

ROTHESAY BY-LAW 3-00
A BY-LAW DESCRIBING THE PROCEDURE FOR DIRECTING THE UNDERTAKING OF A WORK
AS A LOCAL IMPROVEMENT

The Council of the town of Rothesay (hereinafter called the "Council") pursuant to the authority vested in it under the provisions of the Municipalities Act, R.S.N.B. 1973, c. M-22 (hereinafter referred to as the "Act") enacts the following By-Law:

- 1) This By-Law may be cited as the 'Local Improvement Procedures By-Law'.
- 2) The terms used in this By-Law are as defined in section 118 of the Municipalities Act.
- 3) Where this By-Law provides that to enact a By-Law two-thirds of the whole Council or the whole Council must vote in favour thereof, it shall be sufficient compliance with such provision if two-thirds of the whole Council or the whole Council, respectively, vote in favour of the By-Law on third reading by title.
- 4) The Council may authorize and direct the undertaking of any of the following work as a Local Improvement and order that the cost thereof shall be raised by special frontage assessment:
 - a) opening, constructing, widening, straightening, extending, grading, gravelling, levelling, diverting, surfacing or paving a street;
 - b) constructing a sidewalk;
 - c) curbing, sodding or planting a street;
 - d) constructing, deepening, enlarging, extending or making connections with a surface sewer, domestic sewer, sewerage works, water main, or water system; or
 - e) any combination thereof.
- 5) (1) The Director of Operations, upon the completion of the work, shall determine the cost of the work and file with the Clerk a certificate showing:
 - a) the date of completion of the work, and
 - b) the cost of the work done.
- 5) (2) Such certificate referred to in Section 5(1) is conclusive evidence of such cost and of the amount payable by the owner.
- 6) The cost of a work is deemed to include:
 - a) the actual cost of construction;
 - b) the cost of engineering and surveying;
 - c) the compensation for lands taken for the purpose of the work or injuriously affected by it and the expenses incurred by the municipality in connection with determining such compensation;
 - d) the estimated cost of the issue and sale of debentures and any discount allowed the purchasers of them; and
 - e) the interest on all borrowings in connection with such work and any expenses incidental to the entering on, carrying out and completing the work and raising the money to pay the cost thereof.
- 7) A work payable in whole or in part by special frontage assessment may be undertaken pursuant to petition or notice as hereinafter provided.
- 8) Upon presentation of a petition to Council asking that a work be undertaken, signed by at least two-thirds of the owners of the abutting parcels proposed to be specially assessed, and having a value of at least one-half of all such abutting parcels, Council may take all necessary steps to undertake such work and by By-Law passed on the affirmative vote of not less than two-thirds of the whole Council:
 - a) authorize and direct the undertaking of such work, and
 - b) order that the cost thereof or such portion of the cost as may be fixed in that By-Law shall be raised by special frontage assessment.
- 9) Council may at any time within three years of the presentation of a petition undertake either the whole or part of the work sought and may not undertake a part only of the work sought unless the petition is sufficient with respect to such part.

