MUNICIPALITY OF THE DISTRICT OF LUNENBURG

A BY-LAW RESPECTING THE MAINTENANCE AND IMPROVEMENT OF PRIVATE STREETS
Amended February 14, 2006
Amended October 9, 2007
Amended February 17, 2009

Be it enacted by the Council of the Municipality of the District of Lunenburg as follows:

1.0 Short Title
   This Bylaw shall be known as A By-law Respecting the Maintenance and Improvement of Private Streets and shall be cited as "The Private Streets Maintenance and Improvement By-law"

2. Interpretation


2.2 "Association" means a body corporate incorporated and in good standing under the Societies Act, which represents the owners within a Charge Area.

2.3 "Council" means the Council of the Municipality of the District of Lunenburg.

2.4 "Charge" means a charge imposed pursuant to Section 81 of the Municipal Government Act in an amount to be determined pursuant to this By-law and payable in respect of the street improvement or maintenance.

2.5 "Charge Area" means an area to which a Charge is imposed and as more fully described in a petition for street improvements and / or maintenance submitted pursuant to this By-law.

2.6 "Improvement" means the work undertaken on a road to increase or improve upon the existing condition or level of service of a road.

2.7 "Maintenance" means the work required to maintain a roads existing condition or level of service and for greater certainty includes snow and / or ice removal.

2.8 "Municipality" means the Municipality of the District of Lunenburg

2.9 "Owner" means:

(a) an owner, part owner, joint owner, tenant in common or joint tenant, excluding the Municipality of the District of Lunenburg, of any interest in the whole or any part or parcel of land or a building in a Charge Area and having the right to use the street; [Amended October 9, 2007]
(b) in the case of the absence or incapacity of a person or persons having
ownership of any interest in the parcel of land or building, a trustee, an
executor, a guardian, an agent, a mortgagee in possession or a person
having the care or control of land or building in a Charge Area and having
the right to use the street; or

(c) in the absence of proof to the contrary, the person assessed for the taxes
on the parcel of land or building in a Charge Area and having the right to
use the street; and

(d) for the purpose of calculating the percentage of owners in Section 3, a
parcel of real property with more than one owner shall be counted as
having one owner.

2.10 "Street" means any private street, private roadway, private highway or private
traveled way, or portion thereof, situate in the Municipality.

3. Charge Imposed

3.1 The Municipality may levy a charge for improvements and/or maintenance of a
street upon the owners of real property within a Charge Area, in an amount
necessary to provide for such improvement and/or maintenance:

a) where the requested method of levying the charge is on a lot frontage
basis, upon at least sixty-six and two thirds percent (66.66%) of the
owners of real property in the Charge Area owning land which also
comprises at least sixty-six and two thirds percent (66.66%) of the
frontage of real property within a Charge Area; or

b) where the requested method of levying the charge is on a uniform lot
charge basis, upon at least sixty-six and two thirds percent (66.66%) of
the owners of real property in the Charge Area; or

(c) where the requested method of levying the charge is on a lot area basis,
a lot assessment basis, an assessment classification basis, or such other
method not referred to in clause (a) and (b), upon at least sixty-six and
two thirds percent (66.66%) of the owners of real property in the Charge
Area owning land which also comprises at least sixty seven percent of the
area of real property within a Charge Area;

petitioning in person or by agent the Municipality for an improvement and/or
maintenance of a street within a Charge Area, for a purpose provided for under
Section 81 of the Municipal Government Act; and

(d) the petition referred to in clause (a), (b) or (c) herein has been submitted
by an Association responsible for having the improvement and/or
maintenance carried out; representing the Charge Area:
i) an estimated yearly maintenance and/or improvement budget for that year's street maintenance which was passed by a Special Resolution of the Association,

ii) a copy of the Special Resolution required in subclause (i) [Amended February 17, 2009]

iii) a copy of the Associations Memorandum of Understanding and By-laws which clearly states that the object or purpose of the Association is to carry out maintenance and/or improvements to the street and that the Association has been formed to represent the owners within the Charge Area;

iv) where the requested method of levying the Charge is on a lot frontage basis a Plan showing the Charge Area outlined in red, the lots affected, a survey of the streets and the frontage of the lots in the Charge Area on the street,

v) where the requested method of levying the Charge is on a lot area basis a Plan showing the Charge Area outlined in red, the lots affected, the area of the lots, the length and width of the streets,

vi) where the requested method of levying the Charge is on a lot assessment or a per lot basis, a Plan Showing the Charge Area outlined in red, the lots affected, and the width and length of the street, and

vii) notwithstanding subclauses (iv), (v) or (vi), Council may require additional information as it deems necessary to determine the method of calculation or the amount of a Charge necessary; and [Amended February 17, 2009]

e) The Association has entered into an Agreement with the Municipality which:

i) requires that the Association shall be responsible for performing, or contracting, the work associated with the improvement or maintenance of the street or streets in a Charge Area;

ii) indemnifies and saves harmless the Municipality from any and all liability or responsibility with respects to the work associated with the improvement or maintenance of the street or streets in a Charge Area;

iii) identifies that the petition forms the basis of the method of the Charge; and

iv) contains any other clauses as deemed necessary by Municipal Council.

