

**THE CORPORATION OF THE MUNICIPALITY OF NEEBING**  
**MINUTES OF THE SPECIAL MEETING OF COUNCIL**

Held at the Municipal Office  
On Tuesday, November 22, 2016

**PRESENT:** Mayor Ziggy Polkowski  
Councillor Erwin Butikofer (left at 9:35 a.m.)  
Councillor Bill Lankinen  
Councillor Roger Shott (arrived at 9:25 a.m.)  
Councillor Brian Wright  
Councillor Curtis Coulson  
Councillor Mike McCooeye

Rosalie A. Evans, Solicitor-Clerk

**1. PRELIMINARY MATTERS:**

- (a) Call to Order: Mayor Polkowski called the meeting to order at 9:00 a.m.
- (b) Attendance: Attendance was recorded.
- (c) Declarations of Pecuniary Interest: No declarations of interest were received.

**2. INSURANCE AND RISK MANAGEMENT:**

**2.1 Presentation by Tom Gilham, Gillon's Insurance, Related to the Municipal insurance policy/package**

Prior to Mr. Gilham's presentation, Mayor Polkowski advised that Councillor Butikofer would not be able to stay for more than ½ hour, and suggested Councillor Butikofer ask his questions of Mr. Gilham prior to the presentation.

Ultimately, the meeting became a question-and-answer period. When questions had concluded, Mr. Gilham confirmed the elements within his presentation had been covered.

It was agreed that the presentation would be forgone, and copies of the slides would be made and provided to members of Council.

**2.2 Question and Answer Period**

Councillor Butikofer asked how risks are assessed by insurers. Mr. Gilham indicated that the insurance industry looks at municipalities as a whole, to see if any trends are occurring, and they also look into certain elements on a municipality's individual basis. What services are offered? What does the municipality do to reduce the likelihood of events causing injuries/claims?

Councillor Butikofer suggested referring to the East Oliver Lake Boat launch as an example. When the municipality contacted the insurer, what did the insurer do?

Mr. Gilham stated he attended the site and took photographs. He sent them to the insurer. Things considered were:

- there are more people on the road now than even 20 years ago;
- more people live year-round in the area now;
- statistics show that drivers are more inattentive than they used to be; and
- people tend to drive faster now than previously in history.

These factors lead to a conclusion that the site of this launch was risky.

That doesn't necessarily lead to higher insurance premiums. What the insurer wants to know is that, having recognized a risk – is the Municipality doing its best to prevent an incident that leads to a claim? At the end of the day – insurers know you have to offer services to the public and that always comes with some level of risk – regardless of what the service is. They want to know you've analyzed the risk and considered what could happen, and then taken steps to reduce the risk.

Any measures that you take – signage, speed limit reductions, etc. – those measures, well-documented, would bode well in your favour in a law suit.

The single biggest issue impacting insurance rates is what is referred to as “joint and several liability”, and also called the “one percent rule”. This means if a party in a lawsuit is found to be only one percent responsible for the damages, it could still end up paying the full amount of the damages if other parties are impecunious, have no insurance, or have insufficient insurance.

Mayor Polkowski indicated this was an issue that has been on Ontario municipalities' radars for many years, but all attempts to have the Province change these rules have failed. All indications from the Province are that this will not be changed.

Some historic lawsuits involving large damage awards against municipalities were reviewed. Mr. Gilham pointed out that, not only is society as a whole more litigious, but damage awards (and settlements) are much higher than they used to be. High “future care” cost estimates are the reason. Home care/nursing is extremely expensive. This will not change any time in the future and, in fact, is likely to become more expensive, leading to even higher damage awards.

This is why risk management is so important.

Councillor Butikofer asked for clarification on the payment of the damage awards. Mr. Gilham confirms that the insurance companies pay the awards; not the municipality directly. That is the reason for insurance. The municipality would only have to pay if the amount of the award was in excess of the amount of insurance coverage that the municipality purchases.

