


Item No. 11.1.2
Halifax Regional Council
January 19, 2010

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Dan English, Chief Administrative Officer



Mike Labrecque, Deputy CAO - Corporate Services and Strategy

DATE: December 15, 2009

SUBJECT: **Road Maintenance Fee for South West Grand Lake Property Owners Association**

ORIGIN

On January 16, 2007, Regional Council approved the Private Road Maintenance Costs Recovery Policy. 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 South West Grand Lake Property Owners Association has applied for the implementation of area rates under this Policy to fund the maintenance of the Kings Road and private roads accessed from it in Wellington.

RECOMMENDATION

It is recommended that Halifax Regional Council:

1. Approve in principle the Schedule of Annual Uniform Charges as shown in Appendix A of this report to be applied against all properties which must be accessed via Kings Road, Wellington as depicted in the map shown in Appendix B effective with the 2010-11 fiscal year for the purpose of funding the road maintenance activities of the South West Grand Lake Property Owners Association.
2. Approve in principle amending Administrative Order 45, Respecting Private Road Maintenance, by adding Schedule 4, respecting uniform charges for the South West Grand Lake Property Owners Association, attached hereto as Appendix C.
3. Subject to the approval of Schedule 4 of Administrative Order 45, authorize the Mayor and Municipal Clerk to sign on behalf of HRM, the Management and Operating Agreement between HRM and the Association included as Appendix D of this report.

BACKGROUND

Kings Road is located just off of Hwy #2 in the community of Wellington in District 2. Kings Road and other private roads which branch off from Kings Road are maintained by the South West Grand Lake Property Owners Association (SWGLPOA). The private roads maintained by the Association are: Kings Road, Alben Lane, Twilight Lane, Sleepy Cove Road, and Turtle Cove Road. The private roads travel over multiple properties and therefore have multiple ownership. Canal Cays Drive and Keegan Lane also branch off of Kings Road but are not maintained by the Association. However, the owners of property on those two roads are required to pay a fee for the maintenance of Kings Road as they must travel it to access their properties.

The Association funds road maintenance expenses through annual fees collected from the owners of each of the 112 properties which must be accessed via Kings Road. The fees vary from \$0 to \$1,020 depending on which road the property is located, whether the property is vacant or has a residence on it, whether the property is occupied on a seasonal or year-round basis, or whether a property owner owns a second property which is vacant. For example, if a property owner owns a property with a residence, and a second property which is vacant, no fee is charged on the second property. The schedule of fees was developed over a number of years as the result of discussions between the property owners. HRM staff were not involved in the development of the fee schedule. A Schedule of Annual Uniform Charges with criteria to determine which fee amount applies to a property is included as Appendix A to this report.

In the past, the Association has had some difficulty collecting the road maintenance fees from a few of the property owners. As a result, the Association has applied to HRM through the Private Road Maintenance Costs Recovery Policy to ensure timely collection of road maintenance fees from all property owners.

DISCUSSION

The Private Road Maintenance Costs Recovery Policy outlines the conditions which must be satisfied before a uniform charge for private road maintenance can be implemented. Those conditions and the manner in which they were satisfied with respect to the South West Grand Lake Property Owners Association (SWGLPOA) 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 Kings Road, Alben Lane, Twilight Lane, Sleepy Cove Road, and Turtle Cove Road are privately owned (refer to #2 below), provides direct access to Hwy #2 (refer to map in Appendix B), and have more than two properties containing principal residences.

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

A portion of Kings Road is within the property identified as PID# 41142159. The owner has consented to the maintenance of the portion of the road which he owns by voting in favour of the road maintenance fee. The remainder of Kings Road is within the property identified as PID# 05354633 which is owned by Kinglands Development Ltd. While Kinglands Development Ltd did not vote in favour of the road maintenance fee, they are a party to an agreement with owners of property accessed by the road to provide a common right-of-way. The agreement states in part that "The parties agree to allow maintenance of the common right-of-way herein created to be carried out on their respective portions of the right-of-way by a maintenance committee as provided in a separate agreement for the maintenance of the right-of-way." With respect to Alben Lane, Twilight Lane, Sleepy Cove Road, and Turtle Cove Road, right-of-ways are provided for in the deeds to each property. Legal Services is of the opinion that sufficient consent to maintenance meeting the standards of the policy has been obtained from the owners of the subject private roads.

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.*

In September 2009, SWGLPOA served a petition to staff on behalf of the residents of the private roads requesting HRM collect their annual road maintenance fees via their property tax billings. Staff reviewed the petition and determined that the signatories represented at least two-thirds of both the principal residences and the road frontage along Kings Road and the private roads which branch off from it.

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 co-ordinator.*

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

5. *The meeting shall be conducted by the applicant under the supervision of the HRM staff co-ordinator. 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 Wednesday, November 18, 2009 at 7:00 p.m at the Grand Lake Oakfield Fire Hall, 22 Lakeside Drive, Grand 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. A short presentation was made by the President of the Association explaining the fee schedule and use of the uniform charges 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.*

Owners of 76 of the 112 properties (67.9%) voted in favour of having HRM collect their annual road maintenance fees via their property tax billings in order to fund the road maintenance activities of SWGLPOA.

