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PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Halifax Regional Council
November 7, 2006
Committee of the Whole
January 9, 2007
January 16, 2007

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:

A handwritten signature in cursive script, appearing to read "Stephen Adams".

Councillor Adams, Chair, Private Roads Committee

DATE: October 26, 2006

SUBJECT: Private Roads Maintenance Costs Recovery Policy

ORIGIN

May 25, 2004 meeting of the Private Roads Committee.

RECOMMENDATION

That Halifax Regional Council consider the draft Maintenance Cost Recovery Policy as attached to the staff report to the Private Roads Committee dated October 24, 2006.

BACKGROUND

At the May 25, 2004 meeting of the Private Roads Committee a motion was passed requesting that staff provide a report outlining various options for enabling legislation to recoup costs associated with the maintenance of private roads by an area rate, from abutting property owners.

DISCUSSION

At the October 24, 2006 meeting the Private Roads Committee passed a motion to forward the draft Maintenance Cost Recovery Policy to Regional Council, without recommendation.

BUDGET IMPLICATIONS

There are no budget implications associated with this report.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

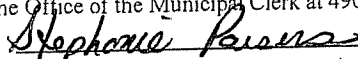

There are not alternatives recommended by the Private Roads Committee at this time.

ATTACHMENTS

1. Minute extracts of October 24, 2006, February 16, 2006, May 25, 2004, November 23, 2004 meetings of the Private Roads Committee.
2. Staff report dated October 17, 2006 to the Private Roads Committee with the following attachments:
 - January 19, 2006 Information Report
 - HRM Draft Maintenance Cost Recovery Policy
 - Copy of relevant MGA Sections
 - Kings County Maintenance Delivery Process.

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by:
Report Approved by:


Stephanie Parsons, Legislative Assistant

Councillor Adams, Chair, Private Roads Committee

PRIVATE ROADS COMMITTEE
DRAFT MINUTE EXTRACT
October 24, 2006

4. BUSINESS ARISING OUT OF THE MINUTES

4.1 Bill C-70 - Update

- A staff report dated October 17, 2006 with attachments was before the Committee.

Mr. Wayne Legere, Manager, Service Delivery and Quality Improvements, TPW advised the Committee that the Kings County policy on private roads has been legally challenged. The issue is ownership of the property and whether or not the abutters have an active interest. He suggested that the Committee await the outcome of the legal challenge before implementing HRM's policy.

Responding to the questions of the Committee staff advised of the following:

- Staff has made inquires regarding the status of the legal challenge and will be following the case;
- Bill 70 provides HRM with legal recourse to address issues pertaining to the maintenance of private roads;
- If Council can expend funds on private roads, it can implement cost sharing agreements.

MOVED BY Councillor Meade, seconded by Councillor Kent that the Private Roads Committee recommend that Halifax Regional Council proceed with the implementation of the Private Roads Maintenance Cost Recovery Policy without an administration charge.

Councillor Meade commented that Bill 70 was approved two years ago and there is still no policy in place. Regarding Ingram River Lane, he stated that the river is washing out the road. The road cannot be upgraded to HRM standards as it only has a 20 ft right away. He further added that during the first year of implementation of the policy there would be approximately 12 applications and one or two applications thereafter.

Ms. Catherine Sanderson, Senior Manager Financial Services, advised:

- The issue is the conflict among the property owners;
- The policy would require that the Home Owner's Association hire a contractor to provide maintenance;
- If issues arose with the contractor, it is likely that the residents would call staff. HRM staff would refer them to the Home Owners Association.
- The issue will become governance;
- The alternative for residents would be small claims court.

Mr. Leger advised that this would be a recurring annual event each year. Staff can only accommodate 12 roads with the existing resources, additional resources would be required. Ms. Sanderson added that applications would have to be considered during the budgeting process, which is why staff would recommend an administration fee.

Councillor Hendsbee stated the following:

- A one time administration fee should be charged;
- The right away should be deeded to the Home Owner's Association to avoid ownership issues;
- HRM procurement policies should be applied, to ensure due diligence and competitive quotes;
- Upgrading private roads to HRM standards has proven difficult;
- This is the only mechanism to assist the property owners if there is lack of cooperation among them;
- He prefers that the petition requirement be fifty percent plus one.

Further discussion ensued and staff advised of the following:

- There maybe no issue if ownership is deeded to the Home Owner's Association, but the difficulty is determining ownership;
- The policy is for maintenance and does not cover capital infrastructure, the request by Ingram River Lane is for capital assistance.

Councillor Kent commented that HRM would be acting as mediators for private issues. If the policy is implemented there is an implied responsibility.

Councillor Hendsbee commented that HRM would be a facilitator of the process to ensure the funds are collected and ensure equality.

Ms. Rosemary MacNeil, Development Officer, Community Development, cautioned the Committee in implementing the policy unless ownership can clearly be established, if it cannot be established you are forcing people to pay. She suggested that the Committee await the outcome of the Kings County case. In addition she suggested that there maybe a need for a cap on applications as there are limited resources.

Responding to Ms. Sanderson's, previous comment Councillor Meade stated that as part of the condition's HRM can require that ownership be established.

Councillor Hendsbee reiterated that HRM would be the facilitator and that in addition to maintenance there are other issues such as garbage collection, street lighting, bus service access by emergency vehicles, and access to municipal services.

After further discussion by the Committee, the Chair commented that given the number of districts that maybe affected by the policy, he suggested that the Committee refer the matter to Regional Council.

