



MUNICIPALITY OF THE DISTRICT OF WEST HANTS
A By-Law Respecting the Maintenance and Improvement of Private Roads

1. Short Title

- 1.1 This by-law shall be known as, A By-Law Respecting the Maintenance and Improvement of Private Roads and shall be cited as the "Private Roads By-Law".

2. Definitions

- a) "Act" means the *Municipal Government Act*, R.S.N.S., Chapter 18 of the Acts of 1998;
- b) "Association" means a body corporate incorporated and in good standing under the *Societies Act*, which represents the owners within a Charge Area and to which all owners in the Charge Area are entitled to be a voting member of;
- c) "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 road maintenance and/or improvement;
- d) "Charge Area" means an area to which a charge is imposed and as more fully described in a petition for road maintenance and/or improvement submitted pursuant to this By-Law;
- e) "Dwelling" means a residential unit as identified by the Property Valuation Services Corporation file roll;
- f) "Fiscal Year" means the period April 1st to March 31st;
- g) "Improvement" means the work undertaken on a road to increase or improve upon the existing condition or level of service of a road;
- h) "Maintenance" means the work required to maintain a road's existing condition or level of service;
- i) "Municipality" means the Municipality of the District of West Hants;
- j) "Owner" means:
- i. An owner, part owner, joint owner, tenant in common or joint tenant 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 road;
 - ii. 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 road; or



- iii. 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 road;
- k) "Parent Parcel" means the parcel which keeps the primary Assessment Account Number (AAN) during a subdivision;
- l) "Petition" means a written request to the Municipality to levy a charge for the maintenance and improvement of private roads submitted by the duly elected executive officers of an Association;
- m) "Road" under this by-law means any private street, private roadway, private highway or private traveled way, or portion thereof, situated in the Municipality;
- n) "Seasonal Dwelling" means a residential unit as identified by the Property Valuation Services Corporation filed roll; and occupied as a secondary residence, not used or intended to be used for year-round occupancy and not occupied for greater than six month per calendar year;
- o) "Special Resolution" means a resolution passed under the Association's By-Laws by such members entitled to vote as are present in person or by proxy, where proxies are allowed, at a general meeting or a special meeting of which notice specifying intention to purpose the resolution as a special resolution has been duly given.

3. Charge Imposed

3.1 The Municipality may levy a charge for maintenance and improvement of a road upon the owners of property within a Charge Area in an amount necessary to provide for maintenance and improvement where the duly elected executive officers of an Association petition the Municipality for a purpose provided under Section 81 of the Act and have signed an agreement with the Municipality.

- 3.1.1 The petition referred to in clause 3.1 shall be accompanied by:
 - i. An estimated yearly maintenance and improvement budget for that year which was passed by a Special Resolution at a duly called meeting of the Association;
 - ii. A copy of the Special Resolution approved by the Association requesting the Municipality to collect a charge for the maintenance and /or improvement of roads;
 - iii. Proof of the Association's good standing with the Registry of Joint Stocks;
 - iv. A copy of the Association's Memorandum of Understanding and By-Laws which clearly states that an object or purpose of the



Association is to carry out maintenance and /or improvements to the road(s);

- v. A Plan clearly showing the Charge Area, the lots affected, the road(s) , the frontage of the lots and the Property Identification (PID) and Assessment Account Number (AAN) of each lot affected in the Charge Area; and
- vi. Any additional information as deemed necessary by the Municipality

3.1.2 The Agreement referred to in clause 3.1 shall, at a minimum,

- i. Require the Association be responsible for performing or contracting, the work associated with the improvement or maintenance of the road(s) in a Charge Area;
- ii. Indemnify and save harmless the Municipality from any and all liability or responsibility with respect to the work associated with the improvement or maintenance of the road(s) in a Charge Area;
- iii. Identify the basis of the charge and the Charge Area;
- iv. Provide for automatic renewal; and
- v. Contain any other clauses as deemed necessary by the Municipality.