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 charges would be applied against all properties which must be accessed via Kings Road as depicted in the map shown in Appendix B of this report. SWGLPOA shall provide annually to HRM a list of the properties with the fees to be charged as per the Schedule of Annual Uniform Charges.

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

The budget in support of the proposed area flat rates is included in Appendix F of this report. Staff have reviewed the budget and determined that it is sufficient to justify the uniform charge amounts shown in the Schedule of Annual Uniform Charges in Appendix A.

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

Staff have verified with the Registry of Joint Stock Companies that SWGLPOA, Registry ID 3185612, is currently in good standing (ie. not lapsed).

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

The peculiar nature of the differing charges in the subject area has effectively resulted in a number of “areas” being created. As all arise from related road maintenance administered by one association it is the intention of Finance to charge a single \$200.00 administration fee. Accordingly this administration fee will be collected if Council approves the implementation of the uniform charges.

BUDGET IMPLICATIONS

The \$200 administration fee would be posted to the 2009/10 Operating Budget for Finance. The uniform charges would take effect in the 2010/11 fiscal year. As all funding is from the uniform charges (ie. no transfers from the general tax rate), there would be no impact on the HRM General Operating Budget at any time in the future. As with all property taxes, these charges would be lienable.

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. This will increase the Gross operating budget but not the net.

ALTERNATIVES

Council could either (1) change the amount of the uniform charges or (2) deny approval of the uniform charges altogether. Neither alternative is recommended because (1) the amount of the uniform charges are based on a budget approved by the Association's membership and verified by staff, and (2) over two-thirds of owners of the affected properties voted in favour of paying the uniform charges.


ATTACHMENTS

- Appendix A: Schedule of Annual Uniform Charges
- Appendix B: Map of Catchment Area for Proposed Uniform Charges
- Appendix C: Draft of Administrative Order 45 Schedule 4
- Appendix D: Management and Operating Agreement between HRM and the Association
- Appendix E: Copy of Meeting Notice and Ballot mailed to Property Owners
- Appendix F: Proposed Budget for 2010/2011


A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.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: Gordon Roussel, Financial Consultant 490-6468

Report Approved by:


Paul Fleming, Manager, Budget & Financial Analysis 490-7203

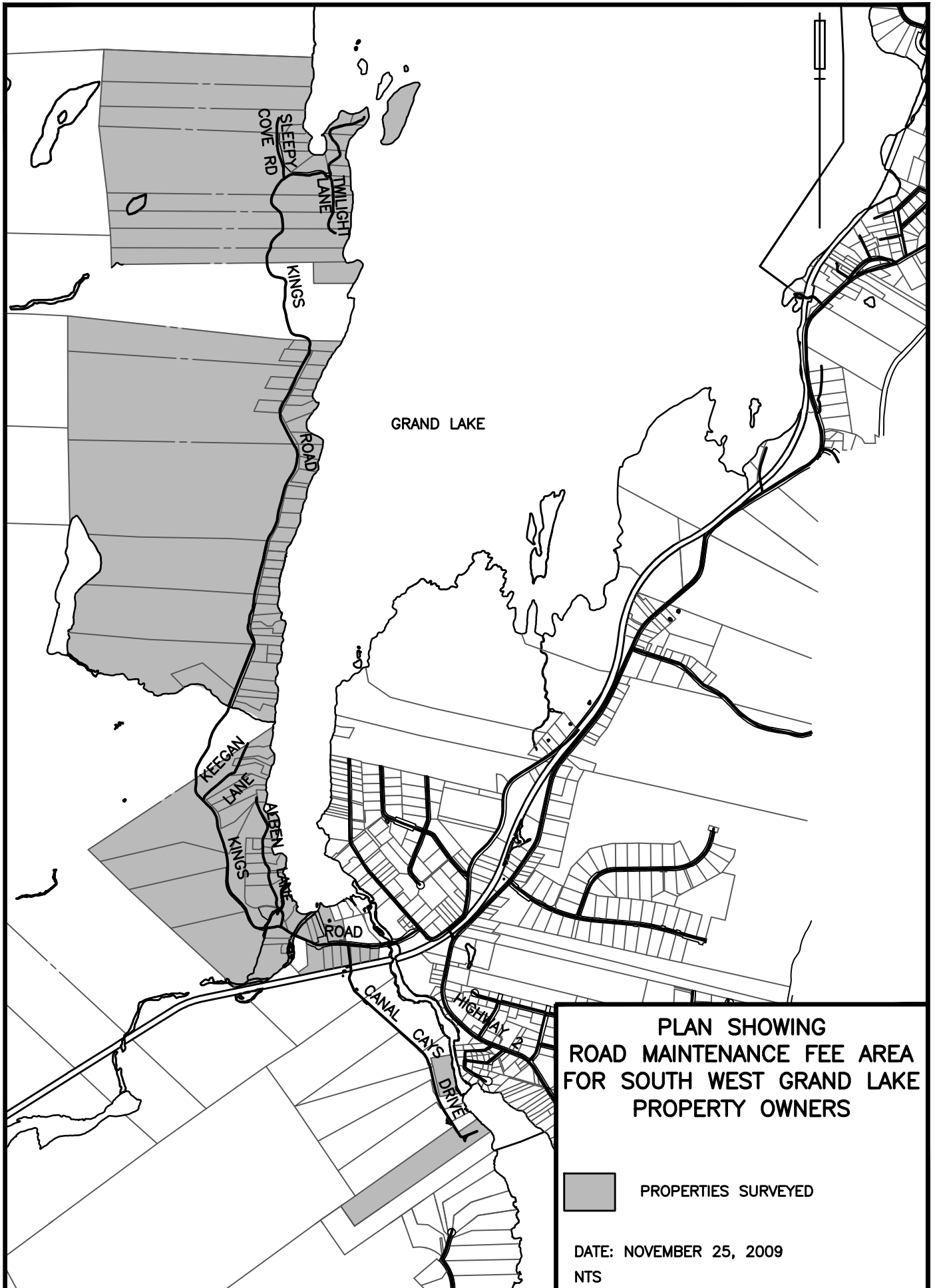
Report Approved by:


Cathie O'Toole, Director, Finance 490-6308

Appendix A

Schedule of Annual Uniform Charges

Annual Fee	Criteria
\$1.00	Vacant land where the owner is paying a fee on another property under this fee schedule, or has a legal exemption.
\$125.00	Vacant or seasonal use property from and including 54 Kings Rd up to but not including 112 Kings Rd., or vacant land on Alben Lane or Canal Cays Drive.
\$150.00	Year round use property on Canal Cays Drive, or from and including 54 Kings Rd up to but not including 112 Kings Rd., with the exception of the property located at 81 Kings Rd (this property is a two unit apartment building).
\$175.00	Vacant or seasonal use property located on Keegan Lane, or from and including 112 Kings Rd up to but not including 515 Kings Rd .
\$285.00	Property located at 515 or 521 Kings Rd which is used seasonally with winter access, or vacant land located beyond 521 Kings Rd to the end of Kings Rd, or on Sleepy Cove Road, Turtle Cove Road, or Twilight Lane.
\$300.00	Year round use property located on Keegan Lane, 81 Kings Rd (this property is a two unit apartment building), or from and including 112 Kings Rd up to but not including 515 Kings Rd.
\$325.00	Seasonal use property located on Alben Lane.
\$375.00	Seasonal use property with winter access located on Alben Lane.
\$395.00	Seasonal use property located beyond 521 Kings Rd to the end of Kings Rd, or on Sleepy Cove Road, Turtle Cove Road, or Twilight Lane.
\$400.00	Year round use property on Alben Lane.
\$895.00	Seasonal use property with winter access located beyond 521 Kings Rd to the end of Kings Rd, or on Sleepy Cove Road, Turtle Cove Road, or Twilight Lane.
\$1,020.00	Year round use property located beyond 521 Kings Rd to the end of Kings Rd, or on Sleepy Cove Road, Turtle Cove Road, or Twilight Lane.



Appendix C

Halifax Regional Municipality ADMINISTRATIVE ORDER NUMBER 45 Respecting Private Road Maintenance

1. Area Rate Charges pursuant to By-Law Number P-1100 Respecting Charges for Private Road Maintenance are hereby imposed in those areas described in the attached Schedules as is more particularly set out in the Schedules.

Schedule 4

1. Area Rate charges for properties located on Kings Road, Wellington, or located on private roads in Wellington accessed from Kings Road, shall be as identified in the following areas:

- Area 1. A Flat Area Rate Charge of no more than \$1.00 annually shall be applied to the following properties in Area 1 which must be accessed by Kings Road, Wellington: PID numbers 503755, 503789, 568766, 569103, 40574394, 40621807, 40621815, 40669798, 40695132, 40699803, 40800088, 40813438, 40818692, 40818734, 41026956, 41026964, 41078213, 41142159, 41211491, 41266966, and 41266974.
- Area 2. A Flat Area Rate Charge of no more than \$125.00 annually shall be applied to the following properties in Area 2 which must be accessed by Kings Road, Wellington: PID numbers 503797 and 40551178.
- Area 3. A Flat Area Rate Charge of no more than \$150.00 annually shall be applied to the following properties in Area 3 which must be accessed by Kings Road, Wellington: PID numbers 503524, 503573, 503631, 503664, 503771, 40383630, 40383648, 40392623, 40392631, 40392649, 40392656, 40607269, 40695603, and 40852089.
- Area 4. A Flat Area Rate Charge of no more than \$175.00 annually shall be applied to the following properties in Area 4 which must be accessed by Kings Road, Wellington: PID numbers 503581, 569194, 40301434, 40304289, 40377228, 40455123, 40784795, 40885337 and 41125923.
- Area 5. A Flat Area Rate Charge of no more than \$285.00 annually shall be applied to the following properties in Area 5 which must be accessed by Kings Road, Wellington: PID numbers 503680, 569251, 40364036, 40480063, 40704165, 40766347, and 40766370.
- Area 6. A Flat Area Rate Charge of no more than \$300.00 annually shall be applied to the following properties in Area 6 which must be accessed by Kings Road, Wellington: PID numbers 503599, 503607, 503615, 503698, 503847, 503870, 568790, 568865, 568931, 569087, 40151334, 40301251, 40304271, 40304297, 40304305, 40304313, 40304321, 40455115, 40455149, 40455156, 40533275, 40576001, 40608523, 40620296, 40688285, 40695553, 40705089, 40742785, 40761421, 40784787,

