

HALIFAX

P.O. Box 1749
Halifax, Nova Scotia
B3J 3A5 Canada

Item No. 11.1.5
Halifax Regional Council
June 23, 2015

TO: Mayor Savage and Members of Halifax Regional Council

Original signed by 

SUBMITTED BY:

Richard Butts, Chief Administrative Officer

Original Signed by 

Mike Labrecque, Deputy Chief Administrative Officer

DATE: May 29, 2015

**SUBJECT: Road Maintenance Fee for St. Margaret's Bay Heights Subdivision
Resident's 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 St. Margaret's Bay Heights Subdivision Resident's 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 \$240.00 per property, to be applied against properties abutting the private roads in St. Margaret's Bay Heights Subdivision, as depicted in the map shown in Appendix A of this report, effective with the 2015-16 fiscal year for the purpose of funding the road maintenance activities of the St. Margaret's Bay Heights Subdivision Resident's Association;

RECOMMENDATION CONTINUED ON PAGE 2

2. Approve amending Administrative Order 45, Respecting Private Road Maintenance, by adding Schedule 13, respecting a Uniform Charge for the St. Margaret's Bay Heights Subdivision Resident's Association, attached hereto as Appendix B; and
3. Subject to the approval of Schedule 13 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

St. Margaret's Bay Heights Subdivision is located in the community of Head of St. Margaret's Bay in District 13. The Association funds road maintenance expenses through an annual fee collected from the owners of 43 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 St. Margaret's Bay Heights Subdivision 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 the roads within St. Margaret's Bay Heights Subdivision are privately containing principal residences.

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.*

Registered to each property is a "Shared Right-of-Way and Cost Shared Private Roads Maintenance Agreement" whereby the parties "agreed to create a cost shared right of way and private roads maintenance agreement for persons and vehicles for ingress and egress over Ridgewood Drive (PID 41219072), Clearwood Court (PID 41219064), Teakwood Drive (PIDs 41222811 and 41252065), and Chera Drive (PIDs 41252073, 41252107, 41252180)".

Paragraph 3 of this agreement states that "the Parties further covenant and agree that all costs associated with the maintenance and repair of the Cost Shared Right of Way including but not limited to grading, plowing and general upkeep of the Cost Shared Right of Way, shall be shared equally amongst all lot owners entitled to access and use the Cost Shared Right of Way, one share per lot."

Paragraph 5 states that "once all the Lots are sold, then the Cost Shared Right of Way shall be conveyed to the St. Margaret's Bay Heights Subdivision Residents Association, which entity shall be responsible for all costs and expenses including but not limited to taxes, maintenance and repairs in connection with the Cost Shared Right of Way" and "arranging to have the maintenance carried out and the collection of the contribution from each lot owner on an annual basis".

The covenants attached to the deeds of the properties in St. Margaret's Bay Heights Subdivision require each owner to participate in an association for the purpose of enforcing the covenants. The covenants further require that all owners of building lots in the Subdivision must be a member and shall pay to the Association "such fees, dues, levies, and assessments as are imposed from time to time by the

Association for the purpose of carrying out its objectives.”

It is clear from the foregoing that the legal owners of the private roads in the Subdivision consent to the maintenance of the roads and the collection of fees from all lot owners for that maintenance.

- 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 January 22, 2015, staff received a petition from the owners of property abutting the roads in St. Margaret's Bay Heights 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 C 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, and a fax number 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 Thursday, May 21, 2015 at St. Luke's United Church Community Hall, 5374 St. Margaret's Bay Road, Upper Tantallon. 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 35 of the 43 properties (81.4%) voted in favour of establishing an annual uniform charge of no more than \$240.00 each to fund the road maintenance activities of the St. Margaret's Bay Heights Subdivision Resident's 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 43 properties abutting the private roads in St. Margaret's Bay Heights Subdivision, 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 on the second page of Appendix C 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 St. Margaret's Bay Heights Subdivision Resident's Association, Registry ID 3274542, 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 2015-16 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 \$240.00 per property is based on the 2015-16 operating budget of \$10,300, divided by the number of properties in the catchment area, which is 43. Details of the budget are provided in Appendix C of this report.

COMMUNITY ENGAGEMENT

The Community Engagement process is outlined in detail in the Discussion section of this report. All property owners were mailed 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 45 Schedule 13
Appendix C: Copy of Meeting Notice and Ballot mailed to Property Owners, including proposed budget

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.php> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 902.490.4210, or Fax 902.490.4208.

