a proceeding.
- 13.3 A procedural order shall prevail over any provision of these Rules that is inconsistent with the procedural order.
- 13.4 If a party fails to comply with any Rule or procedural order the Appeal Committee may take any steps it considers just.

14. HEARING QUORUM

- 14.1 Except for procedural matters, which may be decided by the Chair or another member, as chosen by the Chair, each hearing shall be presided over by at least three members.

15. CONDUCT OF HEARINGS

- 15.1 The Appeal Committee shall control the conduct of the hearing, including the order of presentation of evidence and submissions.
- 15.2 Unless directed otherwise, a hearing shall be conducted in the following order:
- a. Opening Statement of the Town;
 - b. Opening Statement of the appellant may proceed immediately thereafter, or at the conclusion of the Town's case;
 - c. The Town's witness(es);
 - d. Opening statement of the appellant, if not already done, followed by the Appellant's witness(es);
 - e. Reply evidence, if any, by the Town.
 - f. Closing statements of the Town followed by the Appellant.
- 15.3 The Appeal Committee may stipulate time permitted for any part of the hearing.
- 15.4 The Appeal Committee may limit further examination or further cross-examination of a witness if satisfied or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the matters at issue.
- 15.5 Where a hearing is conducted electronically, all the parties and the members of the Appeal Committee participating in the hearing must be able to hear, or hear and see, one another and any witnesses throughout the hearing.
- 15.6 All oral hearings of the Appeal Committee are digitally recorded by the Appeal Committee. A copy of the recording may be requested by any person, who shall receive it after paying the required fee, if any, unless a statute, a court order, or an order of the Appeal Committee provides otherwise.

16. EVIDENCE OF WITNESSES DURING A HEARING

- 16.1 Witnesses shall be affirmed or sworn in, unless the Appeal Committee directs otherwise.

- 16.2 Unless the Appeal Committee directs otherwise, witnesses at an in person or electronic hearing shall be examined orally and the examination may consist of direct examination, cross examination, and re-examination.
- 16.3 The Appeal Committee shall ensure that there is no undue harassment or embarrassment of the witness as they are giving evidence and may disallow a question put to the witness that is vexatious or irrelevant to any matter that may be properly inquired into at the hearing.
- 16.4 The Appeal Committee may at any time during a hearing direct that a witness be recalled for further examination.
- 16.5 Where a witness appears unwilling or unable to give answers to the questions being posed, the Appeal Committee may permit the party calling the witness to examine them by asking leading questions.
- 16.6 Where a proceeding is conducted in writing, the evidence of a witness shall be given by affidavit or as directed by the Appeal Committee.

17. EXPERT WITNESSES

- 17.1 Any party wishing to rely on expert evidence must ensure the expert has filed a written report in accordance with these Rules.
- 17.2 It is the duty of every expert engaged by or on behalf of a party who is to provide opinion evidence at a proceeding under these Rules to acknowledge, either prior to (by signing the acknowledgment form attached to the Rules) or at the proceeding, that they are to:
 - a. Provide opinion evidence that is fair, objective and non-partisan;
 - b. Provide opinion evidence that is related only to the matters that are within the expert's area of expertise;
 - c. Provide such additional assistance as the Appeal Committee may reasonably require to determine a matter in issue;
 - d. Not to seek or receive assistance or communication from any third party, except technical support, while giving oral evidence in examination in chief, while under cross-examination, or while in reply; and

- e. Acknowledge these duties prevail over any obligation owed by the expert to the party by whom or on whose behalf he or she is engaged.

18. DECISIONS FINAL

- 18.1 Decisions of the Appeal Committee are final. However, the Appeal Committee may at any time correct a typographical error, or a technical error, made in a decision or order.

ACKNOWLEDGMENT OF EXPERT'S DUTY

Town of Newmarket

File Number: _____

My name is _____.

I live _____ (municipality).

in _____ (county or region, if applicable)

in the province of _____.

I have been engaged by or on behalf of _____ (name of party/parties) to provide expert evidence in relation to the above-noted proceeding.

I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:

- to provide opinion evidence that is fair, objective and non-partisan;
- to provide opinion evidence that is related only to matters that are within my area of expertise; and
- to provide such additional assistance as the _____ may reasonably require, to determine a matter in issue.
- not to seek or receive assistance or communication, except technical support, while under cross-examination, through any means including any electronic means, from any third party, including but not limited to legal counsel or client.

I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date _____

Signature _____

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