40800625, 40852071, 40885345, 41037052, and 41211509.

- Area 7. A Flat Area Rate Charge of no more than \$325.00 annually shall be applied to the following properties in Area 7 which must be accessed by Kings Road, Wellington: PID numbers 503565, 503656, and 503706.
- Area 8. A Flat Area Rate Charge of no more than \$375.00 annually shall be applied to the following property in Area 8 which must be accessed by Kings Road, Wellington: PID number 40589178.
- Area 9. A Flat Area Rate Charge of no more than \$395.00 annually shall be applied to the following properties in Area 9 which must be accessed by Kings Road, Wellington: PID numbers 40068348, 40068355, 40068371, 40068389, 40255150, 40480055, and 40585523.
- Area 10. A Flat Area Rate Charge of no more than \$400.00 annually shall be applied to the following properties in Area 10 which must be accessed by Kings Road, Wellington: PID numbers 503722, 503805, 40607277, 40872046, and 41078205.
- Area 11. A Flat Area Rate Charge of no more than \$895.00 annually shall be applied to the following properties in Area 11 which must be accessed by Kings Road, Wellington: PID numbers 40364028, and 40574386.
- Area 12. A Flat Area Rate Charge of no more than \$1,020.00 annually shall be applied to the following properties in Area 12 which must be accessed by Kings Road, Wellington: PID numbers 568410, 40068363, 40068397, 40068405, 40068413, and 40480071.
2. The Area and therefore the Flat Area Rate Charge applicable to a property will be determined in accordance with the following criteria:
- i. If the property is vacant, and the owner owns property in any of the other Areas, or if the property is otherwise legally exempt from a Flat Area Rate Charge, then it will be included in Area 1 and the applicable Flat Area Rate Charge will be no more than \$1.00 annually;
 - ii. If the property is vacant or is used on a seasonal basis and located from and including civic number 54 up to but not including 112 on Kings Road, or is vacant property on Alben Lane or Canal Cays Drive, then it will be included in Area 2 and the applicable Flat Area Rate Charge will be no more than \$125.00 annually;
 - iii. If the property is used year round and located on Canal Cays Drive, or from and including civic number 54 up to but not including 112 on Kings Road, then, with the exception of the property located at civic number 81 on Kings Road, it will be included in Area 3 and the applicable Flat Area Rate Charge will be no more than \$150.00 annually;
 - iv. If the property is vacant or is used on a seasonal basis and located on Keegan Lane or from and including civic number 112 up to but not including 515 on Kings Road, then it will be included in Area 4 and the applicable Flat Area Rate Charge will be no more

- than \$175.00 annually;
- v. If the property is located at 515 or 521 Kings Road and is used seasonally with winter access, or if the property is vacant and located beyond civic number 521 on Kings Road to the end of Kings Road, or on Sleepy Cove Road, Turtle Cove Road, or Twilight Lane, then it will be included in Area 5 and the applicable Flat Area Rate Charge will be no more than \$285.00 annually;
 - vi. If the property is used year round and located on Keegan Lane or from and including civic number 112 up to but not including 515 on Kings Road, or at civic number 81 on Kings Road, then it will be included in Area 6 and the applicable Flat Area Rate Charge will be no more than \$300.00 annually;
 - vii. If the property is located on Alben Lane and used on a seasonal basis, then it will be included in Area 7 and the applicable Flat Area Rate Charge will be no more than \$325.00 annually;
 - viii. If the property is located on Alben Lane and used on a seasonal basis with winter access, then it will be included in Area 8 and the applicable Flat Area Rate Charge will be no more than \$375.00 annually;
 - ix. If the property is used on a seasonal basis and is located beyond civic number 521 on Kings Road to the end of Kings Road, or on Sleepy Cove Road, Turtle Cove Road, or Twilight Lane, then it will be included in Area 9 and the applicable Flat Area Rate Charge will be no more than \$395.00 annually;
 - x. If the property is located on Alben Lane and used on a year round basis, then it will be included in Area 10 and the applicable Flat Area Rate Charge will be no more than \$400.00 annually;
 - xi. If the property is used seasonally with winter access and is located beyond civic number 521 on Kings Road to the end of Kings Road, or on Sleepy Cove Road, Turtle Cove Road or Twilight Lane, then it will be included in Area 11 and the applicable Flat Area Rate Charge will be no more than \$895.00 annually;
 - xii. If the property is used year round and is located beyond civic number 521 on Kings Road to the end of Kings Road, or on Sleepy Cove Road, Turtle Cove Road or Twilight Lane, then it will be included in Area 12 and the applicable Flat Area Rate Charge will be no more than \$1,020.00 annually.

