

HALIFAX

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Item No. 14.1.2
Halifax Regional Council
January 30, 2018

TO: Mayor Savage and Members of Halifax Regional Council

Original Signed by 

SUBMITTED BY:

Jacques Dubé, Chief Administrative Officer

DATE: November 20, 2017

SUBJECT: Road Maintenance Fee for Kelly Point Lot Owners Association

ORIGIN

On January 16, 2007, Regional Council approved the Private Road Maintenance Costs Recovery Policy. Amendments to the Policy were adopted by Council on June 16, 2015. The purpose of this Policy is to provide owners of property accessed by private roads with the use of area rates or uniform charges to collect the funds required to maintain private roads. The Kelly Point Lot Owners Association has applied for such an area rate/ uniform charge under this Policy.

LEGISLATIVE AUTHORITY

Charter section 104(1)(g) which states "The Council may make by-laws imposing, fixing and providing methods of enforcing payment of charges for 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." Also, By-Law P-1100 "Respecting Charges for Private Road Maintenance", and Administrative Order 45, "Respecting Private Road Maintenance".

RECOMMENDATION

It is recommended that Halifax Regional Council

1. Approve an annual uniform charge of no more than \$700.00 per property, to be applied against properties abutting Barachois Lake Road, Kelly Point Drive, Bayview Crescent, Murphy Cove Drive Noonan Drive and Maroon Drive, as depicted in the map shown in Appendix A of this report, effective with the 2018-19 fiscal year for funding the road maintenance activities of the Kelly Point Lot Owners Association.
2. Adopt amending Administrative Order 45, Respecting Private Road Maintenance, by adding Schedule 15, respecting a Uniform Charge for the Kelly Point Lot Owners Association, attached hereto as Appendix B.

Subject to the approval of Schedule 15 of Administrative Order 45, authorize the Mayor and Clerk to sign on behalf of HRM, an Agreement between HRM and the Association in the form approved by Regional Council on February 11, 2014.

BACKGROUND

Kelly Point Subdivision is located on the Prospect Peninsula in District 11. The Association funds road maintenance expenses through an annual fee collected from the owners of 68 properties abutting the roads. In the past, the Association has had some difficulty collecting the fee from some of the property owners. As a result, the Association applied to HRM through the Private Road Maintenance Costs Recovery Policy for a uniform charge to ensure timely collection from all property owners.

DISCUSSION

The Private Road Maintenance Costs Recovery Policy outlines the conditions which must be satisfied before an area rate or uniform charge for private road maintenance can be implemented. Those conditions and the manner in which they were satisfied with respect to Kelly Point Lot Owners Association are outlined below.

1. *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.*

Staff have verified that all roads in the Kelly Point subdivision are private roads with abutting principal residences and that these private roads provide direct access to the public road system.

2. *The legal owner(s) of the property on which the private road is situated must consent in writing to the maintenance of the road.*

Attached as Appendix C to this report is a signed Private Roads Maintenance Agreement between the owner of the roads, Vladi Private Islands (Canada) Ltd, and the Kelly Point Lot Owners Association whereby the road owner grants permission to the Association to maintain the road.

3. *An application for private road maintenance financing assistance under this policy shall be commenced by presenting a petition to the HRM Council. 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.*

On September 12, 2017, staff received a petition from the owners of property abutting private roads within Kelly Point subdivision, requesting HRM collect their annual road maintenance dues via their property tax billings. Staff reviewed the petition and determined that the signatories represented at least two-thirds of the properties which would be charged the fee under the Policy.

4. *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 coordinator.*

The meeting notice and ballot mailed out to all affected property owners is included as Appendix D to this report. The meeting notice was developed by staff and included all the information required above as per the Private Road Maintenance Cost Recovery Policy. Self-addressed return envelopes were included in the mail-out, plus a fax number and email address was also provided.

5. *The meeting shall be conducted by the applicant under the supervision of the HRM staff coordinator. 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.

A meeting of the affected property owners was held on Monday October 23, 2017 at the Prospect Road Community Center, 2141 Prospect Road, Hatchet Lake. The HRM staff coordinator was present at the meeting to supervise the proceedings and to answer any questions with respect to the Private Road Maintenance Costs Recovery Policy. The President of the Association explained the amount and use of the uniform charge after which attendees had an opportunity to ask questions.