Councillor Butikofer then asked whether a damage award would impact the municipality's insurance premiums. Mr. Gilham stated that it could. There is “general pricing” for the industry as a whole – based on risks and payouts experienced industry-wide (things like the Fort McMurray fire, the Lac-Mégantic train disaster, tornadoes, ice storms, etc., and there is “individual pricing”.

Individual pricing considers many things, including claims history. It considers geographic location, the types of services you offer, local weather patterns, sewer back up frequencies, etc. Even your municipality's population is something that factors into “individual pricing”.

Again referring to the East Oliver Lake Boat Launch site, Councillor Butikofer asked about how “expert witness” testimony factors in to law suits. If the launch were to be opened in the face of Council’s knowledge that a Manager with Ontario Parks in this District stated he would never consider this area for a boat launch – would that be held against the municipality in the event of a lawsuit resulting from an accident?

Mr. Gilham commented that with lawsuits, experts get brought in to testify for both sides. The bottom line for the judge is whether the municipality acted reasonably in its attempts to prevent injury to the public. He mentioned that he had consulted with a lawyer about the boat launch when the issue first came up, because she happened to be in town on another case. The lawyer stated that signage and speed limit reduction would help. But a municipality will always be included in the lawsuit as the owner of the land. Lawyers for plaintiffs include any possible person or entity that might be found to be at fault.

The Solicitor-Clerk reminded Council of the lawsuit brought in 2015 against the municipality as the result of a motor vehicle accident. The lawyers who were hired by our insurers to represent our interests were able to convince the lawyers for the other parties involved to drop the suit as against Neebing. That is an example of “being dragged in” even if we are not ultimately found at fault. The legal fees exceeded the deductible on Neebing’s insurance policy. Neebing paid the deductible amount and the insurance covered the balance. Risk management will involve some costs (in this case, legal fees) even when one is absolved from liability.

Councillor McCooeye commented that one proposal relating to the East Oliver Lake boat launch issue, was to place a “stop” or “yield” sign at the top of the hill. Debbie McArthur, of the Ministry of Transportation for Ontario, stated that she would never condone a stop sign or yield sign on a thoroughfare as a means of traffic control.

Conversation clarified that the issue of traffic control on this particular roadway is solely a municipal decision.

Councillor McCooeye understands that point, but he has concerns that, having asked the question and having been provided with the answer that it would never be done, this would be held against the municipality in the event of a lawsuit.

Mr. Gilham responded that if a stop sign were to be erected, the Municipality would have done the best it could do – people may “roll through” the stop sign, but that would still reduce the risk of an accident occurring. He expressed his opinion that this would result in as safe a site as the Municipality could make it.

The Solicitor-Clerk clarified that her reports on this subject matter supported a stop sign at the site of the launch, with a “stop sign ahead” sign near or at the top of the hill. She agrees that stop signs are not appropriate on thoroughfares, however, the launch site is, technically, an “intersection” between the shoreline road allowance and the travelled road.

Councillor Butikofer advised Mr. Gilham that the Recreation Committee is looking at the west side of Oliver Lake. There are approximately 15 acres of land there owned by the Ministry of Natural Resources and Forestry. If the Municipality were to lease that land from the MNRF, or enter into some kind of partnership arrangement, would the insurer look at the issue differently than if the Municipality were to operate on land it owns?

Mr. Gilham indicated that the insurer would want to review the lease or other agreement. He pointed out, however, that whether the municipality owns or occupies the property, it would still be named in any lawsuit involving an incident on that property.

Mayor Polkowski stated that when the Municipality looked into operation of the Pigeon River Park, a 38-page legal agreement was forwarded. The Solicitor-Clerk advised that any agreement she had ever seen from a Provincial ministry or agency relating to use of land fully absolved the owner of any liability whatsoever. That having been said, the courts recognize that you cannot “contract out” of your own negligent behaviour.

Whether the municipality owns the land or leases it – the end goal is to make the operation of activity on that land as safe as possible. Mr. Gilham stated if the Municipality did its best, there would likely be no impact on insurance premiums.

