

The Corporation of the Township of Huron-Kinloss



BY-LAW

2022-133

Being a By-Law to Authorize the Signing of a Memorandum of Agreement
with B.M. Ross and Associates Limited for Part 8 Services under the
Ontario Building Code for the Township of Huron-Kinloss

WHEREAS the *Municipal Act S.O. 2001, c 25, Section 5(1)*, as amended, provides that the powers of a municipal corporation are to be exercised by its Council;

AND WHEREAS the *Municipal Act S.O. 2001, c 25, Section 5(3)*, as amended, provides that a municipal power, including a municipality's capacity rights, powers and privileges under Section 9; shall be exercised by By-Law;

AND WHEREAS the Council for the Corporation of the Township of Huron-Kinloss deems it expedient to enter into a Memorandum of Agreement with B.M. Ross and Associates Limited regarding the Sewage System Management Program under Part 8 of the Ontario Building Code Act for the Township of Huron-Kinloss;

NOW THEREFORE the Council of the Corporation of the Township of Huron-Kinloss enacts as follows:

- 1.0 That the Corporation of the Township of Huron-Kinloss enter into a Memorandum of Agreement with B.M. Ross and Associates Limited for Part 8 Services under the Ontario Building Code attached as Schedule "A" and forming part of this By-Law.
- 2.0 That the Deputy Mayor and Deputy Clerk are hereby authorized to sign on behalf of the Council for The Corporation of the Township of Huron-Kinloss, any documents required to authorize the agreement, and to affix the corporate seal of the Township of Huron-Kinloss.
- 3.0 This By-law shall come into full force and effect upon passing.
- 4.0 This By-law may be cited as the "Agreement Part 8 Services – B.M. Ross and Associates By-Law".

READ a FIRST and SECOND TIME this 18th day of July, 2022

READ a THIRD TIME and FINALLY PASSED this 18th day of July, 2022

Don Murray Deputy Mayor

Kelly Lush, Deputy Clerk

MEMORANDUM OF AGREEMENT

Between

THE CORPORATION OF THE TOWNSHIP OF HURON-KINLOSS
(herein referred to as the Township)

and

B.M. ROSS AND ASSOCIATES LIMITED
(herein referred to as BMROSS)

Regarding

SEWAGE SYSTEM MANAGEMENT PROGRAM
(UNDER PART 8 OF THE ONTARIO BUILDING CODE ACT
(herein referred to as the Program))

1.0 Introduction

The Township of Huron-Kinloss is responsible for the enforcement of the *Ontario Building Code Act* (the Act) within their jurisdiction. The Act allows for municipalities to enter into an agreement with third parties or an outside agency for the enforcement of the Act and the Ontario Building Code (OBC) as related to sewage systems. Previous to 2012, the Grey Bruce Health Unit (GBHU) had been providing administration and enforcement of the OBC, Part 8 (Sewage Systems). However, on January 21, 2011, the Township was given written notice advising that the Health Unit would be relinquishing their responsibility for the Part 8 program effective January 31, 2012. Since that date BMROSS has been administering the Program on behalf of the Township.

The Ontario Building Code, Part 8 governs the design, construction, operation and maintenance of various classes of sewage systems located within residential, commercial and industrial properties. This legislation deals with sewage systems having a daily sewage flow up to 10,000 litres per day for a single property. Sewage systems with daily sewage flows above that level and/or located off-lot (communal) are regulated by the Ontario Ministry of the Environment, Conservation and Parks.

Section 3 (2) of *the Act* requires councils of municipalities to appoint a qualified Chief Building Official (CBO) and qualified inspectors to carry out the enforcement of the *Building Code*.

2.0 Purpose

The Township is engaging BMROSS to assist it in managing the Program. The purpose of this Memorandum of Agreement is to document how the Program is to be carried out in the Township as of January 01, 2023, particularly to set out the scope of services provided by BMROSS on behalf of the Township for this Program and to document responsibilities, timing, costs, liabilities and governance for the length of the Agreement.

3.0 Scope

The Township is the Principal Authority under the Building Code Act. As such they will carry out specific duties of managing the Program and overseeing the duties of BMROSS. An explanation of the duties and responsibilities is set out in a BMROSS Report to the Township of February 5, 2015 titled *Township of Huron-Kinloss Ontario Building Code, Part 8, Sewage System Program Management Agreement*, which forms part of this Memorandum of Agreement and is attached as Appendix “A”.

A summary of the responsibilities of each party is as follows:

- Under the direction and license of the Township CBO, BMROSS will be responsible for the enforcement of the Building Code Act and Ontario Building Code under the authority of the Township CBO, as related to sewage systems including the hiring of qualified inspection staff; investigation of complaints; initiating legal action for compliance; and provision of all related documentation to the Township.
- Township staff will be responsible for general inquiries; processing applications; collection of application fees; and filing of documents.

4.0 Term of the Agreement

This Agreement shall be in force for the period commencing January 01, 2023 and ending on December 31, 2030. Either party may terminate this Agreement on not less than 12 months written notice. BMROSS undertakes this assignment based on its concurrent undertaking of the Septic Inspection Program, which is subject to a separate Memorandum. Termination of BMROSS undertaking that Program will result in the termination of this Agreement.

5.0 Fees for Service

The Report on the Management Agreement, Appendix “A” of this Memorandum of Agreement, sets out a proposed Application Fee Schedule, including Permit Fees for Sewage Systems and fees for the review of specific application types. It also sets out the division of these fees between the Township and BMROSS based on the duties assigned to each party. This fee schedule shall form the basis of the fees for the first year of the agreement. The appropriateness of the fees will be reviewed annually by the Township and BMROSS, based on the experience of the delivery of

the Program, any changes to the duties of the parties, and the impact of inflation on the costs of the Program. Changes to the fee schedule will be agreed upon by both parties. If an agreement cannot be reached, BMROSS reserves the right to request and receive an increase to their share of the fee schedule based on the Statistics Canada Consumer Price Index, Table 1 Consumer Price Index and major components, Canada – not seasonally adjusted, for the previous year.

6.0 Force Majeure

Any delay or failure of either party to perform its obligations under this Agreement shall be excused and this Agreement is suspended if, and to the extent that, the delay or failure is caused by an event or occurrence beyond the reasonable control of the party and without its fault or negligence, such as, by way of example and not by way of limitation, acts of God, fires, floods, windstorms, riots, pandemics, labour problems (including lockouts, strikes, and slow-downs) or court injunctions or orders.

In WITNESS WHEREOF the parties have executed this Memorandum of Agreement as of the _____, 202_:

THE CORPORATION OF THE TOWNSHIP OF HURON-KINLOSS

Mayor, Mitchell Twolan

Date

Clerk, Emily Dance

Date

B.M. ROSS AND ASSOCIATES LIMITED

Matthew Pearson, Senior Planner & Principal

Date

B. M. ROSS AND ASSOCIATES LIMITED
Engineers and Planners
62 North Street, Goderich, ON N7A 2T4
p. (519) 524-2641 • f. (519) 524-4403
www.bmross.net

APPENDIX “A”

TO

MEMORANDUM OF AGREEMENT

February 5, 2015

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**TOWNSHIP OF HURON-KINLOSS
ONTARIO BUILDING CODE, PART 8, SEWAGE SYSTEM PROGRAM
MANAGEMENT AGREEMENT**

1.0 BACKGROUND

The Township of Huron-Kinloss is responsible for the enforcement of the *Ontario Building Code Act* (the Act) within their jurisdiction. The Act allows for municipalities to enter into an agreement third parties for the enforcement of the Act and the Ontario Building Code (OBC) as related to sewage systems. Prior to 2012, the Grey Bruce Health Unit (GBHU) had been providing administration and enforcement of OBC, Part 8 (Sewage Systems). However, on January 21, 2011, the Township was given written notice advising that the Health Unit would be relinquishing their responsibility for the Part 8 program effective January 31, 2012. Effective that date BMROSS assumed these responsibilities on behalf of the Township

BMROSS has been providing administration of the Township’s Community Septic Inspection program since its inception in 2007, with the GBHU providing the septic system inspections. In 2011, BMROSS took over full responsibility of the program including provision of the inspections with the hiring of an on-site sewage inspector qualified under the OBC.

2.0 LEGISLATION

The Ontario Building Code, Part 8 governs the design, construction, operation and maintenance of various classes of sewage systems located within residential, commercial and industrial properties. This legislation deals with sewage systems having a daily sewage flow up to 10,000 litres per day for a single property. Sewage systems with daily sewage flows above that level and/or located off-lot (communal) are regulated by the Ontario Ministry of the Environment, Conservation and Parks.