- 10) Council may, on its own initiative, cause a notice of its intention to undertake a work to be published in the form set out in Schedule 'A' once a week for two consecutive weeks in a newspaper published or having general circulation in the municipality.
- 11) Unless a majority of the owners of abutting parcels proposed to be specially assessed, having a value of at least one-half of all the abutting parcels proposed to be specially assessed, petition Council within two weeks of the last publication of the notice against proceeding with the proposed work, Council may, by By-Law passed by the affirmative vote of not less than two-thirds of the whole council at any time within three years:
 - a) authorize and direct the undertaking of such work, and
 - b) order that the cost thereof shall be raised by special frontage assessment, or such portion of the cost as may be fixed by By-Law.
- 12) Where a sufficient petition is presented against a proposed work, except as provided in Section 13, Council shall not within one year from the filing of such petition give a second notice of intention with respect to the same proposed work.
- 13) Notwithstanding that a sufficient petition is presented against a proposed work, Council may by By-Law passed by unanimous vote of the whole council
 - a) declare a work to be necessary or requisite in the general interest of the locality in which it is to be made,
 - b) authorize and direct the undertaking of such work, and
 - c) order that the cost thereof shall be raised by special frontage assessment, or such portion of the cost as may be fixed by By-Law.
- 14) (1) Where the Minister of Health and Community Services under authority of the Health Act orders changes or additions to be made to an existing system of water works, sewers or sewage disposal by the municipality, Council may on its own initiative cause a notice of its intention to undertake any work ordered by the Minister of Health and Community Services and specified in Section 4(d) to be published in accordance with Section 10 and shall further state that the work is to be undertaken pursuant to an order made under the Health Act.
- 14) (2) Notwithstanding that a petition is presented against undertaking a work such as described in Section 14(1), Council may by By-Law passed by the affirmative vote of a majority of Council present at any regular meeting or at any special meeting called for the purpose
 - a) declare the work to be necessary or requisite in the general interest of the locality in which it is to be made,
 - b) authorize and direct the undertaking of such work, and
 - c) order that the cost thereof or such portion of the cost as may be fixed by By-Law shall be raised by a special frontage assessment.
- 15) (1) A petition for or against a work shall be filed with the Clerk and shall be deemed to be presented to Council when it is so filed.
- 15) (2) The Clerk shall determine the sufficiency of a petition for or against a work and her determination is conclusive.
- 15) (3) Where two or more persons are the owners of an abutting parcel
 - a) they shall not be entitled to petition under this part unless the majority in interest of them concur; and
 - b) they shall be regarded as one owner.
- 15) (4) No person has the right to withdraw his name from a petition after the Clerk has determined it to be sufficient.
- 16) Except as otherwise provided in this By-Law, the entire cost of a work undertaken as a local improvement shall be specially assessed upon the abutting parcels according to the extent of their respective metre frontages, by an equal special rate per metre frontage sufficient to defray such cost.
- 17) The owners' portion of the cost of any work undertaken as a local improvement shall be 100% or such lesser share as shall be prescribed by Council in a particular local improvement By-Law.

- 18) If, for the purpose of affording an outlet for a domestic sewer, a sewer main is constructed along a street or through land in which it would not in the opinion of Council have been constructed except as a means of affording an outlet as aforesaid, the lots or parcels of land abutting on such street and such land may be exempted from the payment of any special frontage assessment in respect of the domestic sewer system and sewer main either for the whole or a part of the term of the special frontage assessment imposed in respect of the said domestic sewer system served by the outlet, or from the payment of the whole or a part of the proportionate cost thereof as appears to Council to be just under the circumstances.
- 19) If any lot or parcel of land that has not been assessed by way of special frontage assessment for any part of the cost of a domestic sewer system or sewer main is connected therewith, Council may by resolution order that such lot or parcel of land shall be assessed by a special frontage assessment at the same rate per metre frontage as was assessed against the lands actually abutting on the street or place on which a domestic sewer system was constructed and the Clerk shall add to the local improvement assessment roll for the work, the name of the owner of each parcel of land when connected with the sewer main and the notice provisions of Section 32 apply.
- 20) All sums collected under an assessment made under authority of Section (19) shall be placed to the credit of the account relating to sewers.
- 21) If, for the purpose of affording a water supply to lands or parcels of land a water main is constructed along a street or through land in which it would not in the opinion of Council have been constructed except as a means of affording a water supply to such other lands or parcels of land, the parcels of land abutting on such street and such land may be exempted from the payment of any special frontage assessment imposed in respect of such work either from the whole or a part of the term of the special frontage assessment imposed in respect of the work, or from the payment of the whole or a part of the proportionate cost thereof, as appears to Council to be just under the circumstances.
- 22) If a lot or parcel of land that has not been assessed by way of special frontage assessment for any part of the cost of a water main is connected therewith Council may by resolution order that such land or parcel of land shall be assessed by a special frontage assessment at the same rate per metre frontage as was assessed against other lands actually abutting on the street or place on which the water main was constructed, and the Clerk shall add to the local improvement assessment roll for the work, the name of the owner of each parcel of land when connected with the water main and the notice provisions of Section 32 apply.
- 23) All sums collected under an assessment made under authority of Section 22 shall be placed to the credit of the account relating to water supply.
- 24) Where the work undertaken is a sidewalk or curbing, only the abutting parcels on that side of the street upon which the work is constructed shall be specially assessed, but where a petition to Council praying that a sidewalk be constructed on one side of a street only, is made by the owners of abutting parcels on both sides of the street or the portion thereof on which the sidewalk is proposed to be constructed, Council may order that the cost of the work shall be borne by the owners of abutting parcels on both sides of the street.
- 25) Where a special frontage assessment is to be levied Council shall estimate the cost of the work and by By-Law shall fix the number of annual instalments in which such assessment shall be paid.
- 26) Except as hereinafter provided the owners' portion of the cost of the work shall be paid by equal annual instalments over the term fixed for payment.
- 27) (1) Except as herein otherwise provided, every abutting parcel shall be assessed according to its actual metre frontage.
- 27) (2) In the case of corner lots and triangular or irregularly shaped lots situated at the junction or intersection of streets, a reduction shall be made in the special frontage assessment that otherwise would be chargeable thereon sufficient, having regard to the situation, value and superficial area of such lots as compared with the other lots, to adjust the assessment on a fair and equitable basis.

- 27) (3) Where a lot is for any reason wholly or in part unfit for building purposes a reduction shall be made in the special frontage assessment which would otherwise be chargeable thereon, sufficient to adjust its assessment as compared with the lots fit for building purposes on a fair and equitable basis.
- 27) (4) Where a lot, other than a corner lot, has two limits that abut on works and the size or nature of the lot is such that any or all the works are not required, a reduction in respect of the works that are not required, so long as they are not required, shall also be made in the special assessment that would otherwise be chargeable thereon, sufficient to adjust its assessment on a fair and equitable basis.
- 27) (5) The reduction shall be made by deducting from the total frontage of the lot liable to special frontage assessment so much thereof as is sufficient to make the proper reduction, but the whole of the lot shall be charged with the special frontage assessment as so reduced.
- 27) (6) The amount of any reduction made in the assessment of any lot under the provisions of this section shall not be chargeable upon the lots liable to special frontage assessment but shall be paid by the municipality and shall be entered on the local improvement assessment roll as if the municipality were the owner of the frontage so deducted.
- 27) (7) A reduction under the provisions of this section shall be made by the Clerk.
- 28) The total metre frontage of the abutting parcels to be assessed shall be determined by adding the reduced metre frontage of abutting parcels as determined pursuant to Section 27, to the actual metre frontage of every other abutting parcel.
- 29) The rate of a special frontage assessment shall be determined by dividing the owners' portion of the cost of the work, expressed in dollars, by the total metre frontage of the abutting parcels to be assessed, as determined by Section 28.
- 30) (1) Every abutting parcel other than an abutting parcel belonging to Canada or to the Province shall be liable to special frontage assessment.
- 30) (2) Where an abutting parcel is exempt from special frontage assessment it shall nevertheless for all purposes except petitioning for or against a work, be subject to the provisions of this part and shall be entered on the local improvement assessment roll as if the municipality were the owner thereof, and the assessment levied with respect thereto shall be paid by the municipality.
- 31) Where a special frontage assessment is to be made the Clerk shall cause to be prepared a special assessment roll to be known as the local improvement assessment roll for the work.
- 32) (1) When a special frontage assessment is to be made the Clerk shall within ninety days after the passing of the By-Law directing the undertaking of a work as a local improvement, deliver to the owner of each abutting parcel a notice in the form set out in 'Schedule B' that shall contain the following information:
- a) a description in general terms of the work;
 - b) the estimated cost of the work;
 - c) the owners' portion of the cost expressed in dollars or as a percentage of total cost or the uniform unit rate per metre frontage, to be specially assessed;
 - d) the number of annual instalments in which the assessment is payable;
 - e) the total metre frontages of the abutting parcels to be assessed;
 - f) the net metre frontage of each abutting parcel to be assessed against such owner.
- 32) (2) The notice referred to in Section 32(1) may be delivered by leaving the same at the residence or place of business of the owner or by mailing the same to the owner, addressed to him at his latest known residence or place of business.
- 33) (1) Any person to whom a notice of a special frontage assessment has been delivered may within twenty (20) days after delivery thereof apply by petition to the Clerk for revision of the local improvement assessment roll in the following matters:
- a) the names of the owners of abutting parcels;
 - b) the total metre frontage of abutting parcels; and
 - c) the metre frontage of any abutting parcel.