Without a vote being taken on the motion on the floor the following motion was placed:

MOVED by Councillor Kent, seconded by Councillor Meade that the Private Roads Committee forward the draft policy on the Private Roads Maintenance Cost Recovery as attached to the staff report dated October 24, 2006, without recommendation to Regional Council for consideration. MOTION PUT AND PASSED.

HALIFAX REGIONAL MUNICIPALITY
PRIVATE ROADS COMMITTEE
MINUTE EXTRACT February 16, 2006

6.1 Bill C-70 - Private Road Services Ramifications Information Report

- An information report dated January 19, 2006 was before the Committee.

Councillor Adams advised that the purpose of the meeting is to discuss the implications of moving forward with Bill C-70. His concern is that if HRM proceeds with the proposed bylaw those private road residents who currently receive municipal services will be charged for those services.

Mr. Leger advised that this is not the intent of the policy. In 1996 Council approved a list of roads that would continue to receive services. He advised that Kings County is implementing a similar model. Kings County has have received backlash from seasonal private road owners who do not want to participate.

A discussion ensued and the Committee requested that staff include the following in the final report:

1. A statement referencing the motion passed by Council in 1996 stating that those private roads that receive some type of service will continue to receive that service.
2. Clarify that those who currently receive service will continue to receive the same level of service that they have been accustomed to. (Clarify that the Bill only applies to those private roads that do not currently receive services.)
3. List as an alternative option "That the status quo be maintained".
4. Include in the report the legal opinion that provides HRM the ability to force private roads into public ownership, if HRM has expended funds on a private road that is used by the public and the owner has not claimed right of ownership or requested that public use of the road be stopped.

Councillor Johns suggested providing a reduced tax rate to private road owners for the services they do not receive. Councillor Adams commented that this should be reflected in the assessment.

Mr. Leger advised the Committee of the following.

- Staff will prepare a maintenance cost recovery system for private road abutters, a course of action, resource implications and recommendations for presentation back to the Committee. Staff's recommendation will be to proceed with the area rate.

- It is unknown how many applications will come forward and therefore it cannot be determined what revenues will be generated by the area rate.
- A resident of the road has to take the initiative to form a Road Owner's Association and provide an estimated cost.
- Staffs intent is to develop one bylaw with various appendices to reduce administrative cost and time.

Mr. Hubley advised that if a request for snow plowing is received next winter staff will not be able to provide the service as funds would have to be included in this year's budget. Mr. Leger advised that he has contacted Financial Services and advised that the Private Roads Committee would like to see something in place in the 2006-2007 budget.

A discussion ensued regarding HRM's ability to recover capital costs and operational costs.

Mr. Hubley advised the Committee that HRM has the ability to recover cost but has not exercised that option. Since amalgamation HRM has taken over two private roads. There have been several requests but has been cost prohibitive.

Councillor Johns raised concern that if HRM does not recoup the cost it has incurred, it places HRM in the same position that it is currently.

In response to Mr. Leger, the Committee requested he include in the report the ability for HRM to recover cost.

Councillor Adams requested that when the report to Council is finalized that staff forward the report to the Legislative Assistant for distribution to the Committee for review. A meeting will be scheduled so that the Private Roads Committee can make a recommendation to Council.

HALIFAX REGIONAL MUNICIPALITY
PRIVATE ROADS COMMITTEE
MINUTE EXTRACT May 25, 2004

4.3 Provincial Amendment re: Area Rates for Private Roads

Councillor Hendsbee informed the Committee that Bill #70 has passed and now HRM has the ability to establish a by-law to start levying betterment charges on private roads.

MOVED by Councillor Hendsbee, seconded by Councillor Johns, that the Private Roads Committee request staff provide a report showing enabling legislation for the different options available approved by an area rate.

Councillor Meade provided a scenario that if you have 10 properties on a private road and they're each charged, for example, \$100 a property, the charges for snow plowing and/or upgrading could be paid out of that money.

The Chair requested that the staff report address Councillor Meade's suggestion and advise on what would have to be done to accomplish this. It was also requested that staff from, including but not limited to, Planning & Development, Legal Services, Finance Services and Environmental Management Services attend the next meeting to discuss this issue.

MOTION PUT AND PASSED UNANIMOUSLY.

HALIFAX REGIONAL MUNICIPALITY
PRIVATE ROADS COMMITTEE
MINUTES NOVEMBER 23, 2004

5.1 Provincial Amendment re: Area Rates for Private Roads

- A staff report dated November 19, 2004, prepared for Mike Labrecque, A/Director, Public Works and Transportation, was circulated to the Committee.

Mr. Reg Ridgley, Manager, Strategic Capital Project Support, advised the Committee that Bill No. 70, which amends the Municipal Government Act (MGA), has been adopted by the Province, and the Municipality now has the ability to establish a by-law enabling betterment charges for work conducted on private roads.

Councillor Meade expressed concern with not all residents of a private road contributing to the maintenance costs of that road. He inquired if the MGA will now allow for an area rate to be placed on such a road thus requiring all residents of the road to pay towards the maintenance costs. Mr. Ridgley responded in the affirmative but noted that a surplus cannot be accumulated and the funds have to be identified for specific expenditures. He also noted if there is a deficit in the funds, HRM will advance the necessary funding but the residents will pay interest costs of the loan. Mr. Ridgley stated all the terms of the area rate would be included in a by-law which would have to go through the public hearing process and approval at Regional Council. A residents' association, through which to vehicle the funds through, would also need to be put in place. Mr. Ridgley noted that he has advised staff of Financial Services that this issue may be raised during the upcoming budget deliberations and that there should be a separate section of the budget to address it.

