



Special Board Meeting

Teleconference

1:00 pm

April 15, 2020

AGENDA

ROLL CALL

Agenda Review

Declarations of Interest (written)

1. Administrative By-law Amendment to implement Ministerial Directive March 23, 2020
3055/20

ADJOURNMENT

REPORT

3055/20

TO:	Board of Directors, MVCA
FROM:	Sally McIntyre, General Manager
RE:	By-law Amendments to Allow Electronic Meetings and the establishment of an Executive Committee during Emergencies
DATE:	April 8, 2020

Recommendation:

That the Board approve amendment of the MVCA Administrative By-laws as set out in Attachment 1.

1.0 PURPOSE

MVCA's Administrative By-law has no policies regarding moving into or out of a state of Emergency Operation or how the organization will be governed during emergency conditions when the General Members may be unable to meet and timely decisions are required. Specifically, the By-law does not provide for board quorum and voting to be achieved by electronic means. And, it does not provide for the assignment of executive powers to a smaller group to provide direction and approvals during emergency situations. The purpose of this report and the proposed by-law amendments is to address these gaps in governance.

2.0 BACKGROUND

The MVCA Administrative By-law closely follows a template developed by Conservation Ontario, which was implemented by most conservation authorities (CAs) in 2018. As such, the above gaps in governance are not unique to MVCA and have required collective action to address, specifically:

- Conservation Ontario (CO) worked with a subset of CAs and legal counsel to develop appropriate language to allow for electronic meetings that were reviewed by all CAs; and

- CO worked with the province to obtain a Ministerial Direction (Attachment 2) that allows CAs to hold electronic meetings during emergencies and to hold a special meeting to adopt the necessary by-law amendments.

3.0 MINISTERIAL DIRECTION

The Minister's Direction issued March 26, 2020 only applies during an emergency declared under the *Emergency Management and Civil Protection Act* and allows for:

- Board members to participate electronically in both open and closed meetings;
- Board members participating electronically to be counted towards quorum;
- Board members participating electronically to register votes electronically;
- Hearings and appeals to be conducted electronically; and
- The Board to postpone matters required by their Administrative By-law such as the holding of an Annual General Meeting.

The Direction also requires that meetings held electronically be open to the public. In discussions with other CAs and municipalities, this is being achieved through one or more of the following means:

- Formal request for written public input in advance of meetings and the sharing of that feedback at the meetings;
- The audio recording of teleconferenced meetings and uploading of the recording and any presentations to CA websites; and
- The use of live interactive tools such as Zoom, YouTube, and WebEx.

Lastly, all CAs must publish the Minister's Direction (Attachment 2), and make available to the public any by-laws amended per the Directive (Attachment 1.)

MVCA is currently examining alternative approaches to ensure public access to CA meetings, and may change its approach depending upon Board and public feedback. At present, the public is being invited to provide written comment by 11:00 am the day of the meeting, with comments circulated to Board members in advance of the meeting or read aloud at the appropriate item (depending on length and number.) Presentations will be published on the website at the same time they are distributed to Board members. Meeting notices and agenda will be published and posted in accordance with current business practices.

4.0 EMERGENCY OPERATIONS

Due to the urgent need to deal with the COVID-19 pandemic, escalation policies and procedures have been developed specifically for a pandemic event and are presented in detail in Staff Report 3052/20. The proposed by-law amendment will enable the emergency escalation procedure and governance structure set out in that report, specifically, it will allow:

- the General Manager to move into Emergency Operations in consultation with the Chair and Vice Chair of the Board of Directors;
- the General Manager to request establishment of an Executive Committee comprised of the Board Chair and Vice Chair, and the two Standing Committee Chairs;
- the General Manager to request other Board members to participate in the Executive Committee if one or more of the Chairs or Vice Chair are unable to fulfil their role on the Executive Committee.
- the Executive Committee to carryout a selection of executive functions as set out in Section B 1) c) Powers of the General Membership of the *MVCA Administrative By-law, 2018* as presented in Attachment 3.