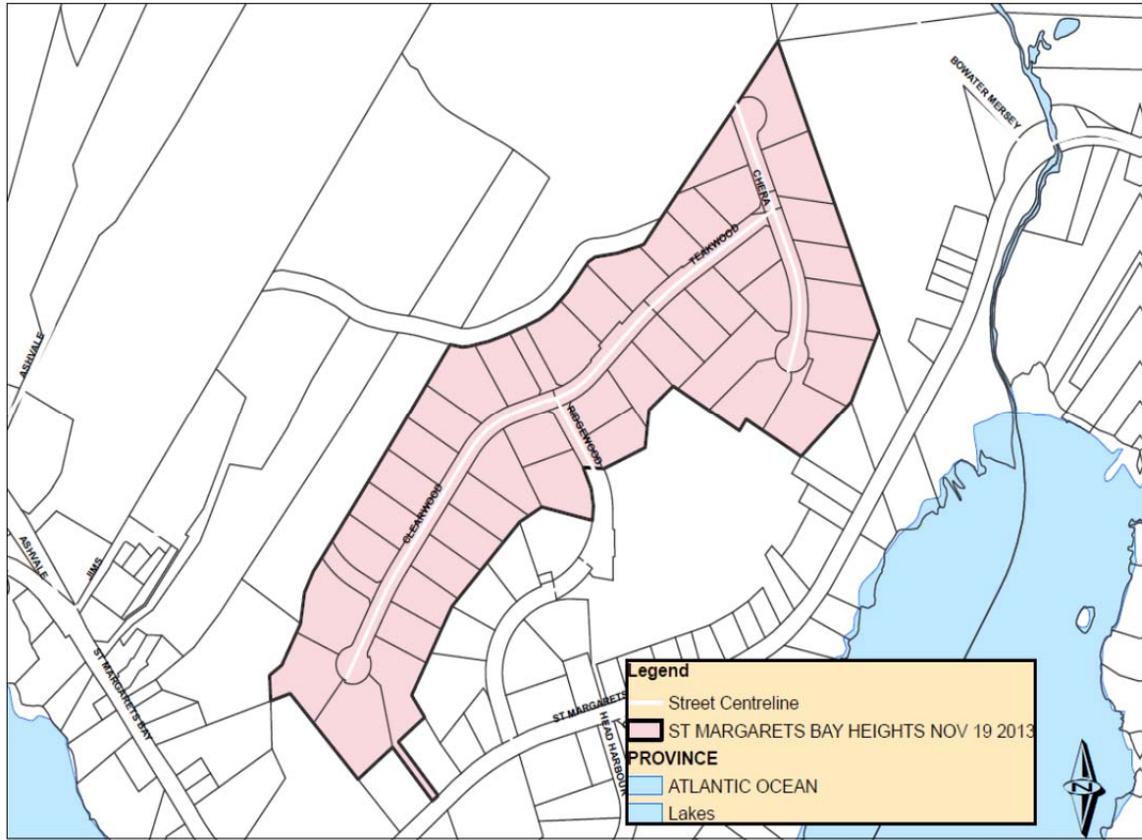
Report Prepared by: Gordon Roussel, Senior Financial Consultant 902.490.2500

Report Approved by: _____
Bruce Fisher, Acting Director of Finance & ICT/CFO, 902.490.4493

Financial Approval by: _____
Louis de Montbrun, **Acting** Director of Finance & ICT/CFO, 902.490.4493

ATTACHMENT A

ST MARGARETS BAY HEIGHTS NOVEMBER 19, 2013



ATTACHMENT B

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 13

- (a) An Area Rate Charge for properties fronting or abutting in whole or in part on any of the private roads located in the St. Margaret's Bay Heights sub-division in the community of Head of St. Margaret's Bay, as identified on the map dated November 19, 2013 attached hereto, shall be a flat area rate of no more than \$240.00 annually.
- (b) The Charges collected under this By-Law shall be used by the St. Margaret's Bay Heights Subdivision Resident's Association for the maintenance of the private roads located in the St. Margaret's Bay Heights 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.

ATTACHMENT C

HALIFAX
BALLOT FOR PRIVATE ROAD MAINTENANCE TAX

May 7, 2015

OWNER 1
OWNER 2
MAILING ADDRESS
CITYPROV PC

Property ID # PID#
CIVIC# STREET ST TYPE COMMUNITY LOT#

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 St. Margaret's Bay Heights subdivision. Since those signing the petition represent at least 66.7% of the properties along the private roads in this subdivision, 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 the private roads in St. Margaret's Bay Heights subdivision wish to implement a per property charge of \$240.00 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 2015. The charges collected would be turned over to the St. Margaret's Bay Heights Subdivision Resident's 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 St. Margaret's Bay Heights Subdivision Resident's Association. On the reverse side of this letter is a summary of the responsibilities of both parties under the service agreement. The reverse side of 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:

Thursday, May 21 @ 7:00 p.m.
St. Luke's United Church Community Hall
5374 St. Margaret's Bay Rd., Upper Tantallon

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 email the completed ballot to rousseg@halifax.ca. If you have any questions regarding the process, please contact Gordon Roussel at 490-2500. For questions regarding road maintenance services, please refer to the enclosed letter from the Association for contact information.

Please note that all ballots must be received by May 29, 2015. If you are mailing in your ballot please allow adequate time for delivery. Results of the ballot will be communicated by the St. Margaret's Bay Heights Subdivision Resident's Association.

-
- YES**, I am in favour of implementing the area rate for private road maintenance and paying an annual area rate of \$240.00 on my property tax bill.
 - NO**, I am not in favour of implementing the area rate for private road maintenance.

Property ID # PID#

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

The Responsibilities of the Municipality under the Service Agreement:

- HRM's responsibilities are restricted only to collecting the road maintenance fees on property tax bills and then turning those funds over to the Association.
- HRM does not have any responsibility to monitor or oversee how the Association spends the funds.
- HRM also does not provide any other services such as maintenance, engineering, technical or legal services or advice, and takes no responsibility for private roads or their condition.
- Therefore, HRM provides a fee collection service for the Association and nothing more. However, HRM does review the budget and year-end financial statements provided each year by the Association to ensure that the funds are spent in accordance with the purpose of the Area Rate.

The Responsibilities of the Association under the Service Agreement:

- The Association is required to provide to HRM each year a budget that has been approved at the Association's Annual General Meeting (AGM). It must include the amounts to be spent on each type of road maintenance work and the costs for administration, insurance, etc.
- At the end of the year, the Association is to provide HRM with a copy of its financial statements for the year, also approved by the membership at the AGM. These financial statements must detail all expenditures made from the Area Rate funds.
- Maintenance of the road(s) and proper expenditure of the area rate funds is entirely under the control and direction of the Association.
- The area rate funds must be kept separate from other funds.
- While the Association is expected to seek competitive prices before hiring a third party to undertake Road Maintenance, HRM does not monitor compliance.
- Liability insurance is also the responsibility of the Association.
- The Association must maintain an active status with the Registry of Joint Stock Companies at all times.
- All property owners who are required to pay the Area Rate are members of the Association and are entitled to all rights and privileges as outlined in the Association By-Laws including the right to attend and vote at all general and special meetings of the Association.

**St. Margaret's Bay Heights Subdivision
Resident's Association
2015 Road Maintenance Budget**

Revenue

43 properties @ \$240 each = \$ 10,300

Total Revenue \$ 10,300

Expenditures

Snow & Ice Control \$ 6,100

Road Maintenance 2,800

Director's Insurance 600

Legal Costs 300

Admin Expenses 300

HRM Set-up Fee 200

Total Expenditures \$ 10,300

Saint Margaret's Bay Heights Residents' Association

To: Homeowners Association Members

From: Association Executive

Re: Petition to have Annual Dues collected with our municipal taxes

Dear Fellow Homeowner,

Thank you for taking the time to respond to our request to have our annual Residents' Association dues collected via Halifax's municipal tax system.

We have discussed this process at our last couple of Annual Meetings but we felt it would be useful to remind everyone about the purpose for the Annual Dues and the benefits of collecting it on our Annual tax bill.

The Annual Dues allow us to plow and maintain our shared roads, put up street signs (which you'll see in the spring), and generally keep up the infrastructure. In addition it pays the annual registration fees imposed by the Province on Associations such as ours and our Director's Insurance and bank fees.

There are several advantages in having the City take over collection of our fees. Most importantly is that we have very limited options in collecting fees from those very few neighbours who are reluctant to contribute. Each year we have had 2 or 3 homeowners who have been unwilling or unable to pay. In a neighbourhood of 43 home/lots that places an extra burden on each of us. Secondly, after year 1, the payment will be split over the two tax bills, helping you to budget more effectively. And finally it reduces the workload of the Association Treasurer, who has to keep running to the bank whenever we get another cheque!

Please let us know if you have any questions. Our contact info is below.

Steve Willson [REDACTED]

Audrey Wamboldt - [REDACTED]

Kara Henman - [REDACTED]

Trisha Chambers - [REDACTED]

Chris Milligan - [REDACTED]

Jeff Coreschi - [REDACTED]

General Email: [REDACTED]

Phone: [REDACTED] (Steve Willson)