

Municipality of the District of Lunenburg

BY-LAW

| | |
|--|---|
| Title: Private Roads By-law | |
| By-Law No. 040 (Consolidated to include By-law 040A) | Legislative Authority: Municipal Government Act , Section 75 Municipal Government Act , clause 81(1)(da) |
| Effective Date: June 17, 2020 | Amended Date: February 25, 2021 |

Title

- 1 This By-law is entitled the Private Roads By-law.

Interpretation

- 2 In this By-law,
- (a) “Act” means the **Municipal Government Act**;
 - (b) “applicant” means a landowner on a private road in the Municipality who cannot, in the sole opinion of Council, meet the definitions of an association in clause (c);
 - (c) “association” means a non-profit society
 - (i) incorporated under the **Societies Act**, or
 - (ii) unincorporated but in the process of being incorporated with the Registry of Joint Stock Companies under the **Societies Act**;
 - (d) “Council” means the Council of the Municipality of the District of Lunenburg;
 - (e) “charge” means a charge imposed under subsection 75(2) or clause 81(1)(da) of the **Municipal Government Act** in an amount determined in this By-law and payable in respect of the private road maintenance or improvement;
 - (f) “Charge Area” means an area to which a charge is imposed for maintenance or improvement of all the private roads in the area, and physically defined in an application submitted under this By-law;
 - (fa) “fiscal year” means the period from April 1st in one year to March 31st in the following year, including both dates;

- (g) “improvement” means the work undertaken on a private road to improve upon the existing condition or to increase the service level of the private road;
- (h) “landowner” means an owner (including a registered owner as defined in the **Land Registration Act**), part owner, joint owner, tenant in common or joint tenant, or any party legally appointed on their behalf, excluding the Municipality, of any interest in the whole or any part of parcel of land in a Charge Area, and for the purpose of calculating the percentage of landowners under clauses 4(1)(b), 4(1)(e) and 6(c), a parcel of real property with more than one landowner is counted as having one owner;
- (i) “maintenance” means the work undertaken on a private road to sustain the existing condition or service level of the private road, such as snowplowing, brush-cutting, pothole-filing, repaving;
- (j) “Municipality” means the Municipality of the District of Lunenburg; and
- (k) “private road” means an access or a right-of entry not owned by the Municipality or the Province of Nova Scotia, and includes roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads.

Approval by resolution

- 3** (1) Subject to subsection (2), Council may, by resolution, approve an application from an applicant or an association to enter into an agreement between the Municipality, and the applicant or the association, regarding a charge.
- (2) If a development officer receives an application, Council must give at least 7 days notice to all Council members before approving the application.

Application requirements

- 4** (1) If an association applies, the application in Section 3 must be submitted with
- (a) a plan defining the Charge Area boundary, the property boundaries in the Charge Area, and the length and width of the private road;
 - (b) subject to Section 6, a copy of the memorandum and the by-laws of the incorporated association approved by or proposed to the Registrar of Joint Stock Companies;
 - (c) subject to clause (d), an estimated operating budget for private road maintenance or an estimated capital budget for private road improvement, including the amount budgeted for general reserve, planned for the next fiscal year of submission;

- (d) a record of meeting minutes, passed by the association and signed by a director of the association with signing authority, approving the annual operating budget or the annual maintenance budget;
 - (e) subject to Section 5, a method of collecting charges; and
 - (f) any other information that Council may require to determine the method of calculation or the amount of charges necessary.
- (2)** If an applicant applies, the application in Section 3 must be submitted with
- (a) a plan defining the Charge Area boundary, the property boundaries in the Charge Area, and the length and width of the private road;
 - (b) subject to subsection 8(2), an estimated operating budget for private road maintenance, including the amount budgeted for general reserve, planned for the next fiscal year of the fiscal year of submission;
 - (c) subject to Section 5, a method of collecting charges;
 - (d) supporting documents to determine the circumstances under subsection 8(6); and
 - (e) any other information that Council may require to determine the method of calculation or the amount of charges necessary.

Methods of collecting charges

5 The Municipality must impose a charge

- (a) as the uniform amount for each lot in the Charge Area;
- (b) as the uniform amount for different classes of development, including but not limited to vacant land, seasonal lot, and commercial parcel of land; or
- (c) by the method approved by the Council.

