

**THE CORPORATION OF THE TOWNSHIP OF ESSA  
VIRTUAL REGULAR COUNCIL MEETING  
WEDNESDAY, FEBRUARY 2, 2022**

**(To follow Committee of the Whole)**

To view our live stream visit the Township of [Essa's YouTube Channel](#)

**AGENDA**

- 1. OPENING OF MEETING BY THE MAYOR**
- 2. DISCLOSURE OF PECUNIARY INTEREST**
- 3. ADOPTION OF PREVIOUS MINUTES AND MOTIONS**
  - p. 1 **Recommendation:** *Be it resolved that the motions duly passed and approved at the Committee of the Whole meeting of this date be approved; and That the minutes of the Committee of the Whole and Regular Council meetings held on the 19<sup>th</sup> day of January, 2022 be adopted as circulate; and That the Committee of the Whole minutes from the meeting of December 1, 2021 be approved as amended.*
- 4. CONSENT AGENDA**
  - Recommendation:** *Be it resolved that the items listed in the Consent Agenda dated February 2, 2022 be received for information, and that the necessary actions be taken.*
- 5. COMMITTEE REPORTS**
  - p. 13 **a. Essa Public Library Board**
    - Recommendation:** *Be it resolved that the minutes of the Essa Public Library Board from their meeting of December 13, 2021 be received.*
  - p. 16 **b. Healthy Community Committee**
    - Recommendation:** *Be it resolved that the minutes of the Healthy Community Committee from their meeting of January 20, 2022 be received.*
- 6. PETITIONS**
- 7. MOTIONS AND NOTICES OF MOTIONS**
  - p. 17 **a. Support of AMO Resolution - Joint and Several Liability**
    - Recommendation:** *Whereas municipal governments provide essential services to the residents and businesses in their communities; and Whereas the ability to provide those services is negatively impacted by exponentially rising insurance costs; and Whereas one driver of rising insurance costs is the legal principle of "joint and several*

*liability” which assigns disproportionate liability to municipalities for an incident relative to their responsibility for it; and*

*Whereas, the Government of Ontario has the authority and responsibility for the legal framework of “joint and several liability;” and*

*Whereas the Premier of Ontario committed to review the issue in 2018 with a view to helping municipal governments manage their risks and costs; and*

*Whereas the Association of Municipalities of Ontario on behalf of municipal governments has provided recommendations as attached to align municipal liability with the proportionate responsibility for incidents and capping awards;*

*Now, therefore be it resolved, that the Township of Essa does hereby support AMO’s recommendations; and*

*Further be it resolved that the Township of Essa does hereby call on the Attorney General of Ontario to work with municipal governments to put forward a plan of action to address “joint and several liability” before the end of the government’s current term so that municipalities can continue to offer high quality services to their communities.*

**8. UNFINISHED BUSINESS**

**9. BY-LAWS**

p. 35 **a. By-law 2022-08**

Recommendation: *Be it resolved that leave be granted to introduce By-law 2022-08, that being a By-law to authorize municipal borrowing for current expenditures; and, that said By-law be read a first, and taken as read a second and third time and finally passed.*

p. 37 **b. By-law 2022-09**

Recommendation: *Be it resolved that leave be granted to introduce By-law 2022-09, that being a By-law to authorize the levy and collection of an interim tax on all properties and property classes, and to establish the date(s) for payment of taxes, and to provide for penalty and interest; and, that said By-law be read a first, and taken as read a second and third time and finally passed.*

**10. QUESTIONS**

**11. CLOSED SESSION**

**12. CONFIRMATION BY-LAW**

p. 40 **By-law 2022-10**

Recommendation: *Be it resolved that leave be granted to introduce By-law 2022-10, that being a By-law to confirm the proceedings of the Council and Committee of the Whole meetings held on this 2<sup>nd</sup> day of February, 2022; and that said By-law be read a first, and taken as read a second and third time and finally passed.*

**13. ADJOURNMENT**

Recommendation: *Be it resolved that this meeting of Committee of the Whole of the Township of Essa adjourn at \_\_\_\_\_ p.m. to meet again on the 16<sup>th</sup> day of February, 2022 at 6:00 p.m.*

**THE CORPORATION OF THE TOWNSHIP OF ESSA  
VIRTUAL COMMITTEE OF THE WHOLE MEETING  
WEDNESDAY, DECEMBER 1, 2021**

**MINUTES**

A Committee of the Whole meeting was held virtually on Wednesday, December 1, 2021 and was livestreamed to the public on the Township of Essa's YouTube Channel.

In attendance: Mayor Sandie Macdonald  
Deputy Mayor, Michael Smith  
Councillor Pieter Kiezebrink  
Councillor Henry Sander  
Councillor Ron Henderson

Staff in attendance: C. Healey-Dowdall, Chief Administrative Officer  
K. Pascoe, Deputy Clerk  
L. Lehr, Manager of Legislative Services

**1. OPENING OF MEETING BY THE MAYOR**

Mayor Macdonald opened the meeting at 6:00 p.m.

Item 8(a) was deferred to a future meeting. A further staff report will come forward for Council's consideration of the matter.

**2. DISCLOSURE OF PECUNIARY INTEREST**

None.

**3. DELEGATIONS / PRESENTATIONS / PUBLIC MEETINGS**

**STAFF REPORTS**

**4. PLANNING AND DEVELOPMENT**

**5. PARKS AND RECREATION / COMMUNITY SERVICES**

**6. FIRE AND EMERGENCY SERVICES**

**7. PUBLIC WORKS**

**8. FINANCE**

- a. **Staff Report TR016-21 submitted by the Manager of Finance, re: 2022 Business Improvement Area of Angus Budget.**

This item was deferred. A Staff Report will be brought forward at a future meeting.

**9. CLERKS / BY-LAW ENFORCEMENT / IT**

**10. CHIEF ADMINISTRATIVE OFFICER (C.A.O.)**

- a. **Staff Report CAO054-21 submitted by the Chief Administrative Officer, re: Policy No. A01-2021 COVID-19 Vaccination Policy.**

**MOTION AS AMENDED BY RESOLUTION CW008-2022:**

**Resolution No: CW146-2021 Moved by: Kiezebrink Seconded by: Sander**

*Be it resolved that Staff Report CAO054-21 be received; and  
That Policy A01-2021 known as "COVID-19 Vaccination Policy" be amended as directed by Council; and  
That Council endorse Policy No. A01-2021 COVID-19 Vaccination Policy, as amended, which would apply to staff, volunteers, Members of Council and all Council-appointed Committee Members, volunteers being those persons appointed by Council or paid.*

**----Carried----**

**11. OTHER BUSINESS**

- a. **Annual Angus Tree Lighting Ceremony (December 3, 2021 – 6:00 p.m.)**

Mayor Macdonald advised that the annual Christmas Legacy Tree Lighting Ceremony in Angus was taking place on December 3, 2021 at 6:00 p.m. at the Angus Arena. She reminded all that plan to attend to follow all COVID health protocols as recommended by the local health unit.

- b. **Thornton Tree Lighting Ceremony (December 5, 2021 – 7 p.m.)**

Councillor Sander advised that the Thornton Tree Lighting Ceremony would be taking place virtually on December 5, 2021 at 7:00 p.m. He encouraged Council, Staff and residents to attend the virtual ceremony, stating that the link for the ceremony would be made available closer to the event on social media and the Township's website.

**12. ADJOURNMENT**

**Resolution No: CW147-2021 Moved by: Smith Seconded by: Kiezebrink**

*Be it resolved that this meeting of Committee of the Whole of the Township of Essa adjourn at 6:09 p.m., to meet again on the 15<sup>th</sup> day of December, 2021 at 6:00 p.m.*

**----Carried----**

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Sandie Macdonald, Mayor

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Lisa Lehr, Manager of Legislative Services

THE CORPORATION OF THE TOWNSHIP OF ESSA  
VIRTUAL REGULAR COUNCIL MEETING  
WEDNESDAY, JANUARY 19, 2022

MINUTES

A Regular Meeting of Council was held virtually on Wednesday, January 19, 2022 following Committee of the Whole and was livestreamed to the public on the Township of Essa’s YouTube Channel.

In attendance: Mayor Sandie Macdonald  
Deputy Mayor, Michael Smith  
Councillor Pieter Kiezebrink  
Councillor Henry Sander  
Councillor Ron Henderson

Staff in attendance: C. Healey-Dowdall, Chief Administrative Officer  
R. Rosilius, Deputy Treasurer  
A. Powell, Manager of Planning and Development  
D. Burgin, Fire Chief  
G. McNamara, Deputy Fire Chief  
M. Mikael, Manager of Public Works  
J. Coleman, Manager of Parks and Recreation  
K. Pascoe, Deputy Clerk  
L. Lehr, Manager of Legislative Services

**1. OPENING OF MEETING BY THE MAYOR**

Mayor Macdonald opened the meeting at 6:46 p.m.

**2. DISCLOSURE OF PECUNIARY INTEREST**

None.

