

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:**

Original Signed by 

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Jacques Dubé, Chief Administrative Officer

**DATE:** August 3, 2022

**SUBJECT:** Private Road Area Rate AO 2018-003-ADM Amendment for Unknown Ownership of Road Procedures

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## **ORIGIN**

May 17, 2022 meeting of Halifax Regional Council, Item 16.1:

MOVED by Councillor Cuttell, seconded by Deputy Mayor Lovelace

THAT Halifax Regional Council direct the Chief Administrative Officer to provide a staff report with corresponding amendments to Administrative Order 2018-003-ADM, the *Private Road Maintenance Cost Recovery Administrative Order*, the purpose of which is to include procedures for private road area rates to be approved in instances where the road ownership cannot be determined.

MOTION PUT AND PASSED UNANIMOUSLY.

## **LEGISLATIVE AUTHORITY**

*Halifax Regional Municipality Charter* subsection 96(2) and clause 104(1)(g), as follows:

96(2) The Council may recover annually from the area the amount required or as much of that sum as the Council considers advisable to collect in any one fiscal year by an area rate of so much on the dollar on the assessed value of the taxable property or occupancy assessments in the area.

104(1) The Council may make by-laws imposing, fixing and providing methods of enforcing payment of charges for

(g) 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; ...

By-Law P-1100, Private Road Maintenance By-Law  
2018-003-ADM Administrative Order – Respecting Private Road Maintenance

**RECOMMENDATION ON PAGE 2**

## **RECOMMENDATION**

It is recommended that Halifax Regional Council adopt the amendments to Administrative Order 2018-003-ADM, *Respecting Private Road Maintenance*, as set out in Appendix B to this report.

## **BACKGROUND**

The existing Administrative Order 2018-003-ADM, *Respecting Private Road Maintenance* clause 27. (2) stipulates that “The Association must provide written consent from the owner(s) of the private road(s), in the form of an Private Road Maintenance Agreement; if the private road(s) are not owned by the Association”. Written consent must be provided by the road owner for a private road area rate to be established. In some cases, the private road owners cannot be determined. These roads are recorded at the Land Registry as owner unknown or in some way that makes determining ownership impossible. This amendment will provide a provision that if the Treasurer is satisfied an owner cannot be determined, Council may waive the requirement to obtain owner consent to permit a private road area rate to be implemented and maintenance to be performed in those instances.

## **DISCUSSION**

As set out in Appendix C - *Private Roads Agreement with Road Owner(s)* to this report, and as stipulated in Administrative Order 2018-003-ADM, before a private road area rate can be established; each owner of the private road on which maintenance has been proposed, except in the case where the road is owned by the Association, must sign the Private Roads Agreement with Road Owner legal agreement. This is specified in Administrative Order 2018-003-ADM, *Respecting Private Road Maintenance* clause 27. (2) which states that “The Association must provide written consent from the owner(s) of the private road(s), in the form of an Private Road Maintenance Agreement; if the private road(s) are not owned by the Association”. Because of this clause in the AO, if there is a section of road in the proposed maintenance area that has no known owner, it would disqualify the association from performing maintenance on this section of road. This scenario would likely prevent the association from successfully establishing a private road area rate to help with needed upkeep of the road such as maintaining curbs, sidewalks, gutters, culverts, retaining walls, and signage as well as snow removal, grading, ditch and culvert and bridge repair, brush clearing, and the creation of or repairs to street and traffic signage.

The amendments as set out in Appendix B to this report would amend the AO by adding a subsection (3) of section 27, which provides for a situation where if the Treasurer is satisfied the owner of a portion of the private road cannot be identified, the requirement for all owners to consent in subsection (2) of section 27 may be waived by Council. In order to satisfy the new subsection that an owner cannot be determined, the association would be required to have a legal title search and certificate of title performed by a qualified legal professional, and have these searches return as inconclusive or no owner determined. Once satisfied, it would allow an association to complete the process of having a private road area rate established and performing required maintenance to this section of road. Under the new waiver, a private road maintenance agreement would still be put in place containing the authorized signatures for the identified or known owners of all other portions of the private road, but would waive the requirement for a signature for the unknown portion of the road. The only exception would be if the unknown ownership portion represents the only portion of the road not owned by the Association. In that case, there would be no agreement required. Having the requirement for a legal title search and a certificate of title is important to ensure that appropriate due diligence is performed by the association, and all efforts to identify a potential owner have been exhausted.

### **FINANCIAL IMPLICATIONS**

As all funding is from the uniform charges (i.e. no transfers from the general tax rate), there would be no financial impact on the HRM General Operating or Capital Budget at any time in the future.

### **RISK CONSIDERATION**

There is a risk in providing a waiver for the requirement for all owners to provide consent through a Private Road Maintenance Agreement. There may be circumstances in which a waiver is given by Council, work is performed on the road, and a legal owner of the portion of the road comes forward and expresses disagreement with the work performed. This risk is mitigated by requiring Associations to perform a title search and certificate of title over any portion of road where an owner cannot be found.

### **COMMUNITY ENGAGEMENT**

Community engagement was not required for this report.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications were identified.

### **ALTERNATIVES**

Halifax Regional Council could choose to:

1. Decline to adopt the proposed amendments to Administrative Order 2018-003-ADM.
2. Direct other changes to the proposed amendments to Administrative Order 2018-003-ADM. This may require a supplementary report.

### **ATTACHMENTS**

Appendix A: Showing Proposed Changes to 2018-003-ADM  
Appendix B: Amendments to Administrative Order 2018-003-ADM  
Appendix C: Private Roads Agreement with Road Owner(s)

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Daniel Freeman, Senior Financial Consultant, Finance & Asset Management, 902.399.8397

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**HALIFAX REGIONAL MUNICIPALITY  
ADMINISTRATIVE ORDER 2018-003-ADM  
RESPECTING PRIVATE ROAD MAINTENANCE**

**BE IT RESOLVED** as an Administrative Order of the Council of the Halifax Regional Municipality, as follows:

**WHEREAS** the Municipality is committed to facilitating public streets access for residents of the Municipality whose principal residences are accessed from private roads which do not form part of the street system of the Municipality;

**AND WHEREAS** facilitating the maintenance of private roads is a service that provides for safety and long-term usability of private roads situated on privately owned land;

**AND WHEREAS**, pursuant to clause 79(1)(ab) of the HRM Charter, the Municipality may expend funds for work on private roads ;

**AND WHEREAS**, pursuant to section 104 of the HRM Charter, the Municipality may 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 by the Municipality or under an agreement between the Municipality and a person;

**AND WHEREAS** Council may levy an area rate or uniform charge pursuant to section 96 of the HRM Charter;

**Short Title**

1. This Administrative Order may be cited as the *Private Road Maintenance Cost Recovery Administrative Order*.

**Interpretation**

2. In this Administrative Order;

- (a) "area rate" means an area rate set pursuant to subsection 96(2) of the HRM Charter;
- (b) "Association" means a Property Owner's Association incorporated as a society pursuant to the *Societies Act*; 1989 R.S.N.S., c. 42, as amended;
- (c) "By-law" means By-law P-1100, the *Private Road Maintenance By-law*;
- (d) "Council" means the Council of the Municipality;
- (e) "Director" means the director of the department of the Municipality responsible for administering private roads, and includes a person acting under the supervision and direction of the Director;
- (f) "HRM Charter" means the *Halifax Regional Municipality Charter*, 2008 S.N.S. c. 39, as amended;
- (g) "Municipality" means the Halifax Regional Municipality;
- (h) "private road maintenance" means all work required to maintain a private road in a serviceable condition year-round, including work respecting

(i) curbs, sidewalks, gutters, culverts, retaining walls, and signage that are associated with those private roads, and

(ii) snow removal, grading, ditch and culvert and bridge repair, brush clearing, and the creation of or repairs to street and traffic signage;

(i) "rate" means an area rate or uniform charge for private road maintenance; and

(j) "uniform charge" means a uniform charge levied pursuant to subsection 96(4) of the HRM Charter.

### **Purpose**

3. The purpose of this Administrative Order is to provide a financing procedure for the funding and repayment of private road maintenance.

### **General Provisions**

4. A rate under this Administrative Order shall only apply to costs associated with private road maintenance.

5. The Municipality will only administer the collection of the rate, and assist an applicant with the process for the establishment of the rate.

6. The Municipality will not provide to the Association:

(a) engineering, technical, or legal services;

(b) advice in respect of the private road maintenance; or

(c) private road maintenance.

7. In accordance with the By-law, this Administrative Order does not apply to construction of or capital improvements to private roads.

8. Unless otherwise stated, a uniform charge under this Administrative Order is levied on each taxable property assessment in the catchment area.

9. Nothing in this Administrative Order requires Council to pass a rate, pass a rate at a certain amount, or restricts Council's ability to impose, set, change, or terminate a rate.

### **PROCESS**

#### **Commencement by Petition**

10. Upon application by a person, the Municipality may consider the establishment of a rate under this Administrative Order.