These criteria will apply to any existing and new properties which become subject to a Flat Area Rate Charge under this Schedule. If the criteria applicable to a property changes such that another Area is indicated for the property other than the Area it is included in, then that property will become part of the Area for which it meets the criteria, and the appropriate Flat Area Rate Charge will apply.

- 3. The Charges collected under this By-Law shall be used by the South West Grand Lake Property Owners Association for the maintenance of the following private roads located within Wellington: Kings Road, Alben Lane, Twilight Lane, Sleepy Cove Road, and Turtle Cove Road, and shall include 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.

Appendix D

MANAGEMENT AND OPERATING AGREEMENT

THIS AGREEMENT is made as of the 5th day of January, 2010

BETWEEN:

Halifax Regional Municipality, a body corporate pursuant to the *Municipal Government Act* (“the Municipality” or “HRM”)

OF THE FIRST PART

- and -

South West Grand Lake Property Owners Association, a society incorporated under the *Societies Act* of Nova Scotia (“the Association”)

OF THE SECOND PART

WHEREAS the Municipality 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.;

AND WHEREAS the Municipality recognizes 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.;

AND WHEREAS authority to fund work on private roads is pursuant to section 79(1)(ab) of the *Halifax Regional Municipality Charter*.

THEREFORE the parties hereto covenant and agree as follows:

**ARTICLE ONE
DEFINITIONS**

Section 1.01 **Definitions**

When used in this Agreement, the following terms shall have the following meanings:

- (a) **“Area Rate”** means the annual charge to property owners for the maintenance of the Private Road referred to in this agreement, and which is included as part of their property tax invoices.
- (b) **“Association”** means a private road resident's association which is party to this agreement. The Association must during the effective period of this agreement or renewal period maintain its status as a not for profit society incorporated under the Societies Act of Nova Scotia.
- (c) **“Council”** means Halifax Regional Council.
- (d) **“Fiscal Year”** means the annual period ending on March 31 of each year or such other period as the Municipality may establish upon notice to the Association.
- (e) **“Municipality”** means Halifax Regional Municipality.
- (f) **“Revenues”** means all monies collected by the Municipality from the Area Rate.
- (g) **“Private Road”** means that portion of road described in Schedule “A” attached hereto, provided that the road (a) is not public and remains so do during the effective period of this agreement or renewal terms, and (b) provides year round 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.
- (h) **“Term”** has the meaning set forth in Section 7.01.

ARTICLE TWO
APPOINTMENT OF ASSOCIATION AND ANNUAL BUDGETS

Section 2.01 **Appointment of Association**

The Municipality hereby appoints the Association for the Term of this Agreement to maintain the Private Road as an independent non-profit association, on the terms and conditions set out in this Agreement, and the Association hereby accepts such appointment.

Section 2.02 **General**

The Association shall have full responsibility for maintaining the Private Road, including culverts, retaining walls, sidewalks, curbs and gutters that are associated with the Private Road. 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 in accordance with and subject to the terms and conditions of this Agreement during the Term of this Agreement unless and except to the extent otherwise determined by the Municipality in writing to the Association. The Association shall perform its duties and exercise the powers and authority set out in the Agreement in a competent, efficient and economical manner and in accordance with the terms of this Agreement, subject to the directions from time to time of the Municipality, which directions shall not be in contradiction with the terms of this Agreement or with the terms of the Memorandum of Association of the Association.

This agreement does not provide for the construction or capital improvement of private roads.

Section 2.03 **Annual Plans and Budgets**

The Association shall maintain the Private Road strictly in conformance with the annual operating budget approved from time to time by the Municipality pursuant to this Agreement.

Section 2.04 **Preparation of Annual Operating and Capital Budgets**

- (a) The Association shall prepare and present for consideration by Council an annual proposed operating budget (the "Operating Budget") for the maintenance of the Private Road. The Operating Budget shall be prepared and presented within the time frames established from time to time by the Municipality for the submission of operating budgets by its various departments.
- (b) The Operating Budget shall be prepared in accordance with the methodologies, frameworks, policies, guidelines, directives, and instructions of the Municipality from time to time relating to annual budgets.

- (c) The Association shall prepare and present to the Municipality annually a plan for the maintenance of the road for the subsequent twelve month period. The maintenance plan shall be prepared and presented within the time frames established from time to time by the Municipality for the submission of business plans by its various departments.

Section 2.05 **Operating Deficit or Surplus**

In the event the Association sustains, in any fiscal year, an Operating Deficit or Surplus, the Association shall prepare a written report setting out the magnitude of the operating deficit or surplus, the reason or reasons for the operating deficit or surplus in the opinion of the Association and the recommendation or recommendations of the Association for dealing with the operating deficit or surplus, as the case may be, in the ensuing fiscal year. The report is to be submitted to Council at the time the Association submits its Operating Budget for the ensuing fiscal year.