Councillor Butikofer raised the issue of the “path of the paddle” portion of the TransCanada Trail. The operators have asked for signage at boat launches/waterfront properties inviting canoeists or kayakers to come ashore. The Council has not been amenable based on risks as advised by the insurer. The fear is that putting up signage “invites liability”.

Mr. Gilham stated his opinion that the reverse is true. If we are aware that people are pulling up on shore, we should have signage to prevent loss or injury. If fires are not permitted, that should be signed so that people are aware of the rules. If a trail that someone wishes to walk is 10 km long, that should be signed so that people don’t think it’s only 2 km long and end up getting lost.

Councillor Shott arrived at 9:25 a.m., during the discussion relating to fire risk.

Mayor Polkowski pointed out that a fire had been started by a paddler – on shore – on private property. This caused some concern.

Mr. Gilham stated that, at the public areas, if there is a known need for fire use, perhaps a “proper” and more safe fire pit could be installed. On private property; that’s another issue.

Councillor Lankinen advised that there are many, many people who do not purchase property liability insurance. Mr. Gilham stated that this is another reason why lawyers look to find some way to put the municipality on the hook – so that the person injured on the uninsured private property can recover from the municipality based on joint and several liability.

Mayor Polkowski indicated that Council had previously been advised that signs such as “use at your own risk” do not reduce a municipality’s liability. Mr. Gilham responded that such a sign does act as a warning – and would be a factor to be considered, along with all of the other factors that lead to the incident resulting in the lawsuit.

Councillors expressed concern about different types of advice being provided by different people. Mr. Gilham responded that there is no magic rule stating “if you do “this”, then you will have no liability”. It still comes down to due diligence. Did the defendant do everything that it should have to protect themselves or to make the site in question safe for use? If you are aware that the public is using municipal property – and you ignore that – it could cause liability.

Councillor Shott raised the point that our Municipality requires permits to have open fires between April and October annually, which is the very time that waterways would be used. He felt that the areas frequented by canoeists should be signed to advise people that a permit is required for an open fire.

Councillor Butikofer left the meeting at 9:35 a.m.

Mr. Gilham agreed that signage would assist. Residents of the municipality would be aware of the need to obtain a fire permit, however, visitors to the community would not be so aware unless they were informed through signage.

There was some discussion about exactly what was and was not permitted without a fire permit. Administration was asked to review the by-law(s) and clarify the rules for Council.

Councillor Coulson commented that it seems there is a lack of common sense. Mr. Gilham suggested that risk management start with the assumption that a person will make the worst kind of decision, and consider signage from that point. Signage does not "invite" liability. The ownership of the land invites the liability. Signage helps reduce the liability.

Discussion turned to snowmobiles and/or all terrain vehicles on municipal roadways. The former are allowed on travelled roadways by provincial law. The latter are allowed on provincial highways, but are only allowed on municipal roadways if the municipality passed a by-law to allow it.

It was noted that both Conmee and Oliver-Paipoonge allow all terrain vehicles on their municipal roads. Mayor Polkowski relayed that Mayors Holland (Conmee) and Kloosterhuis (Oliver Paipoonge) had told him that these by-laws actually reduced complaints of persons trespassing with their vehicles on private property. Councillor Shott pointed out the issue with Boundary Drive where all terrain vehicles are permitted on the Oliver Paipoonge side, but not on the Neebing side.

Mr. Gilham stated he was not aware of this issue, and would have to ask the insurers what the position would be in that regard.

Administration was asked to include, in the upcoming report about a potential by-law to allow all terrain vehicles on municipal roads, the exact state of the current law.

Mr. Gilham pointed out that whenever the municipality or its staff have questions, they can bounce them off of him. He has an on line research library about different things municipalities get into and insurance information related to it – best practices for risk management, etc. He recently, for example, checked into outdoor rinks for one of their insureds.

Mayor Polkowski commented on a session he and Councillor Shott had attended relating to trails through municipalities. They were started by volunteers, but as the volunteers fell by the wayside, the Province passed laws to force municipalities to take them over and be responsible for upkeep, etc. Trails can be controversial. Many run behind houses and can be used as access routes for thieves, etc. Municipalities who were forced to take these on experienced significant cost increases relating to maintenance and law enforcement.

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Mr. Gilham commented that, if the municipality offers services, it has to be able to do all that goes along with providing the service, including risk management.

Councillor Shott asked a question relating to emergency services. Neebing operates with a volunteer fire rescue squad. He asked whether, if we allow the water trail past our shoreline, would we have to ensure our volunteers had water rescue training (at present, we do not provide water rescue)? A related question is rock or ice climbing. Would our volunteers have to be trained in high angle rescue?

Mr. Gilham noted this issue was new to him, but he would look into it.

Mayor Polkowski advised that, at a point in time where consideration was being given to a cross-border snowmobile trail, a lawyer had told Council that "if you sanction it, and someone is killed, you may be held responsible". Most examples were cases from the United States, but it gave pause for concern.

Mr. Gilham pointed out that these are the very reasons why insurance is necessary. When these things do happen, the insurance company responds. You cannot stop offering services – your premiums won't skyrocket overnight because of an individual incident.

Over the last 10 to 20 years, insurance premiums have gone up significantly. This is due to the increase in the numbers of lawsuits and the amounts of the damages being awarded in those lawsuits. A study by the Association of Municipalities of Ontario indicated that, between 2007 and 2011, municipal insurance premiums increased by 22%.

The Solicitor-Clerk advised Mr. Gilham that Administration is looking at some longer-term cost forecasting for budget purposes. She asked whether an insurance premium increase of five per year would be a reasonable assumption to use for this purpose. After discussion, Mr. Gilham suggested that a more reasonable assumption would be between eight and ten per cent, per year.

For context, Mayor Polkowski indicated that, in Neebing, a budget increase of \$23,000.00 is a one percent tax rate increase. The \$7,000 premium increase is of concern. It alone is 1/3 of a percent.

Mayor Polkowski used the municipal garage fire as an example. The claim ended up costing more than a million dollars. Our insurance premium increased by \$7,000.00. If we had a ten million dollar claim that succeeded, would the insurance premium increase by \$70,000.00? Mr. Gilham replied that it does not have a direct correlation that way. The premium would increase, but not by that amount. He was asked to, and agreed to, come up with a "ball park" figure for how much our insurance premium would increase in the event of a successful ten million dollar claim.

Mayor Polkowski advised that last year, in Neebing, for the first time, the rate of people failing to make tax payments on time increased to fifteen percent. Council is doing its best to contain and control costs, but people are still having significant financial hardships.

Mr. Gilham indicated that, with municipal service provision, there is a "long term cost" versus a "short term impact" consideration. Think of services that are used relatively infrequently, by your own residents and compare that to a service that is an attraction to visitors. Campgrounds, skateboard or BMX parks, ski hills, mountain bike trails – would they be busy daily and all day. The busier those things are, the greater the risk that incidents will occur. A lesser-used service can be implemented but then do everything possible to risk manage the delivery of that service.

He pointed out that communication is clear. Keep the insurer advised of the services you offer. If you suddenly build a new and unplanned facility – say a skateboard park - without communicating it, there could be problems.

Councillor Shott thanked Mr. Gilham for coming and praised Gillons in terms of Neebing's experience with them as an insurance provider.

Mr. Gilham provided the Solicitor-Clerk with his power point presentation to be distributed to members of Council.

**2.3 Resolutions (if any)**

No resolutions were passed at this Special meeting of Council.

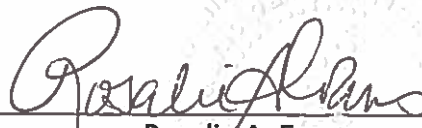
**3. ADJOURN THE MEETING:**

There being no further business to attend to, Mayor Polkowski adjourned the meeting at 10:19 a.m.

**SPECIAL MEETING OF COUNCIL**



Ziggy Polkowski  
MAYOR



Rosalie A. Evans  
SOLICITOR-CLERK