**3. ADOPTION OF PREVIOUS MINUTES AND MOTIONS**

**Resolution No: CR001-2022 Moved by: Kiezebrink Seconded by: Henderson**

*Be it resolved that the motions duly passed and approved at the Committee of the Whole meeting of this date be approved; and  
That the minutes of the Committee of the Whole and Regular Council meetings held on the 15<sup>th</sup> day of December, 2021 be adopted as circulated; and  
That the minutes of the Special Budget meeting held on the 15<sup>th</sup> day of December, 2021 be adopted, as amended.*

----Carried-----

**4. CONSENT AGENDA**

**Resolution No: CR002-2022 Moved by: Sander Seconded by: Smith**

*Be it resolved that the items listed in the Consent Agenda dated January 19, 2022 be received for information; and*

*That Item A5(b) "Call to Action – Joint and Several Liability" be referred to section C of the Consent Agenda for a report to come forward for Council's consideration at a future meeting.*

----Carried-----

**5. COMMITTEE REPORTS**

**a. Essa Public Library Board**

**Resolution No: CR003-2022 Moved by: Sander Seconded by: Smith**

*Be it resolved that the minutes from the Essa Public Library Board dated October 25, 2021 be received.*

----Carried-----

**6. PETITIONS**

**7. MOTIONS AND NOTICES OF MOTIONS**

**8. UNFINISHED BUSINESS**

**9. BY-LAWS**

**a. By-law 2022-01**

**Resolution No: CR004-2022 Moved by: Kiezebrink Seconded by: Henderson**

*Be it resolved that leave be granted to introduce By-law 2022-01, that being a By-law to appoint Doug Burgin as the Fire Chief, Community Emergency Management Coordinator (CEMC) and Fire Inspector for the Township of Essa; and to repeal By-law No. 2021-29; and, that said By-law be read a first, and taken as read a second and third time and finally passed.*

----Carried-----

**b. By-law 2022-02**

**Resolution No: CR005-2022 Moved by: Sander Seconded by: Smith**

*Be it resolved that leave be granted to introduce By-law 2022-02, that being a By-law to appoint Gary McNamara as the Deputy Fire Chief, Fire Inspector, and Alternate Community Emergency Management Coordinator for the Corporation of the Township of Essa; and, that said By-law be read a first, and taken as read a second and third time and finally passed.*

----Carried-----

**c. By-law 2022-03**

**Resolution No: CR006-2022 Moved by: Smith Seconded by: Kiezebrink**

*Be it resolved that leave be granted to introduce By-law 2022-03, that being a By-law to provide for a Subdivision Agreement with Briarwood (Angus) Ltd. for 365 Centre Street, being Part of East Half Lot 31, Concession 4, Township of Essa, County of Simcoe; and, that said By-law be read a first, and taken as read a second and third time and finally passed.*

**----Carried----**

**d. By-law 2022-04**

**Resolution No: CR007-2022 Moved by: Sander Seconded by: Smith**

*Be it resolved that leave be granted to introduce By-law 2022-04, that being a By-law to appoint Aimee Powell, Silva Yousif and Joshua Mueller as Secretary-Treasurers to the Committee of Adjustment; and, that said By-law be read a first, and taken as read a second and third time and finally passed.*

**----Carried----**

**e. By-law 2022-05**

**Resolution No: CR008-2022 Moved by: Smith Seconded by: Sander**

*Be it resolved that leave be granted to introduce By-law 2022-05, that being a By-law to appoint Domenic Malatesta as a Building Inspector, Plumbing Inspector, Property Standards Officer and Zoning Administrator; and, that said By-law be read a first, and taken as read a second and third time, and finally passed.*

**----Carried----**

**f. By-law 2022-06**

**Resolution No: CR009-2022 Moved by: Smith Seconded by: Henderson**

*Be it resolved that leave be granted to introduce By-law 2022-06, that being a By-law to appoint Silva Yousif and Joshua Mueller as Zoning Administrators; and, that said By-law be read a first, and taken as read a second and third time and finally passed.*

**----Carried----**

**10. QUESTIONS**

**11. CLOSED SESSION**

**Resolution No: CR010-2022 Moved by: Sander Seconded by: Kiezebrink**

*Be it resolved that Council proceed to a Closed Session in order to address matters pertaining to:*



- *Acquisition or Disposition of Land [s.239(2)(c)]*
- *Litigation or Potential Litigation [s.239(2)(e)]*
- *Plans and Instructions for Negotiation [s.239(2)(k)]*

----Carried----

**Note: Livestream does not run during Closed Session Deliberations.**

Council proceeded into Closed Session Deliberations at 6:56 p.m.

**Motion to Rise and Report from Closed Session Meeting of January 19, 2022.**

**Resolution No: CR011-2022 Moved by: Sander Seconded by: Henderson**

*Be it resolved that Council rise and report from the Closed Session Meeting at 7:35 p.m.*

----Carried----

- a. **LITIGATION OR POTENTIAL LITIGATION [s.239(2)(e)]**  
**Confidential Staff Report PD001-22 submitted by the Manager of Planning and Development, re: Ontario Land Tribunal Case – Appeal of Applications A11/21 and B8/21.**

**Resolution No: CR012-2022 Moved by: Sander Seconded by: Kiezebrink**

*Be it resolved that Confidential Staff Report PD001-22 be received; and That staff be directed to proceed with Option No. 2 as contained in this Report.*

----Carried----

- b. **PLANS AND INSTRUCTIONS FOR NEGOTIATION [s.239(2)(k)]**  
**Confidential Staff Report PD001-22 submitted by the Manager of Public Works, re: Environmental Study Report (ESR) of the Class EA process for Wastewater for the Community of Baxter.**

**Resolution No: CR013-2022 Moved by: Smith Seconded by: Sander**

*Be it resolved that Confidential Staff Report PW001-22 be received; and That Council support Precinct 2 as outlined in the letter of commitment provided by the developer, which describes that both odour technique and odour control will be applied and installed regardless of the actual odour modelling outcome.*

----Carried----

- c. **POTENTIAL LAND ACQUISITION [s.239(2)(c)]**  
**Confidential Staff Report CAO001-22 submitted by the Chief Administrative Officer, re: Potential Land Acquisition.**

**Resolution No: CR014-2022 Moved by: Kiezebrink Seconded by: Sander**

*Be it resolved that Confidential Staff Report CAO001-22 be received; and That the Chief Administrative Officer be authorized to proceed with Option No. 1 as contained within this Report.*

----Carried----

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12. **CONFIRMATION BY-LAW**

**By-law 2022-07**

**Resolution No: CR015-2022 Moved by: Henderson Seconded by: Smith**

*Be it resolved that leave be granted to introduce By-law 2022-07, That being a By-law to confirm the proceedings of the Council and Committee of the Whole meetings held on this 19<sup>th</sup> day of January, 2022; and that said By-law be read a first, and taken as read a second and third time and finally passed.*

----Carried-----

13. **ADJOURNMENT**

**Resolution No: CR016-2022 Moved by: Henderson Seconded by: Sander**

*Be it resolved that this meeting of Committee of the Whole of the Township of Essa adjourn at 7:37 p.m. to meet again on the 2<sup>nd</sup> day of February, 2022 at 6:00 p.m.*

----Carried-----

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Sandie Macdonald, Mayor

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Lisa Lehr, Manager of Legislative Services

**THE CORPORATION OF THE TOWNSHIP OF ESSA  
VIRTUAL COMMITTEE OF THE WHOLE MEETING  
WEDNESDAY, JANUARY 19, 2022**

**MINUTES**

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In attendance: Mayor Sandie Macdonald  
Deputy Mayor, Michael Smith  
Councillor Pieter Kiezebrink  
Councillor Henry Sander  
Councillor Ron Henderson

Staff in attendance: C. Healey-Dowdall, Chief Administrative Officer  
R. Rosilius, Deputy Treasurer  
A. Powell, Manager of Planning and Development  
D. Burgin, Fire Chief  
G. McNamara, Deputy Fire Chief  
M. Mikael, Manager of Public Works  
J. Coleman, Manager of Parks and Recreation  
K. Pascoe, Deputy Clerk  
L. Lehr, Manager of Legislative Services

Guests in attendance: Richard Steinginga, Baker Tilly KDN LLP

**1. OPENING OF MEETING BY THE MAYOR**

Mayor Macdonald opened the meeting at 6:00 p.m.

Council welcomed Gary McNamara as the new Deputy Fire Chief for the Township of Essa.

**2. DISCLOSURE OF PECUNIARY INTEREST**

None.

**3. DELEGATIONS / PRESENTATIONS / PUBLIC MEETINGS**

- a. Delegation – Richard Steinginga, Baker Tilly KDN LLP**  
re: Draft Consolidated Financial Statements

The Township Auditor was in attendance to provide Council with a brief overview of the completed 2020 Draft Consolidated Financial Statements.

**Resolution No: CW001-2022 Moved by: Smith                      Seconded by: Sander**

*Be it resolved that the draft 2020 Consolidated Financial Statements for the Township of Essa, as presented by Baker Tilly KDN LLP, be approved.*

**STAFF REPORTS**

**4. PLANNING AND DEVELOPMENT**

- a. **Staff Report PD002-22 submitted by the Manager of Planning and Development, re: Additional Delegation of Planning Decisions/Schedule 19 – Bill 13.**

**Resolution No: CW002-2022 Moved by: Henderson Seconded by: Kiezebrink**

*Be it resolved that Staff Report PD002-22 be received: and  
That Council approve the delegation of routine powers and duties to Staff for the approval of Site Plan Control, the Lifting of Holding Provisions and Part Lot Control and “red-line” revisions to Draft Plans of Subdivision/Condominium; and  
That a By-law be brought forward at a future meeting for Council’s consideration.*

**----Carried----**

**5. PARKS AND RECREATION / COMMUNITY SERVICES**

**6. FIRE AND EMERGENCY SERVICES**

- a. **Staff Report FD001-22 submitted by the Fire Chief, re: Purchase of an RTV.**

**Resolution No: CW003-2022 Moved by: Smith Seconded by: Kiezebrink**

*Be it resolved that Staff Report FD001-22 be received: and  
That Council authorize the Fire Chief to purchase a Kubota RTV X1100C from Earth Power Tractors and Equipment Inc. located in Stayner at a purchase price of \$37,152.78 (taxes included).*

**----Carried----**

**7. PUBLIC WORKS**

**8. FINANCE**

- a. **Reduction of Securities – Briarwood Homes Subdivision Angus.**

**Resolution No: CW004-2022 Moved by: Sander Seconded by: Henderson**

*Be it resolved that Council approve the reduction of securities relating to Briarwood Homes Subdivision Angus, as recommended by the Township Engineer as follows:*

<i>Current Securities Held by Township of Essa:</i>	<i>\$4,539,985.34</i>
<i>LESS Recommended Reduction:</i>	<i>\$542,202.05</i>
<i>Securities to be Retained by Township of Essa:</i>	<i>\$3,997,783.29</i>

*And,*

*That the return of securities is conditional upon the Developer providing the municipality with a finalization of works with documentation provided to the Township for final approval.*

**----Carried----**

**b. Reduction of Securities – Nottawasaga Village (Stonemount) Subdivision – Block 124/125.**

**Resolution No: CW005-2022 Moved by: Kiezebrink Seconded by: Smith**

*Be it resolved that Council approve the reduction of securities relating to Nottawasaga Village (Stonemount) Subdivision – Block 124/125, as recommended by the Township Engineer as follows:*

<i>Current Securities Held by Township of Essa:</i>	<i>\$102,067.53</i>
<i>LESS Recommended Reduction:</i>	<i>\$17,218.55</i>
<i>Securities to be Retained by Township of Essa:</i>	<i>\$84,848.98</i>

*And,*

*That the return of securities is conditional upon the Developer providing the municipality with a finalization of works with documentation provided to the Township for final approval.*

**----Carried----**

**c. Release of Securities – Brownley Meadows – Phase 2 (Brookvalley Angus South)**

**Resolution No: CW006-2022 Moved by: Sander Seconded by: Smith**

*Be it resolved that Council approve the release of securities relating to Brownley Meadows – Phase 2 (Brookvalley Angus South), as recommended by the Township Engineer as follows:*

<i>Current Securities Held by Township of Essa:</i>	<i>\$77,533.08</i>
<i>LESS Recommended Reduction:</i>	<i>\$77,533.08</i>
<i>Securities to be Retained by Township of Essa:</i>	<i>\$0.00</i>

*And,*

*That the return of securities is conditional upon the Developer providing the municipality with a finalization of works with documentation provided to the Township for final approval.*

**----Carried----**

**d. Staff Report TR001-22 submitted by the Manager of Finance, re: 2022 Business Improvement Area of Angus Budget.**

**Resolution No: CW007-2022 Moved by: Kiezebrink Seconded by: Sander**

*Be it resolved that Staff Report TR001-22 be received; and  
That the 2022 Business Improvement Area of Angus Budget as presented by the Business Improvement Area of Angus Board of Management, with an Operating Budget levy of \$29,035.00, be approved; and  
That a BIA Tax Rating By-law be prepared for the consideration of Council.*

**----Carried----**

**9. CLERKS / BY-LAW ENFORCEMENT / IT**

## 10. CHIEF ADMINISTRATIVE OFFICER (C.A.O.)

- a. Council Reconsideration of Staff Report CAO054-21 submitted by the Chief Administrative Officer, re: Policy No. A01-2021 COVID-19 Vaccination Policy.

Resolution No: CW008-2022 Moved by: Smith Seconded by: Henderson

*WHEREAS Motion CW146-2021 was passed by Council at its meeting of December 1, 2021; and*

*WHEREAS Council has reconsidered its decision on the aforementioned motion and is desirous of amending the previously passed motion to include an amendment to Policy A01-2021;*

*NOW THEREFORE BE IT RESOLVED THAT Motion CW146-2021 be amended to read as follows:*

*Be it resolved that Staff Report CAO054-21 be received; and  
That Policy A01-2021 known as "COVID-19 Vaccination Policy" be amended as directed by Council; and  
That Council endorse Policy No. A01-2021 COVID-19 Vaccination Policy, as amended, which would apply to staff, volunteers, Members of Council and all Council-appointed Committee Members, volunteers being those persons appointed by Council or paid.*

----Carried----

- b. Staff Report CAO002-22 submitted by the Chief Administrative Officer, re: Briarwood Subdivision (Part Lot 31, Con 4) – Centre Street, Angus.

Resolution No: CW009-2022 Moved by: Sander Seconded by: Smith

*Be it resolved that Staff Report CAO002-22 be received; and  
That Council direct staff to issue final approval to Briarwood (Angus) Ltd. upon receipt of final clearance from the NVCA; and  
That the appropriate By-law be brought forward for Council's consideration to allow the Mayor and Clerk to enter into a subdivision agreement to be registered on title to govern the development of a 156-lot residential plan of subdivision.*

----Carried----

- c. Staff Report CAO003-22 submitted by the Chief Administrative Officer, re: OMERS Pension Investments.

Resolution No: CW010-2022 Moved by: Kiezebrink Seconded by: Sander

*Be it resolved that Staff Report CAO003-22 be received for information.*

----Carried----

## 11. OTHER BUSINESS

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12. **ADJOURNMENT**

**Resolution No: CW011-2022 Moved by: Henderson Seconded by: Smith**

*Be it resolved that this meeting of Committee of the Whole of the Township of Essa adjourn at 6:46 p.m., to meet again on the 2<sup>nd</sup> day of February, 2022 at 6:00 p.m.*

**----Carried-----**

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Sandie Macdonald, Mayor

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Lisa Lehr, Manager of Legislative Services







13.4.2 Board Meeting Dates for 2022

2021:071 Moved: PK Seconded: SM Carried  
THAT the Essa Public Library Board hold Regular Board Meetings on: January 24, February 28, March 28, April 25, May 30, June 27, September 26, October 24, November 28, and December 19.

13.4.3 Library Closed Dates for 2022

2021:072 Moved: JB Seconded: AM Carried  
THAT Essa Public Library be closed January 1, February 21 Family Day, April 15 Good Friday, April 18 Easter Monday, May 23 Victoria Day, July 1 Canada Day, August 1 Civic Holiday, September 5 Labour Day, October 10 Thanksgiving, December 24 at 1pm, December 26 and 27, December 31 at 1pm.

14. Closed Meeting:

2021:073 Moved: HS Seconded: AM Carried  
THAT the Board proceed to Closed Session at 7:56pm to discuss:

- ✓ other matters pertaining to personal matters about an identifiable individual, including Board employees

2021:074 Moved: HS Seconded: SM Carried  
THAT the Board rise from the Closed Session at 8:01pm.

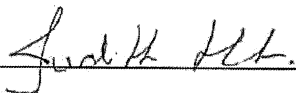
15. Other Business: Gift Cards for My Sister’s Place by Monday, December 20<sup>th</sup>.

16. Next Virtual Meeting: Monday, January 24<sup>th</sup>, 2022 at 7pm.

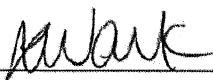
17. Adjournment

2021:075 Moved: CC Carried  
THAT the Meeting be adjourned at 8:03pm.

APPROVED: January 24, 2022

  
\_\_\_\_\_

Essa Public Library Board Chair

  
\_\_\_\_\_

CEO, Treasurer-Secretary

## HEALTHY COMMUNITY COMMITTEE MEETING MINUTES

January 20, 2022

5:00 – 6:00 PM

**Attendees:** Susan Antler, Anne Learn-Sharpe, Judith Hunter

**Council:** Michael Smith

**Staff:** Aimee Powell, Audra Marshall

**Regrets:** Angelica Tang

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### Finalizing Projects 2021

- Signs for LeClair Park ready to be installed in Spring 2022
- Bike Racks ordered, to be installed in Spring 2022
- Bat, Bird and Bee Houses to be installed Spring 2022

### 2022 Proposed Budget

- Use \$5000 to build new Pollinating Gardens at Essa Admin Centre like the ones created at LeClair Park in 2021 (potential including watering services)
- Use \$2000 for Community Event Surrounding Pollinating Gardens, Art and Education
- Create 'No Mow May' within Township to educate public on first food for pollinators, event celebrated around the world.

### Next Steps

- Organize a tour at Admin Centre grounds to determine location of new Pollinating Gardens
- Put out request for volunteers to help with HCC member participation
- Next meeting February 17, 2022

**End of meeting 6:01 pm**



# Towards a Reasonable Balance:

Addressing growing municipal liability and insurance costs

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Submission to the Attorney General of Ontario

October 1, 2019

**Table of Contents**

**Letter to the Attorney General of Ontario..... 3**  
**Executive Summary ..... 5**  
**Recommendations ..... 7**  
**Insurance Cost Examples..... 8**  
**Joint and Several in Action - Recent Examples ..... 9**  
**Joint and Several Liability in Action - Other notable cases ..... 11**  
**2011 Review of Joint and Several Liability – Law Commission of Ontario ..... 11**  
**2014 Resolution by the Ontario Legislature and Review by the Attorney General ..... 12**  
**Options for Reform – The Legal Framework..... 13**  
**The Saskatchewan Experience..... 15**  
**Insurance Related Reforms ..... 17**  
**Conclusion..... 18**

Sent via email to: [doug.downeyco@pc.ola.org](mailto:doug.downeyco@pc.ola.org)  
[magpolicy@ontario.ca](mailto:magpolicy@ontario.ca)

October 1, 2019

The Honourable Doug Downey  
Attorney General of Ontario  
McMurtry-Scott Building, 11th Floor  
720 Bay Street  
Toronto, Ontario  
M7A 2S9

Dear Attorney General Downey,

Municipal governments accept the responsibility to pay their fair share of a loss. Always. Making it right and paying a fair share are the cornerstones of our legal system. Citizens expect nothing less of their local governments.

But what is a challenge for municipalities and property taxpayers alike, is being asked to assume someone else's responsibility for someone else's mistake. Municipal governments should not be the insurer of last resort. For municipalities in Ontario, however, the principle of joint and several liability ensures that they are just that.

Joint and several liability means higher insurance costs. It diverts property tax dollars from delivering public services. It has transformed municipalities into litigation targets while others escape responsibility. It forces municipal government to settle out-of-court for excessive amounts when responsibility is as low as 1%.

There must be a better way. There must be a better way to help ensure those who suffer losses are made whole again without asking municipalities to bear that burden alone. There must be a better way to be fair, reasonable, and responsible.

AMO welcomes the government's commitment to review joint and several liability. It is a complex issue that has many dimensions. Issues of fairness, legal principles, "liability chill", insurance failures and high insurance costs are all intertwined. Many other jurisdictions have offered additional protection for municipalities and AMO calls on the Ontario government to do the same.

What follows is a starting point for that discussion. Our paper reasserts key issues from AMO's 2010 paper, AMO's 2011 insurance cost survey, provides more recent examples, and details some possible solutions of which there are many options.

Municipalities are in the business of delivering public services. Municipal governments exist to connect people and to advance the development of a community. It is time to find a reasonable balance to prevent the further scaling back of public services owing to joint and several liability, "liability chill", or excessive insurance costs.

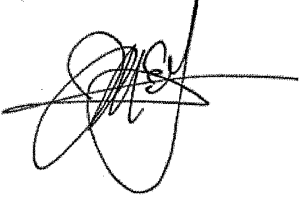
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**Towards a Reasonable Balance:  
Addressing growing municipal liability and insurance costs**

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Together with the provincial government, I am confident we can find a better way.

Sincerely,

A handwritten signature in black ink, appearing to read 'JM', with a long horizontal line extending to the right.

Jamie McGarvey  
AMO President

## Executive Summary

AMO's advocacy efforts on joint and several liability in no way intends for aggrieved parties to be denied justice or damages through the courts. Rather, municipal governments seek to highlight the inequity of how much "deep pocket" defendants like municipalities are forced to pay, for both in and out of court settlements.

It is entirely unfair to ask property taxpayers to carry the lion's share of a damage award when a municipality is found at minimal fault or to assume responsibility for someone else's mistake.

Municipal governments cannot afford to be the insurer of last resort. The principle of joint and several liability is costing municipalities and taxpayers dearly, in the form of rising insurance premiums, service reductions and fewer choices. The *Negligence Act* was never intended to place the burden of insurer of last resort on municipalities.

As public organizations with taxation power and "deep pockets," municipalities have become focal points for litigation when other defendants do not have the means to pay. At the same time, catastrophic claim awards in Ontario have increased considerably. In part, joint and several liability is fueling exorbitant increases in municipal insurance premiums.

The heavy insurance burden and legal environment is unsustainable for Ontario's communities. Despite enormous improvements to safety, including new standards for playgrounds, pool safety, and better risk management practices, municipal insurance premiums and liability claims continue to increase. All municipalities have risk management policies to one degree or another and most large municipalities now employ risk managers precisely to increase health and safety and limit liability exposure in the design of facilities, programs, and insurance coverage. Liability is a top of mind consideration for all municipal councils.

Joint and several liability is problematic not only because of the disproportioned burden on municipalities that are awarded by courts. It is also the immeasurable impact of propelling municipalities to settle out of court to avoid protracted and expensive litigation for amounts that may be excessive, or certainly represent a greater percentage than their degree of fault.

Various forms of proportionate liability have now been enacted by all of Ontario's competing Great Lakes states. In total, 38 other states south of the border have adopted proportionate liability in specific circumstances to the benefit of municipalities. Many common law jurisdictions around the world have adopted legal reforms to limit the exposure and restore balance. With other Commonwealth jurisdictions and the majority of state governments in the United States having modified the rule of joint and several liability in favour of some form of proportionate liability, it is time for Ontario to consider various options.

There is precedence in Ontario for joint and several liability reform. The car leasing lobby highlighted a particularly expensive court award made in November of 2004 against a car leasing company by the victim of a drunk driver. The August 1997 accident occurred when the car skidded off a county road near Peterborough, Ontario. It exposed the inequity of joint and several liability for car leasing companies. The leasing companies argued to the government that the settlement had put them at a competitive disadvantage to lenders. They also warned that such liability conditions would likely drive some leasing and rental companies to reduce their business in Ontario. As a result, Bill 18 amended the *Compulsory Automobile Insurance Act*, the *Highway Traffic*



*Act* and the Ontario *Insurance Act* to make renters and lessees vicariously liable for the negligence of automobile drivers and capped the maximum liability of owners of rental and leased cars at \$1 million. While Bill 18 has eliminated the owners of leased and rented cars as “deep pocket” defendants, no such restrictions have been enacted to assist municipalities.

A 2011 survey conducted by AMO reveals that since 2007, liability premiums have increased by 22.2% and are among the fastest growing municipal costs. Total 2011 Ontario municipal insurance costs were \$155.2 million. Liability premiums made up the majority of these expenses at \$85.5 million. Property taxpayers are paying this price.

These trends are continuing. In August of 2019, it was reported the Town of Bradford West Gwillimbury faces a 59% insurance cost increase for 2019. This is just one example. AMO encourages the municipal insurance industry to provide the government with more recent data and trends to support the industry’s own arguments regarding the impact joint and several has on premiums.

Insurance costs disproportionately affect small municipalities. For 2011, the per capita insurance costs for communities with populations under 10,000 were \$37.56. By comparison, per capita costs in large communities with populations over 75,000 were \$7.71. Property taxpayers in one northern community are spending more on insurance than their library. In one southern county, for every \$2 spent on snowplowing roads, another \$1 is spent on insurance.

In 2016, the Ontario Municipal Insurance Exchange (OMEX), a not-for-profit insurer, announced that it was suspending reciprocal underwriting operations. The organization cited, a “low pricing environment, combined with the impact of joint and several liability on municipal claim settlements” as reasons for the decision. Fewer choices fuels premium increases.

Learning from other jurisdictions is important for Ontario. The Province of Saskatchewan has implemented liability reforms to support its municipalities. As a municipal lawyer at the time, Neil Robertson, QC was instrumental in laying out the arguments in support of these changes. Now a Justice of the Court of Queen’s Bench for Saskatchewan, AMO was pleased to have Neil Robertson prepare a paper and address AMO conference delegates in 2013. Much of the Saskatchewan municipal experience (which led to reforms) is applicable to the Ontario and the Canadian municipal context. Summarised below and throughout this paper are some of Robertson’s key findings.

Robertson found that, regardless of the cause, over the years municipalities in Canada have experienced an accelerating rate of litigation and an increase in amounts of damage awards. He noted these developments challenge municipalities and raise financial, operational and policy issues in the provision of public services.

Robertson describes the current Canadian legal climate as having placed municipalities in the role of involuntary insurer. Courts have assigned municipal liability where liability was traditionally denied and apportioned fault to municipal defendants out of proportion to municipal involvement in the actual wrong.

This increased exposure to liability has had serious ramifications for municipalities, both as a deterrent to providing public services which may give rise to claims and in raising the cost and reducing the availability of insurance. The cost of claims has caused insurers to reconsider not only

## **Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs**

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what to charge for premiums, but whether to continue offering insurance coverage to municipal clients.

Robertson also makes the key point that it is reasonable for municipal leaders to seek appropriate statutory protections. He wrote:

“Since municipalities exist to improve the quality of life for their citizens, the possibility of causing harm to those same citizens is contrary to its fundamental mission. Careful management and wise stewardship of public resources by municipal leaders will reduce the likelihood of such harm, including adherence to good risk management practices in municipal operations. But wise stewardship also involves avoiding the risk of unwarranted costs arising from inevitable claims.”

And, of course, a key consideration is the reality that insurance premiums, self-insurance costs, and legal fees divert municipal funds from other essential municipal services and responsibilities.

It is in this context that AMO appreciated the commitments made by the Premier and the Attorney General to review the principle of joint and several liability, the impact it has on insurance costs, and the influence “liability chill” has on the delivery of public services. Now is the time to deliver provincial public policy solutions which address these issues.

### **Recommendations**

AMO recommends the following measures to address these issues:

1. The provincial government adopt a model of full proportionate liability to replace joint and several liability.
2. Implement enhancements to the existing limitations period including the continued applicability of the existing 10-day rule on slip and fall cases given recent judicial interpretations, and whether a 1-year limitation period may be beneficial.
3. Implement a cap for economic loss awards.
4. Increase the catastrophic impairment default benefit limit to \$2 million and increase the third-party liability coverage to \$2 million in government regulated automobile insurance plans.
5. Assess and implement additional measures which would support lower premiums or alternatives to the provision of insurance services by other entities such as non-profit insurance reciprocals.
6. Compel the insurance industry to supply all necessary financial evidence including premiums, claims, and deductible limit changes which support its, and municipal arguments as to the fiscal impact of joint and several liability.
7. Establish a provincial and municipal working group to consider the above and put forward recommendations to the Attorney General.

## Insurance Cost Examples

The government has requested detailed information from municipalities regarding their insurance costs, coverage, deductibles, claims history, and out-of-court settlements. Municipalities have been busy responding to a long list of provincial consultations on a wide range of topics. Some of the information being sought is more easily supplied by the insurance industry. AMO's 2011 survey of insurance costs produced a sample size of 122 municipalities and assessed insurance cost increases over a five-year period. The survey revealed an average premium increase which exceeded 20% over that period.

All of the same forces remain at play in 2019 just as they were in 2011. Below are some key examples.

**Ear Falls** - The Township of Ear Falls reports that its insurance premiums have increased 30% over five years to \$81,686. With a population of only 995 residents (2016), this represents a per capita cost of \$82.09. This amount is a significant increase from AMO's 2011 Insurance Survey result. At that time, the average per capita insurance cost for a community with a population under 10,000 was \$37.56. While the Township has not been the subject of a liability claim, a claim in a community of this size could have significant and long-lasting financial and service implications. The Township has also had to impose stricter insurance requirements on groups that rent municipal facilities. This has had a negative impact on the clubs and volunteers' groups and as a consequence, many have cut back on the service these groups provide to the community.

**Central Huron** - For many years the municipality of Central Huron had a deductible of \$5,000. In 2014, the deductible was increased to \$15,000 to help reduce insurance costs. The municipality also increased its liability coverage in 2014 and added cyber security coverage in 2018. The combined impact of these changes represents a premium cost of \$224,774 in 2019, up from \$141,331 in 2010. Per capita costs for insurance alone are now \$29.67.

**Huntsville** - Since 2010, the Town of Huntsville reports an insurance premium increase of 67%. In 2019 this represented about 3.75% of the town's property tax levy. At the same time, Huntsville's deductible has increased from \$10,000 to \$25,000. The town also reports a reluctance to hold its own events for fear of any claims which may affect its main policy. Additional coverage is purchased for these events and these costs are not included above.

**Ottawa** - In August 2018, the City began working with its insurance broker, Aon Risk Solutions ("Aon"), to prepare for the anticipated renewal of the Integrated Insurance Program in April 2019. As the cost of the City's insurance premiums had risen by approximately 25% between 2017 and 2018, this early work was intended to ensure that any further increase could be properly accounted for through the 2019 budget process. Early indications of a possible further 10% premium increase prompted the City and Aon in late 2018 to explore options for a revised Program, and to approach alternative markets for the supply of insurance.

On January 11, 2019, an OC Transpo bus collided with a section of the Westboro Station transit shelter, resulting in three fatalities and numerous serious injuries. This was the second major incident involving the City's bus fleet, following approximately five years after the OC Transpo - VIA train collision in September 2013.

## Towards a Reasonable Balance: Addressing growing municipal liability and insurance costs

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The January 2019 incident prompted insurance providers to re-evaluate their willingness to participate in the City Program. Despite Aon's work to secure an alternative provider, only Frank Cowan Company ("Cowan"), the City's existing insurer, was prepared to offer the City an Integrated Insurance Program. Cowan's offer to renew the City's Program was conditional on revised terms and limits and at a significant premium increase of approximately 84%, or nearly \$2.1 million per year. According to Cowan, these changes and increases were attributable to seven principle factors, including Joint and Several Liability:

1. Escalating Costs of Natural Global Disasters;
2. Joint and Several Liability;
3. Claims Trends (in the municipal sector);
4. Increasing Damage Awards;
5. Class Action Lawsuits;
6. New and/or Adverse Claims Development; and,
7. Transit Exposure.

Cowan also indicated that the primary policy limits for the 2019-2020 renewal would be lowered from \$25 million to \$10 million per occurrence, thereby raising the likelihood of increased costs for the City's excess liability policies.

### Joint and Several in Action - Recent Examples

The following examples highlight joint and several in action. The following examples have occurred in recent years.

**GTA Municipality** – A homeowner rented out three separate apartments in a home despite being zoned as a single-family dwelling. After a complaint was received, bylaw inspectors and Fire Prevention Officers visited the property. The landlord was cautioned to undertake renovations to restore the building into a single-family dwelling. After several months of non-compliance, charges under the fire code were laid. The owner was convicted and fined. A subsequent visit by Fire Prevention Officers noted that the required renovations had not taken place. Tragically, a fire occurred which resulted in three fatalities. Despite having undertaken corrective action against the homeowner, joint and several liability loomed large. It compelled the municipality to make a payment of \$504,000 given the 1% rule.

**City of Ottawa** - A serious motor vehicle accident occurred between one of the City's buses and an SUV. The collision occurred at an intersection when the inebriated driver of the SUV failed to stop at a red light and was struck by the City bus. This collision resulted in the deaths of the SUV driver and two other occupants, and also seriously injured the primary Plaintiff, the third passenger in the SUV. The secondary action was brought by the family of one of the deceased passengers.

The Court ultimately concluded that the City was 20% liable for the collision, while the SUV driver was 80% at fault. Despite the 80/20 allocation of fault, the City was required to pay all of the approximately \$2.1 million in damages awarded in the primary case and the \$200,000 awarded in the secondary case, bringing the amount paid by the City to a total that was not proportionate to its actual liability. This was due to the application of the principle of joint and several liability, as well as the interplay between the various automobile insurance policies held by the SUV owner and

7a

**Towards a Reasonable Balance:  
Addressing growing municipal liability and insurance costs**

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passengers, which is further explained below. Although the City appealed this case, the Ontario Court of Appeal agreed with the findings of the trial judge and dismissed it.

This case was notable for the implications of various factors on the insurance policies held by the respective parties. While most automobile insurance policies in Ontario provide for \$1 million in third party liability coverage, the insurance for the SUV was reduced to the statutory minimum of \$200,000 by virtue of the fact that the driver at the time of the collision had a blood alcohol level nearly three times the legal limit for a fully licensed driver. This was contrary to the requirements of his G2 license, which prohibit driving after the consumption of any alcohol. Further, while the Plaintiff passengers' own respective insurance provided \$1 million in coverage for underinsured motorists (as the SUV driver was at the time), this type of coverage is triggered only where no other party is in any way liable for the accident. As a result, the primary Plaintiff could only effectively recover the full \$2.1 million in damages if the Court attributed even a small measure of fault to another party with sufficient resources to pay the claim.

In determining that the City was at least partially responsible for the collision, the Court held that the speed of the bus – which according to GPS recordings was approximately 6.5 km/h over the posted limit of 60 kilometres an hour – and momentary inattention were contributing factors to the collision.

To shorten the length of the trial by approximately one week and accordingly reduce the legal costs involved, the parties had earlier reached an agreement on damages and that the findings regarding the primary Plaintiff would apply equally to the other. The amount of the agreement-upon damages took into account any contributory negligence on the part of the respective Plaintiffs, attributable to such things as not wearing a seat belt.

**City of Ottawa, 2<sup>nd</sup> example** – A Plaintiff was catastrophically injured when, after disembarking a City bus, he was struck by a third-party motor vehicle. The Plaintiff's injuries included a brain injury while his impairments included incomplete quadriplegia.

As a result of his accident, the Plaintiff brought a claim for damages for an amount in excess of \$7 million against the City and against the owner and driver of the third-party vehicle that struck him. Against the City, the Plaintiff alleged that the roadway was not properly designed and that the bus stop was placed at an unsafe location as it required passengers to cross the road mid-block and not at a controlled intersection.

Following the completion of examinations for discovery, the Plaintiff's claim against the Co-Defendant (the driver of the vehicle which struck the plaintiff) was resolved for \$1,120,000 comprising \$970,000 for damages and \$120,000 for costs. The Co-Defendant's policy limit was \$1 million. The claim against the City was in effect, a "1% rule" case where the City had been added to the case largely because the Co-Defendant's insurance was capped at \$1 million, which was well below the value of the Plaintiff's claim.

On the issue of liability, the pre-trial judge was of the view that the City was exposed to a finding of some liability against it on the theory that, because of the proximity of the bus stop to a home for adults with mental health issues, the City knew or should have known that bus passengers with cognitive and/or physical disabilities would be crossing mid-block at an unmarked crossing. This, according to the judge, could have resulted in a finding being made at trial that the City should

7a

either have removed the bus stop or alternatively, should have installed a pedestrian crossing at this location.

The judge assessed the Plaintiff's damages at \$7,241,000 exclusive of costs and disbursements which he then reduced to \$4,602,930 exclusive of costs and disbursements after applying a reduction of 27.5% for contributory negligence and subtracting the \$970,000 payment made by the Co-Defendant's insurer.

Settlement discussions took place and the judge recommended that the matter be resolved for \$3,825,000 plus costs of \$554,750 plus HST plus disbursements.

## **Joint and Several Liability in Action - Other notable cases**

**Deering v Scugog** - A 19-year-old driver was driving at night in a hurry to make the start time of a movie. She was travelling on a Class 4 rural road that had no centerline markings. The Ontario Traffic Manual does not require this type of road to have such a marking. The driver thought that a vehicle travelling in the opposite direction was headed directly at her. She swerved, over-corrected and ended up in a rock culvert. The Court found the Township of Scugog 66.7% liable. The at-fault driver only carried a \$1M auto insurance policy.

**Ferguson v County of Brant** - An inexperienced 17-year-old male driver was speeding on a road when he failed to navigate a curve which resulted in him crossing the lane into oncoming traffic, leaving the roadway, and striking a tree. The municipality was found to have posted a winding road sign rather than a sharp curve sign. The municipality was found 55% liable.

**Safranyos et al v City of Hamilton** - The plaintiff was leaving a drive-in movie theatre with four children in her vehicle at approximately 1 AM. She approached a stop sign with the intention of turning right onto a highway. Although she saw oncoming headlights she entered the intersection where she was struck by a vehicle driven 15 km/h over the posted speed limit by a man who had just left a party and was determined by toxicologists to be impaired. The children in the plaintiff's vehicle suffered significant injuries. The City was determined to be 25% liable because a stop line had not been painted on the road at the intersection.

**Mortimer v Cameron** - Two men were engaged in horseplay on a stairway and one of them fell backward through an open door at the bottom of a landing. The other man attempted to break the first man's fall and together they fell into an exterior wall that gave way. Both men fell 10 feet onto the ground below, one of whom was left quadriplegic. The trial judge determined both men were negligent, but that their conduct did not correspond to the extent of the plaintiff's injuries. No liability was attached to either man. The building owner was determined to be 20% and the City of London was found to be 80% liable. The Court awarded the plaintiff \$5 M in damages. On appeal, the City's liability was reduced to 40% and building owner was determined to be 60% liable. The City still ended up paying 80% of the overall claim.

## **2011 Review of Joint and Several Liability – Law Commission of Ontario**

In February 2011 the Law Commission of Ontario released a report entitled, *"Joint and Several Liability Under the Ontario Business Corporations Act"*. This review examined the application of

joint and several liability to corporate law and more specifically the relationship between the corporation and its directors, officers, shareholders and stakeholders.

Prior to the report's release, AMO made a submission to the Law Commission of Ontario to seek to expand its review to include municipal implications. The Law Commission did not proceed with a broader review at that time, but the context of its narrower scope remains applicable to municipalities. In fact, many of the same arguments which support reform in the realm of the *Business Corporations Act*, are the same arguments which apply to municipal governments.

Of note, the Law Commission's<sup>1</sup> report highlighted the following in favour of reforms:

**Fairness:** "it is argued that it is unfair for a defendant, whose degree of fault is minor when compared to that of other defendants, to have to fully compensate a plaintiff should the other defendants be insolvent or unavailable."

**Deep Pocket Syndrome:** "Joint and several liability encourages plaintiffs to unfairly target defendants who are known or perceived to be insured or solvent."

**Rising Costs of Litigation, Insurance, and Damage Awards:** "Opponents of the joint and several liability regime are concerned about the rising costs of litigation, insurance, and damage awards."

**Provision of Services:** "The Association of Municipalities of Ontario identifies another negative externality of joint and several liability: municipalities are having to delay or otherwise cut back services to limit exposure to liability."

The Law Commission found that the principle of joint and several liability should remain in place although it did not explicitly review the municipal situation.

## **2014 Resolution by the Ontario Legislature and Review by the Attorney General**

Over 200 municipalities supported a motion introduced by Randy Pettapiece, MPP for Perth-Wellington which called for the implementation a comprehensive, long-term solution in 2014. That year, MPPs from all parties supported the Pettapiece motion calling for a reform joint and several liability.

Later that year the Ministry of the Attorney General consulted on three options of possible reform:

### **1. The Saskatchewan Model of Modified Proportionate Liability**

Saskatchewan has adopted a modified version of proportionate liability that applies in cases where a plaintiff is contributorily negligent. Under the Saskatchewan rule, where a plaintiff is contributorily negligent and there is an unfunded liability, the cost of the unfunded liability is split among the remaining defendants and the plaintiff in proportion to their fault.

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<sup>1</sup> Law Commission of Ontario. "Joint and Several Liability Under the Ontario *Business Corporations Act*." Final Report, February 2011 Pages 22-25.

## **2. Peripheral Wrongdoer Rule for Road Authorities**

Under this rule, a municipality would never be liable for more than two times its proportion of damages, even if it results in the plaintiff being unable to recover full damages.

## **3. A combination of both of the above**

Ultimately, the government decided not to pursue any of the incremental policy options ostensibly because of uncertainty that insurance cost reductions would result. This was a disappointing result for municipalities.

While these reviews did not produce results in Ontario, many other common law jurisdictions have enacted protections for municipalities. What follows are some of the options for a different legal framework.

## **Options for Reform – The Legal Framework**

To gain a full appreciation of the various liability frameworks that could be considered, for comparison, below is a description of the current joint and several liability framework here in Ontario. This description will help to reader to understand the further options which follow.

This description and the alternatives that follow are taken from the Law Commission of Ontario's February 2011 Report entitled, *"Joint and Several Liability Under the Ontario Business Corporations Act"* as referenced above.<sup>2</sup>

### **Understanding the Status Quo and Comparing it to the Alternatives**

Where three different defendants are found to have caused a plaintiff's loss, the plaintiff is entitled to seek full payment (100%) from any one of the defendants. The defendant who fully satisfies the judgment has a right of contribution from the other liable parties based on the extent of their responsibility for the plaintiff's loss.

For example, a court may find defendants 1 (D1), 2 (D2) and 3 (D3) responsible for 70%, 20%, and 10% of the plaintiff's \$100,000 loss, respectively. The plaintiff may seek to recover 100% of the loss from D2, who may then seek contribution from D1 and D3 for their 70% and 10% shares of the loss. If D1 and/or D3 is unable to compensate D2 for the amount each owes for whatever reason, such as insolvency or unavailability, D2 will bear the full \$100,000 loss. The plaintiff will be fully compensated for \$100,000, and it is the responsibility of the defendants to apportion the loss fairly between them.

The descriptions that follow are abridged from pages 9-11 of the Law Commission of Ontario's report. These are some of the key alternatives to the status quo.

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<sup>2</sup> Ibid. Page 7.



7a

## **1. Proportionate Liability**

### **a) Full Proportionate Liability**

A system of full proportionate liability limits the liability of each co-defendant to the proportion of the loss for which he or she was found to be responsible. Per the above example, (in which Defendant 1 (D1) is responsible for 70% of loss, Defendant 2 (D2) for 20% and Defendant 3 (D3) for 10%), under this system, D2 will only be responsible for \$20,000 of the \$100,000 total judgement: equal to 20% of their share of the liability. Likewise, D1 and D3 will be responsible for \$70,000 and \$10,000. If D1 and D3 are unable to pay, the plaintiff will only recover \$20,000 from D2.

### **b) Proportionate Liability where Plaintiff is Contributorily Negligent**

This option retains joint and several liability when a blameless plaintiff is involved. This option would cancel or adjust the rule where the plaintiff contributed to their loss. As in the first example, suppose the plaintiff (P) contributed to 20% of their \$100,000 loss. D1, D2 and D3 were responsible for 50%, 20% and 10% of the \$100,000. If D1 and D3 are unavailable, P and D2 will each be responsible for their \$20,000 shares. The plaintiff will remain responsible for the \$60,000 shortfall as a result of the absent co-defendants' non-payment (D1 and D3).

### **c) Proportionate Liability where Plaintiff is Contributorily Negligent with a Proportionate Reallocation of an Insolvent, Financially Limited or Unavailable Defendant's Share**

In this option of proportionate liability, the plaintiff and remaining co-defendants share the risk of a defendant's non-payment. The plaintiff (P) and co-defendants are responsible for any shortfall in proportion to their respective degrees of fault.

Using the above example of the \$100,000 total judgement, with a shortfall payment of \$50,000 from D1 and a shortfall payment \$10,000 from D3, P and D2 must pay for the missing \$60,000. P and D2 have equally-apportioned liability, which causes them to be responsible for half of each shortfall - \$25,000 and \$5,000 from each non-paying defendant. The burden is shared between the plaintiff (if determined to be responsible) and the remaining defendants.

### **d) Proportionate Liability with a Peripheral Wrongdoer**

Under this option, a defendant will be proportionately liable only if their share of the liability falls below a specified percentage, meaning that liability would be joint and several. Using the above example, if the threshold amount of liability is set at 25%, D2 and D3 would only be responsible for 20% and 10%, regardless of whether they are the only available or named defendants. However, D1 may be liable for 100% if it is the only available or named defendant. This system tends to favour defendants responsible for a small portion of the loss, but the determination of the threshold amount between joint and several liability and proportionate liability is arbitrary.