ARTICLE THREE
DUTIES AND RESPONSIBILITIES OF THE ASSOCIATION

Section 3.01 **Licences and Permits**

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. This includes obtaining written permission from the legal owner(s) of the Private Road to provide maintenance if the documentation creating the Private Road access does not permit the property owners to implement the maintenance work. 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.

Section 3.02 **Annual Meeting**

The Association shall have an annual general meeting prior to the end of September in each year, at which meeting the simple majority of a quorum present shall review and approve the road maintenance plan and budget for the following year.

Section 3.03 **Special Meeting**

Any changes to the amount of the area rate shall require majority approval at a special meeting of the Association called for the purpose of considering the rate increase issue. For the purposes of this Section, majority approval means property owners representing at least two-thirds (66.7%) of the

residential properties abutting the Private Roads. Notice of the special meeting shall conform to the standards outlined in Section 6 of the Private Roads Maintenance Costs Recovery Policy. An application to increase the area rate shall include a budget and maintenance plan in support of the proposed increase, and a declaration setting out the fulfilment of the public notice and public meeting process required under the policy. The Association may also by special meeting elect to terminate the financial assistance agreement with HRM and upon the termination of the agreement the area rate will discontinue after the payment of all outstanding amounts.

ARTICLE FOUR DUTIES AND RESPONSIBILITIES OF THE MUNICIPALITY

Section 4.01 Scope of Responsibility

- (a) Pursuant to the provisions of the MGA, the Municipality has the authority to impose, fix and providing methods of enforcement of charges or area rates for maintaining private roads, curbs, sidewalks, gutters, bridges, culverts and retaining walls that are associated with private roads where the cost is incurred under this agreement between the Municipality and the Association.
- (b) The Municipality's responsibilities will be limited to the administration of the charge or area rate.
- (c) The Municipality will review the plan and budget approved at each Annual General Meeting of the Association to ensure it complies with the purpose of the area rate and that sufficient funding can be raised through the area rate to fund it.
- (d) Any special meeting at which an increase to the area rate is proposed shall be under the supervision of a staff coordinator designated by the Municipality.
- (e) All proposed area rate increases are subject to approval by the Municipality.
- (f) The Municipality will not be involved in the provision of engineering, technical or legal services or advice in respect of the private road maintenance.

ARTICLE FIVE
FINANCES, RECORDS AND INFORMATION SERVICES

Section 5.01 **Revenues**

HRM Council will establish an area rate for private road maintenance services to be applied on a per dwelling unit basis or adjoining property basis. Payment of the area rate revenue 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 Association and the Association shall be wholly responsible for the application of the funds provided.

Section 5.02 **Full Banking and Bookkeeping Package**

(a) Operating Account

Except as otherwise provided herein, all revenues received by the Association from time to time shall be deposited into an Operating Account.

(b) Bookkeeping

The Association is required to maintain a complete and proper set of books following general accounting and bookkeeping practices, as set out in the Generally Accepted Accounting Principles as established from time to time by the Canadian Institute of Chartered Accountants.

Section 5.03 **Financial Reports**

The Association shall provide to the Municipality a copy of the annual financial statements prepared by or on behalf of the Association for the Association's Annual General Meeting within 30 days of presenting such statements to the Annual General Meeting.

Section 5.04 **Other Reports**

The Association shall, if and when requested from time to time by the Municipality, prepare and furnish to the Municipality, such other reports or statements as the Municipality may reasonably require.

Section 5.05 **Right to Review and Audit**

The Municipality reserves to right to review and audit the books and financial statements and all corporate 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.

ARTICLE SIX ASSOCIATION MEMBERSHIP

Section 6.01 Board of Directors

It is a term and condition of this agreement that throughout the Term of this Agreement, that the Board of Directors of the Association shall be made up of representatives as outlined by the by-laws of the Association.

Section 6.02 Members

It is a term and condition of this agreement that throughout the Term of this Agreement that any property owner who is required to pay the area rate is as a right a Member of the Association and will be entitled to all rights and privileges as outlined by the by-laws of the Association including the right to attend and vote at all General and Special Meetings of the Association.

ARTICLE SEVEN TERM/TERMINATION

Section 7.01 Commencement and Initial Term

This Agreement shall be for a initial one year term (the "Term") as set out in Schedule "B" attached hereto, and continue in force, unless earlier terminated as set out in Section 7.02 or Section 7.03. The agreement will automatically renew for periods of one (1) year each unless either party shall notify the other that it elects not to renew this Agreement at least three (3) months prior to the end of the initial term or any subsequent renewal term.

Section 7.02 Termination by Either Party for Breach

- (a) This Agreement may be terminated by the Municipality upon giving the Association three (3) months written notice of its election to terminate this Agreement if the Association breaches or fails to comply with or observe any of the terms, conditions, provisions or requirements of this Agreement.
- (b) This Agreement may be terminated by the Association upon giving the Municipality three (3) months written notice of its election to terminate this Agreement if the Municipality breaches or fails to comply with or observe any of the terms, conditions or requirements of this Agreement.
- (c) Upon termination of the Agreement, the area rate will be discontinued upon payment

of all outstanding amounts..

Section 7.03

Termination by Either Party for Any Reason

This Agreement may be terminated at any time by either of the parties hereto for any reason whatsoever on three (3) months notice in writing. Upon termination of the Agreement, the area rate will be discontinued upon payment of all outstanding amounts.

**ARTICLE EIGHT
INSURANCE**

Section 8.01

Property and Liability Insurance

The Association is solely responsible for obtaining and maintaining at its own expense any and all insurance protection required to administer this Agreement.

Section 8.02

Suits and Claims

The Association shall notify the Municipality in writing as soon as possible after the Association becomes aware of any claim or possible claim against the Association and/or Municipality which involves the Private Road. The Association shall notify the Municipality in writing as soon as possible after it becomes aware of any injury or property damage occurring in, on or about the Private Road, which could reasonably be expected to result in a claim being made against the Municipality or the Association and of all claims against the Municipality and/or the Association which involve the Private Road. The Association shall take no steps (such as the admission of liability) which would operate to bar the Municipality from obtaining any protection afforded by any policies of insurance it may hold or which will operate to prejudice the defence in any legal proceedings involving the Municipality or the Association, or otherwise prevent the Municipality from protecting itself against any such claim, demand or legal proceeding. The Association and the Municipality shall cooperate fully with each other in the defence of any claim, demand or legal proceeding.

**ARTICLE NINE
AUTHORITY OF THE ASSOCIATION**

Section 9.01

Authority of the Association

The Association is hereby authorized to act solely for the purpose of carrying out the authority and responsibilities set forth in this Agreement, subject, however, to any limitations set forth in this

Agreement or in any notice in writing at anytime delivered to the Association by the Municipality pursuant to this Agreement. The Municipality shall execute and provide to the Association any documents or other evidence which may be reasonably required by the Association to demonstrate to third parties the authority of the Association set out in this Agreement.

Section 9.02 **Limitation of Authority**

The Association is not an agent of the Municipality and shall not pass off or represent that it is an agent of the Municipality. Unless expressly authorized in this Agreement, or by prior written direction or approval of the Municipality, the Association shall not have the authority to do any of the following:

- (a) cause the Municipality to extend credit or to make any loans or become a surety, guarantor, endorser or accommodation endorser for any person, firm or Association;
- (b) cause the Municipality to enter into any contracts;
- (c) release, compromise, assign or transfer any claim, right or benefit of the Municipality;
- (d) allow a default judgement to be entered against the Municipality;

**ARTICLE TEN
GENERAL PROVISIONS**

Section 10.01 **Notices**

All notices, demands, requests, approvals or other communication of any kind which a party hereto may be required or may desire to serve on the other party in connection with this Agreement shall be served personally or sent by registered mail. Any such notice or demand so served by registered mail shall be deposited in the Canadian mail with postage thereon fully prepaid, registered and addressed to the party so to be served as follows:

- (a) if to the Municipality:
 Attention: Director
 Finance
 Halifax Regional Municipality
 P. O. Box 1749
 Halifax, NS
 B3J 3A5

- (b) if to the Private Road Association:
SWGLPOA
PO BOX 2104
FALL RIVER NS B2T 1K6

Except in the event of a postal service strike or lockout (in which event the parties hereto agree to temporarily utilize other reasonable methods of communicating any notices), service of any notice or demand so made by mail shall be deemed complete on the date of actual delivery as shown by the registry receipt or at the expiration of the seventh business day after the date of mailing, whichever is earlier in time. Either party may from time to time, by notice in writing served upon the other party as aforesaid, designate a different mailing address or different or additional persons to which all such notices or demands are thereafter to be addressed.

Section 10.02 **Validity of Provisions**

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and this Agreement shall be enforceable to the fullest extent permitted by law.

Section 10.03 **Waiver and Modification**

No consent or waiver, express or implied, by a party of any breach or default by the other party in the performance by such other party of its obligations hereunder shall be deemed or construed to be a consent or waiver of any other breach or default hereunder. Failure on the part of a party to complain of any act, or failure to act, on the part of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Neither this Agreement nor any provision hereof may be amended, waived, modified or discharged except by an instrument in writing executed by the party against whom enforcement of such amendment, waiver, modification or discharge is sought.

Section 10.04 **Successors**

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, provided, however, that this Agreement shall at all times remain personal to the Association and may not be assigned by the Association without the prior written consent of the Municipality.

Section 10.05 **Remedies**

Both parties shall, in addition to all rights provided herein or as may be provided by law, be entitled to the remedies of specific performance and injunction to enforce their rights hereunder.

Section 10.06 **Headings**

The heading used in this Agreement are inserted solely for convenience or reference and are not a part of the Agreement and are not intended to govern, limit or aid in the construction of any term or provision hereof.

