

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

By-Law 2014-094

Being a bylaw to establish a municipal service board to control and manage activities at the Newcastle Village Community Hall

WHEREAS pursuant to an Indenture dated July 30, 1923 (the "Massey Trust"), Chester Daniel Massey agreed to convey the land and the building now known municipally as the Newcastle Village Community Hall, 20 King Avenue West, which is legally described as Part of Lot 28, Concession 2, former Village of Newcastle, now in the Municipality of Clarington, designated as Lots 2, 3 and 4 on Block "A" on the plan of the Village of Newcastle (the "Property") to The Corporation of the Village of Newcastle upon certain trusts; and

WHEREAS By-Law No. 723 passed by the Municipal Council of the Village of Newcastle on December 14, 1959 established the Newcastle Village Community Hall and appointed a board under the *Community Centres Act, 1949* to manage the Property; and

WHEREAS by virtue of paragraph 2(1)(c) of *The Regional Municipality of Durham Act, 1973*, S.O. 1973 c.78, The Corporation of the Village of Newcastle amalgamated with The Corporation of the Township of Clarke and The Corporation of the Township of Darlington and continued as a town municipality under the name The Corporation of the Town of Newcastle effective January 1, 1974; and

WHEREAS by virtue of section 148 of *The Regional Municipality of Durham Act, 1973*, (a) the Newcastle Village Community Hall Board was dissolved as of December 31, 1973; (b) the Council of The Corporation of the Town of Newcastle was deemed to be the board of the Newcastle Village Community Hall under the *Community Recreation Centres Act, 1974*; and (c) the assets and liabilities of the Newcastle Village Community Hall Board became the assets and liabilities of The Corporation of the Town of Newcastle; and

WHEREAS by virtue of subsection 1(2) of *The Regional Municipality of Durham Amendment Act (Newcastle-Clarington), 1993*, S.O. 1993 c.3, on July 1, 1993 The Corporation of the Town of Newcastle was continued as a town municipality under the name of The Corporation of the Municipality of Clarington (the "Municipality"); and

WHEREAS the *Community Recreation Centres Act, 1974* was repealed effective January 1, 2003; and

WHEREAS section 196 of the *Municipal Act, 2001* authorizes the Council of a Municipality to establish municipal service boards; and

WHEREAS section 198 of the *Municipal Act, 2001*, S.O. 2001 c.25 provides that a municipality may give a municipal service board the control and management of such services and activities of the municipality as the municipality considers appropriate and shall do so by delegating the powers and duties of the municipality to the board; and

WHEREAS the Council of the Municipality ("Council") wishes to formally establish a municipal service board to control and manage the Newcastle Village Community Hall in a manner consistent with the Massey Trust.

NOW THEREFORE Council hereby enacts as follows:

Name

1. Subject to section 2 of this By-law, the building located on the Property shall be always known and referred to as the "Newcastle Village Community Hall".
2. For purposes of this By-law only, the building on the Property is referred to as the "Hall".

Board

3. Council hereby establishes a municipal service board to control and manage the Property as set out in this By-law. The Board shall be known as the "Newcastle Village Community Hall Board".

Board Composition

4. The Board shall have 7 directors who shall be appointed/elected as follows:
 - (a) 3 directors shall be appointed by the Council from among the citizens of Newcastle Village;
 - (b) 2 directors shall be elected from among the citizens of Newcastle Village at a meeting of the citizens of Newcastle Village called for that purpose; and
 - (c) Council shall appoint the Ward 4 Local Councillor and the Wards 3 and 4 Regional Councillor to the Board.
5. For purposes of this By-law, "Newcastle Village" shall be the area shown on the Map attached to this By-law as Schedule "A".
6. Every director of the Board appointed under section 4(a) and elected under section 4(b) shall hold office for two years from the date of his or her appointment or election and until his or her successor is appointed or elected. The two Councillors appointed under section 4(c) shall hold office for the term of Council.
7. The 3 Council appointments to the Board under section 4(a) shall be made at the beginning of the term of Council and again two years after the initial appointments.
8. The elections for the 2 directors to the Board under section 4(b) shall take place every two years from January 2012.
9. If a director does not complete his or her two-year term, a new director may be appointed by the remaining directors for the remainder of the vacating director's term.
10. The Board may have a Board Chair, committee chairs and such other positions as it deems necessary for the proper administration of the Board. The Board shall elect directors to such positions, and all such directors shall hold their positions at the pleasure of the Board or for such period as the Board may prescribe.
11. The Operations Department of the Municipality shall assign a representative who will act as a staff liaison to the Board. As the Municipal staff liaison, this individual will attend Board meetings as a non-voting resource person when requested.

Remuneration

12. The directors shall serve without remuneration.

Quorum

13. Four directors of the Board shall constitute a quorum.

Meetings

14. The Board may fix the times and places for its meetings, establish the mode of calling and conducting its meetings, and make regulations governing the conduct of its directors.
15. The meetings of the Board shall be open to the public and no person shall be excluded from a Board meeting except for improper conduct or for reasons set out in subsection 239(2) of the *Municipal Act, 2001*.

Records

16. The Board shall keep minutes of its meetings and all books papers and documents used in and pertaining to the business of the Board and all such minutes, books, papers and documents shall be open to the members of Council and to any other person or persons appointed for that purpose by Council in accordance with the *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56*.

17. The minutes of all Board meetings shall be submitted to the Municipal Clerk within ten (10) business days following ratification by the Board.

Conflict of Interest

18. Directors shall be governed by the *Municipal Conflict of Interest Act*, R.S.O. 1990, c. M.50 which requires them to declare a conflict of interest if they or any member of their family has a pecuniary interest in a matter before the Board. The declaration of a conflict of interest and any subsequent action taken by the Board relating to matter in respect of which the declaration was made shall be recorded in the minutes of the meeting as required under *Municipal Conflict of Interest Act*.
19. No director or employee of the Board shall have any contract, other than employment, with the Board or have any pecuniary interested direct or indirect in any contract work relating to the operations or functions of the Board.

General Board Mandate

20. The Board may make such decisions as are necessary for the proper operation and management of the Property in a manner that is consistent with the terms of the Massey Trust and this by-law.
21. The Board shall at all times act in accordance with all legislation affecting the Board, its employees, its operations and all of its actions.

Repairs and Maintenance

22. The Board shall be responsible for such day-to-day repair and maintenance of the Property as it deems proper or necessary to keep the Property clean and in good condition.
23. The Board shall provide daily maintenance from an operational perspective including custodial care and snow clearing.
24. In consultation with the Municipality's Director of Operations, the Board shall plan and provide for any internal improvements to the Hall.
25. The Municipality shall be responsible for the building envelope and physical plant through its annual budget process. Neither the Board nor its employees shall physically alter or contract to alter any physical aspect of the Hall or the grounds without prior written Council approval.
26. Any repairs or maintenance work undertaken on the Property, whether structural or otherwise, shall be undertaken in a manner that reflects the Property's designation under section 29 of the *Ontario Heritage Act*, R.S.O. 1990, c. O.18 as a property which has historic or architectural value or interest (Municipal By-Law 93-147).

Use

27. The Property may be used for such purposes as in the judgment of the Board tend to the advancement of the community in education and knowledge of the arts, in particular,
 - (a) music and drama;
 - (b) the promotion of the cause of health and temperance;
 - (c) the cultivation of good citizenship and patriotism;
 - (d) the encouragement of recreation;
 - (e) the promotion of public welfare and religious work; and
 - (f) the holding and giving of public and other meetings and entertainments which may be consistent with any such purposes.
28. The Board shall not permit any person to lease, license or otherwise use the Property other than for non-profit purposes other than single day auctions that have been licensed by the Municipality.
29. The Board may,

- (a) fix the hours when the Hall will be open to the public;
- (b) establish rates, fees or charges for admission to, or use of, the Property; and
- (c) adopt policies or rules for the use or rental of the Property.

Procurement

30. In accordance with subsection 270(2) of the *Municipal Act, 2001*, the Board shall adopt procurement policies. The Municipal purchasing by-law may be used as adapted by the Board to the specific requirements of the Hall.

Agreements

31. The Board may enter into,
- (a) rental agreements with terms not exceeding 3 years;
 - (b) employment contracts (subject to section 34); and
 - (c) agreements for normal operating or administrative matters that are within budgetary limits and are consistent with the terms of the Massey Trust and this by-law.
32. Except as permitted by section 31, the Board shall not enter into any agreement which has the potential to commit funds, oblige or encumber the Municipality, or incur any debt or long term financial obligation without prior written Council approval.

Employees

33. The Board shall adopt hiring policies with respect to the hiring of its employees and shall abide by all applicable laws governing employment practices.
34. The Board may employ such full time and part time persons as the Board considers necessary on such terms as it considers appropriate. All contracts of employment shall contain a clause stating that the employee shall not be considered a Municipal employee, or have any claim against the Municipality for any employment action or decisions by the Board.

Financial

35. All moneys received by the Board from time to time from or in respect to any portion of the Hall shall be applied and extended in payment of the actual operating expenses of the Hall such as heating, lighting and janitor service.
36. Any on-going surplus remaining after payment of the actual operating expenses of the Property shall be turned over to the Municipality for the formation of a fund which shall from time to time to be used as may be necessary or desirable by the Municipality for rebuilding, repairing, re-fitting, improving or further equipping the Property so as to keep it from time to time well and thoroughly adapted for fulfilling the purposes described in section 27.
37. If at any time for any cause or reason the revenues from the Hall are not sufficient for its proper maintenance and use then the Municipality shall be responsible for such deficiency.