- 6. The support for the proposed area flat rate shall be the owners of at least two-thirds (66.7%) of the affected properties.*

The owners of 52 of the 68 properties (76.5%) voted in favour of establishing an annual uniform charge of no more than \$700.00 each to fund the road maintenance activities of the Kelly Point Lot Owners Association.

- 7. 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 uniform charge would be applied to 68 properties abutting the private roads of Barachois Lake Road, Kelly Point Drive, Bayview Crescent, Murphy Cove Drive, Noonan Drive and Maroon Drive, as depicted in the map shown in Appendix A of this report.

- 8. An application shall include a budget in support of the proposed area flat rate.*

The budget in support of the proposed area flat rate (uniform charge) is included in Appendix D on page 10 of this report. Staff have reviewed the budget and determined that it is sufficient to justify the amount of the area flat rate.

- 9. The Applicant shall form, under the Societies Act, an incorporated association of the owners of the subject properties.*

Staff has verified with the Registry of Joint Stock Companies that the Kelly Point Lot Owners Association, Registry ID 3024955, is currently in good standing (i.e. not lapsed).

- 10. The administration fee shall be a set up charge of \$200.00 for each area rate.*

The administration fee will be collected if Council approves the implementation of the uniform charge.

FINANCIAL IMPLICATIONS

If approved, the uniform charge would take effect in the 2018-19 fiscal year. As all funding is from the uniform charge (i.e. no transfers from the general tax rate), there would be no impact on the HRM General Operating Budget at any time in the future.

The uniform charge of \$700.00 per property is based on the 2018-19 operating budget of \$47,600, divided by the number of properties in the catchment area, which is 68. Details of the budget are provided in Appendix D of this report.

RISK CONSIDERATION

HRM's role with respect to the Private Road Maintenance Costs Recovery Policy is outlined in detail in the service agreements between HRM and the private road maintenance associations, and in the meeting notices mailed out to all affected property owners. The agreements specify that HRM's role is restricted

only to collecting the road maintenance fees on property tax bills and turning those funds over to the private road maintenance association. HRM does not have any responsibility to monitor or oversee how the Association spends the funds, nor does HRM provide any other services such as maintenance, engineering, technical or legal services or advice, and takes no responsibility for private roads or their condition. In this way, liability risk to HRM is minimized. Since the road maintenance fees are collected on property tax bills, HRM may impose a lien on properties for which the fees are past due. Therefore, bad debt risk is minimized.

COMMUNITY ENGAGEMENT

The Community Engagement process is outlined in detail in the Discussion section of this report. All property owners were mailed or emailed a formal ballot which included information regarding the purpose and amount of the uniform charge, and the date, time and location of a public information meeting. The purpose of the meeting was to provide additional information and address questions and concerns raised by property owners.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications resulting from the recommendations in this report.

ALTERNATIVES

Council could deny approval of the uniform charge. This alternative is not recommended because owners of more than 66.7% of the affected properties voted in favour of paying the uniform charge which is the minimum required under the Private Road Maintenance Costs Recovery Policy.