11. To commence the application process, a petition must be presented to the Director.

12. The presented petition shall:

(a) be signed by property owners comprising at least two-thirds (66.7%) of the properties located within the proposed area that would be subject to the rate; and

(b) contain the following information:

- (i) the proposed area that would be subject to the rate,
- (ii) the proposed rate,
- (iii) the nature of the private road maintenance being proposed, and
- (iv) whether the proposed rate would be an area rate or uniform charge.

13. Upon acceptance of the petition by the Director, an employee of the Municipality will be assigned to assist the applicant with the process.

**Meeting of Property Owners**

14. Subject to section 16, after the Municipality has accepted the petition, the applicant shall call a public meeting of the subject property owners.

15. (1) The applicant shall provide notice of the public meeting by:

(a) posting a notice in three (3) conspicuous places in the proposed area that would be subject to the rate, and the notice shall:

- (i) contain the information required by subsection 15(2), and
- (ii) be posted not less than fourteen (14) days prior to the date of the meeting; and

(b) subject to subsection 15(3), mailing a notice to the tax assessment addresses of all the property owners located within the proposed area that would be subject to the rate, and the notice shall:

- (i) contain the information required by subsection 15(2),
- (ii) contain the ballot and proxy form required by subsection 15(5), and
- (iii) be mailed not less than fourteen (14) days prior to the date of the meeting.

(2) The notices of the public meeting shall contain the following information:

- (a) the date, time, and place of the meeting;
- (b) the name or names of the applicant;
- (c) a description of the area that would be subject to the proposed rate;
- (d) a description of the nature of the road maintenance proposed;
- (e) a description of the type of rate proposed;
- (f) a description of the road maintenance plan and budget;
- (g) the proposed rate amount;
- (h) that the property owners are entitled to vote on the establishment of the rate;

(i) the date of the vote, including only ballots received within 7 days of the meeting will be counted; and

(j) the method of voting, including that a proxy may vote on a property owner's behalf at the public meeting.

(3) If a property owner owns property located within the proposed area but resides at a location outside of the proposed area that would subject to the rate, such as residing in another province or country, the Director may approve emailing the notice of the public meeting to them rather than mailing it.

(4) An emailed notice shall

(a) contain the information required by subsection 15(2);

(b) contain the ballot and proxy form required by subsection 15(5); and

(c) be emailed not less than fourteen (14) days prior to the date of the public meeting.

(5) Any notice mailed or emailed shall contain proxy forms and ballots approved to form by the Director.

#### **Waiver of Public Meeting**

16. (1) The requirement for a meeting of the property owners may be waived where, in the opinion of Council, a meeting is not in the best interest of the property owners affected, or a meeting is unreasonable in the circumstances.

(2) Before Council determines whether to waive the public meeting, a staff report may be prepared listing the reasons for the request of the waiver.

(3) If the public meeting requirement is waived by Council, the applicant shall provide notice of the rate by

(a) posting a notice in three (3) conspicuous places in the proposed area that would be subject to the rate, and the notice shall:

(i) contain the information required by subsection 15(2), except for the information respecting proxy voting, and except for the information respecting the date, time and place of the meeting, and

(ii) be posted not less than fourteen (14) days prior to the date of the vote; and

(b) mailing a notice to the tax assessment addresses of all property owners that would be affected by the proposed rate, and the notice shall

(i) contain the information required by subsection 15(2), except for the information respecting proxy voting, and except for the information respecting the date, time and place of the meeting,

(ii) contain the ballot required by subsection 15(5), and

(iii) be mailed not less than fourteen (14) days prior to the date of the vote.

(4) If a property owner owns property located within the proposed area but resides at a location outside of the proposed area that would subject to the rate, such as residing in another province or country, the Director may approve emailing the notice of the public meeting to them rather than mailing it.

(5) An email notice shall

(a) contain the information required by subsection 15(2), except for the information respecting proxy voting, and except for the information respecting the date, time and place of the meeting;

(b) contain the ballot required by subsection 15(5); and

(c) be emailed not less than fourteen (14) days prior to the date of the vote.

### **Public Meeting**

17. (1) The public meeting shall be conducted by the applicant under the supervision of staff of the Municipality.

(2) At the public meeting, the applicant shall:

(a) have a register available in which those property owners attending the meeting may place their names and addresses; and

(b) make a presentation setting out the amount of the proposed rate and the proposed uses of the funds arising from that rate.

(3) After the presentation, a vote shall be conducted to determine if the property owners support the proposed rate.

(4) Proxy voting shall be allowed by property owners not in attendance at the public meeting.

