

## **1.0 Short Title**

This Bylaw shall be known as Bylaw No. 36 and may be cited as the “Local Improvement Bylaw”.

- 1.1** This Bylaw is intended to establish the ways and means of delivering services to existing as well as new developments abutting an existing street or a proposed street developed according to the Town’s Subdivision Bylaw.

## **2.0 Definitions**

In this Bylaw:

- a. “Adjacent Property” means a parcel or lot of property, other than an Exempt Property, which has a common boundary with a Street in which a Local Improvement is or will be situated, provided that some portion of the Local Improvement is located immediately beside the parcel or lot of property.
- b. "CAO" means the Chief Administrative Officer of the Town of Yarmouth.
- c. "Charge" means the recovery of costs through a uniform area rate equal to the relevant components of the area service rates.
- d. "Corner Property" means an Adjacent Property situated at an intersection or junction of two or more Streets, such that the property has frontage on more than one street, provided that each such street either:
  - i. has been improved and has been the subject of a municipal local improvement charge attaching to the property in question for the applicable type of local improvement, irrespective of whether the charge was levied under a previous bylaw or pursuant to this By-Law; or
  - ii. is unimproved but is potentially eligible for future local improvement under this By-Law in respect of the applicable type of local improvement.
- e. “Council” means the Council for the Town of Yarmouth.
- f. "Dwelling" means a building operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities.
- g. "Effective Date" means the date of issuance of Substantial Completion Certificate for the local improvement.
- h. "Engineer" means the appointed engineer of the Town, or a consultant engineer engaged by the Town, or any other person engaged by the Town who, in the opinion of the Council, is competent to carry out the duties normally assigned to an engineer.

- i. "Exempt Property" means property exempted by the Municipal Government Act from paying a charge levied under this By-Law.
- j. "Frontage" means the length of the common boundary, or common portion of boundary, between an Adjacent Property and the portion of a Street in which a Local Improvement is or will be situated, irrespective of whether the boundary is a front, rear or side boundary of the Adjacent Property, or along a side or end of a Street. In calculating frontage the following rules shall apply:
  - i. Where a Local Improvement does not extend the full length of the Street, frontage shall only be measured to a point perpendicular to the end-point of the Local Improvement, except that at a cul-de-sac, inside corner or similar circumstance, if a property is effectively fully-serviced by a Local Improvement, the frontage shall be measured along the entire such common boundary irrespective of perpendiculars.
  - ii. For Corner Properties frontage may be adjusted by reducing the actual measured frontage by 50% if a local improvement has already taken place on the street not the subject of the current calculation, or a local improvement will take place at the same time, or within a reasonable period of time as determined at the discretion of Council.
  - iii. For properties at the end of the street, Council may in its discretion, approve an amount of frontage greater than that which exists to recognize the increased development potential of the property as a result of the local improvement. The amount of frontage so determined for the property shall be calculated by the Engineer and set out at the time of approving the Petition.
- k. "Local Improvement" includes any of the following activities: laying out, opening, paving, constructing, repairing, improving, and maintaining streets, curbs, sidewalks, gutters, bridges, culverts, retaining walls, catch basins, multi-purpose trails and extensions of the sanitary and storm sewers and water systems and other improvements, but excludes maintenances of the paving and ancillary works.
- l. "Owner" includes a part owner, joint owner, tenant in common or joint tenant of the whole or any part of any real property fronting on a street, and also includes any trustee, executor, guardian, agent or other person having the care or control of such real property in case of the absence or disability of the person having title thereto.
- m. "Street" means a Provincially or Town owned street, highway, road, lane, travelled way, bridge, or square and includes the portion of the street right-of-way which is not used for vehicular traffic but which is available for use for installation of services, or as a shoulder, ditch or buffer.
- n. "Total Cost" means the total cost to Town of undertaking the Local Improvement exclusive of any direct funding for the Local Improvement provided to the Town by or through the Province of Nova Scotia or the Government of Canada or any funding agencies or programs of those governments.

### **3.0 Petition Process**

One or more Owners of Adjacent Properties who are proponents of the Local Improvement may initiate a petition process in compliance with this section, in order to request Council to carry out a Local Improvement funded by frontage charges in accordance with this By-Law.

- 3.1** Before circulating a petition, the form of the petition shall be developed with or approved by the Engineer and shall include at the minimum:
- a. an accurate description of the nature of the proposed Local Improvement and its precise geographic location, identified on a plan or diagram showing the Local Improvement and identifying the Adjacent Properties and all pertinent information pertaining to the request;
  - b. a summary of the Local Improvement funding formula set out in this Bylaw;
  - c. an estimate by the Engineer as to the anticipated Total cost of the Local Improvement, the anticipated amount of the Frontage Rate and its annual payment, but the Municipality shall not be liable and owners of Adjacent Properties shall not be relieved of paying the true amount of the Charge in the event that any such estimates prove to be wrong;
  - d. a petition signature sheet or sheets on which shall be listed beside each signature space the civic address, assessed owner and property identification number of each Adjacent Property according to the Municipality's records, and a column shall be included on the petition sheets for identification of Frontage for each such property. At the discretion of the Engineer, the column for Frontage for each Adjacent Property may be completed in advance of circulating the petition, to include estimates by the Engineer of the applicable entries for individual Adjacent Properties, but the Municipality shall not be liable and owners of Adjacent Properties shall not be relieved of paying the true amount of the Charge in the event that any such estimates prove to be wrong;
  - e. in the petition sheets no more than one signature space shall be provided for each Adjacent Property;
  - f. a warning in a form satisfactory to the Engineer that estimates may be inaccurate or subject to change;
  - g. valid expiration date of petition.
- 3.2** The petition shall be circulated by the proponents to the Owners of as many Adjacent Properties as reasonably possible, but that in any event a copy of the Petition shall be mailed or delivered at their current address.
- 3.3** Where an Adjacent Property has more than one Owner, the signature of one Owner of an Adjacent Property shall be taken to signify the consent of other owners of the same property.
- 3.4** The Engineer shall review the petition submitted by the proponent, and may carry out such verification or validation process as he or she deems fit before submitting the petition to Council with an opinion from staff as to whether the petition is valid and signifies majority approval for the proposed Local Improvement.