Association by-laws

6 The memorandum and by-laws of association, as required under clause 4(1)(b), must

- (a) state the purpose of the association is to conduct the maintenance, the improvement, or both the maintenance and improvement on the private road and to represent the landowners within the Charge Area;
- (b) mandate the admittance of only those landowners of Charge Area to membership of the association; and
- (c) have more than one-half of the landowners of Charge Area as the members of the association as defined in subsection 15(1) of the **Societies Act**.

Public properties

- 7** For greater certainty, the Municipality and the Province of Nova Scotia are not considered as a landowner in this By-law and are excluded from signing a petition conducted under clause 4(1)(e) and the list of members under clause 6(c).

Application by applicant

- 8** (1) This Section applies only to an application submitted by an applicant.
- (2) The operating budget submitted with the application in subsection (1) must be itemized and reasonable for the length and condition of private roads in the Charge Area.
- (3) After a notice is given under subsection 3(2), and at least 45 days before the Council meeting to consider an application in subsection (1), the Municipality must notify all the landowners within the proposed Charge Area determined under clause 4(2)(a) by ordinary mail, in which the notice includes
- (a) a description of the proposed request;
 - (b) the date, time, and place of the Council meeting on the proposed request; and
 - (c) a method of submitting a written response before the Council meeting regarding the proposed request.
- (4) The notice under subsection (3) is deemed to have been given, for a mailing address in the parcel register
- (a) within Nova Scotia, on the third day after the date of mailing; or
 - (b) outside of Nova Scotia, on the ninth day after the date of mailing.
- (5) The general consensus of the landowners in the Charge Area must not be an active opposition to the charge proposed in the application under subsection (1), in which the lack of written responses is not deemed as the active opposition.
- (6) Subject to subsections (2) to (5), Council may consider designating a Charge Area and levy a charge in one or more of the following circumstances:
- (a) the applicant exercised due diligence in communicating with the other landowners in the Charge Area;
 - (b) the number of landowners in the Charge Area did not meet the minimum incorporation requirement of the **Societies Act**, despite representing more than one-half of all the landowners in a Charge Area;

- (c) the financial burden of road maintenance is distributed unevenly amongst the landowners within the Charge Area, such as when some landowners are not contributing to the maintenance of their private road;
- (d) the non-performance of road maintenance is causing public safety issues, such as limiting the accessibility to public roads, infrastructure, utilities, services, or other critical amenities.

Charge collection agreement

9 If Council approves an application in Section 3, the Municipality may enter into an agreement with an association or an applicant, in which the agreement

- (a) requires that the association or the applicant must be responsible for performing, or contracting the work in relation to the maintenance or improvement of the private road in a Charge Area;
- (b) indemnifies the Municipality from all liability or responsibility with the work in relation to the maintenance or improvement of the private road in a Charge Area;
- (c) identifies the method of collecting a charge that the person indicated in the application;
- (d) specifies a time period that the agreement is effective, with or without conditions for the renewal of agreement;
- (e) indicates that this agreement may be transferable under the conditions set out in the agreement; and
- (f) contains any other clauses that the Council may require.

Annual budgets

- 10** **(1)** Subject to subsection (2), if the Municipality enters into an agreement with an association in Section 9, the association must submit an operating budget or a capital budget for each fiscal year to conduct private road maintenance and improvement, respectively.
- (2)** The budgets in subsection (1) must be approved by an ordinary resolution of the association.
- (3)** If the Municipality enters into an agreement with an applicant in Section 9, the applicant must submit an operating budget for each fiscal year to conduct private road maintenance, in which the operating budget must be approved by a resolution of the Council.

Fiscal year

- 11** An application and subsequent annual budgets of a Charge Area must be submitted by the first day of March, or its next business day if it is a holiday, of the preceding fiscal year that the charge would be applied.

Administration fee

- 12** The total amount of the charge imposed in a Charge Area must not exceed the total expenditures in annual budgets plus the administration fee under subsection 4.1 of Policy 058.