ATTACHMENTS

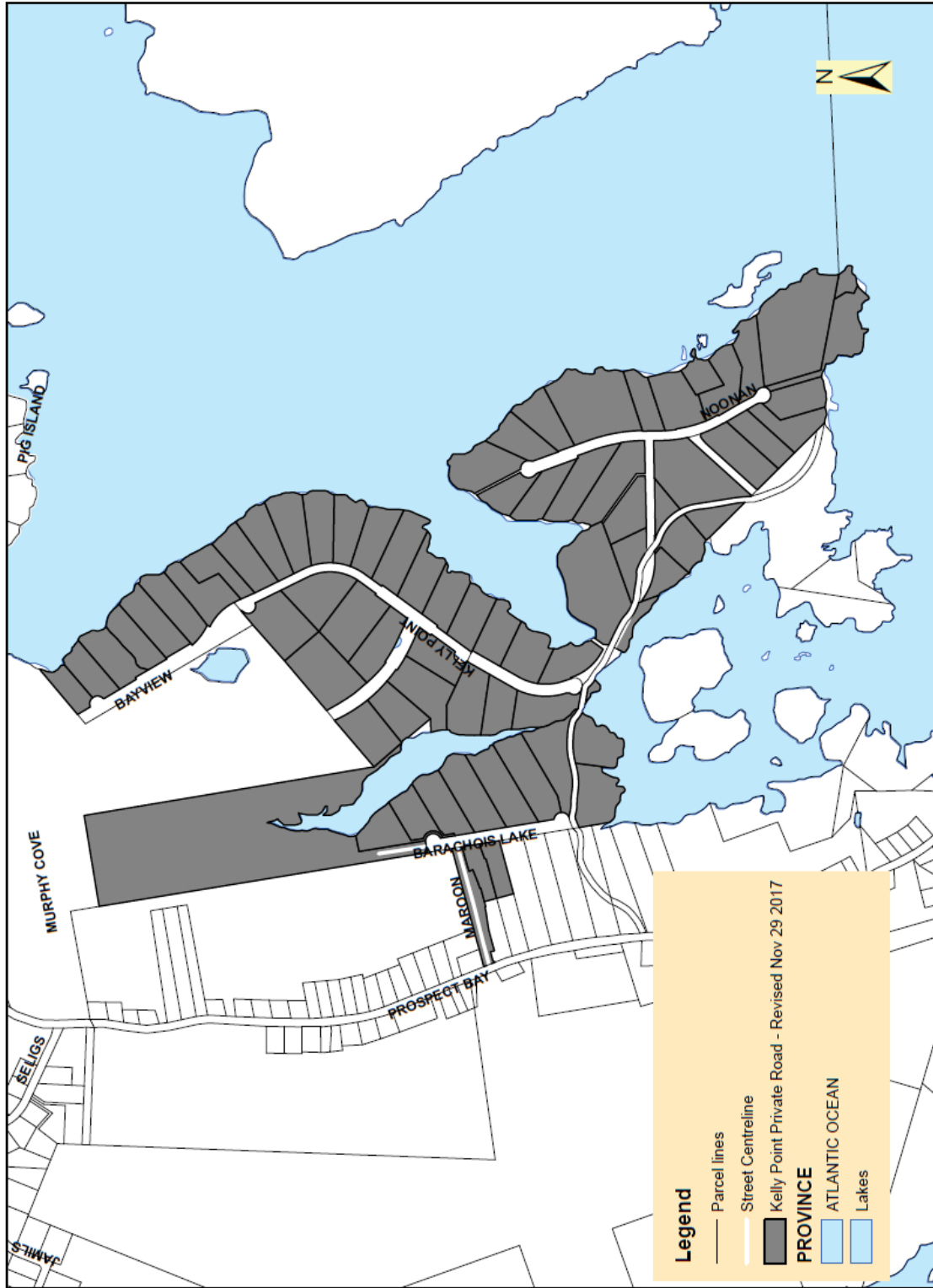
- Appendix A: Map of Catchment Area for Proposed Uniform charge
- Appendix B: Draft of Administrative Order Amending Administrative Order 45
- Appendix C: Private Roads Maintenance Agreement
- Appendix D: Copy of Meeting Notice and Ballot mailed to Property Owners, including proposed budget

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Barb Wilson, Senior Financial Consultant 902 490.4280

Map of Catchment Area for Kelly Point Lot Owners Association

KELLY POINT PRIVATE ROAD



(Amending Administrative Order)

Halifax Regional Municipality
ADMINISTRATIVE ORDER NUMBER 45
Respecting Private Road Maintenance

BE IT ENACTED by the Council of the Halifax Regional Municipality that Administrative Order 45, Respecting Private Road Maintenance, is further amended by inserting the following as Schedule 15:

Schedule 15

- (a) A Uniform Charge for properties fronting or abutting in whole or in part on private roads located within the Kelly Point Sub-division, Prospect Peninsula as identified on the map dated November 29, 2017 attached hereto, shall be a Uniform Charge of no more than \$700.00 annually.
- (b) The Charges collected under this By-Law shall be used by the Kelly Point Lot Owners Association for the maintenance of private roads located within Kelly Point Sub-division including culverts, retaining walls, sidewalks, curbs and gutters that are associated with the 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.

Done and passed in Council this day of 20 .