Building Code Qualifications

Section 3 (2) of *the Act* requires councils of municipalities to appoint a qualified Chief Building Official (CBO) and qualified inspectors to carry out the enforcement of the *Building Code*.

Building Code Act Fee Provisions

To pay for the costs of providing *Building Code* services, municipalities are permitted to charge fees for processing building permit applications. The Act requires that permit fees not exceed “the anticipated reasonable costs to administer and enforce the *Building Code* during building construction”. In addition, municipalities are required to prepare annual reports that record the amount of fees received and the costs incurred in administering the process.

Ontario Regulation 305/03 expands on the requirements, specifying that annual reports must record both the direct and indirect costs of reviewing application and conducting building inspections. In this regard:

- direct costs include the costs of reviewing building permit applications and inspecting buildings; and
- indirect costs include the support and overhead costs of administering and enforcing the process.

Annual reports must also include the balance of any building permit reserve funds municipalities may have.

Regulation 305/03 also sets out the requirements for a public process that must accompany the setting of fees, including:

- holding at least one public meeting;
- providing 21 days notice of the public meeting; and
- providing in the notice an estimate of the costs of providing Building Code services, the amount of the new fees, and the rationale for new fees.

Section 7 of the Act gives municipalities the authority to prescribe fees for building permits. Specifically, Section 7(2) of the Act states that “the total amount of the fees authorized under clause (1) (c) must not exceed the anticipated reasonable costs of the principal authority to administer and enforce this Act in its area of jurisdiction”. The fees collected are to be kept in the Building Department to enforce the *Ontario Building Code*. The municipality is to run the Building Department on a “full cost recovery” basis and ensure that it be funded by the user, not the rate payer.

Section 7(6) states that if a principal authority proposes to change any fee imposed for a building permit that 21 days notice shall be given and a public meeting held.

If there is a surplus of fees after all costs are covered, the municipality must keep the excess in a reserve fund that is carried over to the next fiscal year. There is no limit to the amount specified in the Act with respect to the size of the reserve fund. Reserve funds can only be spent on Building Department related expenses. In most cases, the funds will be used to offset slower construction years.

Code Timelines

The Township has two days from the time the permit application is received, to notify the applicant if the permit cannot be issued. If the permit can be issued, there are specific time frames that the permit must be issued. The time frames vary on the complexity of the application (i.e., single dwelling vs. large industrial building). Once an application is considered complete, the permit application must be reviewed within ten business days starting the day after it is considered complete.

Once the permit is issued, the applicant(s) are notified that the permit is ready for pick-up. An inspection information sheet should be issued with every permit that indicates to the applicant what stages they must call for an inspection. A typical sewage system could require up to four inspections. When the inspection request is called in, inspections must be carried out within 48 hours. The goal is to ensure that the contractors work is not held up.

3.0 PROGRAM DELIVERY

Municipal staff would be responsible for the following:

- general inquires
- printing of application documents
- providing and receiving application documents
- collecting of fees
- filing of relevant documents.

BMROSS would be responsible for the following:

- appropriate and qualified inspectors for the enforcement of Part 8 of the Ontario Building Code
- all required paperwork (i.e., applications, forms, etc.)
- develop public awareness information (i.e., website)
- develop policies and procedures for staff involved in program delivery
- application and plan review for all OBC Part 8 applications as well as consultation and assistance
- response and comment for all circulated applications under the planning act such as consents, zoning, minor variance, etc.
- permit issuance or refusal with the time lines as set out in the OBC
- conduct all necessary site inspections to determine compliance with the OBC and all related legislation

- all services noted provided on a cost recovery basis based on permit fees
- maintain all appropriate records in relation to Part 8 enforcement and make these records available to the Township
- any other matters related to the administration or enforcement of the Act or OBC relating to sewage systems
- complaint investigation and enforcement for systems installed and not maintained according to the Act including (but not limited to) issuing orders and appropriate legal action

Complaint Investigations

Complaint investigations would not be covered in the fee schedule and would be charged on an hourly rate including mileage. Complaints regarding malfunctioning septic systems fall under the jurisdiction of the Act which regulates the construction, operation and maintenance of septic systems. Section 15(1) of the Act provides authority for enforcement agencies to conduct inspections of potentially unsafe on-site sewage systems. Section 15(2.1) deems a sewage system (as defined) to be “unsafe” for this purpose if it is not maintained or operated in accordance with the Act and the OBC. An inspector who finds a contravention of the Act or OBC can issue an order to the responsible party.

Complaints would initially be reviewed by the Township CBO, who would determine if further investigation was warranted and if so would forward the complaint to BMROSS.

Consultations

Consultation includes but is not limited to requests for services not normally covered in the fee schedule or by regulation. Examples are: pre-assessment of lots or sewage systems prior to submission of permits or applications, and meetings as requested by the Township.

4.0 PROGRAM COST

Historically, sewage system revenue has been reviewed periodically and calculated to ensure stability for the program, to meet OBC requirements, and to anticipate for a construction slow down. The last review and permit fee increase for the Huron-Kinloss Part 8 program was in 2015.

The majority of permits have been for new or replacement Class 2, 3, 4, or 5 systems. In the period 2015-2021, an average of 64 permits were applied for and processed annually by the Township.

The anticipated costs for administration and enforcement of the Part 8 program, including calculation of direct and indirect costs, and calculation of revenue, has been reviewed. At this time BMROSS recommends that the current fee schedule be left unchanged. This schedule is subject to yearly review and adjustment.

Application Type	Current
Class 2, 3, 4 or 5 new or replacement system	\$750.
Class 4 or 5 tank replacement	\$400.
Class 4 leaching bed repair	\$400.
Demolition Permit	\$125.
Revision or Renewal of Permit	\$50.
Building Alternation/Change of Use	\$200.
Property Inquiry/File Search	\$175.
Copy of Permit/Application	\$35.
Permit Transfer	\$75
Zoning By-law Amendment (per application)	\$175
Consent (Severance) (per each lot created)	\$175

5.0 CURRENT APPLICATION FEE STRUCTURE

SEWAGE SYSTEM PERMIT FEES

Application Type	Current Fee	BMROSS (81% of fee)	Township (19% of fee)
Class 2, 3, 4 or 5 new or replacement system	\$750.	\$610	\$140
Class 4 or 5 tank replacement	\$400.	\$325	\$75
Class 4 leaching bed repair	\$400.	\$325	\$75
Demolition Permit	\$125	\$100	\$25
Revision or Renewal of Permit	\$50	\$40	\$10
Building Alteration/Change of Use*	\$200	\$165	\$35
Property Inquiry/File Search (includes copies of permits/applications)	\$175	81%	19%
Copy of Permit/Application	\$35.	n/a	100%
Permit Transfer	\$75	n/a	100%

Notes:

*A \$200 credit shall be applied to a new sewage permit application in cases where a building alteration appraisal has required a new or altered sewage system be installed.

Refunds

- A minimum of \$215 shall be retained for any application that is withdrawn.
- An additional \$125 shall be retained if a site visit was completed.
- No fee is refundable after a permit has been issued.

APPLICATION REVIEW FEES

Application Type	Current Fee
Zoning By-law Amendment (per application)	\$175.
Consent (Severance) (per each lot created)	\$175.
Draft Plan of Subdivision Note: 0.3 metre reserve blocks shall not be included in the calculation of the number of blocks	\$50. per lot/block min. \$500. max. \$6000.
Draft Plan of Condominium (flat fee per application)	\$500.
Private Multi-Lot Residential Development (as an OPA and/or ZBA)	\$50. per lot/block min. \$500. max. \$6000.
Other Types of Applications not Noted Above	\$125.

Notes and Definitions: Fees for multiple joint applications made at the same time for the same parcel and for the same development proposal for Zoning By-Law Amendments, and Consents will be discounted as follows:

First Application: full fee as per application review fee above

Additional Applications: 50% of the full application review fee per lot/application

The first application review fee shall always be the higher of the applicable fees

6.0 SUMMARY

- Under the direction and license of the Township CBO, BMROSS will be responsible for the enforcement of the Building Code Act and Ontario Building Code, as related to sewage systems including the hiring of qualified inspection staff; investigation of complaints; legal action; and provision of all related documentation to the Township.
- Township staff will be responsible for general inquiries; processing applications; collection of application fees; and filing of documents.
- A by-law will need to be passed by Council authorizing BMROSS to assume the Part 8 Program.
- BMROSS recommends certain application permit and review fees as discussed in this report.