### **Votes**

18. (1) Each property located within the proposed area that would be subject to the rate is entitled to one vote.

(2) A person who owns more than one property in the proposed area may vote once for each property that is owned.

### **Counting Votes**

19. (1) The votes cast at the public meeting, and the mailed and emailed ballots that are received by 4:30 pm on the seventh day after the date of the public meeting, will be counted to determine the level of support for the proposed rate.

(2) For a vote to be successful, owners representing at least two-thirds (66.7%) of the assessed properties that are located within the proposed area that would be subject to the rate must have voted in favor of the rate.

### **Request to Establish**

20. The applicant may only request a rate be established under this Administrative Order if the vote was successful.

21. (1) The request for the establishment of a rate shall include the following information:

(a) the area where the proposed rate would apply;

(b) whether the proposed rate is an area rate or uniform charge, and if a uniform charge is proposed, the request shall indicate whether the proposed uniform charge will apply to each taxable property assessment or each dwelling unit in the area;

(c) a detailed proposed maintenance budget to support the proposed rate;

(d) a declaration that the public notice requirements have been satisfied;

(e) unless the public meeting requirement was waived by Council, a declaration that the requirement for the public meeting was satisfied; and

(f) any additional information that, in the opinion of the Director, is necessary to process the application, bill the rate on the tax bills, and collect the funds arising from the rate.

(2) A request for the establishment of the rate may only proceed if the Director is of the opinion that the information provided pursuant to subsection 21(1) is sufficient to allow the Municipality to process the rate, bill the rate on the tax bills, and collect the funds arising from the rate.

(3) If the Director is of the opinion that the information provided pursuant to subsection 2(1) is insufficient to allow the Municipality to process the rate, bill the rate on the tax bills, and collect the funds arising from the rate, the Director may request additional information, and if the information is not received by the date indicated in such request, the Director may terminate the application process.

#### **Establishment of Rate**

22. Upon receipt of a complete request, Council may consider the establishment of a rate in accordance with the provisions of this Administrative Order, the By-law, and the HRM Charter.

23. Staff will prepare a report and recommendation for the consideration of Council respecting the establishment of a rate.

24. Upon receipt of the staff report, Council may consider the report and may establish

(a) an area rate based on so much on the dollar on the assessed value of the taxable property in the catchment area; or

(b) a uniform charge on each taxable property assessment, or dwelling unit, in the catchment area.

25. If a rate is established, Council will define the area that will be subject to the rate.

#### **Property Owner's Association**

26. If Council establishes a rate, the applicant shall incorporate a Property Owner's Association in the form of a society under the *Societies Act*.

27. (1) The Association shall be comprised of the owners of the subject properties and all subject property owners shall be eligible for membership in the Association.

(2) **Subject to subsection (3),** the Association must provide written consent from the owner(s) of the private road(s), in the form of a Private Road Maintenance Agreement; if the private road(s) are not owned by the Association.

(3) **Where the Association has provided a legal title search and a certificate of title respecting ownership of the private road(s), and the Treasurer is satisfied that one or more owners cannot be identified for a portion of the private road(s), Council may waive the requirement under subsection (2).**

28. (1) The Municipality 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.

(2) Council hereby authorizes the Mayor and Clerk to enter into and execute on behalf of the Municipality the Agreement, and any amendments thereto, with an Association, providing such Agreements is generally in the form of the Agreement that was most recently approved by Council.

29. After the Agreement is signed by all parties, the Municipality will provide the funds collected from the rate to the Association.

30. The Association shall:

(a) direct and control all work resulting from the funds arising from the rate that are provided by the Municipality; and

(b) be wholly responsible for the application of the funds arising from the rate that are provided by the Municipality.

### **Meetings of the Association**

31. (1) The Association shall have an annual general meeting prior to the end of each year at which meeting the majority of the quorum present shall review and approve the road maintenance plan and budget for the following year.

(2) The Municipality will review the plan and budget to ensure it complies with the purpose of the rate and that sufficient funding can be raised through the rate to fund it.

(3) Any changes to the amount of the rate requires majority approval at the annual general meeting, or at a special meeting of the Association that is called to determine the level of support for the rate increase.

(4) Notice of the special meeting or of the general meeting where a proposed rate increase will be considered shall comply with the public meeting notice requirements set out in section 15.

(5) All proposed rate increases are subject to Council approval.

(6) The Association may, by special meeting or at the general meeting, elect to request Council terminate the rate and, Council may consider such request.

### **Lien**

32. A rate imposed under this Administrative Order constitutes a lien on the subject properties and is collectable in the same manner as rates and taxes under the *Assessment Act*.