3.2 The petition referred to in clause 3.1 shall be in a form as prescribed by the Municipality in Schedule A, or such other form as may be authorized from time to time by the Director of Finance of the Municipality and shall be submitted no later than the 31st day of January prior to the fiscal year in which the charges are to begin.

3.3 The Agreement referred to in clause 3.1 shall be in a form agreed to by the Association and the Municipality (sample in Schedule B), and signed by the Association's signing officers. Any amendments to the Agreement proposed by the Association shall be in consultation with the Municipality and submitted for approval by the Municipality no later than January 31st.

4. Method 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:



- 4.1.1 The assessment of each lot, being a rate of so much on the dollar on the assessed value of the taxable property within the Charge Area; or
 - 4.1.2 A charge per property within the Charge Area; or
 - 4.1.3 A charge per dwelling unit within the Charge Area.
 - 4.2 For all methods of charge, each property shall only be assigned one charge amount which may be reviewed annually.
 - 4.3 Any changes to the method of calculation of a charge within a Charge Area must be approved by Special Resolution at a duly called meeting of the Association and shall require an amendment to the Agreement between the Municipality and the Association. Any change request must be submitted for approval by the Municipality no later than the January 31st for the following fiscal year (commencing April 1).
5. Total Charges:
- 5.1 The total amount of the charge levied by the Municipality shall not exceed the estimated annual cost of the road(s) maintenance and improvements and an administration charge as determined in the Agreement.
6. Exemption from Charge
- 6.1 Notwithstanding the provisions of this By-Law, any property within a Charge Area that has been granted tax exemption under the Municipality's tax exemption by-laws or policies shall be exempt from the charge to be levied. The Municipality will inform the Association of any exemptions.
 - 6.2 All Municipal, Provincial and Federal properties are exempt from such charges.
7. Annual Maintenance Charge
- 7.1 Where the Municipality has accepted the petition and signed an Agreement for roads maintenance and improvement, the Association shall submit, on an annual basis, a budget for the estimated road maintenance and improvement cost for the Fiscal Year. This Budget shall be approved as per the Association's By-Laws at a duly called



meeting of the Association. The budget, including the estimated and actual cost of the previous year, a copy of the minutes of the duly called meeting and proof of good standing with the Registry of Joint Stocks, plan of the Charge Area and any amendments to the Association's by-laws shall be received by the Municipality no later than January 31st of each calendar year.

8. Lien

- 8.1 A charge imposed pursuant to this By-Law constitutes a lien upon the property with respect 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.
- 8.2 The lien provided for in this By-Law shall become effective on the date which the Clerk of the Municipality and the Association's signing officers sign the Agreement. The Agreement shall identify the area(s) subject to an annual charge for road maintenance and improvement as provided for in this By-Law and shall remain effective from year to year until terminated pursuant to this By-Law.
- 8.3 The lien provided for in this By-Law shall remain in effect until the charge plus interest has been paid in full.
- 8.4 Where a property subject to a lien is subdivided, the amount of lien plus interest shall stay with the parent parcel.

9. Notice of Charge

- 9.1 Upon signing the Agreement pursuant to clause 8.2, the Association shall notify the owner(s) of each property within the Charge Area of the purpose of the charge and the basis for the charge to be incurred.
- 9.2 The notice needs only to be sent to each owner upon signing the Agreement and not annually.

10. Payment of Charges

- 10.1 A charge payable pursuant to this By-Law for road maintenance and improvements shall be due at the same time that taxes and rates are due in each year.



11. Termination of Charges

11.1 The charge imposed pursuant to this By-Law may be terminated at any time on three month's notice before the start of a fiscal year by the Association by filing with the Municipality a signed copy of the Special Resolution passed at a duly called meeting requesting the Municipality to terminate the charge; or

11.2 The charge imposed pursuant to this By-Law may be terminated at any time by the Municipality, at its own discretion, if there has been non-compliance by the Association with the provisions of this By-Law or the Agreement or without cause provided the Municipality gives 3 months notice in advance of the fiscal year when the termination becomes effective;

11.3 In either case, once all monies payable pursuant to this charge have been collected, the Agreement shall thenceforth have no further force of effect within the Charge Area.