- 33) (2) The Clerk shall consider such petition and if she finds any error in respect of the matters referred to in Section 33(1) that a reduction in metre frontage should be made under section 31, she shall cause to be made such alterations or amendments in the roll as shall appear proper but the net metre frontage of any abutting parcel shall not be altered on the roll until notice of such intended alteration is first given to the owner of such abutting parcel.
- 33) (3) The Clerk shall, in the manner prescribed by Section 32, deliver notice of her decision to the applicant and to the owner of any abutting parcel whose metre frontage is affected by an alteration or amendment .
- 34) Any person who has applied to the Clerk for revision and every owner of an abutting parcel, the metre frontage of which has been altered or amended by the Clerk may, within fourteen days after delivery of the decision of the Clerk, appeal that decision to The Court of Queen's Bench of New Brunswick.
- 35) Each year on or before February 15th, Council shall by resolution determine the owners' portion of the cost of each work completed within the preceding twelve months and shall direct the Clerk by warrant of assessment in the form set out in Schedule C to assess and levy such cost in accordance with this part.
- 36) The warrant of assessment shall be executed by the Mayor and Clerk under the corporate seal of Rothesay and attached to the local improvement assessment roll. A local improvement assessment roll shall be prepared in the form set out in Schedule D.
- 37) When the Clerk receives a warrant of assessment she shall determine the rate per metre frontage and compute the total assessment to be levied on each abutting parcel and the amount of each annual instalment in accordance with the form set out in Schedule D.
- 38) The Clerk after having completed the local improvement assessment roll and made such alterations and amendments therein as are necessary to give effect to decisions on any appeals to The Court of Queen's Bench of New Brunswick shall certify the roll to be correct and thereupon the roll and the special frontage assessment shall be valid and binding upon all persons concerned, and upon the abutting parcels specially assessed; and the work in respect of which the local improvement assessment roll has been made and certified shall be conclusively deemed to have been lawfully undertaken and proceeded with pursuant to and in accordance with the Municipalities Act.
- 39) The Clerk shall on or before the first day of March in each year in which an instalment is payable, deliver to the Treasurer an assessment roll containing the names of the owners of each abutting parcel that has been assessed, identifying it, and the addresses of such owners together with the amount of the instalment payable in such year and shall endorse on such assessment roll a precept in the form as set out by Schedule E. The Treasurer shall cause the special frontage assessment to be levied and collected in accordance with Section 41.
- 40) Every special frontage assessment shall be deemed an assessment on land and each instalment payable thereon, from the date it becomes due and payable, shall be a lien on the abutting parcel with respect to which it has been assessed.
- 41) The terms and conditions for collection and payment of special assessments are as follows:
- a) special assessments shall be paid annually as a component of the utility accounts;
 - b) annual installments shall be paid to the Town on or before the first day of June in each year,
 - c) installments in arrears shall bear interest at the same rate as that for outstanding utility account per month or part thereof until paid,
 - d) the same terms and conditions as apply respecting the collection of accounts in default of payment as set out in Sewer and Water By-Laws, shall also apply to the special frontage assessment component of the invoice.
- 42) A special frontage assessment, except so much as is in arrears and unpaid, shall not as between a vendor and a purchaser or in respect of a covenant against encumbrances or for the right to convey, or for quiet possession, free from encumbrances, be deemed to be an encumbrance upon the lands upon which the special frontage assessment is made.

- 43) Instead of basing the special frontage assessment on the cost of the work, Council may by By-Law fix a uniform unit rate for a class of work that may be undertaken as a local improvement.
- 44) The omission to deliver any notice in no way affects the liability of any person to pay any special frontage assessment or the validity of any proceeding taken hereunder to enforce payment of any assessment imposed under this By-Law or local improvement By-Laws prepared in accordance with this By-Law.
- 45) When an abutting parcel against which a special frontage assessment is in effect, is divided, the Clerk with the written consent of the owners of each parcel, may apportion the balance of the special frontage assessment between such owners according to the metre frontage of the parcels of each respective owner, and thereafter the lien for the balance of the special frontage assessment payable by each owner shall extend only to the parcel of such owner.
- 46) (1) Where an owner of an abutting property pays an amount determined by the Clerk as the full sum of the outstanding balance of the special frontage assessment calculated under Section 33, no further payments against the property will be assessed under the By-Law.
- 46) (2) The Treasurer will cause any payments received in accordance with Section 46 (1) to be deposited in a reserve account solely for the purpose of retiring the debt associated with the work.