### **e) Proportionate Liability with a Reallocation of Some or All of an Insolvent or Unavailable Defendant's Share**

This option reallocates the liability of a non-paying defendant among the remaining defendants in proportion to their respective degrees of fault. The plaintiff's contributory negligence does not

impact the application of this reallocation. Joint and several liability would continue to apply in cases of fraud or where laws were knowingly violated.

#### **f) Court Discretion**

Similar to the fraud exception in the option above, this option includes giving the courts discretion to apply different forms of liability depending on the case.

For example, if a particular co-defendant's share of the fault was relatively minor the court would have discretion to limit that defendant's liability to an appropriate portion.

### **2. Legislative Cap on Liability**

Liability concerns could be addressed by introducing a cap on the amount of damages available for claims for economic loss.

### **3. Hybrid**

A number of jurisdictions provide a hybrid system of proportionate liability and caps on damages. Co-defendants are liable for their portion of the damages, but the maximum total amount payable by each co-defendant is capped to a certain limit.

## **The Saskatchewan Experience**

As referenced earlier in this paper, the Province of Saskatchewan responded with a variety of legislative actions to assist municipalities in the early 2000s. Some of those key developments are listed below which are abridged from *"A Question of Balance: Legislative Responses to Judicial Expansion of Municipal Liability – the Saskatchewan Experience."* The paper was written by Neil Robertson, QC and was presented to the annual conference of the Association of Municipalities of Ontario in 2013. Two key reforms are noted below.

#### **1. Reforming joint and several liability by introducing modified proportionate liability: "The Contributory Negligence Act" amendments**

The *Contributory Negligence Act* retained joint and several liability, but made adjustments in cases where one or more of the defendants is unable to pay its share of the total amount (judgement). Each of the parties at fault, including the plaintiff if contributorily negligent, will still have to pay a share of the judgement based on their degree of fault. However, if one of the defendants is unable to pay, the other defendants who are able to pay are required to pay only their original share and an additional equivalent share of the defaulting party's share.

The change in law allows municipalities to reach out-of-court settlements, based on an estimate of their degree of fault. This allows municipalities to avoid the cost of protracted litigation.

Neil Robertson provided the following example to illustrate how this works in practise:

"...If the owner of a house sues the builder for negligent construction and the municipality, as building authority, for negligent inspection, and all three are found equally at fault, they would each be apportioned 1/3 or 33.3%. Assume the damages are \$100,000. If the builder has no funds, then the municipality would pay only its share (\$33,333) and a 1/3 share of the builder's defaulting share

(1/3 of \$33,333 or \$11,111) for a total of \$44,444 (\$33,333 + \$11,111), instead of the \$66,666 (\$33,333 + \$33,333) it would pay under pure joint and several liability.”

This model will be familiar to municipal leaders in Ontario. In 2014, Ontario’s Attorney General presented this option (called the Saskatchewan Model of Modified Proportionate Liability) for consideration. At the time, over 200 municipal councils supported the adoption of this option along with the “Peripheral Wrongdoer Rule for Road Authorities” which would have seen a municipality never be liable for more than two times its proportion of damages, even if it results in the plaintiff being unable to recover full damages. These two measures, if enacted, would have represented a significant incremental step to address the impact of joint and several to Ontario municipalities.

## **2. Providing for uniform limitation periods while maintaining a separate limitation period for municipalities: “The Limitations Act”**

This act established uniform limitation periods replacing many of the pre-existing limitation periods that had different time periods. The Municipal Acts in Saskatchewan provide a uniform one-year limitation period “from time when the damages were sustained” in absolute terms without a discovery principle which can prolong this period. This helps municipalities to resist “legacy” claims from many years beforehand. This act exempts municipalities from the uniform two-year discoverability limitation period.

Limitation periods set deadlines after which claims cannot be brought as lawsuits in the courts. The legislation intends to balance the opportunity for potential claimants to identify their claims and, if possible, negotiate a settlement out of court before starting legal action with the need for potential defendants to “close the books” on claims from the past.

The reasoning behind these limitations is that public authorities, including municipalities, should not to be punished by the passage of time. Timely notice will promote the timely investigation and disposition of claims in the public interest. After the expiry of a limitation period, municipalities can consider themselves free of the threat of legal action, and continue with financial planning without hurting “the public taxpayer purse”. Municipalities are mandated to balance their budgets and must be able to plan accordingly. Thus, legacy claims can have a very adverse affect on municipal operations.

Here in Ontario, there is a uniform limitations period of two years. Municipalities also benefit from a 10-day notice period which is required for slip and fall cases. More recently, the applicability of this limitation deadline has become variable and subject to judicial discretion. Robertson’s paper notes that in Saskatchewan, courts have accepted the one-year limitations period. A further examination of limitations in Ontario may yield additional benefits and could include the one-year example in Saskatchewan and/or the applicability of the 10-day notice period for slip and fall cases.

### **Other Saskatchewan reforms**

Saskatchewan has also implemented other reforms which include greater protections for building inspections, good faith immunity, duty of repair, no fault insurance, permitting class actions, and limiting nuisance actions. Some of these reforms are specific to Saskatchewan and some of these currently apply in Ontario.

## Insurance Related Reforms

### Government Regulated Insurance Limits

The April 2019 provincial budget included a commitment to increase the catastrophic impairment default benefit limit to \$2 million. Public consultations were led by the Ministry of Finance in September 2019. AMO wrote to the Ministry in support of increasing the limit to \$2 million to ensure more adequate support those who suffer catastrophic impairment.

In 2016, the government lowered this limit as well as third-party liability coverage to \$200,000 from \$1 million. This minimum should also be increased to \$2 million to reflect current actual costs. This significant deficiency needs to be addressed.

### Insurance Industry Changes

In 1989 the Ontario Municipal Insurance Exchange (OMEX) was established as a non-profit reciprocal insurance provider for Ontario's municipalities. It ceased operations in 2016 citing, "[a] low pricing environment, combined with the impact of joint & several liability on municipal claim settlements has made it difficult to offer sustainable pricing while still addressing the municipalities' concern about retro assessments."<sup>3</sup> (Retro assessments meant paying additional premiums for retroactive coverage for "long-tail claims" which made municipal budgeting more challenging.)

The demise of OMEX has changed the municipal insurance landscape in Ontario. That joint and several liability is one of the key reasons listed for the collapse of a key municipal insurer should be a cause for significant concern. Fewer choices fuels cost. While there are other successful municipal insurance pools in Ontario, the bulk of the insurance market is dominated by for-profit insurance companies.

Reciprocal non-profit insurers are well represented in other areas across Canada. Municipalities in Saskatchewan, Alberta, British Columbia are all insured by non-profit reciprocals.

The questions for policy makers in Ontario:

Are there any provincial requirements or regulations which could better support the non-profit reciprocal municipal insurance market?

What actions could be taken to better protect municipalities in Ontario in sourcing their insurance needs?

How can we drive down insurance costs to better serve the needs of municipal property taxpayers?

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<sup>3</sup> Canadian Underwriter, August 11, 2016 <https://www.canadianunderwriter.ca/insurance/ontario-municipal-insurance-exchange-suspends-underwriting-operations-1004098148/>

7a

## **Conclusion**

This AMO paper has endeavoured to refresh municipal arguments on the need to find a balance to the issues and challenges presented by joint and several liability. It has endeavoured to illustrate that options exist and offer the reassurance that they can be successfully implemented as other jurisdictions have done.

Finding solutions that work will require provincial and municipal commitment. Working together, we can find a better way that is fair, reasonable, and responsible. It is time to find a reasonable balance.

9a

**THE CORPORATION OF THE TOWNSHIP OF ESSA**

**BY-LAW 2022 - 08**

**A By-law to authorize municipal borrowing for current expenditures for 2022.**

WHEREAS the Council of the Corporation of the Township of Essa deems it necessary to borrow the sum of Two Million Dollars (\$2,000,000) to meet the current expenditures of the Corporation for the year, until the taxes are collected;

NOW THEREFORE BE IT ENACTED as a By-law of the said Corporation as follows:

1. The Mayor and the Manager of Finance are hereby authorized to borrow from the Bank of Nova Scotia from time to time by way of promissory note a sum or sums not exceeding at any one time, Two Million Dollars (\$2,000,000) to meet, until the taxes are collected, the current expenditures of the Corporation for the year.
2. The Mayor and the Manager of Finance are hereby authorized to sign on behalf of the Corporation and to furnish to the said Bank from time to time a promissory note or notes sealed with the corporate seal for the sum or sums so borrowed with interest at such rate as the said Bank may from time to time determine.
3. The Manager of Finance is hereby authorized and directed to furnish to the said Bank, as it may from time to time request, a statement showing the nature and amount of the estimated revenues of the current year not yet collected or of the estimated revenues of the Corporation as set forth in the estimates adopted for the next preceding year, that have not been repaid.
4. All sums borrowed from the said Bank shall, with interest thereon, be a charge upon the whole or any part or parts of the revenues of the Corporation for the current year and for any preceding years, as and when such revenues are received.
5. The Manager of Finance is hereby authorized and directed to apply in payment of all sums borrowed from the said Bank, with interest thereon, all of the money hereafter collected or received on account or realized in respect of the taxes levied for the current year and for any preceding years and all of the monies collected or received from any other source.
6. That this By-law shall come into force and take effect on the day it is finally passed.

READ A FIRST, AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY PASSED on this the 2nd day of February, 2022.