Mr. Hubley raised the issue of the impact on staff resources if there were 50 requests for private road upgrading brought forward at one time. He noted that, at the current staff level, 5-10 requests per year could probably be handled without any significant impact on staff resources. However, he noted the number of projects and complexity of each would have to be ascertained in order to provide a suitable estimate of staff resource and time requirements. Mr. Hubley also stated that a set of criteria would need to be developed to prioritize requests if a decision needs to be made to between two or more roads.

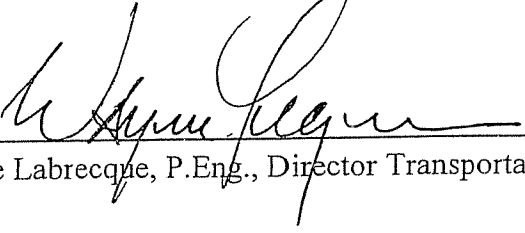
Councillor Meade expressed concern with respect to inspection of these roads and suggested HRM should be inspecting the work.



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Private Roads Committee
October 24, 2006

TO: Chairman and Members of Private Roads Committee

SUBMITTED BY: 
for Mike Labrecque, P.Eng., Director Transportation & Public Works

DATE: October 17, 2006

SUBJECT: Private Roads Maintenance Costs Recovery Policy

ORIGIN

May 2004 approval of Bill 70 (Municipal Law Amendment (2004) as it relates to Private Roads), and February 16, 2006 Private Roads Committee meeting.

RECOMMENDATION

It is recommended that the Private Roads Committee not consider pursuing the Private Roads Maintenance Costs Recovery Policy at this time.

BACKGROUND

On February 15, 2006, the Private Roads Committee discussed the January 19, 2006 Information Report (attached) and gave staff direction to prepare a Maintenance Cost Recovery Policy in accordance with provisions outlined in the MGA amendments per Bill 70, which would provide a mechanism for private road abutters to share the costs of ongoing minor road maintenance works such as road grading or snowplowing.

DISCUSSION

The attached draft Maintenance Cost Recovery Policy outlines the annual process required to allow HRM to invoice the private road abutters for maintenance work undertaken by the property owners' association. The Administration Charges (Section 14) address the costs that will be borne by Financial Services in the administration of the policy. It is envisaged that existing staffing levels could accommodate approximately 12 (twelve) Private Road Policy applications per year before additional resourcing is required.

The private road ownership/consent and the majority consent of the abutters are viewed as critical components in the successful implementation of this type of policy. As such, staff has recommended against implementing this policy at this time, until the courts have decided on the legal challenge filed against Kings County when they attempted to implement a similar maintenance cost recovery policy on private roads.

The August 1, 2006 Private Roads Committee meeting asked staff for the consideration of a similar policy for capital road improvements on private roads. As indicated in the January 19, 2006 report to the Private Roads Committee, HRM has facilitated a similar project in the past, the Kings Road Bridge. In addition to the outcome of the Kings County litigation, staff has concerns regarding significant capital investment on roads owned and controlled by an outside party. Legal Services has recommended that these unique requests continue to be dealt with by By-Law, to allow for the specifics of each project to be outlined. In these instances, given the higher costs, technical and regulatory requirements, it is recommended that HRM undertake all project administration, including design, tendering, regulatory permit applications, and construction inspections.

BUDGET IMPLICATIONS

None at this time.

ALTERNATIVES

HRM could encourage private road abutters seeking improved maintenance to pursue upgrading their streets for public acceptance via HRM's procedure for acceptance of private roads.

Private Roads Maintenance
Costs Recovery Policy
Council Report

- 3 -

October 24, 2006

ATTACHMENTS

January 19, 2006 Information Report
Draft Maintenance Cost Recovery Policy

A copy of this report can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

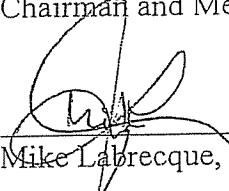
Report Prepared by: Wayne Legere, Manager, Service Delivery & Quality Improvement



PO Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Private Roads Committee
February 16, 2006

TO: Chairman and Members of Private Roads Committee

SUBMITTED BY: 
Mike Labrecque, P.Eng., Director, Transportation & Public Works

DATE: January 19, 2006

SUBJECT: Private Road Servicing Ramifications Through Bill 70
Amendments to the MGA

INFORMATION REPORT

ORIGIN

May 2004 approval of Bill 70 (Municipal Law Amendment (2004) Act as it relates to Private Roads).

BACKGROUND

The Bill 70 amendments gives municipalities the ability to consider implementing bylaws for imposing changes for:

81(1)(da) "laying out, opening, construction, repairing, improving and maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads, where the cost is incurred

- (i) by the Municipality; or
- (ii) under an agreement between the municipality and a person."

In addition, amendments to Section 65 of the MGA makes provision for municipal councils to expend funds on private roads. (Copy of relevant sections attached.)

DISCUSSION

These amendments benefit the facilitation of recovering costs when undertaking larger capital projects on private roads, such as the construction of a bridge on Kings Road, or the reconstruction of Norwood Court to Municipal Standards for acceptance as a public road.

The amendments also provide the potential for municipalities to consider facilitating the disbursement of charges incurred on private roads for ongoing maintenance activities such as road grading, ditching, and snow plowing.

Focus

As directed by the Private Roads Committee, TPWS will now focus on the maintenance application through meetings with Finance and Legal Services staff to develop applicable policies, bylaws, and procedures to facilitate the process. One possible model for maintenance delivery may be the process currently underway in Kings County (copy attached), where the Council would provide the financial facilitation of maintenance fees collection only.

Scope

Staff is currently reviewing our private road inventory to better determine the potential magnitude of any considered maintenance model. To date, we have identified 1056 private or unaccepted roads within HRM, of which 358 are located within the core, and 698 are located outside the core. All statistics thus far should be considered as soft numbers, subject to revision, as staff continue to research the records. Staff is working with NSTPW on the verification of the outside core listing, as well as attempting to determine actual road lengths for the inventory.

Inside the core, staff has determined that HRM currently provides year round maintenance provision to 49 roads, and winter snow & ice control only, to an additional 88 roads. This inventory of service provision on private and unaccepted roads represents the legacy obligations of the former municipal units. Given HRM currently provides some level of service to approximately 38% of the private roads inventory within the core; (and financed through the general tax rate) we must explore the service equity relationship, if HRM is to consider service provision on a user pay basis for the potential 62% balance of private roads within the urban core.

Resource Requirements

Dependent upon the service provision model pursued, and the level of interest expressed by the private road abutters, resource requirements may be significant. For example, if HRM chooses service provision by the municipality, Public Works Operations would require additional resourcing to provide additional services through in-house, contracted, or a combination of both. Alternatively, should HRM pursue the financial administrative model (similar to Kings County) there will be the administrative burden of bylaw preparation, assessment roll research on abutters, and LIC or area rate process requirements. Interestingly, the process for the financial collection would be required

for either maintenance provision selected, and will be required on an annual basis. As noted in the Kings County Policy, it is their intent to recover this cost through administrative fees included in the area rate.

Next Steps

Staff will prepare a maintenance cost recovery system for private road abutters, including a detailed course of action, resource implications and recommendations for presentation back to the Committee in June 2006.

BUDGET IMPLICATIONS

There are no budget implications at this time.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

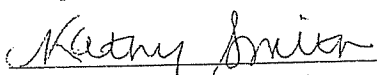
ALTERNATIVES

There are no recommended alternatives.

ATTACHMENTS

1. Copy of relevant MGA Sections
2. Kings County Maintenance Delivery Process

Further information regarding the contents of this report may be obtained by contacting Wayne Legere, at 490-4048. Additional copies of this report and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Financial Review: 
Kathy Smith, Financial Consultant at 490-6153

(7) The actual cost of removal of the tree or limb pursuant to subsection (6) may be recovered as a debt from the owner of the land upon which it was located and is a first lien on the real property of the owner of the land and may be collected in the same manner as taxes.

(8) An owner may appeal an order requiring the removal of a tree or limb to the Supreme Court of Nova Scotia within seven days of service of the order on the owner and the giving of a notice of appeal acts as a stay of proceedings until the appeal has been determined.

(9) Upon an appeal pursuant to subsection (8), the Supreme Court of Nova Scotia may confirm, modify or set aside the order.

(10) A municipality is not liable for failure to remove a diseased or dangerous tree or limb from property, whether publicly or privately owned.

(11) A person who defaces, mutilates or cuts a tree upon property of a municipality without the written consent of the municipality is guilty of an offence, and is guilty of a separate offence for each tree defaced, mutilated or cut.

(12) A municipality may borrow for a term not exceeding ten years for the cost of a major tree removal program. *1998, c. 18, s. 63.*

PART IV

FINANCE

Fiscal year

64 The fiscal year of a municipality begins on April 1 and ends on March 31 in the following year. *1998, c. 18, s. 64.*

Power to expend money

65 The council may expend money required by the municipality for

(a) expenses of elections and plebiscites;

(b) premiums on an insurance policy for damage to property, personal injury or liability, including liability of members of the council or employees of the municipality, volunteer members of fire departments, emergency services providers and volunteers in municipal programs;

(c) repayment of money borrowed by the municipality, the payment of interest on that money and payment of sinking funds;

(d) police services;

- (e) providing an emergency response system;
- (f) snow and ice removal;
- (g) equipping and maintaining fire departments or emergency services providers;
- (h) honoraria and training expenses for volunteer firefighters and emergency services volunteers;
- (i) providing school crossing guards;
- (j) emergency measures;
- (k) recreational programs;
- (l) advertising the opportunities of the municipality for business, industrial and tourism purposes and encouraging tourist traffic, with power to make a grant to a nonprofit society for this purpose;
- (m) promotion and attraction of institutions, industries and businesses, the stabilization and expansion of employment opportunities and the economic development of the municipality;
- (n) lighting any part of the municipality;
- (o) public transportation services;
- (p) preventing or decreasing flooding;
- (q) collecting, removing, managing and disposing of solid waste;
- (r) salaries, remuneration and expenses of the mayor or warden, councillors, officers and employees of the municipality;
- (s) the reasonable expenses incurred by the mayor or warden or a councillor for attendance at meetings and conferences, if the permission of the council is obtained prior to the meeting or conference or the attendance is in accordance with a policy of the council;
- (t) the contribution of the municipality to a pension or superannuation fund;
- (u) where determined by the Board, payment to the Board of an assessment on a public utility owned or operated by the municipality;
- (v) annual subscription fees of the Union of Nova Scotia Municipalities and other municipal or professional associations;
- (w) public libraries;

- (x) lands and buildings required for a municipal purpose;
- (y) furnishing and equipping any municipal facility;
- (z) acquisition of equipment, materials, vehicles, machinery, apparatus, implements and plant for a municipal purpose;
- (aa) streets, culverts, retaining walls, sidewalks, curbs and gutters;
- (aaa) *private roads, culverts, retaining walls, sidewalks, curbs and gutters that are associated with private roads and are identified and approved for expenditure by the council;*
- (ab) placing underground the wiring and other parts of a system for the supply or distribution of electricity, gas, steam or other source of energy or a telecommunications system;
- (ac) a system for the supply or distribution of electricity, gas, steam or other source of energy;
- (ad) pounds;
- (ae) a fire alarm system;
- (af) ponds, reservoirs, brooks, canals and other means of accumulating or directing the flow of water to be used in extinguishing fires;
- (ag) playgrounds, trails[,] including trails developed, operated or maintained pursuant to an agreement made under clause 59(c), bicycle paths, swimming pools, ice arenas and other recreational facilities;
- (ah) public grounds, squares, halls, museums, parks, tourist information centres and community centres;
- (ai) public markets;
- (aj) property held by trustees for the use of the public;
- (ak) wastewater facilities and stormwater systems;
- (al) water systems;
- (am) solid-waste management facilities;
- (an) buildings for a medical centre to encourage medical doctors, dentists and other health professionals to locate in the municipality or a part of it;
- (ao) industrial parks, incubator malls and land and other facilities for the encouragement of economic development;

(ap) parking lots and parking structures;

(aq) landing strips and airports;

(ar) wharves and public landings;

(as) carrying out an agreement with the Minister of Community Services, Canada Mortgage and Housing Corporation or a body corporate or agency made under clause 59(b);

(at) contributing to a hospital to which the Hospitals Act applies, with power to raise the amount as an area rate in the area or areas primarily served by the hospital and to borrow for capital grants;

(au) a grant or contribution to

(i) a society within the meaning of the Children and Family Services Act,

(ii) a mental health clinic in receipt of financial assistance from the Province,

(iii) an exhibition held by an educational institution in the municipality,

(iv) a club, association or exhibition within the meaning of the Agriculture and Marketing Act,

(v) any charitable, nursing, medical, athletic, educational, environmental, cultural or social organization within the Province,

(vi) a registered Canadian charitable organization,

and the municipality shall publish annually a list of the organizations and grants or contributions made pursuant to this clause in a newspaper circulating in the municipality;

(av) all other expenditures

(i) authorized by this Act or another Act of the Legislature,

(ii) that are required to be made under a contract lawfully made by, or on behalf of, the municipality,

(iii) incurred in the due execution of the duties, powers and responsibilities by law vested in, or imposed upon, the municipality, its mayor or warden, council or officers.

1998, c. 18, s. 65; 2001, c. 35, s. 5; 2003, c. 9, s. 52; 2004, c. 7, s. 4.

Power to borrow money

lot is reserved or set aside transfers the lot to any person other than a father, mother, brother, sister, son, daughter, grandson, granddaughter or spouse of the owner referred to in subsection (3) or to the owner, then the change in use tax is payable by the transferor in accordance with this Section.

(6) Subsections (3) to (5) do not apply to any transfer, conveyance, reservation or setting aside of lands unless the grantor or person reserving or setting aside the land files, in the registry, a statutory declaration that the grantee of the land or person for whom the land is reserved or set aside, as the case may be, is a person named in subsection (3). *1998, c. 18, s. 78.*

User charges

79 Subject to the approval of the Board for those services that are subject to the Public Utilities Act, the council may, by by-law, prescribe charges for the provision of services for persons who use or benefit from the service, on a basis to be set out in the by-law. *1998, c. 18, s. 79.*

Fire protection rate

80 (1) The council may levy a rate on the value of all assessable property and business occupancy assessment in the area served by a water system in the municipality, as defined by the council by policy, in order to recover that part of the cost of the water system that is attributable to fire protection.

(2) No property, except property of Her Majesty in right of the Province, in the area served by the water system as defined by policy is exempt from the rate, unless exempted by by-law.

(3) The rate is a first lien on the real property and may be collected in the same manner as taxes. *1998, c. 18, s. 80; 2001, c. 35, s. 8.*

By-law regarding payment of charges

81 (1) The council may make by-laws imposing, fixing and providing methods of enforcing payment of charges for

(a) wastewater facilities or stormwater systems, the use of wastewater facilities or stormwater systems and connecting to wastewater facilities or stormwater systems;

(b) expenditures incurred for the wastewater management system in a wastewater management district;

(c) the municipal portion of the capital cost of installing a water system;

(d) laying out, opening, constructing, repairing, improving and maintaining streets, curbs, sidewalks, gutters, bridges, culverts and retaining walls, whether the cost is incurred by the municipality directly or by, or pursuant to, an agreement with Her Majesty in right of the Province, the Minister of Transportation and Public Works or any person;

(da) laying out, opening, constructing, repairing, improving and maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads, where the cost is incurred

(i) by the municipality, or

(ii) under an agreement between the municipality and a person;

(e) the municipal portion of the cost of a major tree removal program or the cost of removing trees from a private property;

(f) the municipal portion of the capital cost of placing the wiring and other parts of an electrical distribution system underground;

(g) depositing in a special purpose tax account to provide for future expenditures for wastewater facilities, stormwater systems, water systems, transportation facilities or other anticipated capital requirements.