3.2 The petition referred to in clause 3.1(a) shall be in form as prescribed in
Schedule A of this By-law and be submitted no later than the first working day of March in the fiscal year prior to the fiscal year in which the charges are sought.  

[Amended February 17, 2009]

3.3 The Municipality of the District of Lunenburg not being included in the definition of owner as set out in section 2.9 of this By-law shall be excluded from signing any petition as described in sections 3.1 and 3.2 of this By-law.  

[Amended Oct. 9, 2007]

4. Methods of Charge

4.1 A Charge levied pursuant to Section 3, shall be determined in accordance with the provisions of this By-law and may be calculated based on:

a) the frontage of each lot on any street, being the ratio that the foot frontage of each lot bears to the total frontage of the street or portion thereof to be improved and / or maintained;

b) the assessment of each lot, being an area rate of an amount per $100.00 of assessed value of the property within the Charge Area;

c) the assessment classification of each lot, being a charge apportioned to a lot based upon the assessed use of the property as shown on the Assessment Records of the Province of Nova Scotia;

d) an uniform amount for each lot, being an equal amount apportioned to each lot within the Charge Area;

e) the area of each lot, being the ratio that the area of each lot bears to the total area of the lots within the Charge Area

f) any combination of two or more such methods of calculating the Charge;

or

g) such other method as Council deems appropriate

4.2 Variations in Charges
The Charge levied pursuant to this By-law may be fixed at different rates for different assessment classes or uses of properties and may be fixed at different rates for different “Charge Areas”

4.3 Frontage Charge
Where the amount of the Charge contains a component, calculated, in whole or in part, based upon the frontage of the lot on a street, the component of the Charge which is based upon frontage shall be calculated as follows:

a) for the purpose of calculating frontage, the number of lineal feet of frontage shall be a horizontal projection measured along the boundary line adjacent to the street;
b) where a lot is situated such that the lot has frontage on two or more streets within a Charge Area, the component of the Charge based upon frontage shall be calculated based upon the average lot frontage, calculated as the total frontage divided by the number of streets the lot has frontage on; and

c) notwithstanding clause 4.3(a) and 4.3(b), where a lot has frontage on a street the minimum deemed frontage shall be 75 feet.

4.4 Dispute of Measurement
In the event of a dispute between a property owner and the Municipality as to any measurement or area of real property, the owner shall retain, at his or her sole expense, a Licensed Nova Scotia Land Surveyor, who shall certify to the measurements or area of real property and submit the same to the Clerk.

5. Administration Charge

The total amount of the Charge levied by the Municipality shall not exceed the cost of the street improvements and / or maintenance and an administration charge of five percent (5%) of the cost.

For Greater Clarity:

(Total Cost of Improvement and / or maintenance) x 5% = (total amount of Administration Charge) [Amended February 17, 2009]

6. Exemptions from Charge

6.1 Notwithstanding the provisions of this By-law, the Municipality may, upon request, exempt from a charge any owners within a Charge Area whose property abuts and has access to a public highway or does not use or have access to the street upon which the maintenance and/or improvement is being sought but subject to the provisions that the Municipality may later assess those exempted owners if it appears to it that they are then using the improved streets.

6.2 The Municipality of the District of Lunenburg shall be exempt from payment of all charges and levies made pursuant to the By-law. [Amended October 9, 2007]

7. Annual Maintenance Charge

Where Municipal Council has accepted a petition for street maintenance, the Association shall submit on an annual basis a budget for the estimated road maintenance cost for the fiscal year. This Budget shall be passed by a Special Resolution of the Association responsible for ensuring the maintenance is carried out and the Budget and Special Resolution shall be received by the Municipality no later than the first working day of March in each calendar year. The effective date of this provision is March 16th, 2009. [Amended February 17, 2009]
8. Annual Improvement Charge

Charges for improvements to a private road shall be requested on an annual basis in accordance with the requirements Section 3.1

9. Lien

9.1 A Charge imposed pursuant to this By-law constitutes a first lien upon the real property with respects to which the Charge has been made and the Charge may be calculated in the same manner as taxes and shall be made payable in the same manner as taxes. [Amended February 14, 2006]

9.2 The lien provided for in this By-law shall become effective:

a) with regard to a street improvement, on the date on which the Clerk of the Municipality signs and files at the Municipal Office, a Certificate stating the total costs of the street improvement and the amount of the Charge to be levied on each owner.

b) with regard to street maintenance, on the date which the Clerk of the Municipality signs and files at the Municipal Office, a Certificate with a statement that the affected area is subject to an annual Charge for street maintenance in an amount set annually by Municipal Council as provided for in this By-law and shall remain effective from year to year until terminated pursuant to this By-law.