12. The Municipality shall be entitled to rely upon all documents provided to it by the Association as authentic and accurate without any obligation of verification, and is not liable to members of the Association in the event of irregularities in the documents or conduct of meetings of the Association.

13. The Association shall be responsible for complying with all laws, bylaws or regulations affecting its maintenance work and activities.

14. The Association shall discharge its maintenance responsibilities in an impartial, fair and even-handed manner, but this provision does not preclude the Association from dedicating more resources to areas of higher traffic impact or greater susceptibility of problems than to other areas.



SCHEDULE "A"

Petition for Private Road Maintenance and Improvement Charge

To the Council of the Municipality of the District of West Hants,

From the (_____) the "Association"
Name of the Association as per Society Act

Address: _____

Representing the "Owners" for the purpose of the Private Roads Maintenance and Improvement By-Law, in the "Charge Area" as shown on the attached map.

The Association hereby requests the Municipality to collect road maintenance and improvements fees on behalf of the Association in accordance with the provisions of the Private Roads Maintenance and Improvement By-Law.

The Association requests the properties in the "Charge Area" be levied a charge in respect of the road maintenance, road improvement or both. Further the charge shall be levied on the basis of (Choose only one by placing an "X" beside the option chosen):

- a) Rate per \$100.00 of assessed value of the property within the Charge Area;
- b) A charge per property within the Charge Area;
- c) A charge per Dwelling unit within the Charge Area;

For this purpose the Association is willing to enter into an agreement with the Municipality as outlined in the Private Road Maintenance and Improvement By-Law

NAME AND SIGNATURE OF ASSOCIATION EXECUTIVES

Name Signature Civic Address, PID and AAN – Please Print

Name Signature Civic Address, PID and AAN – Please Print



| | | |
|-------|-----------|---|
| _____ | _____ | _____ |
| Name | Signature | Civic Address, PID and AAN – Please Print |
| _____ | _____ | _____ |
| Name | Signature | Civic Address, PID and AAN – Please Print |
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| Name | Signature | Civic Address, PID and AAN – Please Print |
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| Name | Signature | Civic Address, PID and AAN – Please Print |
| _____ | _____ | _____ |
| Name | Signature | Civic Address, PID and AAN – Please Print |

This petition must be accompanied by:

- a) An estimated yearly maintenance and improvement budget for the year which was passed by a Special Resolution at a duly called meeting of the Association;
- b) A copy of the Special Resolution approved by the Association requesting the Municipality to collect a charge for the maintenance and /or improvement of roads;
- c) Proof of the Association’s good standing with the Registry of Joint Stocks;
- d) A copy of the Association’s Memorandum of Understanding and By-Laws which clearly states that a primary objective or purpose of the Association is to carry out specified items under the MGA Section 81 (da);
- e) A Plan clearly showing the Charge Area, the lots affected, the road(s), the frontage of the lots and the Property Identification (PID) and Assessment Account Number (AAN) of each lot affected in the Charge Area.



SCHEDULE "B"

Example

AGREEMENT made this ____ day of _____, _____

Agreement Between:

XYA Property Owners Association, an association incorporated under the Society Act of Nova Scotia (hereinafter called the "Association")

And

The Municipality of the District of West Hants (hereinafter called the "Municipality")

WHEREAS the Municipality is committed to facilitating safe access for municipal residents' use of private roads which do not form part the Municipal street system;

AND WHEREAS the Municipality is authorized by Section 81 of the Municipal Government Act and the Private Roads Maintenance and Improvement By-Law to provide a mechanism to establish charge rates for private road maintenance and improvements;

THEREFORE the parties hereto agree to the following:

1. The Municipality hereby accepts and appoints the Association, for the term of the Agreement, to maintain the private road as an independent not-for-profit association, on the terms and conditions set out in this Agreement, and the association hereby accepts such appointment.
2. The Association agrees to adhere to all the terms and conditions of the Private Road Maintenance and Improvement By-Law and this Agreement. Failure to comply may result in the immediate termination of the agreement.
3. The Association shall, by January 31st of each year, provide the Municipality with the following information:
 - a. A budget of the estimated private road maintenance and improvement for the upcoming fiscal year (beginning April 1); including reserves set



aside for the purposes of the maintenance and improvement of private roads.

- i. The reserve portion of the budget shall not increase the balance of the total reserve fund beyond fifty percent (50%) of the total budget before HST and the reserve, in any given year.
 - b. The estimated and actual or projected cost for the previous year.
 - c. Minutes of the duly called meeting of the Association which indicates the approval of the budget in accordance with the Association By-Laws;
 - d. Proof of good standing with the Registry of Joint Stocks.
 - e. A plan clearly showing the Charge Area, the lots affected, the road(s), the frontage of the lots and the Property Identification (PID) and Assessment Account Number (AAN) of each lot affected in the Charge Area.
 - f. Copies of any amendments to the By-Laws of the Association.
4. The Municipality's responsibility will be limited to the billing and collection of the charge and administering this agreement.
5. The Municipality shall collect a charge for private road maintenance and improvements, on behalf of the Association from properties within the Charge Area, as approved by Council during the annual budget process.
6. The charge collected shall be a charge per dwelling unit. (*Insert method of charge as per petition*).
7. If applicable, the Association's HST Registration Number is _____.
8. The Municipality shall charge the Association an Administration Fee of 10% (*Insert percentage of the Administration fee*) plus HST to offset the cost involved in billing, collecting and forwarding the fees, which shall be shown in the annual budget of the Association.
9. The Municipality will remit collected charges to the Association monthly from October to June. No remittance will be issued for the months July to September.
10. Upon request, the Municipality will submit a statement of accounts to the Association.



- 11. The Municipality will not provide engineering, technical, legal services or advice with respect to the private road that is maintained through this agreement.
- 12. The Municipality reserves the right to review the financial statements and records (including By-laws) of the Association from time to time and the Association shall furnish these documents to the Municipality, if and when requested.
- 13. Any issues which may arise between the parties shall be discussed or reviewed by the Director of Finance of the Municipality and the Treasurer of the Association or designated Executive Member.
- 14. This Agreement shall be automatically renewed subject to the Association meeting the requirements as stated in Item 3.
- 15. This Agreement may be terminated by the Association or Municipality upon giving three months written notice to the other party.
- 16. The Association is not an agent of the Municipality and shall not pass itself off as, or represent that it is, an agent of the Municipality unless expressly authorized by prior written direction.

The undersigned have read and understand the obligations and responsibilities as outlined in the Private Road Maintenance and Improvement By-Law and this Agreement and have the authority of the Association to bind it.

SIGNED, SEALED AND DELIVERED)

In the Presence of)

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_____)

Witness

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XYA Property Owners Association

per: _____
(Association Executive Member)

per: _____
(Association Executive Member)

Municipality of the District of West Hants



By-Law

R-002

Witness

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per: _____
Warden

per: _____
Municipal Clerk

I Rhonda Brown, Municipal Clerk of the Municipality of the District of West Hants, the Province of Nova Scotia, do hereby certify that this is a true copy of the By-Law as adopted by the Council of the Municipality of the District of West Hants at a meeting duly called and held on the **8** day of **March, 2016**.

R.N. BROWN
Municipal Clerk

| By-Law Adoption | |
|---|-------------------|
| First Reading: | February 9, 2016 |
| Notice Published: | February 18, 2016 |
| Second Reading & Approval | March 8, 2016 |
| Final Publication | March 31, 2016 |
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| Description: Passing of original By-Law | |