Establishment of an Executive Committee is permitted under section 19 (1) of the *Conservation Authorities Act*, with section 19 (2) prescribing that the chair and vice-chair of the authority shall be the chair and vice-chair of the executive committee. There is no requirement in the Act that the Executive Committee only function during emergencies or that limits its powers. The proposed amendment *does not* provide for an Executive Committee to be established outside of an emergency operation. That can be considered at a future date if desired by the Board.

5.0 BY-LAW AMENDMENTS

The amendments set out in Attachment 1 and 3 are made in accordance with 19.1 (1) of the *Conservation Authorities Act*, that allows conservation authorities to make by-laws; and the Minister's Direction pursuant to subsection 19.1 (7) of the *Conservation Authorities Act*.

Amendments are proposed to the following sections:

- Section B. Governance, Subsection 1. Members, c) Powers of the General Membership
- Section C. Meeting Procedures, with the addition of Subsection 1B. Declared State of Emergency
- Section C. Meeting Procedures, with the addition of Subsection 1C. Emergency Operations

ATTACHMENT 1:

PROPOSED AMENDMENTS TO THE MVCA ADMINISTRATIVE BY-LAWS

- 1. Amend MVCA Administrative By-law, 2018 Section B Governance, Subsection 1. Members c) Powers of the General Membership by adding the following text after item xv:**

xvi. Where an Executive Committee is established under Section C Meeting Procedures subsection 1C Emergency Operations of the *MVCA Administrative By-law*, the Executive Committee may carryout items ii, iv, vi, and xv above on behalf of the Board until such time as MVCA moves out of Emergency Operations.

- 2. Amend MVCA Administrative By-law, 2018 Section C Meeting Procedures as follows:**

2.1. Renumber Subsection "1" to "1A." Rules of Procedure

2.2. Add subsection "1B. Declared State of Emergency", as follows:

During any period where an emergency has been declared to exist, in all or part of an area over which the Authority has jurisdiction, under Section 4 or 7.0.1 of the *Emergency Management and Civil Protection Act (EMCPA)*, that may prevent the General Membership from meeting in person, a Member may participate in meetings electronically and shall have the ability to:

1. register a vote;
2. be counted towards determining quorum; and
3. participate in meetings closed to the public.

During any period where an emergency has been declared to exist, in all or part of an area over which the Authority has jurisdiction, under Section 4 or 7.1 of the *Emergency Management and Civil Protection Act*, that may prevent the General Membership from meeting in person, any date or timeline requirement established under any Section in this By-law shall be postponed until such time as the General Membership can reasonably address the issue.

During any period where an emergency has been declared to exist, in all or part of an area over which the Authority has jurisdiction, under Section 4 or 7.1 of the *Emergency Management and Civil Protection Act*, the Authority shall implement best practices to make meetings of the Authority open to the public in accordance with Subsection 15(3) of the Act. Where possible, the Authority will provide for alternative means for the public to participate in meetings electronically.

During any period where an emergency has been declared to exist, in all or part of an area over which the Authority has jurisdiction, under Section 4 or 7.0.1 of the Emergency Management and Civil Protection Act, that may prevent the General Membership from meeting in person, any hearing or appeal dealt with in this By-law may be conducted electronically with provisions for applicants and their agents to participate if the Authority decides to hold any such hearing or appeal.

2.3. Add subsection 1C: Emergency Operations

The General Manager, in consultation with the Chair and Vice Chair of the Board of Directors, will determine whether the organization should move into or out of Emergency Operations.

Where it is no longer feasible for the General Membership to meet or the pace of change or other circumstance necessitates, the General Manager will request the Chair and Vice Chair of the Board and Standing Committee Chairs to assume executive functions as set out in Section B 1) c) xvi of the *MVCA Administrative By-law*. Other members of the Board may be asked to participate if one or more of the aforementioned Board Members is unable to fulfill this role.

ATTACHMENT 2: MINISTERIAL DIRECTIVE

**Ministry of the Environment,
Conservation and Parks**
Office of the Minister
777 Bay Street, 5th Floor
Toronto ON M7A 2J3
Tel.: 416-314-6790

**Ministère de l'Environnement,
de la Protection de la nature et
des Parcs**
Bureau du ministre
777, rue Bay, 5^e étage
Toronto (Ontario) M7A 2J3
Tél. : 416.314.6790

March 26, 2020

TO: Conservation Authorities as listed in the attached Schedule "A"

SUBJECT: Minister's Direction for Conservation Authorities during the COVID-19 Outbreak

As the COVID-19 outbreak continues to evolve locally and globally, I am writing to provide direction on how conservation authorities can continue operations while maintaining a safe physical distance. To ensure conservation authorities can continue to conduct meetings and hearings as necessary, we are giving conservation authorities the ability to amend their administrative by-laws to allow for virtual meetings, including by teleconference.

As such, I am issuing this Minister's Direction ("Direction") pursuant to subsection 19.1 (7) of the Conservation Authorities Act. This Direction applies to all conservation authorities in Ontario, listed in Schedule "A" as attached. For greater certainty, this Direction also applies to conservation authorities when meeting as a source protection authority under the Clean Water Act, 2006.

The Conservation Authorities Act requires that, "[e]very meeting held by the authority shall be open to the public, subject to such exceptions as may be specified in the by-laws of the authority." Further, at any meeting that is held, "a quorum consists of one-half of the members appointed by the participating municipalities, except where there are fewer than six such members, in which case three such members constitute a quorum". It has been brought to my attention that the administrative by-laws that conservation authorities have adopted pursuant to subsection 19.1 (1) of the Act may create barriers in meeting these provisions of the Act during this time of emergency, where in-person attendance may not be feasible.

The primary purpose of this Direction is to enable conservation authorities to convene a meeting electronically in order to make the necessary amendments to their by-laws to deal with emergencies. This Direction identifies the minimum areas where the by-laws should be amended, in the manner deemed appropriate by the authority, to make provision for emergency situations. However, each conservation authority, depending on their individual by-laws, may identify the need to make other necessary amendments to respond to emergencies.

Accordingly, I am directing that the conservation authority review and amend their by-laws, as applicable, to ensure they comply with the following Direction and take the other necessary steps as set out in this Direction.

Electronic participation, emergencies

1. During any period where an emergency has been declared to exist, in all or part of an area over which a conservation authority has jurisdiction, under section 4 or 7.0.1 of the Emergency Management and Civil Protection Act, that may prevent members of the authority from meeting in person, the by-laws provide:

- a. That members of the authority be permitted to participate in meetings electronically, which shall include the ability of those members participating electronically to register votes.
- b. That any member of the authority who is participating electronically in a meeting may be counted in determining whether or not a quorum of members is present at any point in time during the meeting in accordance with the requirement in subsection 16 (2) of the Conservation Authorities Act.
- c. That any member of the authority can participate electronically in a meeting that is closed to the public.
- d. That any hearing or appeal that is dealt with in the by-laws can be conducted electronically with provisions for applicants and their agents to participate, if the conservation authority holds any such hearing or appeal during any period where an emergency has been declared to exist.

Meetings open to the public

2. Conservation authorities must continue to implement best practices to make board meetings open to the public in accordance with subsection 15 (3) of the Conservation Authorities Act. Where possible, conservation authorities must provide for alternative means to allow the public to participate in any meetings electronically.

General, emergency measures

3. If there is anything that is required to be done under the by-laws during the emergency, including the holding of an annual general meeting, that the by-laws permit postponement to a later date.

Publication of information

4. The conservation authorities listed in Schedule “A” shall make this Direction publicly available on a website or other electronic means.