33. Interest accrues on charges outstanding from the date of billing forward at rate set out in the By-law.

### **Installments**

34. (1) In the first year a rate is established by Council, the amount payable from the rate will be invoiced entirely on the second regular tax bill.

(2) For any other year, the amount payable from the rate will be invoiced as installments in two billings on the regular property tax bills.

### **Administration**

35. A one-time administration fee of \$200 is set by the By-law, and shall form part of maintenance funding for the first year the rate is levied.

**Schedules**

36. The Schedules attached to this Administrative Order shall form part of this Administrative Order.

**Reference**

37. A reference to the *Private Road Maintenance Cost Recovery Policy* and a reference to Administrative Order 45, *Respecting Private Road Maintenance*, shall be read as including a reference to the provisions of this Administrative Order relating to the same subject matter.

**Repeals**

38. The *Private Road Maintenance Cost Recovery Policy*, adopted by Council on January 16, 2007, and all amendments thereto, is repealed.

39. Administrative Order 45, *Respecting Private Road Maintenance*, adopted by Council on May 13, 2008, and all amendments thereto, is repealed.

**APPENDIX B  
(Amending Administrative Order)**

**HALIFAX REGIONAL MUNICIPALITY  
ADMINISTRATIVE ORDER 2018-003-ADM  
RESPECTING PRIVATE ROAD MAINTENANCE**

**BE IT RESOLVED** by the Council of the Halifax Regional Municipality that Administrative Order 2018-003-ADM, the *Private Road Maintenance Cost Recovery Administrative Order*, is amended as follows:

1. Section 27 is amended by:

(a) amending subsection (2) by removing the capital "T" in the word "The" before the words "Association must" and replacing it with a lower case "t";

(b) amending subsection (2) by adding the words, number, brackets, and comma "Subject to subsection (3)," at the beginning of the subsection; and

(c) adding the following subsection immediately after subsection (2):

(3) Where the Association has provided a legal title search and a certificate of title respecting ownership of the private road(s), and the Treasurer is satisfied that one or more owners cannot be identified for a portion of the private road(s), Council may waive the requirement under subsection (2).

Done and passed in Council this      day of                      , 2022.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
MUNICIPAL CLERK

## PRIVATE ROAD MAINTENANCE AGREEMENT

**BETWEEN:**

\_\_\_\_\_, a person(s) having an ownership interest in the private road forming the subject matter of this agreement (“the Road Owner”)

OF THE FIRST PART

- and-

\_\_\_\_\_, a society incorporated under the *Societies Act* of Nova Scotia (“the Association”)

OF THE SECOND PART

IN THE MATTER OF \_\_\_\_\_,  
 (“the Private Road”)

**WHEREAS** the Road Owner has an ownership interest in all or a portion of the Private Road.;

**AND WHEREAS** the Association wishes to engage in the maintenance of the Private Road, including, but not limited to snow ploughing and removal, gravel fill and grading;

**THEREFORE** in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

1. This agreement is with respect to the maintenance of the above referenced Private Road, which in addition to the travelled portion of 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.
2. The Road Owner hereby grants the Association permission to maintain the Private Road, including culverts, retaining walls, sidewalks, curbs and gutters that are associated with the Private Road, including 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.
3. This agreement does not provide for the construction or capital improvement of the Private Road.
4. The Association shall obtain and renew as necessary all licences, permits and approvals which may be required in connection with the maintenance of the Private Road. The Association shall at all times comply with the conditions of such licences, permits and approvals and shall comply with and observe all applicable laws, and by-laws.
5. This Agreement may be terminated at any time by any of the parties hereto for any reason whatsoever on three (3) months notice in writing.
6. The Association shall obtain and maintain at its own expense public liability insurance protection in the minimum amount of \$2,000,000 and shall indemnify and save harmless the Road Owner in respect of any liability for claims for bodily injury, death or damage to property resulting from the Association’s maintenance of the Private Road.
7. The provisions of this Agreement shall, subject to the terms and conditions hereof, be binding upon and enure to the benefit of the successors and assigns of each of the parties hereto.

8. This Agreement, together with any written agreements or modifications or amendments to this Agreement shall constitute the entire agreement between the parties and shall supersede any prior agreement or understanding, if any, whether written or oral, which either party may have had relating to the subject matter hereof.

Dated at the Halifax Regional Municipality this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_ Association

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
President of the Association

\_\_\_\_\_  
Witness

Per: \_\_\_\_\_  
Secretary/Treasurer of the Association

**Private Road Owner(s)**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Owner