

THE CORPORATION OF THE TOWNSHIP OF SPRINGWATER

BY-LAW 2012 – 033

A By-Law to Designate and Establish the Elmvale Business Improvement Area and to Establish a Board of Management for the Elmvale Business Improvement Area.

WHEREAS Section 204(1) of the *Municipal Act*, S.O. 2001, c. 25, as amended, provides that a local municipality may designate an area as an improvement area and may establish a board of management to oversee the improvement, beautification and maintenance of municipally-owned land, buildings and structures in the area beyond that provided at the expense of the municipality generally, and to promote the area as a business or shopping area; and

WHEREAS it is deemed desirable to establish such an area in the former Village of Elmvale, now in the Township of Springwater, and such improvement area is to be known as the Elmvale Business Improvement Area; and

WHEREAS Notice of Intention to pass such a by-law has been given in accordance with Section 210(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended; and

WHEREAS the Clerk of the Township has not received written objections within 60 days after the last day of mailing of such Notices of Intention signed by at least one-third of the total number of persons entitled to notice representing at least one-third of the taxes levied for purposes of the general local municipality levy on rateable property in all prescribed business property classes in the improvement area;

NOW THEREFORE the Council of the Corporation of the Township of Springwater 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 Elmvale Business Improvement Area.

1.3 "**Director**" shall mean Director of the Board of Management for the Elmvale Business Improvement Area.

1.4 "**Clerk**" shall mean the Clerk for the Township of Springwater.

1.5 "**Council**" shall mean the Council of the Corporation of the Township of Springwater.

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 Township of Springwater.

2. The Business Improvement Area is defined as rateable property in the area that is in a prescribed business property class, excluding industrial business classes, within the boundaries as shown on the map that is attached hereto and substantially forms part of this By-law as Schedule "A".

3. A Board of Management for the Elmvale Business Improvement Area is hereby established.

4. The Board is entrusted, subject to such limitations hereinafter set out, with 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 at large, and the promotion of the area as a business or shopping area.

5.0 GENERAL

5.1 Compliance

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 shall exist any 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.

5.2 Authority

The Elmvale BIA is established by the Township of Springwater in accordance with the *Municipal Act, 2001*.

5.3 Indemnification

The BIA 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.

6.0 COMPOSITION OF THE BOARD AND MEMBERSHIP

6.1 The Board

The Board shall be composed of;

- (a) one or more directors appointed directly by the municipality; and
- (b) a minimum of six (6) other directors 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 seven (7), including elected officials appointed by Council.

6.2 Term of Office

Each Director shall hold office from the time of his or her appointment by Township Council, until the expiration of the term of the Township 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.

6.3 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.

6.4 Powers of the Board

The Board may, on behalf of the BIA, 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:

- to enter into contracts or agreements;

- to make banking and financial arrangements and maintain bank accounts;
- to execute documents;
- to direct the manner in which any other person or persons may enter into contracts or agreements on behalf of the BIA;
- to purchase, lease or otherwise acquire, sell, exchange or otherwise dispose of real or personal property;
- securities or any rights or interests for such consideration and upon such terms and conditions as the Board may consider advisable; and
- 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

6.5 Role and Function

The Board shall be responsible for:

- making decisions on policy affecting itself and the BIA,
- managing the affairs of itself and the BIA,
- Establishing and appointing members to committees as may be required to accomplish the work of the BIA.

The Board shall not:

- 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;
- Incur any indebtedness extending beyond the current year without the prior approval of Council;
- Borrow or lend money;
- Offer or provide support to political candidates or political parties;
- Advertise or pay for advertisements in any political publication;
- Make or fund improvements to private property, with the exception of graffiti and pestering removal initiatives; or
- 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.

7.0 MEMBERSHIP

Members of a Business Improvement Area (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:

- to attend any Annual or General Meeting of the BIA membership or any Board meeting of the BIA;
- 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
- 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, by November 1st of each year, provide a list to the Clerk under Section 204(5) of the *Municipal Act, 2001*, as amended, which if satisfactory, shall be accepted by the Municipal Clerk in determining tenancy.

8.0 MEETINGS

8.1 Annual General or General Membership Meetings

The Annual General Meeting (AGM) of the BIA shall be held at a location within the Township of Springwater and on a date determined by the Board.

The AGM agenda shall include, but not be limited to:

- minutes of the last Annual General Meeting;
- annual activity and financial reports of the board of management;
- audited financial statement;
- appointment of an auditor for following year;
- proposed annual budget for the following year;
- election of board of management (if a municipal election year); and
- any other business that may properly be brought before the meeting.

8.2 Notice of Membership Meetings

The Board shall distribute notice of a meeting at least 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.

8.3 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 Member of the BIA when counting a quorum.

8.4 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 Township of Springwater's Procedural By-law.

8.5 Calling and Notice of Meetings

The Board shall hold at least 4 meetings per year, including the Annual General Meeting to which all members of the business improvement area shall be given notice and invited.

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

All board members must be notified of Board meetings at least ten days in advance of the meeting date. 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 Township.

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 shall vote on any resolution arising at any meeting of the Board. A majority of votes shall decide each resolution. In case of a tie vote, the Chair of the meeting shall cast the deciding vote.

A declaration by the Chair that a resolution 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 resolution.

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.