(2) The council may, by by-law

(a) define classes of buildings to be erected or enlarged according to the varying loads that, in the opinion of council, the buildings impose or may impose on the sewer system *or wastewater facility* and levy a one-time redevelopment charge to pay for additional or trunk sanitary or storm sewer capacity *or additional wastewater facility capacity* required to accommodate the effluent from the buildings;

(b) impose a one-time oversized sewer charge on each property determined by the council to benefit from a sewer in the future to recover the cost of making the sewer an oversized sewer and provide that the oversized sewer charge is not payable until the property is serviced by a sanitary sewer or a storm sewer;

(c) levy a one-time storm drainage charge on the owner of each lot of land in a drainage management area for which an application is made for a development permit to allow, on the lot, a development of a class designated by the council in the by-law.

(3) A by-law passed pursuant to this Section may provide

(a) that the charges fixed by, or determined pursuant to, the by-law may be chargeable in proportion to frontage, in proportion to area, in proportion to the assessment of the respective properties fronting on the street or according to another plan or method set out in the by-law;

(b) that the charges may be made and collected only where

(i) the persons owning more than fifty per cent of the frontage of the real property fronting on the street or the portion of a street on which the work is performed, or

- (ii) the persons as determined by the method set out in the by-law,
have filed with the clerk a petition requesting that the work be performed;
- (c) that the charges may be different for different classes of development and may be different in different areas of the municipality;
- (d) when the charges are payable;
- (e) for the total or partial exemption of persons and land from the charge and for adjustments to be made with respect to lots of land or developments where the proposals or applications change in order to reflect the changing nature of lots or developments;
- (f) that the charges are first liens on the real property and may be collected in the same manner as other taxes;
- (g) that the charges be collectable in the same manner as taxes and, at the option of the treasurer, be collectable at the same time, and by the same proceedings, as taxes;
- (h) a means of determining when the lien becomes effective or when the charges become due and payable;
- (i) that the amount payable may, at the option of the owner of the property, be paid in the number of annual installments set out in the by-law and, upon default of payment of any installment, the balance becomes due and payable; and
- (j) that interest is payable annually on the entire amount outstanding and unpaid, whether or not the owner has elected to pay by installments, at a rate and beginning on a date fixed by the by-law.
- (4) For greater certainty, no property is exempt from a charge levied pursuant to this Section except property of Her Majesty in right of the Province.
- (5) A municipality may install the wastewater facilities, stormwater system, water system and system for the supply or distribution of gas, steam or other source of energy of the municipality outside its boundaries and may enter into contracts to provide the services.
- (6) A municipality may charge for services provided outside the municipality in the same manner in which the service is charged for within the municipality, provided that rates that are subject to the approval of the Board are approved by the Board.
- (7) Notwithstanding the Public Utilities Act and for greater certainty, any by-law made pursuant to this Section and any charge imposed or fixed pursuant to this Section do not require approval by the Board. *1998, c. 18, s. 81; 2001, c. 35, s. 9; 2004, c. 7, s. 8.*

Interest payable

THE MUNICIPALITY OF THE COUNTY OF KINGS
POLICY STATEMENT ON PRIVATE ROAD MAINTENANCE AREA RATES

Approved by Council –
Revised - 15 November 2005

Introduction

A requirement for a private road maintenance policy for Kings County was identified as a result of a number of individual private road owners who requested support from the County on various private road management concerns. Recent provincial legislation has allowed the County to assist in the collection of funds by the establishment of area rates administered through Private Road Owners Associations.

Provincial legislation has provided municipalities with a broad range of area rate powers. Section 75 or 81 of the *Municipal Government Act* provides that area rates may be used to finance all or part of the cost of any service that council deems to be of benefit to an area.

Private Road maintenance is a required service that will ensure the safety and long-term serviceability of roads owned by private land-owners. Road maintenance includes all work required to maintain the road in a serviceable condition year around and may include snow removal, grading, ditching, culvert and bridge repair, and brush clearing.

The County of Kings limits its involvement in the private road maintenance to administration of the area rate in cooperation with respective Road Owners Associations. The Municipality will not be directly involved in the provision of engineering advice or technical assistance for the implied private road maintenance activities. This is the sole responsibility of the Road Owners Association.

Terms of the Policy

1. **Council** – Council shall consider the establishment of an area rate upon receipt of an application submitted in accordance with the terms of this policy.
2. **Applicant** – An application for the establishment or continuation of a private road maintenance area rate shall be submitted by an organization, incorporated under the *Societies Act*, R.S.C. 435, having as one objective the provision of private road maintenance services, respectively, and referred to in this policy as the “applicant”.
3. **Ratepayer** – “ratepayer” means a person residing within an area and rated on the current assessment roll of the Municipality within that area and the spouse of such person as defined in the *Matrimonial Property Act*.

4. Area to which the rate applies – An application for the establishment of an area rate shall define the area to which the rate is to apply with sufficient clarity to allow for proper implementation of the rate for billing purposes. The area shall be defined by resolution of the Council at the time of the setting of the area rate. Due to the seasonal occupation of residents on private roads and the requisite use of the private road, Associations can have seasonal-based billing charges. The charges would be defined as a full-year or a half-year, dependent upon the number of months per year that property owners occupied the residence. This alternate billing method would allow for a more equitable treatment of seasonal occupation versus year round occupation. The decision to bill on a full-year or half-year would be the responsibility of the Road Owners Association and would be stated as such in the Association's rules and regulations.