#### **4.0 Majority Approval for Local Improvement**

Where an individual or individuals, representing ownership of fifty-one per cent of the frontage on any one street, file a petition with the CAO requesting that the Town make an improvement to the said street, the Town may make such improvement by levying a charge upon all of the owners of frontage on the said street.

#### **5.0 Council Approval of Local Improvement Project**

Council may approve the expenditure of funds for a proposed Local Improvement, to be funded by Charges based on Frontage of Adjacent Properties; if it has received a petition in accordance with the petition process set out in this Bylaw which Council is satisfied is valid and signifying majority approval.

**5.1** In spite of receiving such a petition, Council shall retain the discretionary right to decline to carry out such a Local Improvement.

**5.2** Council may decline to pave any streets if their access roads are not paved as well.

**5.3** If at the time of approving a Local Improvement under the Section, Council determines that it is unfair or inappropriate to reduce the Frontage for a Corner Property, it may so direct and the Charge shall be computer accordingly, and the petition shall be deemed valid.

**5.4** Owners of Frontage, other than corner property, who do not have entrances on access roads to subdivisions or the street being considered, may only be charged 50% of their Frontage for that street at the discretion of Council.

**5.5** Council may direct that the affected property owners be contacted in the event that the change in the Frontage calculation might affect the outcome of the petition process.

#### **6.0 Repeal of Approval for Local Improvement Due to Delay Before Construction**

Where Council has approved or conditionally approved construction of a Local Improvement pursuant to this Bylaw, but construction of the Local Improvement has neither commenced nor been contracted for within 24 months of the approval by Council due to uncertainties over funding contributions or approvals from other levels of government, or for any other reason, an Owner of Adjacent Property may circulate a petition, in a form satisfactory to the Engineer, to seek repeal of the Council approval for the Local Improvement. The process shall generally be similar to the petition process outlined above, with any necessary changes for context, and including up to date information in the petition document. In the event that such a process indicates that there is no longer majority approval for the Local Improvement, Council may reverse its decision approving the Local Improvement.

#### **7.0 Calculation of Charge**

A Local Improvement shall be funded by a Charge. Upon completion of construction of a Local Improvement, the CAO shall calculate the amount of the Charge which shall be applied to each Adjacent Property in respect of the Local Improvement.

- 7.1** The Charge shall be calculated according to the following formula, with the total frontage being based on both sides of the street and subject to the rules herein for determining frontage:

Chg = Charge

TF = Total Frontage abutting subject street

PF = Portion of total frontage owned by particular individual

TC = Total cost of improvements

$$\text{Chg} = \text{PF}/\text{TF} \times \text{TC}$$

- 7.2** In a case where a lot has two (2) or more frontages, the longest frontage will be assessed at its full length when its Charge is calculated and the other frontage or frontages will be assessed at 50% of their respective full lengths when their respective frontages become subject to the Charge calculation.

- 7.3** The Charge levied under this By-Law becomes effective when the Engineer files with the CAO a Certificate of Substantial Completion that the improvement has been completed.

## **8.0 Charge & Lien**

The amount of the Charge is a lien on the whole of the property and the lien has the same effect as a lien for rates and taxes under the Municipal Government Act and shall be collected in the same manner and at the same time as are rates and taxes under the Municipal Government Act, unless the Owner requests the Town that the Charge be paid over time in accordance with the following section.

## **9.0 Payment of Charge over Time and Interest**

At the option of the Owner of a property which is subject to a Charge, the Charge may be paid in up to ten (10) equal annual installments together with interest on the unpaid balance at 6% per annum compounded annually completed from the effective date of the Charge, subject to the provisions that:

- a. in the event of default of payment of any installment, the entire unpaid balance, including interest, becomes due and payable and shall be collected in the same manner and at the same time as are rates and taxes under the Municipal Government Act;
- b. in the event of default of payment of any installment, the interest on the amount of the default shall be computed at the same rate prescribed for the late payment of other real property taxes payable to the Municipality; and
- c. an Owner may pay off the Charge and extinguish the lien at any time by paying the entire unpaid balance, including any accumulated interest.

- d. If the owner defaults in any one annual installment, the entire balance of the Charge then becomes due and owing.

THIS IS TO CERTIFY THAT this bylaw was passed by the Council of the Town of Yarmouth at a duly constituted meeting of said Council held the 13<sup>th</sup> day of June, 2019.

SIGNED by the Mayor and Town CAO this 13<sup>th</sup> day of June, 2019.

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MAYOR

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TOWN CAO

**Clerk's Annotation for Official Bylaw Book**

Date of Adoption: June 13<sup>th</sup>, 2019

Date of Notice to Council Members of Intent to Consider: March 1<sup>st</sup>, 2019

I certify that this 'Local Improvement Bylaw' was adopted by Council as indicated above.

Town Clerk:

Date: