

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

**SUBMITTED BY:** Original signed by   
Richard Butts, Chief Administrative Officer

Original Signed by  
Mike Labrecque, Deputy Chief Administrative Officer

**DATE:** May 27, 2015

**SUBJECT:** By-Law P-1300 Respecting Private Ways

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## **ORIGIN**

Regional Council motions, March 24, 2015, Item 11.1.4, confirming the report of the Commissioner Deborah Baker laying out a private way across the property at 5 Milton Drive for the benefit of 9 Milton Drive, and confirming the award of the Arbitrators as set out in the decision of the Arbitration Panel dated November 17, 2014.

## **LEGISLATIVE AUTHORITY**

*Private Ways Act, R.S.N.S., c.358, Section 29A*

29A (1) The council may make by-laws respecting the payment of compensation charged against the polling district in which a private way or road is made, or in whole or in part against the applicant or applicants therefor.

(2) A by-law passed pursuant to subsection (1) may provide

(a) that the charges may be chargeable according to a plan or method set out in the by-law;

(b) when the charges are payable;

(c) that the charges are first liens on the real property in the polling district or belonging to the applicant or applicants, and may be collected in the same manner as other taxes;

(d) that the charges be collectable in the same manner as taxes and, at the option of the Treasurer, be collectable at the same time, and by the same proceedings, as taxes;

(e) a means of determining when the lien becomes effective or when the charges become due and payable;

(f) that the amount payable may, at the option of the owner of the property, be paid in the number of annual instalments set out in the by-law and, upon default of payment of any instalment, the balance becomes due and payable; and

(g) that interest is payable annually on the entire amount outstanding and unpaid, regardless of whether the owner has elected to pay by instalments, at a rate and beginning on a date fixed by the by-law. 2011, c. 25, s. 1.

### **RECOMMENDATION**

It is recommended that Halifax Regional Council move first reading of By-law P-1300, Respecting Private Ways, as set out in Attachment A to this report.

### **BACKGROUND**

On March 24, 2015, Halifax Regional Council passed the following motions:

- 1) Confirm the report of the Commissioner Deborah Baker, dated November 15, 2014, laying out a private way across the property at 5 Milton Drive for the benefit of 9 Milton Drive; and
- 2) Confirm the award of the Arbitrators as set out in the decision of the Arbitration Panel dated November 17, 2014.

The total amount of compensation awarded by the Arbitrators was \$168,477.15. Under the *Private Ways Act (PWA)* this amount is paid by Council to the owners of 5 Milton Drive, but can be recovered from Ms. Sutherland. The total cost of the arbitration was \$61,583.52, inclusive of HST. As with the compensation award, the arbitration costs were first paid by Council under the *PWA*, but can be recovered from Ms. Sutherland. The full amount paid and recoverable by Halifax Regional Council was \$230,060.67.

Pursuant to an agreement between the Municipality and Ms. Sutherland dated July 15, 2011, Ms. Sutherland agreed to repay all expenses incurred and recoverable by HRM under the *PWA*, within 6 months of receipt of documentation confirming the amounts. This documentation was sent to Ms. Sutherland via email on April 8, 2015. In addition, Council has the authority under section 29A of the *PWA* to make a by-law setting out how the expenses incurred and recoverable by HRM may be charged against Ms Sutherland and to make those charges a lien on the real property.

### **DISCUSSION**

It is recommended that Council enact By-law P-1300, Respecting Private Ways. This By-law will establish terms of repayment of the amount paid out by Halifax Regional Council should Ms. Sutherland not pay the full amount owing within 6 months of having received the documentation. This By-law will also ensure that the amount constitutes a lien upon 9 Milton Drive. The By-law, should Council agree, will also provide an opportunity for Ms. Sutherland to repay the amount owing over a longer period of time than 6 months.

By-law P-1300 allows for equal annual installments of payments in respect of principal over a period not exceeding 20 years. Interest would be payable in full annually at HRM's standard interest rate of prime plus two percent. Attachment B shows the schedule of payments, inclusive of interest at prime plus 2%. First payment will be due on October 8, 2015, being six months from the date the documentation confirming all expenses was forwarded to Ms. Sutherland. Interest will also begin to accrue on October 8, 2015. The By-Law does not permit Ms. Sutherland to apply for a tax deferral or tax exemption.

