

# **The Corporation of the Town of Essex**

## **By-Law Number 1908**

### **Being a by-law to Authorize the Town of Essex Shoreline Assistance Loan Program and the undertaking of flood and shoreline control/mitigation works on private residential property as Local improvements.**

**Whereas** Part III of Ontario Regulation 586/06 authorizes Council to pass a by-law to undertake works on private residential property as local improvements for the purpose of raising all or part of the cost of the work by imposing special charges on lots upon which all or some part of the local improvement is or will be located; and

**Whereas** such a by-law may authorize the undertaking of works which satisfy the requirements of a Town program; and

**Whereas** at its meeting of September 16, 2019, Town Council authorized Administration to move forward with the finalization of a Shoreline Assistance Loan Program pursuant to the authority of Ontario Regulation 586/06;

**Now therefore**, the Council of The Corporation of the Town of Essex enacts as follows:

- 1.** That Council authorize the undertaking of flood/shoreline control/mitigation works on private property as local improvements on private property by agreement pursuant to the provisions of the Shoreline Assistance Loan Program, as set out in Appendix A to this By-law, for the purpose of raising all or part of the cost of the work by imposing special charges on lots upon which all or some part of the local improvement is or will be located; and
- 2.** That the Mayor and Clerk of the Town may execute Property Owner Agreements with eligible property owners of such properties substantially in the form shown as Appendix B to this By-law subject to such amendments from time to time as may be recommended by administration of the Town acting on the advice of the Town's solicitor.
- 3.** That this by-law comes into force and effect upon passage.

**Read a first, a second and a third time and finally passed on April 20, 2020.**

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Mayor

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Clerk

## **Appendix A**

### **Shoreline Assistance Loan Program Design**

#### **I. Outline of Program**

##### **1.0. Overview**

The Shoreline Assistance Loan Program is designed to extend municipal funding to consenting property owners for the installation of qualifying flood control/mitigation improvements and related designs and permits and then to secure payment by imposing a local improvement charge on the private residential property, as authorized by the Ontario Regulation 596/06 ("the Regulation").

Unless otherwise described herein, capitalized terms shall carry the meaning outlined in the Shoreline Assistance Loan Program (POA) attached hereto as Appendix A to this outline.

##### **1.1. Program Eligibility**

Shoreline properties located within the Town of Essex abutting Lake Erie.

The property must have a property tax account with the Town of Essex.

Participation is voluntary, owner-initiated and subject to the following conditions:

- All registered owner(s) of the property must consent to participating in the Program;
- Property tax, utility bills and all other payment obligations to the Town for the past two years must be in good standing;
- Consent from all mortgage lenders, if the property is subject to one or more mortgages; and
- Compliance with all other terms and conditions of this Program and the Property Owner Agreement.

##### **1.2. Expression of Interest**

Property owners initiate the process by providing an application in the Town's prescribed form (or otherwise contains sufficient information) that the Property Owner completes and submits to the Town's satisfaction that confirms the Property's eligibility to participate in the Program.

### **1.3. Permits and quotation**

This program works in a manner that compliments and necessitates compliance with the permitting requirements within the Town (where applicable) and with the Essex Region Conservation Authority (herein "ERCA"). The property owner must obtain all necessary permits from ERCA and the information on the permit will assist in detailing the intended improvements. The property owner will also be required to provide, to the satisfaction of the Town, information on the estimated lifetime of the improvements.

In addition, the property owner must provide a quotation from a contractor, to the satisfaction of the Town, to assist in the determination of the estimated cost of the improvement.

### **1.4. Funding under the Program**

An initial disbursement of up to 20% of the pre-qualified project costs can be accessed prior to completion of the work, once the above information is provided, together with a signed copy of the Shoreline Assistance Loan Program Property Owner Agreement (POA) prepared by the Town together with any other attachments required under this agreement.

Within 30 days of the earlier of (a) the Work being Substantially Performed or (b) the Completion Date, the Property Owner shall provide the Town with the Project Completion Report.