5. Administration Fee – an administration fee of 4% will be charged by the Municipality to offset the costs involved in billing, collecting and forwarding the area rate funds. Applicants should include this fee in their budget calculations and area rate submissions.

6. Public Participation – prior to the submission of an application for an area rate, an applicant shall call a public meeting. Notice of the meeting shall be given by appropriate local advertisement in the area to which the rate will apply. The first such notice shall be advertised not less than 14 days prior to the date of the meeting and the second notice not less than 7 days prior to the date of the meeting. In addition to local advertisement, the applicant shall post the notice of the meeting in 5 conspicuous places in the area to which the rate is to be applied not less than 14 days prior to the date of the meeting. Notice of the meeting shall also be made through direct mail to all property owners, that will be impacted by the area rate. The notice shall contain the date, time and place of the public meeting; the name of the applicant; the amount of the area rate to be requested in the application; the area to which the rate will apply; that ratepayers will be entitled to vote; and the method of voting.

7. Extent of Public Support – The public meeting shall be conducted by the applicant. The applicant shall have a register in which those ratepayers attending the meeting may place their names and addresses. Prior to a vote being called, the applicant shall make a presentation to the meeting setting out the reasons and proposed purposes for use of the area rate funds and the amount of the rate. The support for the proposed area rate shall be determined by majority vote of the ratepayers present and voting at the meeting. A quorum, as defined in the Association's rules, shall be required in order for the vote to be valid.

8. Application – An application shall set out evidence of the organization's incorporation and good standing under the *Societies Act* and shall include a budget in support of the proposed area rate; a definition of the area to which the rate shall apply; a declaration setting out the fulfillment of the public notice and public meeting process required by this policy.

9. Timing of Area Rate Submissions – Area rates applications will be considered by Council only during the Municipality's budget process. Applications must be submitted by March 1, in each year. However, in the year 2006, applications will be received until April 30.

10. Annual Applications and Accountability- An area rate does not continue automatically from year to year. An application must be submitted each year for the continuation of an area rate. A public meeting as required in section 7 must be held, prior to 1 March in each year, at which the financial statements and a statement of activities of the preceding year are

presented in addition to a budget and the amount of the proposed rate for the coming year. Support for the proposed area rate shall be determined by majority vote of the ratepayers present and voting at the meeting. A quorum, as defined by the Associations rules, shall be required in order for the vote to be valid. Any portion of a proposed rate that was approved at the prior year's meeting related to repayment of debt shall be considered to be approved in each subsequent year to the extent as disclosed in the financial statements.

11. Application of the Area Rate – An area rate for private road maintenance services established under this policy shall be applied on a “per dwelling unit” or “per taxable assessment” basis. It is the responsibility of the Road Owners Association to determine the method of calculating the area rate and to have that stated in the Associations rules and regulations. Area Rate Charges pursuant to this policy are first liens on real property and may be collected in the same manner as taxes.

12. Definition of a Private Road – For the purposes of this Policy, a “private road” shall be any road that:

- (i) is not public,
- (ii) is shown on an approved plan of subdivision or a plan of survey,
- (iii) has access to a public road, although access may cross other private roads, and
- (iv) where not totally located within the area of land being subdivided, has an easement for right-of-way and access that is assignable and perpetual, and has been clearly granted by deed, registered in the registry of deeds, and includes the portion of the road right-of-way which is not used for vehicular traffic but which is available for use for installation of services, or as a shoulder, ditch or buffer

August 10, 2006

Halifax Regional Municipality

Private Road Maintenance Costs Recovery Policy

1. Principles. The Halifax Regional Municipality (HRM) is committed to facilitating public road access for municipal residents whose principal residences are accessed from private roads which do not form part of the HRM municipal street system. It is recognized by HRM that facilitating the maintenance of private roads is a necessary municipal service that will ensure the safety and long term usability of roads situated on privately owned land. Authority to fund work on private road is pursuant to section 65(aaa) of the *Municipal Government Act* (MGA).

2. Scope of Assistance. The purpose of this policy is to provide a financing procedure for the funding and repayment of work to maintain private roads, including culverts, retaining walls, sidewalks, curbs and gutters that are associated with those private roads. Road maintenance includes all work required to maintain the road in a serviceable condition year round and may include snow removal, grading, ditch and culvert and bridge repair and brush clearing. Cost recovery facilitation under this policy is not available for the construction or capital improvement of private roads.

HRM will not be involved in the provision of engineering, technical or legal services or advice in respect of the private road maintenance. HRM involvement will be limited to the administration of the area flat rate. This policy applies only to applications for private road maintenance costs recovery facilitation made under this policy. Private road maintenance programs implemented prior to the adoption of this policy by HRM shall continue in effect unmodified.

3. Repayment. Pursuant to MGA section 81 HRM has the authority to make by-laws imposing, fixing and providing methods of enforcement of charges for maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads where the cost is incurred under an agreement between the municipality and a person. In particular MGA section 81(3) provides that the charges may be determined pursuant to the plan or method set out in the implementing by-law.