FIRST READING BY TITLE	:	14 February 2000
SECOND READING BY TITLE	:	14 February 2000
READ IN ENTIRETY	:	2 March 2000
THIRD READING BY TITLE		
AND ENACTED	:	2 March 2000

DEPUTY MAYOR

CLERK

Schedule A. FORM OF PUBLIC ADVERTISEMENT

The notice required by Section 10 shall be set out in the form as shown below.

<i>Rothesay Letterhead</i>	
<u>Notice of INTENTION TO UNDERTAKE A LOCAL IMPROVEMENT</u>	
<p>The Council of the town of Rothesay pursuant to the authority vested in it under the provisions of the <u>Municipalities Act</u>, R.S.N.B. 1973, c. M-22 and By-Law 3-00 hereby gives notice to all concerned parties that it intends to undertake a local improvement to be paid for by special frontage assessment against abutting properties.</p>	
<p>THE WORK TO BE DONE IS AS FOLLOWS: <i>(A written description of the work to be undertaken)</i></p>	<p>INSERT MAP HERE</p>
<p>THE PROPERTIES AFFECTED ARE IN AN AREA DESCRIBED AS: <i>(A written description of the boundaries and/or civic numbers of the area affected)</i></p>	
<p>Unless a majority of the owners of abutting parcels proposed to be specially assessed, having a value of at least one-half of all the abutting parcels proposed to be specially assessed, petition Council within two weeks of the last publication of the notice against proceeding with the proposed work, Council may by By-Law passed by the affirmative vote of not less than two-thirds of the whole council at any time within three years authorize and direct the undertaking of such work, and order that the cost thereof shall be raised by special frontage assessment.</p>	
<p>For more information or to review a copy of the proposed By-Law, please contact the Town Clerk at 848-6600 or visit the Rothesay website.</p>	<p><i>Signature of Town Clerk</i></p> <p><i>Date of Notice</i></p>

Schedule B. FORM OF NOTICE TO PROPERTY OWNERS

Please be advised that:

The Council of the town of Rothesay pursuant to the authority vested in it under the provisions of the Municipalities Act, R.S.N.B. 1973, c. M-22 and By-Law 3-00 has undertaken a local improvement to be paid for by special frontage assessment against abutting properties.

The work to be done is as follows: Account #
a description in general terms of the work By-Law #

a description in general terms of the area affected

The estimated total cost of the work is: \$ *the estimated cost of the work*

As the owner of: *Civic address* PID:

You are to be assessed \$ *amount in \$* per year which is % *% of the total cost*
approximately of the work

A total of *metres* meters of frontage is being assessed for this work.

Your property has been determined to have: *metres* net metres of frontage subject to the By-Law

This special frontage assessment is payable in # equal annual installments.

Issued at Rothesay *date* signed *Signature of clerk* Clerk

Schedule C. FORM OF WARRANT OF ASSESSMENT

The warrant of assessment shall be in the following form:

Moved by _____, seconded by _____

Whereas projects were undertaken as local improvements in accordance with the pertinent By-Laws, Rothesay Council hereby directs that a special warrant be issued for the sums set out in the local improvement assessment roll for 20XX and and further directs the Clerk to cause such special assessments to be collected in accordance with By-Law 3-00.

Local Improvement By-Law #	Amount to be collected

Dated _____

Mayor

.....

Clerk

Schedule D. FORM OF LOCAL IMPROVEMENT ASSESSMENT ROLL

For the Year 20__ Town of Rothesay Local Improvement By-Law #__

1	2			3	4	5	6	7	8	
Assessment account number	PID of Assessed Property	Owner name	Owner Address	Civic Address of Assessed Property	frontage (m)	frontage (m) reduced or exempted	net frontage (m)	\$ per metre frontage	total assessment (\$)	amount of each annual instalment (\$)

prepared by

date

Clerk

date

Schedule E. FORM OF PRECEPT

The precept required by Section 39 shall be set out in the form as shown below.

Rothesay Letterhead

To the Treasurer for the Town of Rothesay:

I hereby certify that the attached assessment roll accurately identifies the properties subject to the special frontage assessment in the amounts shown and I hereby direct you to collect from the several owners named in the annexed assessment roll the sums set against their respective names.

Clerk
Town of Rothesay