\_\_\_\_\_  
Sandie Macdonald, Mayor

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Lisa Lehr, Manager of Legislative Services

9a

**Appendix A to By-law 2022 - 08**

**AGREEMENT**

BETWEEN:

THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF ESSA  
(hereinafter called the "Corporation" of the one part);

and

THE BANK OF NOVA SCOTIA  
(hereinafter called the "Bank" of the other part);

WHEREAS a By-law passed by the Council of the Corporation on the 2nd day of February, 2022, provides authority to the Mayor and the Manager of Finance of the Corporation to borrow from the Bank the monies therein mentioned, and by such By-law this agreement was authorized; and

WHEREAS the Corporation desires to borrow the said monies by promissory notes and the Bank, in consideration of the execution of this agreement by the Corporation, has consented thereto subject to and upon the terms and conditions hereinafter set forth;

IT IS NOW HEREBY AGREED that the said monies may be borrowed by the Mayor and the Manager of Finance for the Corporation from the Bank upon the promissory notes of the Corporation signed by the Mayor and the Manager of Finance and sealed with the seal of the Corporation.

IT IS FURTHER AGREED that the Corporation shall repay the monies so advanced with interest on such date as shall be agreed with the Bank and in any event not later than the 31<sup>st</sup> day of December next ensuing.

As security for repayment of the monies so advanced by the Bank and interest thereon, all the revenues of the Corporation of whatever nature and kind are hereby charged to and in favour of the Bank, and the Bank shall have a lien upon all such revenues until the charge hereby and by said By-law created is satisfied.

IN WITNESS WHEREOF the Corporation has caused its corporate seal to be hereunto affixed under the hands of its Mayor and Treasurer on the date and year first above written.

THE CORPORATION OF THE TOWNSHIP OF ESSA.

\_\_\_\_\_  
Sandie Macdonald – Mayor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Carol Traynor – Manager of Finance

THE CORPORATION OF THE TOWNSHIP OF ESSA

BY-LAW 2022 – 09

**A By-law to authorize the levy and collection of an interim tax on all properties and property classes, and to establish the date(s) for payment of taxes, and to provide for penalty and interest.**

WHEREAS Section 317(1) of *The Municipal Act*, S.O. 2001, c.25, as amended, provides that the Council of a local municipality may, before the adoption of the estimates for the year under section 290, pass a by-law levying amounts on the assessment of property in the local municipality rateable for local municipal purposes; and

WHEREAS the Council of The Township of Essa deems it appropriate to provide for such interim levy on the assessment of property in this municipality; and

WHEREAS the *Municipal Act*, S.O. 2001, Chapter 25, Section 391 as amended, permits the imposition of fees or charges on persons for services provided or done by or on behalf of any other municipality; and

WHEREAS the *Municipal Act*, S.O. 2001, Chapter 25, Section 398(1) (2) as amended, permits that fees or charges constitute a debt of the person to the municipality and that such amount owing can be added to the Tax Roll and collected in same manner as municipal taxes; and

WHEREAS Section 345(2) of the *Municipal Act*, as amended, provides that Council may, by by-law, impose a percentage charge as a penalty for non-payment of taxes on any class or installment thereof not exceeding 1.25% on the first day of default and on the first day of each calendar month thereafter in which default continues.

NOW THEREFORE the Council of the Corporation of the Township of Essa enacts as follows:

ADMINISTRATION

- 1. That the amounts levied shall be as follows:
  - 1.1 For the Residential, Pipeline, Farmland and Managed Forest, Multi-Residential, Commercial and Industrial property classes there shall be imposed and collected an interim levy of:
    - (a) the percentage prescribed by the Minister under section 317(3) of the *Municipal Act*; or,
    - (b) 50%, if no percentage is prescribed, of the total taxes for municipal and school purposes levied on the property in the year 2021.
  
- 2. That the calculation of the amount shall be as follows:
  - 2.1 For the purposes of calculating the total amount of taxes for the year 2022, if any taxes for municipal and school purposes were levied on a property for only part of 2021 because assessment was added to the collector’s roll during 2021, an amount shall be added equal to the additional taxes that would have been levied on the property if taxes for municipal and school purposes had been levied for the entire year;



9b

BY-LAW 2022 – 09

PAGE 2

3. That the date(s) for payment of taxes levied under the authority of this By-law shall be as follows:  
Due date of First Interim Installment: Three banking days before the last banking day of March  
Due date of Second Interim Installment: Three banking days before the last banking day of June
4. That the date(s) for payment of taxes levied under the authority of the By-law to adopt the estimates of all sums required during the year for all purposes of the municipality for levying the rates and to expend, pledge or apply monies from reserve funds and contributions shall be as follows:  
Due date of First Final Installment: Three banking days before the last banking day of September  
Due date of Second Final Installment: Three banking days before the last banking day of November
5. That no discounts shall be allowed for punctual payment of any taxes or prepayment thereof.
6. That the Manager of Finance of the Corporation shall add to the amount of all taxes due and unpaid and levied under the authority of this By-law a penalty charge equal to one and one-quarter per cent (1.25%) of such amount and the penalty charge shall be added on the first day of the calendar month following the due date, and on the first day of each calendar month thereafter in which default continues but not after the end of the year in which the taxes are levied after which statutory interest of one and one-quarter per cent (1.25%) per month will apply.
7. That the Manager of Finance, no later than twenty-one (21) days prior to the date that the first installment is due, shall mail or cause to be mailed to the assessed owner as recorded in the last revised assessment roll, a tax notice setting out the amount of each installment, the date by which it is to be paid, and the penalty charge imposed for late payment.
8. That the taxes shall be payable to the Corporation on or before the due date and shall be payable at the Municipal Office, or at the Bank of Nova Scotia in Alliston and Angus, or at the TD Bank in Alliston and Angus, or via teller at the Royal Bank of Canada in Alliston. The resident (or presenter of the bill) will be responsible to pay any applicable service charge to the financial institution that accepts the payment. Electronic Fund Transfers (EFT) are available through a Pre-Authorized Payment Plan with the Township and Telephone EFT and EDI payments with various Financial Institutions. In addition, payment can be left after hours at the Municipal Office drop box on the lower level, side entrance. A pre-authorized payment plan can be arranged at the Municipal office. All payments shall be deemed to be paid to the Corporation on the date the Township receives the payment.
9. That except for accounts affected by tax registration procedures, the Manager of Finance and the Collector are hereby authorized to accept part payment from time to time on account of any such taxes that are due, and to give a receipt for such part payment, provided that acceptance of any such part payment shall not affect the collection of any penalty charges imposed and collectable in respect of non-payment of the taxes or any installment thereof.
10. That all taxes levied pursuant to an assessment made under the provisions of Sections 33 and 34 of the *Assessment Act*, as amended, shall be due and payable upon issue and mailing of a tax notice, and said taxes shall be collected on a date to be determined by the Manager of Finance or

11. Collector, with payments due and payable not less than twenty-one (21) days after the billing date. That there be imposed a handling fee of \$30.00 for any returned cheques.

CONFLICTING LEGISLATION

12. If this By-law conflicts with the provisions of any Act, other than the *Municipal Act*, the provisions of that Act prevail to the extent of the conflict.

VALIDITY AND SEVERABILITY

13. It is hereby declared that notwithstanding any section, subsections, clause, paragraph or provision of this By-law or parts thereof, may be declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or beyond the powers of Council to enact, such section or sections or parts thereof shall be deemed to be severable and that all other sections or parts of this By-law are separate and independent therefrom and enacted as such as a whole. Same shall not affect the validity or enforceability of any other provisions of this By-law or of the By-law as a whole.

Whenever any reference is made in this By-law to a statute of the Legislature of the Province of Ontario, such reference shall be deemed to include all subsequent amendments to such statute and all successor legislation to such statute.

ENFORCEMENT

14. This By-law shall be administered by the Manager of Finance of the Corporation of the Township of Essa.

FORCE AND EFFECT

15. That this By-law shall come into force and effect on the day of passing.

READ A FIRST, AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY  
PASSED on this the 2nd day of February, 2022.

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Sandie Macdonald, Mayor

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Lisa Lehr, Manager of Legislative Services

**THE CORPORATION OF THE TOWNSHIP OF ESSA**

**BY-LAW 2022-10**

**Being a By-law to confirm the proceedings of the Council meeting held on the 2<sup>nd</sup> day of February, 2022.**

THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ESSA HEREBY ENACTS AS FOLLOWS:

THAT the action of the Council at its meeting held on the 2<sup>nd</sup> day of February, 2022 and, in respect of each recommendation contained in the Minutes of the Regular Council meeting held on the 19<sup>th</sup> day of January, 2022 and the Committee of the Whole meeting held on the 19<sup>th</sup> day of January, 2022; and, in respect of each motion, resolution and other action passed and taken by Council at the said meetings, is, except where prior approval of the Ontario Municipal Board is required, hereby adopted, ratified and confirmed.

THAT the Mayor and the proper officials of the Township of Essa are hereby authorized and directed to do all things necessary to give effect to the said actions or to obtain approvals where required, and to execute all documents as may be necessary in that behalf and the Clerk is hereby authorized and directed to affix the Corporate Seal to all such documents.

READ A FIRST, AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY PASSED on this the 2<sup>nd</sup> day of February, 2022.

\_\_\_\_\_  
Sandie Macdonald, Mayor

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Lisa Lehr, Manager of Legislative Services