

# THE CORPORATION OF THE TOWN OF SAUGEEN SHORES

## BY-LAW 75 - 2014

Being a Governance By-law for the Port Elgin Business Improvement Area.

**WHEREAS** By-law No. 33-83 of the Corporation of the Town of Port Elgin, as amended, designated an improvement area within the Town of Port Elgin and established a Board of Management for the area;

**AND WHEREAS** it is deemed desirable to provide governance to the Port Elgin Business Improvement Area Board of Management;

**NOW THEREFORE** the Council of the Corporation of the Town of Saugeen Shores **ENACTS** as follows:

### 1. DEFINITIONS

For the purposes of this By-law:

- 1.1 "Act" shall mean the *Municipal Act, 2001 S.O. 2001, c. 25*, as amended.
- 1.2 "Board" shall mean the Board of Management for the Port Elgin Business Improvement Area.
- 1.3 "Director" shall mean Director of the Board of Management for the Port Elgin Business Improvement Area.
- 1.4 "Clerk" shall mean the Clerk for the Corporation of the Town of Saugeen Shores.
- 1.5 "Council" shall mean the Council for the Corporation of the Town of Saugeen Shores.
- 1.6 "Member" shall mean member of an improvement area consisting of the persons who are assessed, on the last returned assessment roll, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property, and Council members appointed as members to the Board.
- 1.7 "Municipal Treasurer" shall mean the Treasurer for the Corporation of the Town of Saugeen Shores.

### 2. GENERAL

- 2.1 The Board is entrusted, subject to such limitations hereinafter set out, to:
  - (a) oversee the improvement, beautification and maintenance of municipally owned lands, buildings, and structures in the area, beyond such improvement, beautification and maintenance as is provided at the expense of the municipality generally, and
  - (b) promote the area as a business or shopping area.

#### 2.2 Authority

The Port Elgin Business Improvement Area was established by By-law 33-83 of the former Town of Port Elgin, as amended by the Town of Saugeen Shores.

#### 2.3 Indemnification

The Port Elgin Business Improvement Area shall indemnify and save harmless Board members, their heirs, executors and administrators, respectively from time to time and at all times from and against:

- All costs, charges and expenses whatsoever that he or she sustains or incurs in or about any action, suit or proceeding that is brought, commenced or prosecuted against him or her, for or in respect of any act, deed, matter or thing whatsoever made, done or permitted by him or her in the execution of the duties of his or her office; and
- All other costs, charges and expenses that he or she sustains or incurs in or about or arising from or in relation to the affairs except costs, charges or expenses thereof as are occasioned by his or her own willful neglect or default.

### **3. COMPOSITION OF THE BOARD AND MEMBERSHIP**

#### **3.1 The Board**

The Board shall be composed of the following Directors:

- a) one (1) member of Council to be appointed by Council; and
- b) a minimum of four (4) other Members selected by a vote of the membership of the improvement area and appointed by the municipality.

The total number of Board members shall be determined by the membership, but shall not be less than five (5), including the elected official appointed by Council. The total number of Board Members, including elected officials, shall be no greater than seven (7).

#### **3.2 Term of Office**

Each director shall hold office from the time of his or her appointment by Town Council, until the expiration of the term of the Town Council that appointed him or her, or until a successor is appointed, as long as the director continues to be qualified.

Each director is eligible for reappointment on the expiration of the term of his or her office. In an election year, the new members of the Board cannot officially assume their duties until approved by Council, therefore the outgoing Board must continue to hold office until their successors are appointed.

#### **3.3 Vacancies**

Where a vacancy on the Board occurs, the Board may nominate (elect) a replacement, subject to Council approval, who shall hold office for the remainder of the term for which his or her predecessor was appointed.

#### **3.4 Quorum**

A majority of the Members of the Board constitutes a quorum of the Board.

#### **3.5 Powers of the Board**

The Board may, on behalf of the Port Elgin Business Improvement Area, exercise all the powers that the BIA may legally exercise in fulfillment of its objectives, unless the Board is restricted by law or by this By-law or by the members from exercising those powers.