5. In accordance with subsection 19.1 (4) of the Conservation Authorities Act, an authority shall make any by-laws that are amended in accordance with this Direction available to the public in the manner it considers appropriate.

Implementation procedure

6. A conservation authority may hold a special meeting to amend a by-law for the purposes of implementing this Direction.

7. Despite any provision in a by-law made under subsection 19.1 (1) of the Conservation Authorities Act, members of the authority can participate electronically in any special meeting that is required to implement this Direction.

8. A member of the authority that is participating electronically in such a special meeting may be counted in determining whether or not a quorum of members is present at any time during the meeting.

Effective date

9. This Direction is effective immediately. If it is in the public interest to do so, I will provide further direction or clarification, at a later date, related to the matters set out in this Direction.

If you have any questions related to this Direction, please contact:

Chloe Stuart
Assistant Deputy Minister, Land and Water Division, MECP
Robinson Pl South Tower, 6th Floor
300 Water Street
Peterborough ON K9J 3C7
(705) 755-5341
chloe.stuart@ontario.ca

To learn more about how the province continues to protect Ontarians from COVID-19, please visit www.ontario.ca/coronavirus.

Sincerely,
Jeff Yurek
Minister of the Environment, Conservation and Parks

c: The Honourable Steve Clark, Minister of Municipal Affairs and Housing
The Honourable John Yakabuski, Minister of Natural Resources and Forestry
Ms. Kim Gavine, General Manager, Conservation Ontario

ATTACHMENT 3:

MVCA Administrative By-law Excerpt:

Section B Governance, 1. Members, c) Powers of the General Membership

Subject to the Act and other applicable legislation, the General Membership is empowered without restriction to exercise all of the powers prescribed to the Authority under the Act. In addition to the powers of an authority under s.21 of the Act for the purposes of accomplishing its object, as referenced in the introduction of this By-law model, the powers of the General Membership include but are not limited to:

- i. Approving by resolution at the Annual General Meeting, the creation of Committees and/or Advisory Boards, the members thereof and the terms of reference for these Committees and/or Advisory Boards;
- ii. Appointing a Chief Administrative Officer and/or Secretary-Treasurer;
- iii. Terminating the services of the Chief Administrative Officer and/or Secretary-Treasurer.
- iv. Approving, establishing and implementing regulations, policies and programs;
- v. Approve the establishment of special reserves for special projects or programs. The minimum amount for a restricted reserve shall be \$25,000.00;
- vi. Awarding contracts or agreements where the approval of the Authority is required under the Authority's purchasing policy.
- vii. Approving by resolution, any new capital project of the Authority;
- viii. Approving by resolution, the method of financing any new capital projects;
- ix. Approving details on budget allocations on any new or existing capital projects;
- x. Approving of the total budget for the ensuing year, and approving the levies to be paid by the Participating Municipalities;
- xi. Receiving and approving the Financial Statements and Report of the Auditor for the preceding year;
- xii. Authorizing the borrowing of funds on the promissory note of the Authority in accordance with subsection 3(5) of the Act;
- xiii. Approving by resolution, any proposed expropriation of land or disposition of land, subject to the requirements under the Act;
- xiv. Delegating to the General Manager or a designate the approval of permits as may be required under any regulations made under Section 28 of the Act.
- xv. Appointing a Regulations Committee (see Terms of Reference in Appendix 4) to conduct hearings for the purpose of reviewing permit applications pursuant to any regulations made under Section 28 of the Act, to deliberate on the evidence presented at the hearing, grant or deny such permission on behalf of the Authority and provide the applicant with reasons in writing thereof.
- xvi. **Where an Executive Committee is established under Section C Meeting Procedures subsection 1C Emergency Operations of the MVCA Administrative By-law, the Executive Committee may carry out items ii, iv, vi, and xiv above, on behalf of the Board until such time as MVCA moves out of Emergency Operations.**

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