9.3 The lien provided for in this By-law shall remain in effect until the Charge plus interest has been paid in full.

9.4 Where a property subject to a lien is subdivided:

a) in which the Charge imposed was calculated based upon frontage or lot area, the amount of the lien plus interest then unpaid shall be apportioned among the new lots created and including any residual land, such that the amount of the lien apportioned to the lots created an any residual land is based upon the percentage of the original lot frontage or lot area that the new lots and residual land are comprised of;

b) in which the Charge imposed was calculated based upon a lot charge, or assessment classification of the lot, or any other method other than as referenced in clause (a), the amount of the lien plus interest then unpaid shall be apportioned among the new lots created including any residual land in proportion that the value of each new lot including any residual land bears to the total market value of the lands subdivided including any residual land or upon the assessment classification of each new lot and any residual land as the case may be at the time of subdivision approval.

The market value and or assessment classification of lots so created must be confirmed by a provincial assessor. Written confirmation of the market value shall be submitted to the Treasurer.
10. Notice of Charge

Upon filing the Certificate pursuant to clause 9.2(a) and clause 9.2(b), the Clerk shall notify the owner of each property within the Charge Area of the charge payable by the owner and the basis for the Charge. [Amended February 17, 2009]

Where the Charge is being collected for street maintenance that occurs on an annual basis the notice needs only to be sent to each owner upon filing of the Certificate and not annually.

11. Payment of Charges

11.1 A Charge payable pursuant to this By-law for street maintenance and/or improvements shall be billed on the last working day of April and due on the last working day of May of each year in which the charges are to be levied. [Amended February 14, 2006 and February 17, 2009]

11.2 The charge imposed by this By-law will appear on the tax bill and shall bear interest on any outstanding balance from and after the due date. The interest rate shall be as prescribed by motion of Council with respect to taxes and overdue charges and shall be applied as per this same motion. [Amended February 14, 2006 and February 17, 2009]

11.3 By June 15th in each year in which the charges are to be levied, the Municipality shall transfer to the Association the amount requested to be levied by the Association for road maintenance and/or improvements, less the administration fee. [Amended February 14, 2006]

12. Termination of Charge

The Charge imposed pursuant to this By-law for a street improvement and / or maintenance may be terminated at any time by the Association filing with the Municipality a certified copy of a Special Resolution of the Association passed at a duly constituted meeting, called for that purpose, requesting the Municipality to terminate the charge or by the Municipality at its own discretion, if there has been non-compliance by the Association with the provisions of this By-law. In either case, upon the Clerk filing with the Municipality a Certificate stating that all monies payable pursuant to this Charge have been collected, this By-law shall thenceforth have no further force or effect within the Charge Area.
SCHEDULE A
(A By-law Respecting the Maintenance and Improvement of Private Streets)

PETITION FOR STREET IMPROVEMENT AND MAINTENANCE

To the Municipality Council of the Municipality of the District of Lunenburg.

The Undersigned, being at least 66.66 percent of the owners of real property in the
Charge Area, as shown on the attached Map, and owning land which also comprises at
least 67 percent of the real property within this same Charge Area do petition Municipal
Council to accept this petition for (choose one only by placing an 'X' beside the option
chosen)

a) Improvements ______
b) Maintenance__________
c) Improvements and Maintenance ______

on the streets located within the Charge Area, as identified on the attached map.

Also, each of the owners, whose signature appears below, respectively propose that the
Municipal Council accept this as a petition in compliance with section 3 of the Private
Streets Maintenance and Improvement By-law.

Each of the owners, whose signature appears below, request that they be levied a
charge in respect of the street improvement, street maintenance or both, as indicated
above, and further that this charge be levied on (choose only one by placing an 'X'
beside the option chosen):

a) the frontage of each lot on the street
b) the assessment of each lot
c) the assessment classification of each lot
d) a uniform amount for each lot
e) the area of the lot
f) a combination of two or more such methods noted above, being

__________________________________________ (note the methods)

The name of the Association representing the owners is:

_________________________________________

NAME AND SIGNATURES OF PROPERTY OWNERS

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Municipal Clerks Annotation for Official By-law Book

Date of First Reading: January 13, 2009
Date of Advertisement – Notice of Intention: January 20\textsuperscript{th} and 23\textsuperscript{rd}, 2009
Date of Second Reading: February 10, 2009
Date of Advertisement of Passage of By-law*: February 17\textsuperscript{th} and 20\textsuperscript{th}, 2009

I certify that this By-law amending a “BY-LAW RESPECTING the Maintenance and Improvement of Private Streets” was adopted by Council and published as indicated above.

\[\text{Appel\, Whyte\, Hopps} \quad \text{Feb 18\textsuperscript{th}, 2009}\]

Municipal Clerk \hspace{2cm} Date

* Effective Date of the By-law unless otherwise specified in the By-law