8.6 Quorum

A majority of the members of a Board constitutes a quorum of the Board, unless City Council approves an alternate quorum figure which shall not be less than one-half the Board membership less one.

A member of Council appointed to a Board shall not be included for the purpose of determining what constitutes a quorum of the Board, but a member of Council attending a meeting of a Board may be counted in order to achieve quorum.

8.7 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:

- 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;
- request that his or her declaration be recorded in the minutes of the meeting; and
- not vote on any resolution or participate in any discussion with respect to the resolution concerning the contract or proposed contract.

8.8 Removal of Board Members

To remove a Board member from office for any of the reasons set out in this section, a resolution 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 resolution 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:

- absence from three (3) consecutive meetings of the Board, unless there are extenuating circumstances;
- failure to perform any duty or tasks as set out in the By-laws and any governing policies;
- a breach of the provisions of the By-laws regarding conflict of interest, code of conduct or confidentiality and privacy of information;

- above and/or behavior deemed harmful to the welfare or best interests of the BIA; and
- ceasing to be a member of the BIA, or a nominee of a member of the BIA, in good standing.

9.0 EXECUTIVE OFFICERS

The Board shall elect from among themselves the Executive of the Board of Management, to the positions of Chair, Vice-Chair, Secretary and Treasurer, or other such positions as deemed desirable, who shall serve for the term of the Board or until or she resigns from the position or is removed from office by resolution and majority vote of the Board.

9.1 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;
 - cast the deciding vote on a motion before the Board in the event of a tie.
- 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 shall:
- cause to be kept and maintained the financial records and books of the BIA;
 - assist the auditor in the preparation of the financial statements of the BIA;
 - perform any other duties, which the Board may from time to time, assign;
 - maintain or cause to be maintained an inventory of all physical assets owned or leased by the BIA;
 - cause to be prepared and distributed the proposed annual budget in accordance with the requirements of the Township.

9.2 Committees of the Board

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

9.3 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.

9.4 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.

10.0 ADMINISTRATION AND FINANCIAL MANAGEMENT

10.1 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 Township of Springwater.

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.

10.2. Signing Authority - Execution of Documents

Three (3) persons 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.

10.3. 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.

10.4 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 Board shall submit its audited financial statement for the preceding year for Council's approval by the date and in the form required by the Treasurer of the Township; all books, documents, transactions, minutes and accounts of the BIA shall at all times be open to his/her inspection.

The BIA shall appoint an auditor each year at the Annual General Meeting and a remuneration to be fixed by the Board. All books, documents, transactions, minutes and accounts of the B.I.A. shall at all times be open to inspection by the Auditor of the B.I.A. The Auditor shall also provide financial information to the Township, as may be requested.

10.5 Special Levy

The Municipality shall annually raise the amount required for the purposes of the Board, including any interest payable by the Municipality on money borrowed by it for the purposes of the Board in accordance with Section 208 of the *Municipal Act, 2001*, as amended. The Municipality shall establish a special charge to raise the amount required for the purposes of the Board by levy on rateable property in the Business Improvement Area, in accordance with Section 208 of the *Municipal Act 2001*, as amended.

The Council shall in each year, commencing in 2012, levy a special charge upon rateable property in the Business Improvement Area that is in a prescribed business property class defined in the *Assessment Act*, R.S.O. 1990, Chapter A31, Section 7 (2), as amended, in accordance with the *Municipal Act, 2001*, as amended,

The special charge shall be levied in accordance with Section 208 of the *Municipal Act*, provided that in 2012 the minimum such portion of the special charge levied on any such taxpayer shall be \$270.00.

The payment of the special charges or rates levied in accordance with Section 208 of the *Municipal Act, 2001*, shall be the responsibility of the assessed property owners. It shall be the responsibility of the assessed property owners to apportion and collect the share of the taxes or special charges that each tenant may be required to reimburse the owner.

10.6 Purchasing

The Board shall adhere to open, competitive and fair procurement practices. All purchases of goods or services valued at over \$7,500. shall be subject to a multi-bid process, with the exception that existing contracts may be renewed without seeking additional bids, provided the Board decides the renewal price rates and goods/services are in keeping with the existing contract.

10.7 Borrowing Powers

The BIA shall not borrow money and, without the prior approval of Council, may not incur indebtedness extending beyond the current year.

11.0 Consistency with Legislation

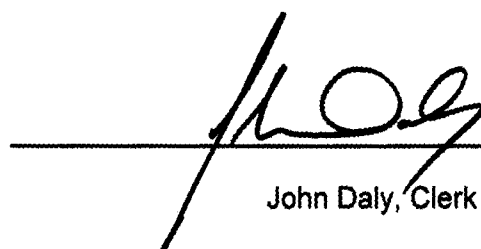
Nothing contained in this by-law shall require the commission of any act, which is contrary to an express provision of the *Municipal Act, 2001*. If there exists any conflict between any provision contained in this By-law and any such provision of the Act, the latter shall prevail, and the provision or provisions herein affected shall be curtailed, limited or eliminated to the extent (but only to the extent) necessary to remove such conflict, and as so modified these By-laws shall remain in full force and effect.

12.0 Amendments


Except for an establishing by-law adopted by the Township, by-laws of the B.I.A. 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.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED this 22nd day of May, 2012


Linda Collins, Mayor


John Daly, Clerk

Schedule A

 Elmvale Settlement Area Boundary