**FINANCIAL IMPLICATIONS**

Upon Council's approval of By-law P-1300, Respecting Private Ways the costs associated with confirming the report of the Commissioner and the award of the Arbitrators will be charged against the property owner who receives the benefit of the private way.

**COMMUNITY ENGAGEMENT**

N/A

**ENVIRONMENTAL IMPLICATIONS**

N/A

**ALTERNATIVES**

1. Regional Council may decide not to adopt the proposed By-law P-1300. This alternative is not recommended.
2. Regional Council may decide to adopt the proposed By-law P-1300 but amend the rate of interest. Attached as Attachments C and D respectively are the payment schedules with interest at prime plus 1% and interest at prime only.
3. Regional Council may choose to adopt By-Law P-1300, but amend the terms of repayment, including the maximum number of years over which the owner of the property can pay the balance, the schedule of repayments generally and/or the payment of interest.

**ATTACHMENTS**

- Attachment A – By-Law P-1300
- Attachment B – Payment schedule with interest at prime plus 2%
- Attachment C – Payment schedule with interest at prime plus 1%
- Attachment D – Payment schedule with interest at prime

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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: Karen MacDonald, Senior Solicitor- 490-3570

Report Approved by: \_\_\_\_\_  
John Traves, Q.C., Director, Legal Services, 902.490.4219

Financial Approval by: \_\_\_\_\_  
Greg Keefe, Director of Finance & ICT/CFO, 902.490.6308

Original Signed

**HALIFAX REGIONAL MUNICIPALITY**

**BY-LAW NUMBER P-1300**

**RESPECTING PRIVATE WAYS**

**WHEREAS** Susan Sheehan (now Susan Sutherland) petitioned the Council of the Municipality pursuant to the *Private Ways Act* to obtain and lay out a private right-of-way across lands at 5 Milton Drive for the benefit of her property located at 9 Milton Drive;

**AND WHEREAS** on March 1, 2011 the Council appointed Deborah Baker a Commissioner to consider the petition of Susan Sheehan;

**AND WHEREAS** on March 24, 2015 Council confirmed the report of Commissioner Deborah Baker, dated November 15, 2014, laying out a private way across the property at 5 Milton Drive for the benefit of 9 Milton Drive;

**AND WHEREAS** Council confirmed the award of the Arbitrators as set out in the decision of the Arbitration Panel dated November 17, 2014;

**BE IT ENACTED** by the Council of the Halifax Regional Municipality, under the authority of the *Private Ways Act*, R.S., c. 358, as follows:

**Short Title**

1. This By-law shall be known as By-law P-1300 and may be cited as the *Private Ways By-law*.

**Charge Imposed**

2. Where Council pays the compensation award and expenses in respect of this petition for a private way, a charge is hereby imposed and levied on the owner or owners of the real property as more particularly described in Schedule "A".

**Amount of Charge**

3. The amount of the charge levied pursuant to Section 2 is the sum of clauses a, b, c, and d determined as follows:

(a) the compensation award of one-hundred and sixty-eight thousand, four hundred and seventy-seven dollars and fifteen cents (\$168,477.15);

(b) the arbitration costs of fifty-three thousand, five hundred and fifty-four dollars and eighty-six cents (\$53,554.86);

(c) the harmonized sales tax on the arbitration costs of eight thousand and twenty-eight dollars and sixty-six cents (\$8,028.66); and

(d) interest as calculated pursuant section 5.

### **Lien**

4. (1) A charge imposed pursuant to this By-law constitutes a lien upon the real property with respect to which the charge has been levied in the same manner and with the same effect as taxes.

(2) A charge imposed pursuant to this By-law is collectable in the same manner as taxes and at the option of the Treasurer is collectable at the same time and by the same proceedings as taxes.

(3) The lien provided for in this By-law shall come into force six (6) months from April 8, 2015.

(4) The lien provided for in this By-law shall remain in effect until the charge plus interest has been paid in full.

(5) Where a property subject to a lien is subdivided, the amount of the charge plus interest then unpaid shall be apportioned equally among the subdivided lots.

### **Interest**

5. (1) Interest shall accrue and be payable annually on the total principal outstanding regardless of whether the owner has elected to pay by installments on charges outstanding from the date of billing forward at a rate equal to the prime rate of the Municipality's banker plus two percentage points.

(2) For the purposes of subsection (1), interest shall begin to accrue six (6) months from April 8, 2015.

### **Installments**

6. The amount payable may at the option of the owner of the property be paid in equal annual installments over a period not exceeding twenty years and the whole balance becomes due and payable in case of default of payment of an installment.

### **Exemption and Deferral Not Allowed**

7. The amount charged pursuant to this By-law is not eligible for Tax Deferral or Tax Exemption.

Done and passed in Council this\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
MAYOR

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

I, Cathy Mellett, Municipal Clerk for the Halifax Regional Municipality, hereby certify that the above-noted by-law was passed at a meeting of the Halifax Regional Council held on \_\_\_\_\_, 2015.

\_\_\_\_\_  
Cathy Mellett  
Municipal Clerk

## SCHEDULE "A"

All that lot, parcel or piece of land situate on the Western side of the North West Arm in the County of Halifax fronting on the shore of the said North West Arm and more particularly described as follows, that is to say:

Commencing at a post on the shore of the North West Arm three feet north westwardly from the southern boundary of land formerly owned by one Yeadon;

Thence running south eastwardly along the shore of the said North West Arm fifty-four feet;

Thence westwardly one hundred and forty seven feet;

Thence northwardly to a post thirty-four feet;

Thence eastwardly one hundred and sixty-one feet to the place of beginning.

Also, a free and uninterrupted way (appurtenant to the said lands) unto the Grantee, his heirs and assigns with the right to construct and build a carriage road of the width of an ordinary carriage road to lead from a point three feet south from the north west corner of a lot hereby conveyed through and over the property now or formerly owned by one Amos Slaughenwhite along the southern boundary of said Yeadon's property until it meets the road leading from said property of Amos Slaughenwhite to the main road, together with a free and uninterrupted right of way and passage upon and along and over the carriage road hereby to be constructed with full right to ingress and egress and way to and for the Grantee, his heirs and assigns, and his and their agents, servants, and tenants-and the occupiers for the time being of the land hereby conveyed and all other persons with or by leave of them over, upon and along the said carriage road hereby to be constructed and also with full liberty for the Grantee, his heirs and assigns to pass and repass from time to time hereafter through, upon, over and along the said carriage road with or without horses, cattle and other animals, carts, carriages, wagons, sleighs and other conveyances, goods and other things to and from the land and premises first above described from and to the main road or public highway,

(2) Also, all that lot, piece or parcel of land situate on the west side of the North West Arm aforesaid fronting on the shore of the North West Arm and more particularly described as follows:

Commencing at the south eastern corner of the lot, piece or parcel of land hereinbefore described;

Thence running southwardly along the shore of the said North West Arm ten feet or until it comes to a stake marked A;

Thence westerly one hundred and forty-seven feet or until it comes to a stake marked with the letter B;

Thence northerly ten feet or until it reaches the south western corner of the said hereinbefore described lot of land;

Thence eastwardly along the southern boundary of said hereinbefore described lot of land one hundred and fifty-seven feet or to the place of beginning.

The said above-described lots of land being the same lots that were conveyed by deed from H. M. Bradford et al, to R. T. MacIlreith and duly recorded in the Registry of Deeds Office at Halifax in Book 328, folio 307 on June 10, 1898 and also by Deed from Amos Slaughenwhite to R. T. MacIlreith Book 332 Folios 355, 356, 357, and any rights which the Vendor may have in any water lot and lands adjacent to the said property, but

Subject to the easement of public foot path across the front of the property as the same existed on December 31, 1953.

Together with an easement appurtenant to the said lands for persons, animals and vehicles over that existing foot path easement or public right of way from the northern boundary of the said lands to the southern boundary of Milton Drive (so-called) and over it to the Dingle Road (so called) for the use of the Grantee, his heirs and assigns for all purposes at all time of the day or night.



**Attachment "B"**

**GUIDELINE FOR PAYMENTS FOR LOCAL IMPROVEMENT INSTALLMENT PROJECTS**

\* note: Interest accrues on the principal balance daily. Any payments made before or after this annual date will decrease/increase the interest portion and the total of the payment due.

Principal project	<b>\$230,060.67</b>
Interest rate	<b>4.85%</b>

Project Bill date	April-08-15
First Installment Due date	October-08-15
Annual Installment due date	Oct. 8
Last Installment due date	October-08-34

Installment	Due date	Month	Year	Minimum principal payment	+ interest	= Payment due	New Balance
							\$230,060.67
1		8 OCT	2015	\$11,503.10	\$0.00	\$11,503.10	\$218,557.57
2		8 OCT	2016	\$11,503.03	\$10,600.04	\$22,103.07	\$207,054.54
3		8 OCT	2017	\$11,503.03	\$10,042.15	\$21,545.18	\$195,551.51
4		8 OCT	2018	\$11,503.03	\$9,484.25	\$20,987.28	\$184,048.48
5		8 OCT	2019	\$11,503.03	\$8,926.35	\$20,429.38	\$172,545.45
6		8 OCT	2020	\$11,503.03	\$8,368.45	\$19,871.48	\$161,042.42
7		8 OCT	2021	\$11,503.03	\$7,810.56	\$19,313.59	\$149,539.39
8		8 OCT	2022	\$11,503.03	\$7,252.66	\$18,755.69	\$138,036.36
9		8 OCT	2023	\$11,503.03	\$6,694.76	\$18,197.79	\$126,533.33
10		8 OCT	2024	\$11,503.03	\$6,136.87	\$17,639.90	\$115,030.30
11		8 OCT	2025	\$11,503.03	\$5,578.97	\$17,082.00	\$103,527.27
12		8 OCT	2026	\$11,503.03	\$5,021.07	\$16,524.10	\$92,024.24
13		8 OCT	2027	\$11,503.03	\$4,463.18	\$15,966.21	\$80,521.21
14		8 OCT	2028	\$11,503.03	\$3,905.28	\$15,408.31	\$69,018.18
15		8 OCT	2029	\$11,503.03	\$3,347.38	\$14,850.41	\$57,515.15
16		8 OCT	2030	\$11,503.03	\$2,789.48	\$14,292.51	\$46,012.12
17		8 OCT	2031	\$11,503.03	\$2,231.59	\$13,734.62	\$34,509.09
18		8 OCT	2032	\$11,503.03	\$1,673.69	\$13,176.72	\$23,006.06
19		8 OCT	2033	\$11,503.03	\$1,115.79	\$12,618.82	\$11,503.03
20		8 OCT	2034	\$11,503.03	\$557.90	\$12,060.93	\$0.00

Principal	\$230,060.67	\$106,000.42 interest
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**Attachment "C"**

**GUIDELINE FOR PAYMENTS FOR LOCAL IMPROVEMENT INSTALLMENT PROJECTS**

\* note: Interest accrues on the principal balance daily. Any payments made before or after this annual date will decrease/increase the interest portion and the total of the payment due.

Principal project	\$230,060.67
Interest rate	3.85%

Project Bill date	April-08-15
First Installment Due date	October-08-15
Annual Installment due date	Oct. 8
Last Installment due date	October-08-34