The Town shall then verify the completeness and accuracy of the Project Completion Report, and will disqualify the Property from any funding under this POA if the Project Completion Report is incomplete or, in the Town's sole opinion, provides inadequate information to qualify for funding under this POA.

The Town may, in its sole discretion, make any reasonable adjustments to the Actual Cost as evidenced on the Project Completion Report, and may, at the Property Owner expense, inspect or cause the inspection of the Work in accordance with Section 25 of this POA.

The Actual Cost as verified and adjusted by the Town in its sole discretion will constitute the Approved Final Cost.

The Funding Amount shall be the amount, that is the lesser of:

- (1) the Approved Final Cost;
- (2) the Estimated Cost plus Five (5) per cent of the Estimated Cost; and
- (3) the highest dollar amount that does not cause the Special Charge (Actual) to exceed the lesser of either 30 percent of Current Value Assessment for the

property or \$250,000, when the Town calculates the Special Charge (Actual) as set forth in Section 11(1) of the POA.

### **1.5. Completing the Works through Contractor Engagement**

The Town will provide funding to Property Owners for eligible improvements covered by the Program that have been approved and signed off by ERCA, verified by the Town and installed by contractors hired by the property owner. The Town will not pre-qualify contractors or procure contractors to perform or install Works on behalf of Property Owners in connection with this Program. The Property Owner will use the funds disbursed by the Town to pay contractors directly.

The Town is not responsible for the work quality of any contractors hired in connection with this Program and assumes no liability for the works undertaken. All improvements and Works must adhere to local codes and by-laws. The Property Owner is responsible for ensuring that hired contractors are licensed, bonded, and insured. Any issues that may arise relating to the quality of workmanship or post-installation performance of flood mitigation measures, for example, should be dealt with by the Property Owner and contractor.

### **1.6. Application Process**

The steps below outline the process and requirements Property Owners need to follow as part of the Program. Town staff will periodically review this process to ensure effective Program implementation and, where deemed appropriate, the Town may make changes in its sole discretion.

#### **Step 1: Pre-qualification**

Property Owners submit an Expression of Interest that includes, but is not limited to, the following information:

- Property address to confirm location is within eligible area of the Town;
- Property assessment roll number to confirm no outstanding payments owed to the Town in the last two years; and
- Evidence of mortgage lender consent (where applicable).  
If a Property Owner has one or more outstanding mortgage(s) associated with the property, then the Property Owner must obtain (at his or her own expense) consent from the mortgage lender(s) through a form that the Town will provide. Property owners will advise their mortgage lender(s) of their intention to participate in the Program and receive permission from the lender(s) (perhaps up to only a specific dollar amount) as a requirement of the Program.

Once the property owner has been prequalified by Town staff, based on the above criteria, the Town will provide Notice to Proceed to the Property Owner.

## **Step 2: Design of Works and Funding Request Form**

1. *Details of Improvements and ERCA approval.* Where not already provided in the Expression of Interest, the Property Owner shall supply sufficient design details describing the nature of the improvements and demonstrating how these works will impact or mitigate flooding and shoreline erosion. In addition, the estimated cost of the works can be included in the report or separately indicated on the Funding Request Form.

### *2. Funding Request Form*

The Property Owner also will need to submit a Funding Request Form that:

- identifies the improvements that the property owner intends to install based on the permit obtained by the Property Owner from ERCA;
- identifies the cost for each improvement (including equipment, materials and labour costs); and
- the amount of prepayment (up to a maximum of 20% of the estimated cost of the work) being requested from the Town upon signing the POA.

Following receipt of the Funding Request Form, the Town will:

- confirm the eligibility of the works (e.g. items affixed to property);
- verify the reasonableness of retrofit costs and labour costs by consulting manufacturer pricing and prevailing labour rates;
- calculate the administrative costs using a formula that apportions the cost to the Town to operate this program per individual property. (*n.b.* the "cost to the Town" includes recurring costs and any non-recurring costs not covered by the grant funding, if any, that the Town has obtained for the Program).

The above steps will enable the Town to derive the funding amount up to the maximum of either 30 percent of Current Value Assessment for the property or \$250,000 to include in the Property Owner Agreement.

## **Step 3: Property Owner Agreement**

After the Town has confirmed the acceptability of the details of the improvements, estimated costs, permit obtained from ERCA, and the Funding Request Form, the Town will prepare a property owner agreement ("POA"), in accordance with Appendix B (as amended from time to time at the discretion of the Town acting on the advice of its solicitor) for the Property Owner to review and sign.

## **Step 4: Completing Improvements**

### *1. Initial Funding Disbursement*

Following execution of the POA, the Town will provide the Property Owner with the initial disbursement agreed upon in the POA to a maximum of 20 percent of the estimated cost of the work that can be used by the Property Owner to pay contractors or suppliers (i.e. security deposit). The property owner will be contractually obligated to repay this initial disbursement to the Town if the property owner does not complete the improvements.

The property owner can proceed with hiring contractor(s) and performing the approved improvements to the property. The improvements must be completed within a reasonable timeframe, as stipulated in the POA, to be determined by the Town in its sole discretion.

### *2. Final Funding Disbursement*

As will be detailed in the POA, the Town will provide the final disbursement only after the Property Owner provides a Project Completion Report that:

- includes a Certificate of Completion that attests the approved shoreline improvement measures having been installed and provides a written verification from ERCA that its permit has been finalized to its satisfaction; and
- indicates the actual costs and useful life for all the works.

The Town shall then verify the completeness and accuracy of the Project Completion Report, can disqualify the Property from any funding if the Project Completion Report is incomplete or provides inadequate information to qualify for funding.

The Town may, in its sole discretion, make any reasonable adjustments to the Actual Cost as evidenced on the Project Completion Report, and may, at Property Owner expense, inspect or cause the inspection of the Work in accordance with Section 25 of the POA.

The Actual Cost as verified and adjusted by the Town in its sole discretion will constitute the Approved Final Cost.

## **Step 5: LIC Repayment**

Following the Town Treasurer's periodic certification of the local improvement roll, (which occurs after the improvements on a given set of properties are complete and the final amounts of funding are confirmed), the administration will submit a corresponding bill for Council to adopt a by-law pursuant to Section 36.14 of O.Reg 586/06 to impose the special charges on the participating properties. For each property included in the by-law, the Treasurer will then add to the Town's tax roll for that property each year that

portion of the imposed special charge that is due in that year. These collective steps will provide priority lien status for the annual amount that the Treasurer adds to the tax roll and will ensure that any subsequent property owner who was not a party to the POA is bound to pay that amount.

To facilitate repayment of the annual special charge, the POA will require Property Owners to sign-up for the pre-authorized payment plan option of 11 monthly instalments similar to the existing Program for property tax payments. At any time, a Property Owner can make advance payments, including a one-time payment of the total outstanding amount owing to clear the property of the LIC charge. Failure to make payments is treated with the same remedy as uncollected property taxes which may include penalties and interest charges.

### **1.7. LIC Disclosure**

As indicated above, the subsequent owner of a property on which the Town has imposed a special charge is required to pay the Town the annual LIC amount even though that subsequent owner was not a party to the original POA. In addition to notice that the Town will be giving in accordance with the provisions of O.Reg 586/06, the Town also will take the following steps to ensure even greater transparency of the LIC to interested parties by:

- i) posting on the City's website notice of the special charge by-law to impose the charge on the property in advance of its introduction and after its adoption; and
- ii) updating the Tax Certificate to include the full LIC amount, amount payable in the current year, outstanding amounts owing and a note to reference the by-law pursuant to which the special charge was imposed.

### **1.8. Quality Control**

As a means of additional oversight to confirm that the funded improvements were completed, the POA will indicate that the Town reserves the right to have a Town official or third party contractor arrange with the property owner for an inspection until such time that ERCA has issued a final approval of the Works and to audit the related documentation which must be retained by the Property Owner and be available for inspection..