Section 10.07 **Interpretation**

Where the context so requires, words used in the singular shall include the plural and vice versa.

Section 10.08 **Entire Agreement**

This Agreement, together with any written agreements executed in connection herewith or modifications or amendments to this Agreement entered into by the parties hereto shall constitute the entire agreement between the parties hereto relative to the subject matter hereof 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.

Section 10.09 **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of Nova Scotia.

Section 10.10 **Time of Essence**

Time is of the essence in the performance of the obligations of this Agreement and of each provision hereof.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto, as of the day and year first above written.

Halifax Regional Municipality

Per: _____

Witness

Per: _____

South West Grand Lake Property Owners
Association

Witness

Per: _____

Per: _____

SCHEDULE "A"

Description of Roads: The portions of the following roads which are privately owned: Kings Road, Alben Lane, Twilight Lane, Sleepy Cove Road, and Turtle Cove Road.

SCHEDULE "B"

Term of the Agreement: April 1, 2010 to March 31, 2011

BALLOT FOR PRIVATE ROAD MAINTENANCE TAX

October 27, 2009

FIELD(OWNER1) FIELD(OWNER2)
FIELD(ADDRESS)
FIELD(CITY) FIELD(PC)

Assessment # FIELD(AAN)
FIELD(CIVIC) FIELD(LOT) FIELD(STR NAME) FIELD(STR TYPE)

Dear Property Owner:

The Halifax Regional Municipality has been petitioned by the owners of property accessed by 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 following private roads located in Wellington: Kings Road, Alben Lane, Twilight Lane, Sleepy Cove Road, and Turtle Cove Road. Since those signing the petition represent at least 66.7% of the principle residences which must access Kings Road (including the five roads mentioned above, plus Canal Cays Drive and Keegan Lane), 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 enough property owners representing at least 66.7% of the properties which must access Kings Road wish to implement an annual per property charge to maintain Kings Road, Alben Lane, Twilight Lane, Sleepy Cove Road, and Turtle Cove Road. If the 66.7% minimum is attained, then all owners of property which must access Kings Road would be required to pay the charge starting in 2010. The annual charge would be divided equally between the two property tax billings mailed to property owners each year. The charges collected would be turned over to the South West Grand Lake Property Owner's Association which is responsible for maintaining the private roads.

The annual charge per property for the 12 month period ending March 31, 2011 is based on the Annual Fee Schedule and Budget shown on the reverse side of this letter. The Annual Fee applicable to your property is indicated in the ballot at the bottom of this page.

As required by the Private Road Maintenance Costs Recovery Policy, a meeting of the owners of property which must be accessed by Kings Road 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:

Wednesday, November 18, 2009 at 7:00 p.m.
Grand Lake Oakfield Fire Hall, 22 Lakeside Drive, Grand Lake

Completed ballots may be dropped off at the meeting, faxed to 490-5622, or mailed in the enclosed self-addressed envelope. You may also scan and e-mail the completed ballot to rousseg@halifax.ca. If you have any questions regarding the process, please contact Gordon Roussel at 490-6468. For other questions, including the maintenance services provided and how the Fee Schedule is determined, please contact Peter Lewis at 861-1541 or Dan White at 861-3996.

Please note that all ballots must be received by November 20, 2009 (No exceptions!). If you are mailing in your ballot please allow adequate time for delivery. Results of the ballot will be communicated by the South West Grand Lake Property Owner's Association.

-
- ☐ **YES**, I am in favour of implementing the area rate for private road maintenance and paying an annual area rate of FIELD(FEE) on my property tax bill.
- ☐ **NO**, I am not in favour of implementing the area rate for private road maintenance.

Assessment # FIELD(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.

Appendix F

South West Grand Lake Property Owners Association

Budget for April 1, 2010 to March 31, 2011

All Roads & Lanes

Income	
Total Annual Fees	\$30,445.00
Other Income	\$1,200.00
Total Income	\$31,645.00
Expenses	
Snow Plowing	\$7,800.00
Sanding	\$4,145.00
Gravel	\$9,610.00
Grading	\$2,700.00
Dust Control	\$2,460.00
Ditching & Road Upgrades	\$2,500.00
Office Expenses	\$300.00
Association Fees	\$30.00
Insurance	\$1,600.00
HRM Fee for Cost Recovery	\$200.00
Other	\$300.00
Total Expenses	\$31,645.00

Annual Fee Schedule for 2010/11

Annual Fee	# Properties	Total
\$0.00	21	\$0.00
\$125.00	2	\$250.00
\$150.00	14	\$2,100.00
\$175.00	9	\$1,575.00
\$285.00	7	\$1,995.00
\$300.00	35	\$10,500.00
\$325.00	3	\$975.00
\$375.00	1	\$375.00
\$395.00	7	\$2,765.00
\$400.00	5	\$2,000.00
\$895.00	2	\$1,790.00
\$1,020.00	6	\$6,120.00

Total:	112	\$30,445.00
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