Installment	Due date	Month	Year	Minimum principal payment	+ Interest	= Payment due	New Balance
							\$230,060.67
1	8 OCT		2015	\$11,503.10	\$0.00	\$11,503.10	\$218,557.57
2	8 OCT		2016	\$11,503.03	\$8,414.47	\$19,917.50	\$207,054.54
3	8 OCT		2017	\$11,503.03	\$7,971.60	\$19,474.63	\$195,551.51
4	8 OCT		2018	\$11,503.03	\$7,528.73	\$19,031.76	\$184,048.48
5	8 OCT		2019	\$11,503.03	\$7,085.87	\$18,588.90	\$172,545.45
6	8 OCT		2020	\$11,503.03	\$6,643.00	\$18,146.03	\$161,042.42
7	8 OCT		2021	\$11,503.03	\$6,200.13	\$17,703.16	\$149,539.39
8	8 OCT		2022	\$11,503.03	\$5,757.27	\$17,260.30	\$138,036.36
9	8 OCT		2023	\$11,503.03	\$5,314.40	\$16,817.43	\$126,533.33
10	8 OCT		2024	\$11,503.03	\$4,871.53	\$16,374.56	\$115,030.30
11	8 OCT		2025	\$11,503.03	\$4,428.67	\$15,931.70	\$103,527.27
12	8 OCT		2026	\$11,503.03	\$3,985.80	\$15,488.83	\$92,024.24
13	8 OCT		2027	\$11,503.03	\$3,542.93	\$15,045.96	\$80,521.21
14	8 OCT		2028	\$11,503.03	\$3,100.07	\$14,603.10	\$69,018.18
15	8 OCT		2029	\$11,503.03	\$2,657.20	\$14,160.23	\$57,515.15
16	8 OCT		2030	\$11,503.03	\$2,214.33	\$13,717.36	\$46,012.12
17	8 OCT		2031	\$11,503.03	\$1,771.47	\$13,274.50	\$34,509.09
18	8 OCT		2032	\$11,503.03	\$1,328.60	\$12,831.63	\$23,006.06
19	8 OCT		2033	\$11,503.03	\$885.73	\$12,388.76	\$11,503.03
20	8 OCT		2034	\$11,503.03	\$442.87	\$11,945.90	\$0.00

Principal	\$230,060.67	\$84,144.66 interest
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**Attachment "D"**

**GUIDELINE FOR PAYMENTS FOR LOCAL IMPROVEMENT INSTALLMENT PROJECTS**

\* note: Interest accrues on the principal balance daily. Any payments made before or after this annual date will decrease/increase the interest portion and the total of the payment due.

Principal project	<b>\$230,060.67</b>
Interest rate	<b>2.85%</b>

Project Bill date	April-08-15
First Installment Due date	October-08-15
Annual Installment due date	Oct. 8
Last Installment due date	October-08-34

Installment	Due date	Month	Year	Minimum principal payment	+ interest	= Payment due	New Balance
							\$230,060.67
1		8 OCT	2015	\$11,503.10	\$0.00	\$11,503.10	\$218,557.57
2		8 OCT	2016	\$11,503.03	\$6,228.89	\$17,731.92	\$207,054.54
3		8 OCT	2017	\$11,503.03	\$5,901.05	\$17,404.08	\$195,551.51
4		8 OCT	2018	\$11,503.03	\$5,573.22	\$17,076.25	\$184,048.48
5		8 OCT	2019	\$11,503.03	\$5,245.38	\$16,748.41	\$172,545.45
6		8 OCT	2020	\$11,503.03	\$4,917.55	\$16,420.58	\$161,042.42
7		8 OCT	2021	\$11,503.03	\$4,589.71	\$16,092.74	\$149,539.39
8		8 OCT	2022	\$11,503.03	\$4,261.87	\$15,764.90	\$138,036.36
9		8 OCT	2023	\$11,503.03	\$3,934.04	\$15,437.07	\$126,533.33
10		8 OCT	2024	\$11,503.03	\$3,606.20	\$15,109.23	\$115,030.30
11		8 OCT	2025	\$11,503.03	\$3,278.36	\$14,781.39	\$103,527.27
12		8 OCT	2026	\$11,503.03	\$2,950.53	\$14,453.56	\$92,024.24
13		8 OCT	2027	\$11,503.03	\$2,622.69	\$14,125.72	\$80,521.21
14		8 OCT	2028	\$11,503.03	\$2,294.85	\$13,797.88	\$69,018.18
15		8 OCT	2029	\$11,503.03	\$1,967.02	\$13,470.05	\$57,515.15
16		8 OCT	2030	\$11,503.03	\$1,639.18	\$13,142.21	\$46,012.12
17		8 OCT	2031	\$11,503.03	\$1,311.35	\$12,814.38	\$34,509.09
18		8 OCT	2032	\$11,503.03	\$983.51	\$12,486.54	\$23,006.06
19		8 OCT	2033	\$11,503.03	\$655.67	\$12,158.70	\$11,503.03
20		8 OCT	2034	\$11,503.03	\$327.84	\$11,830.87	\$0.00

Principal	\$230,060.67	\$62,288.91 interest
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