4. Eligibility. A private road eligible for improvement or maintenance financing under this policy shall include any road that is not public and that provides perpetual direct or indirect access to a public road or highway for at least two properties each of which contains a principal residence. The private road includes the portion of the road and right of way which is not used for vehicle traffic and is available for installation of services or is shoulder, ditch or buffer. If the documentation creating the private road access does not permit the property owners to implement the maintenance work then the legal owner(s) of the property on which the private road is situate must consent in writing to the maintenance of the road.

5. Petition. An application for private road maintenance financing assistance under this policy shall be commenced by presenting a petition to the HRM council. Collectively those signing the petition shall be the applicant for the private road maintenance funding. The presented petition shall be signed by property owners comprising at least two-thirds (66.7%) of both the principal residences and the road frontage on that portion of the private road for which the application is made. The petition shall set out the area to be subject to the application and the nature of the road maintenance proposed, the requested method of area flat rate determination (in conformity with this policy) and the projected annual area flat rate. Upon acceptance of the Petition an HRM staff co-ordinator will be assigned to assist the applicant in processing the application.

6. Meeting of Property Owners. Subsequent to HRM acceptance of the petition an applicant shall call a meeting of the subject property owners. Not less than fourteen (14) days prior to the date of the meeting, notice of the meeting shall be posted in three (3) conspicuous places in the area to which the rate is to be applied. Notice of the meeting shall also be made not less than fourteen (14) days prior to the date of the meeting to all property owners that will be affected by the area rate through prepaid mail to their tax assessment addresses. The notice of the public meeting shall set out the date and time and place of the meeting, the name(s) of the applicant, describe the area to be subject to the application and the nature of the road maintenance proposed, the requested method of area flat rate determination (in conformity with this policy), the road maintenance plan and amount of the area flat rate to be requested in the application, and advise that rate payers will be entitled to vote and the method of voting. The mail notice shall contain regular postage pre-stamped self return envelopes, proxy forms and ballots approved to form by the HRM staff co-ordinator.

7. Support. The meeting shall be conducted by the applicant under the supervision of the HRM staff co-ordinator and the applicant shall have a register in which those rate payers attending the meeting may place their names and addresses. Prior to a vote being called, the applicant shall make a presentation to the meeting setting out the reasons and proposed purposes for the use of the area rate fund and the amount of the flat rate. The support for the proposed area flat rate shall be at least the owners of at least two-thirds (66.7%) of the affected properties. Mail in ballots and proxy voting shall be allowed by a property owners not in attendance at the public meeting.

8. Application. Upon receipt of an application, HRM Council will consider the establishment of an area flat rate in accordance with the provisions of this policy. The application for the establishment of an area flat rate shall define the proposed area to which the flat rate is to apply with sufficient clarity to allow for proper implementation of the flat rate for billing purposes. The area shall be defined by resolution at Council at the time of setting of the area flat rate. An application shall include a budget in support of the proposed area flat rate, a definition of the area to which the rate shall apply, a declaration setting out the fulfilment of the public notice and public meeting process required under the policy.

9. Area Flat Rate. Pursuant this policy HRM Council will establish an area flat rate for private road maintenance services to be applied on a per dwelling unit service or adjoining property basis. It is the responsibility of the applicant to determine the method of calculating the area flat rate and to have that stated in the application.

10. Property Owner's Association. Upon HRM Council establishing an area the Applicant shall form, under the Societies Act, an incorporated association of the owners of the subject properties. All subject property owners will be eligible for membership in the association. HRM will enter into an agreement with the association under which the association shall accept responsibility for the implementing and administration of the maintenance services on the private road. Payment of the area rates collected will be made only to the association. All work performed under private road policy financing arrangements will be under the control and direction of property owner's association and the association shall be wholly responsible for the application of the funds provided.

11. Meetings of the Association. The Property Owner's Association shall have an annual general meeting prior to the end of September in each year, at which meeting the majority of a quorum present shall review and approve the road maintenance plan and budget for the following year. HRM will review the plan and budget to ensure it complies with the purpose of the area flat rate and that sufficient funding can be raised through the area flat rate to fund it. Any changes to the amount of the flat rate shall require majority approval at a special meeting of the Property's Owner's Association called for the purpose of determining the rate increase issue. Notice of the special meeting shall conform to the standards set out above for the application meeting. All proposed area flat rate increases are subject to HRM approval. The Property's Owner's Association may also by special meeting elect to terminate the financial assistance agreement with HRM and upon the termination of the agreement the area flat rate will discontinue.

12. Charge to be Lien. A charge imposed under this policy constitutes a lien on a subject properties in the same manner and with the same effect as rates and taxes under the Assessment Act, and is collectable in the same manner as rates and taxes under this Assessment Act. The lien becomes effective on the completion of the payment of money out of HRM Finance. Interest shall accrue on charges outstanding from the date of billing forward at rate equal to the prime rate of HRM's banker plus two percentage points.

13. Installments. The amount payable as an area charge will be invoiced as installments in two billings during the year on the regular property tax bills.

14. Administration Charges. Pursuant to MGA section 79 a charge shall be imposed by HRM for the provision and administration of private road maintenance costs recovery under this policy, which includes, inter alias, billing, collecting and forwarding the area rate funds. The administration fee shall be a set up charge of \$500.00 for each area rate and an annual charge of \$100.00. Applicants should include this fee in their budget calculation in area rate submissions. This administrative charge shall form part of project funding subject to lien and is collectable together with interest as provided for herein.