Budget

38. On or before November 1st in each year, the Board shall prepare and submit to Council an estimate of its financial requirements for the ensuing financial year and the Municipal Director of Finance shall pay to the Board out of the moneys appropriated for it by Council such amounts as may be requisitioned from time to time or shall pay the accounts approved by the Board directly in respect to and to the limitations of the approved budget revenues and appropriation. The Board shall only use those funds for the purposes identified in its estimate of its financial requirements approved by Council.

Legacy Funds

39. Under the Will of the late Thomas Montague, who died on or about March 24, 1928, a trust (the "Montague Trust") was established in favour of the Municipal Council of the Village of Newcastle for the use and benefit of the Hall.
40. By an agreement dated May 11, 1983, the Municipality assumed responsibility for the Montague Trust and the funds held under the Montague Trust (the "Montague Trust Funds") which as of the date of this by-law are approximately \$19,500.
41. The Montague Trust contains the following provision:

To set aside the sum of Ten Thousand dollars (\$10,000) and to invest and keep invested, and the net annual income derived from such investment to pay in perpetuity to the Municipal Council of the Village of Newcastle, to be applied by such Municipal Council for the use and benefit of the Community Hall in the said Village of Newcastle.
42. Under the Will of the late Irene Rinch, who died on July 16, 2006, a trust (the "Rinch Trust") was established to provide funding for the maintenance and improvement of the Hall.
43. By an agreement dated March 26, 2007 (the "Rinch Trust Agreement"), the Municipality assumed responsibility for the Rinch Trust and the funds held under the Rinch Trust (the "Rinch Trust Funds") which as of the date of this by-law are approximately \$157,000.
44. The Rinch Trust Agreement requires that the Rinch Trust Funds are to be used "to maintain, improve and preserve" the Hall which may include "decorating, landscaping, renovation of interior space, upgrades to facilities such as kitchen equipment or bathroom fixtures, and other improvements inside and outside the building structure". The Rinch Trust Agreement also contains some restrictions on the capital of the Rinch Trust Funds.
45. All legacy funds, including the Montague Trust Funds and the Rinch Trust Funds, shall be invested on the Board's behalf and accessible by request of the Board, subject to the specific requirements or restrictions of any applicable trust agreement or will and the provisions of this by-law.
46. All future legacy funds shall be forwarded within 10 business days after receipt by the Board to the Municipality along with all original documentation supporting such bequests.

Donations

47. The Board shall keep distinct and regular accounts of its receipts (including any private donations received by it and the terms, if any, upon which such donations were made), payments, credits and liabilities. All receipts for tax purposes must be issued by the Municipality in accordance with the requirements of the Canada Revenue Agency.

Development Funds

48. The Board may, with the approval of Council, establish a development fund into which donations and net revenues, if any, may be placed for future Hall development projects and may apply any private donations in such manner as it deems advisable but not inconsistent with the terms upon which any amount was donated. Any funds intended for purposes beyond the calendar year will be automatically turned over to the Municipality prior to December 31st of the year of receipt of funds, for deposit into Municipal accounts identified for Board purposes with the exception of the funds required by the Board for on-going operational requirements, and will be maintained by the Municipality's Director of Finance.

Assets

49. A physical or tangible asset used, assigned, donated or acquired by the Board is the property of the Municipality.

Audit

50. Immediately after its accounts and transactions have been completed for a calendar year, the Board shall submit its financial records to the Municipality's Director of Finance for audit.
51. The accounts and transactions of the Board shall be audited by the Municipal Auditor in the same manner as the accounts of the Municipality and all minutes, books, records, documents, transactions, accounts and vouchers of the Board shall be open to the Municipal Auditor's inspection at all times.


Insurance and Risk Management

52. The Municipality shall be required to take out and maintain insurance on the Hall in an amount not less than 75% of its full insurable value.
53. As the Board is a board of Council, insurance protection is provided to the Board, its employees, and volunteers under the Municipality's Master Insurance Policy terms and conditions. The Board or its employees shall forward to the Municipality's Director of Finance appropriate documentation of all claims or potential claims. The Board shall undertake all of its activities keeping in mind general risk management practices in order to prevent or minimize claims, injuries or damages, and shall work co-operatively with the Municipality's insurer in the investigation and defence of all claims.

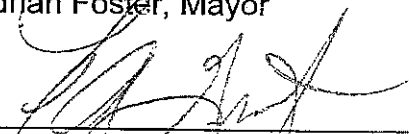
Repeal

54. By-Law No. 723 is hereby repealed.

BY-LAW passed this 15th day of September, 2014.



Adrian Foster, Mayor



Anne Greentree, Municipal Clerk

