

Municipality of the County of Cumberland By-Law 07-06

Maintenance and Improvement of Private Roads By-Law 07-06

General

1. This By-law is entitled "Maintenance and Improvement of Private Roads By-Law".
2. In this By-law:
 - (a) "**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 a Charge Area are entitled to be a voting member of;
 - (b) "**Clerk**" means the Clerk of the Municipality;
 - (c) "**Council**" means the Council of the Municipality of the County of Cumberland;
 - (d) "**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;
 - (e) "**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;
 - (f) "**Improvement**" means the work undertaken on a road to increase or improve upon the existing condition or level of service of a road;
 - (g) "**Maintenance**" means the work required to maintain a road's existing condition or level of service;
 - (h) "**Municipality**" means the Municipality of the County of Cumberland;
 - (i) "**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

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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;

(j) **“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 officer of an Association; and

(k) **“Road”** means any private street, private roadway, private highway or private traveled way, or portion thereof, situate in the Municipality.

3. (1) The Municipality may levy a charge for maintenance and improvement of a road upon the owners of real property within a Charge Area in an amount necessary to provide for such maintenance and improvement where the duly elected executive officers of an Association petition the Municipality for a purpose provided for under Section 81 of the Municipal Government Act; and

(a) the petition referred to in clause 3.1 is accompanied by:

(i) an estimated yearly maintenance and improvement budget for that year which was passed by a Special Resolution of the Association;

(ii) a copy of the Special Resolution required in subclause (I);

(iii) a copy of the Association’s Memorandum of Association and By-Laws which clearly states that the object or purpose of the Association is to carry out maintenance and/or improvements to the road(s);

(iv) a Plan clearly showing the Charge Area, the lots affected, the roads and the frontage of the lots in the Charge Area;

(v) a one time application fee in the amount of \$300.00 to defray the Municipality’s costs in setting up the charge; and

(b) 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 the Change Area;

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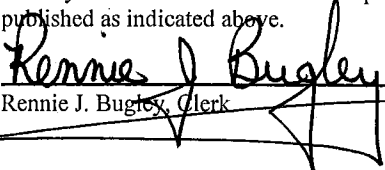
- (ii) indemnifies and saves harmless the Municipality from any and all liability or responsibility with respect to the work associated with the improvement or maintenance of the road(s) in the Change Area;
 - (iii) identifies that the petition forms the basis of the Charge; and
 - (iv) contains any other clauses as deemed necessary by the Municipality.
- (2) The petition referred to in subsection 3(1) shall be in the form as prescribed in Schedule 'A' of this By-Law and must be submitted no later than the 31st day of December in the fiscal year prior to the fiscal year in which the charges are to begin.
- (3) The Agreement referred to in subsection 3(1) shall be in a form agreed to by the Association and the Municipality, signed by the Association 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 in the same manner as Section 7.
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 the road, being the ratio that the frontage of each lot bears to the total frontage of the road(s) or portion thereof to be maintained and/or improved; or
 - (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; or
 - (c) a combination of (a) and (b) above, with the total amounts charged for frontage and assessment to be equal; or
 - (d) an equal charge per property.
- (2) Notwithstanding subsection 4(1)(a), for the purpose of this By-Law only, all lots within a Charge Area shall have a minimum deemed frontage of 75 feet.
- (3) 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. The total amount of the Charge levied by the Municipality shall equal the estimated annual cost of the street maintenance and improvements.

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6. 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 and does not use or have access to the road upon which the maintenance and 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 roads.
7. Where Municipal Council has accepted a petition 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 upcoming fiscal year. This Budget shall be passed by a Special Resolution of the Association responsible for ensuring the maintenance and improvement is carried out and the Budget and Special Resolution shall be received by the Municipality no later than the 31st day of December in each calendar year.
8.
 - (1) A Charge imposed pursuant to this By-law constitutes a lien upon the real 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.
 - (2) The lien provided for in this By-law shall become effective on the date which the Clerk 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 and improvement 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.
 - (3) The lien provided for in this By-law shall remain in effect until the Charge plus interest has been paid in full.
 - (4) Where a property subject to a lien is subdivided:
 - (a) in which the Charge imposed was calculated based upon frontage, 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 and any residual land is based upon the percentage of the original lot frontage that the new lots and residual land are comprised of;
 - (b) in which the Charge imposed was calculated based upon assessment, 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, with the market value of lots so created to be confirmed by a provincial assessor and written confirmation of the market value shall be submitted to the Treasurer;

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- (c) in which the charge imposed was calculated based on both frontage and assessment, the apportionments set out in (a) and (b) above shall each be applied to one-half of the charge and the result combined; and
- (d) in which the Charge imposed was calculated based upon an equal charge per property, the amount of the lien plus interest then unpaid shall be apportioned equally among the new lots created including any residual land.
9. Upon filing the Certificate pursuant to subsection 8(2), 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. The notice needs only to be sent to each owner upon filing of the Certificate and not annually.
10. 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. The Charge imposed pursuant to this By-Law 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.

<u>Clerk's Annotation for Official By-Law Book</u>	
Date of First Reading	<u>May 23, 2007</u>
Date of Advertisement of Notice of Intent to Consider	<u>May 30, 2007</u>
Date of Advertisement of Passage of By-Law	<u>July 7, 2007</u>
Date of Mailing a certified copy to Minister	<u>July 9, 2007</u>
I certify that this Maintenance and Improvement of Private Roads By-Law was adopted by Council and published as indicated above.	
 Rennie J. Bugley, Clerk	<u>July 9, 2007</u> Date

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SCHEDULE A

(Maintenance and Improvement of Private Roads By-Law)

PETITION FOR PRIVATE ROAD MAINTENANCE AND IMPROVEMENT CHARGE

To the Council of the Municipality of the County of Cumberland

From the (_____) the "Association"
name of association as per Societies Act

Located at: _____

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

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

The Association further requests that this charge be made on the basis of

(indicate lot frontage, assessment, a combination of frontage and assessment, or an equal charge per lot).

The purpose of the charge is understood to enable the Association to undertake maintenance and improvements on the road(s) located within the Charge Area, as identified on the attached plan.

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

NAME AND SIGNATURES OF ASSOCIATION EXECUTIVE

_____ Name - Please Print	_____ Signature	_____ Civic Address or PID and AAN - Please Print
_____ Name - Please Print	_____ Signature	_____ Civic Address or PID and AAN - Please Print
_____ Name - Please Print	_____ Signature	_____ Civic Address or PID and AAN - Please Print

This petition must be accompanied by:

- (i) an estimated maintenance and improvement budget for the year which was passed by a Special Resolution of the Association,
- (ii) a copy of the Special Resolution mentioned above,
- (iii) a copy of the Association's Memorandum of Association and By-laws which clearly states that the object or purpose of the Association is to carry out maintenance and/or improvements to the road(s), and
- (iv) a Plan clearly showing the Charge Area, the lots affected, the road(s) and the frontage of the lots in the Charge Area. This must indicate the PID and assessment account # for each lot affected.