These powers include, but are not limited to, the power:

- i) To enter into contracts or agreements;
- ii) To make banking and financial arrangements and maintain bank accounts;
- iii) To execute documents;

- iv) To direct the manner in which any other person or persons may enter into contracts or agreements on behalf of the BIA;
- v) To purchase, lease or otherwise acquire, sell, exchange or otherwise dispose of real or personal property;
- vi) Securities or any rights or interests for such consideration and upon such terms and conditions as the Board may consider advisable; and
- vii) To purchase insurance to protect the property, rights and interests of the BIA and to indemnify the BIA, its members, the Board and staff from any claims, damages, losses or costs arising from or related to the affairs of the BIA.

### 3.6 Role and Function

The Board shall be responsible for:

- i) Making decisions on policy affecting itself and the BIA;
- ii) Managing the affairs of itself and the BIA;
- iii) Hiring staff as the Board deems appropriate and as approved within the budget amount; and
- iv) Establishing and appointing members to committees as may be required to accomplish the work of the BIA.

The Board shall not:

- i) Spend any money unless it is included in the budget approved by Council or in a reserve fund, but the Board may spend unexpected revenues received subsequent to the approval of the annual budget by Council if the Board reports on these revenue and expenditure variances at the annual general meeting and through the audited financial statement;
- ii) Incur any indebtedness extending beyond the current year without the prior approval of Council;
- iii) Borrow or lend money;
- iv) Offer or provide support to political candidates or political parties;
- v) Advertise or pay for advertisements in any political publication;
- vi) Make or fund improvements to private property, with the exception of graffiti and pestering removal initiatives; or
- vii) Participate in a hearing of the Ontario Municipal Board, Committee of Adjustment, or other similar tribunal unless the Board has conducted a general meeting of the membership to obtain approval to participate, and to get approval of any related expenditures.

## 4. MEMBERSHIP

Members of a BIA consist of persons who are assessed, on the last returned assessment roll, with respect to rateable property in the area that is in a prescribed business property class and tenants of such property.

Every Member in good standing is entitled:

- i) To attend any Annual General Meeting or General Membership Meeting of the BIA membership or any Board meeting of the BIA;
- ii) To a single vote per question or motion at BIA general membership meetings regardless of the number of properties that the member may own or lease in the business improvement area; and
- iii) To hold any office of the Board of the BIA, if properly elected and appointed by Council thereto.

Any member of the BIA may designate in writing a nominee to represent the member at a meeting of a BIA and to vote on behalf of the member at a meeting or general meeting, provided the nominee designated is not already a member of the BIA, and for as long as the member of the BIA that nominated the nominee remains a member of the BIA. For these purposes, designated nominees shall be considered members of the BIA.

The Board shall provide annually a list to the Clerk under Section 204(5) of the *Municipal Act, 2001*, as amended, which if satisfactory, shall be accepted by the Clerk in determining tenancy.

## **5. MEETINGS**

### **5.1 Annual General or General Membership Meetings**

The Annual General Meeting of the BIA shall be held at a location within the Town of Saugeen Shores and on a date determined by the Board.

The Annual General Meeting agenda shall include, but not be limited to:

- i) Minutes of the last Annual General Meeting;
- ii) Annual activity and financial reports of the Board of Management;
- iii) Audited financial statement;
- iv) Proposed annual budget for the following year;
- v) Election of Board of Management (if a municipal election year);  
and
- vi) Any other business that may properly be brought before the meeting.

### **5.2 Notice of Membership Meetings**

The Board shall distribute notice of a meeting at least ten (10) business days before the date of the meeting to BIA members and appointed Council members sitting on the board.

Notice of the Annual General Meeting must include the meeting agenda and proposed budget for the following year.

The accidental omission to give notice of any meeting or the non-receipt of any notice by any BIA member shall not invalidate any resolution passed or any proceedings taken at any meeting.

### **5.3 Quorum**

A quorum for the Annual General Meeting or for a General Meeting of the BIA shall equal the quorum for the Board of Directors. No business shall be transacted at any meeting unless the requisite quorum is present at the commencement of business. Regardless of how many individual properties a member of the BIA owns or is a tenant of, a member of the BIA will only count as one (1) member of the BIA when counting a quorum.

### **5.4 Meeting Rules of Order**

Subject to any By-law adopted by the Board, the procedure to be used at all General and Annual General Meetings shall be governed by the Procedural By-law of the Town of Saugeen Shores.

### **5.5 Calling and Notice of Meetings**

The Board shall hold at least four (4) meetings per year, including the Annual General Meeting to which all members of the BIA shall be given notice and invited.

Meetings of the Board may be called by the Chair, the Vice-Chair, the Secretary or any two (2) members of the Board. The Board may hold its meetings at any place in the Town as it may from time to time determine.

All Board members must be notified of Board meetings in advance of the meeting date in accordance with the approved Procedural By-law. The Board may appoint a day or days in any month or months for regular meetings at an hour to be named. A copy of the regular meeting schedule shall be provided to the Clerk of the Town.

No error or omission with respect to notice for a meeting of the Board shall invalidate the meeting or invalidate or make void any proceedings taken or had at the meeting.

The members of the Board, including the Chair, shall vote on any motion arising at any meeting of the Board. A member who declines to vote on the motion is taken as a negative vote. A majority of votes shall decide each resolution. In case of a tie vote, the motion is defeated.

A declaration by the Chair that a motion has been carried and an entry to that effect in the meeting minutes shall be admissible in evidence as prima facie proof of the fact, without proof of the number or proportion of the votes recorded in favour or against any motion.

All Board meetings shall be open to the public in accordance with the *Municipal Act, 2001*. Comments and questions from non BIA members of the public attending such meetings shall be at the discretion of the meeting Chair.

#### 5.6 Conflict of Interest

Every Board member who has any direct or indirect interest in any contract or arrangement, or proposed contract or arrangement with the BIA shall disclose his or her interest in the manner required by the *Municipal Conflict of Interest Act*, as may be amended and shall:

- i) Declare his or her interest at the first meeting of the Board after which he or she became interested or aware of any such interest;
- ii) Request that his or her declaration be recorded in the minutes of the meeting; and
- iii) Not vote on any motion or participate in any discussion with respect to the motion concerning the contract or proposed contract.

#### 5.7 Removal of Board Members

To remove a Board member from office for any of the reasons set out in this section, a motion shall be made and approved by a simple majority of the Board members present at a duly called meeting of the Board to which notice specifying the intent to pass such motion has been given. A Board member who is removed as a Board member is also thereby removed as a member of any committee he or she was a member of.

A Board member may be removed from the Board for:

- i) Absence from three (3) consecutive meetings of the Board, unless there are extenuating circumstances;
- ii) Failure to perform any duty or tasks as set out in the By-laws and any governing policies;

- iii) A breach of the provisions of the By-laws regarding conflict of interest, code of conduct or confidentiality and privacy of information;
- iv) Above and/or behavior deemed harmful to the welfare or best interests of the BIA; and
- v) Ceasing to be a member of the BIA, or a nominee of a member of the BIA, in good standing.

## 6. EXECUTIVE OFFICERS

The Board shall elect from among themselves the Executive of the Board of Management, to the positions of Chair, Vice-Chair, and Treasurer; and shall appoint a Secretary who may or may not be a member of the Board, and any other such positions as deemed desirable, who shall serve for the term of the Board or until he/she resigns from the position or is removed from office by resolution and majority vote of the Board.

### 6.1 Duties of the Executive Officers:

- i) The Chair shall:
  - Chair all meetings of the BIA and of the Board, when present in person and able;
  - Have general supervision of the affairs of the BIA;
  - Sign all By-laws and execute any documents, contracts or agreements with the Secretary or Treasurer;
  - Perform any other duties, which the Board may, from time to time, assign;
  - Sit, ex officio, on all committees;
  - Ensure that all past records of the Board are transferred to the succeeding Treasurer when there is a change of Treasurer;
- ii) The Vice-Chair shall:
  - Exercise any or all of the duties of the Chair in the absence of the Chair or if the Chair is unable for any reason to perform those duties; and
  - Perform any other duties which the Board may, from time to time, assign.
- iii) The Secretary shall:
  - Keep or cause to be kept the BIA's records and books of the BIA including: the registry of Officers and Board members, the registry of members, the minutes of the Annual General Meeting, General Meetings and meetings of the Board or any committees thereof, any committee reports, the By-laws and resolutions;
  - Certify copies of any record, registry, By-law, resolution or minute;
  - Send or cause to be sent any notices required for the Annual General Meeting, General Meetings and meetings of the Board of Management; and
  - Perform any other duties which the Board may, from time to time, assign.
- iv) The Treasurer of the Board shall:
  - Be accountable to the membership regarding all financial aspects of the Board;
  - Authorize Accounts Payable and submit invoices to the Municipal Treasurer for payment as required;
  - Maintain the financial records and bank accounts of the Board, if any;
  - Prepare the annual budget for distribution to the membership and submission to the Town.
  - Perform any other duties which the Board may, from time to time, assign;

## 6.2 Committees of the Board

The Board may establish committees, as deemed appropriate. All committees are required to conduct business in accordance with the approved Procedural By-law.

## 6.3 Confidentiality and Privacy of Information

The Board shall abide by and act in accordance with the laws, policies, and practices governing all matters related to confidentiality, privacy, and access to information. In this regard, every Board member shall:

- Respect the confidentiality of all matters discussed at Board meetings and any other information and documentation to which one may have access to in the capacity as Board member of the BIA;
- Respect and act in accordance with the BIA policies governing the privacy and access to information to which one may acquire in the capacity of Board member of the BIA.

## 6.4 Standard of Care

Every member of the Board of Management shall:

- Exercise the powers and discharge the duties of the office honestly, in good faith, and in the best interests of the BIA; and
- Exercise the degree of care, diligence, and skill that a reasonable and prudent person would exercise in comparable circumstances.

# 7. ADMINISTRATION AND FINANCIAL MANAGEMENT

## 7.1 Records and Information

The Board shall ensure that all necessary books and records of the Board of Management that are required by any applicable statutes or laws are regularly and properly kept.

The Board shall keep proper minutes and records of every meeting of the Board and shall forward electronic or hard copies of the minutes and records to all members of the Board and the Town of Saugeen Shores.

The Board shall abide by and act in accordance with the laws, policies and practices governing all matters related to confidentiality, privacy and access to information.

## 7.2 Signing Authority - Execution of Documents

If the Port Elgin Business Improvement Area establishes a separate bank account from the Town's accounts, the BIA shall appoint three (3) persons who shall have signing authority for the BIA from the Executive Officers of the Board. For clarity, the Board may specify by resolution particular circumstances where the Chair, Vice-Chair, Secretary or Treasurer of the Board may individually, or in combination, have signing authority on behalf of the Board.

Two (2) signatures from the foregoing shall be required on all cheques issued by the BIA.

## 7.3 Remuneration

No Board member shall receive remuneration in payment for services carried out in that capacity.

Board members may be reimbursed for all reasonable, out-of-the-ordinary expenses directly relating to their functions as Board members, provided reimbursement for any such expenses is budgeted for or appropriately approved by the Board and expense receipts are presented.

Board members may be hired to perform a service or provide a good for the BIA provided the BIA's procurement policies are followed and the Board member declares a conflict of interest and abstains from participating in the associated debate and board vote.

#### 7.4 Finances and Budgets

##### i) Fiscal Year

The fiscal year of the BIA shall terminate on December 31 of each year.

##### ii) Audited Financial Statement

The Town's Auditor shall be the auditor of the Board. The Auditor shall submit its audited financial statement for the preceding year for Council's approval. All books, documents, transactions, minutes and accounts of the BIA shall at all times be open to his/her inspection.

#### 7.5 Purchasing

The Board shall adhere to open, competitive and fair procurement practices in accordance with the Procurement Policy approved by the Town of Saugeen Shores.

### 8. AMENDMENTS

Council has the authority to amend or repeal by-laws and policies affecting the BIA in accordance with the *Municipal Act*. Except for an establishing By-law adopted by the Town, By-laws of the BIA may be enacted, repealed, amended, or re-enacted by the Board, upon approval of a General Meeting of members duly called to consider confirmation, enactment, repeal or amendment of any such By-law.

### 9. INCONSISTENT BY-LAW

If there are any inconsistencies between this By-law and any other By-law the provision provided in this By-law shall prevail.

Nothing contained in this By-law shall require the commission of any act which is contrary to an express provision of the *Municipal Act, 2001*.

If there is a conflict between any provision contained in this By-law and any such provision of the said Act, the latter shall prevail, and the provision or provisions herein affected shall be curtailed, limited or eliminated to the extent necessary to remove such conflict, and as so modified this By-law shall remain in full force and effect.

READ A FIRST AND SECOND TIME THIS 8<sup>th</sup> DAY OF SEPTEMBER, 2014.

READ A THIRD TIME AND FINALLY PASSED AND SEALED THIS 8<sup>th</sup> DAY OF SEPTEMBER, 2014.

  
Mike Smith, Mayor

  
Linda White, Clerk