Mayor

Municipal Clerk

PRIVATE ROAD MAINTENANCE AGREEMENT

BETWEEN:

[REDACTED] 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 -

[REDACTED] Society incorporated under the *Societies Act* of Nova Scotia ("the Association")

OF THE SECOND PART

IN THE MATTER OF

[REDACTED]

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 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.
7. 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 6th day of November 2017

[Redacted]
Witness

[Redacted]
Witness

[Redacted]
Witness

Witness

Witness

Witness

Witness

Witness

Witness

Witness

[Redacted] Association

Per: [Redacted]
President of the Association

Per: [Redacted]
Secretary/Treasurer of the Association

[Redacted]
Owner

Owner

Owner

Owner

Owner

Owner

Owner

Owner

BALLOT FOR PRIVATE ROAD MAINTENANCE TAX

September 18, 2017

OWNER1
OWNER2
ADDRESS
CITYPROV PC

Property ID # AAN#
PROPERTY DESCRIPTION

Dear Property Owner:

The Halifax Regional Municipality has been petitioned by the owners of property abutting the private road on which you own the above referenced property. The petition concerns the possible implementation of an area property tax rate to fund the maintenance of the private roads in the Kelly Point Subdivision. Since those signing the petition represent at least 66.7% of the properties along these private roads, a formal vote of all property owners must be held in accordance with the Municipality's Private Road Maintenance Costs Recovery Policy.

A ballot is provided at the bottom of this page. The purpose of this ballot is to determine whether at least 66.7% of owners with property abutting Barachois Lake Road, Kelly Point Drive, Bayview Crescent and Noonan Drive wish to implement a per property charge of \$700.00 annually to maintain their roads. If the 66.7% minimum is attained, then all property owners balloted would be required to pay the charge starting in 2018. The charges collected would be turned over to the Kelly Point Land Owners Association which is responsible for maintaining the private roads.

Following Regional Council approval of the new property charge, a service agreement must be executed between HRM and the Kelly Point Land Owners Association. On the reverse side of this letter is a summary of the responsibilities of both parties under the service agreement. This letter also includes a budget which outlines how the total estimated cost of services was determined and how the annual per property charges were calculated.

As required by the Private Road Maintenance Costs Recovery Policy, a meeting of the owners of property abutting the private roads will be held to provide additional information and to give property owners an opportunity to ask questions or raise concerns. The meeting will be held:

Monday October 23, 2017 @ 6:30 p.m.
Prospect Road Community Center
2141 Prospect Road, Hatchet Lake

Completed ballots may be dropped off at the meeting, faxed to 490-6030, or mailed in the enclosed self-addressed envelope. You may also scan and email the completed ballot to wilsonba@halifax.ca. If you have any questions regarding the process, please contact Barb Wilson at 490-4280. For questions regarding road maintenance services, please contact Sarah Archibald, President KPLOA at [REDACTED] Dave Jones Vice President KPLOA at [REDACTED]

Please note that all ballots must be received by October 30, 2017. If you are mailing in your ballot, please allow adequate time for delivery. Results of the ballot will be communicated by the Kelly Point Land Owners Association.

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- YES**, I am in favour of implementing the area rate for private road maintenance and paying an annual area rate of \$700.00 on my property tax bill.
 - NO**, I am not in favour of implementing the area rate for private road maintenance.

Property ID # AAN#

NOTE: Only one vote per assessment number will be counted. Ballots with written-in, typed-in, or altered assessment numbers will not be accepted.

**Kelly Point Land Owners Association
2018 Road Maintenance Budget**

Revenue

Membership Service Fees - Annual Fees (\$700 x 68 lots)	47,600.00
Total Revenue	47,600.00

Road maintenance

Brush Cutting	3,500.00
Grading and road maintenance - Fall	7,400.00
Grading and road maintenance - Spring	13,500.00
Other road maintenance and pot hole filling	1,500.00
Millings	5,000.00
Road maintenance	30,900.00

Snow removal and sanding

Snow Removal Fees	6,000.00
Sanding and Grit	5,000.00
Total snow removal and sanding	11,000.00

Operating Expenses

Annual Meeting	150.00
Web hosting fees	200.00
Insurance	950.00
Bank Fees	125.00
HRM Administration Charge	200.00
Business Registration	31.15
Total Operating Expenses	1,656.15

Contingency	4,043.85
Total Expenses	47,600.00