Charge exemptions

- 13** (1) Notwithstanding this By-law and subject to subsection (2), the Municipality may, upon request in writing, exempt a charge from any landowners within a Charge Area whose property
- (a) abuts and has access to a public road;
 - (b) does not use the private road; or
 - (c) does not have access to the private road.
- (2) The Municipality may later assess those exempted landowners in subsection (1) if they appear to be using the private road.
- (3) For greater certainty, the Municipality and the Province of Nova Scotia are exempt from a charge levied under this By-law.

Liens

- 14** A charge made under this By-law is a first lien on the real property and may be collected in the same manner as other taxes.

Effectiveness of liens

- 15** (1) For road maintenance, a lien in Section 14 becomes effective three days after the notice to landowners in subsection 17(1) is distributed, and remains effective from year to year until terminated under this By-law.
- (2) For road improvement, a lien in Section 14 becomes effective three days after the notice to landowners in subsection 17(1) is distributed.
- (3) The lien in subsections (1) and (2) remains to be effective until the charge plus interest has been paid in full.

Charge adjustment

- 16** Where a lot subject to a lien is subdivided, the amount of the lien plus interest then unpaid shall be apportioned evenly among the new lots created, including any residual land.

Charge collection notice

- 17** (1) Subject to subsection (2), upon signing the collection agreement in Section 9, a development officer must notify the landowner of each property within the Charge Area of
- (a) the charge payable by the landowner; and
 - (b) the basis for the charge.
- (2) Where the charge is collected for maintenance that occurs annually, the notice only needs to be sent to each landowner for the first time of charge, instead of being sent annually.

Billing of charge

- 18** (1) A charge payable under this By-law for private road maintenance or improvement must be billed by the same day as the last mailing day of interim tax bill of the Municipality.
- (2) The charge payable in subsection (1) must appear on the tax bill.

Charge due date

- 19** The charge payable in Section 18 is due on the same day as the payment due date of interim tax bill of the Municipality on the same fiscal year.

Interest on unpaid Charge

- 20** Interest is payable annually on the entire amount outstanding from and unpaid after the due date in Section 19 at a rate set under Section 8 of Policy 009.

Charge payout

- 21** (1) The Municipality must transfer the amount requested by an association, which is stated in its annual budget in subsection 10(1) and excludes the administration fee in subsection 4.1 of Policy 058 to the association by 15 days after the due date in Section 19, or its next working day if it is a holiday.
- (2) Subject to subsection 10(3), the Municipality must transfer the amount requested by an applicant, which is stated in its annual budget in subsection 10(3) and excludes the administration fee in subsection 4.1 of Policy 058 to the applicant by 15 days after the due date in Section 19, or its next working day if it is a holiday.

Termination of agreement

- 22** (1) Council may, by resolution, terminate an agreement made under Section 9, if
- (a) an association submits a certified copy of a special resolution passed to terminate the agreement;

- (b) an applicant submits a letter of consent to terminate the agreement;
 - (c) an applicant or association breaches any of the clauses in the agreement;
 - (d) an applicant does not meet the condition for the renewal of agreement after the agreement expires; or
 - (e) an applicant meets the condition of transferring the agreement.
- (2) The termination of an agreement in subsection (1) is not effective until all charges payable under this By-law are collected.

Private Streets By-law repealed

23 A By-law Respecting the Maintenance and Improvement of Private Street, adopted by the Council on April 12, 2005, and amended on February 14, 2006, October 9, 2007, and February 17, 2009, is hereby repealed and replaced with a By-Law Respecting the Maintenance and Improvement of Private Roads.

Annotation for Official By-law Book

| | |
|---|--------------------------|
| Date of Adoption | June 17, 2020 |
| Amended | February 25, 2021 |
| Date of First Reading | February 25, 2020 |
| Date of Advertisement of Notice of Intent to Consider | May 20, 2020 |
| Date of Second Reading | June 9, 2020 |
| *Date of advertisement of Passage of By-law | June 17, 2020 |
| Date of mailing to Minister a Certified copy of By-law | June 17, 2020 |
| *Effective Date of the By-law unless otherwise specified in the text of this By-law | |

I certify that this “Private Roads By-law” was adopted and amended by Council and published as indicated above.

Sherry Conrad, Municipal Clerk

Date