



2019November12AmendingWaterHrgFINAL_001
ROTHESAY
PUBLIC HEARING AGENDA
Town Hall
Tuesday, November 12, 2019
Immediately following a Public Hearing



Amending Water By-law 1-18-1

- 1. Introduction** **Mayor Grant**

- 2. Documentation**
17 October 2019 Public Hearing Notice posted to website

7 November 2019 Memorandum from Town Clerk Banks
DRAFT By-law 1-18-1
 Appendix A

Appearances: Treasurer Doug MacDonald, CPA CA

Comments: 5 November 2019 Email from 84 Hampton Road owner
 6 November 2019 Email/letter from Homestar Inc.

- 3. Adjournment**



2019 November 12 Amending Water Hrg FINAL_002

ROTHESAY



PUBLIC HEARING NOTICE

17 October 2019 - Rothesay Council has scheduled a **Public Hearing** to give consideration to enactment of **By-law 1-18-1**, "A By-law of the Municipality of Rothesay to Amend the Rothesay Water By-law", under authority of Section 117 of the *Local Governance Act*, SNB (2017) c.18.

The Public Hearing will be held on **Tuesday, November 12, 2019** in the Common Room, Rothesay Town Hall, 70 Hampton Road, Rothesay, NB, immediately following a public hearing scheduled for 7:00 p.m.

The purpose of the **Water By-law** and **the proposed amendment** is to regulate the connection to, and use and maintenance of the Rothesay potable water system, and to establish water system fees and charges. It is an objective of Rothesay that residents of any Residential Apartment Complex be served by a clean, safe, and continuous supply of potable water.

When the Owner of an existing Residential Apartment Complex established prior to 1 January 1998 chooses not to connect to the available municipal potable water distribution network operated by the Town, such Owner is responsible for providing proof to the Town that a clean, safe, and reliable supply of potable water is provided to their tenants, in accordance with the **Water By-law and amendments thereto**, and **Appendix A** – "Water By-law 1-18 Requirements for Existing Residential Apartment Complexes established Prior to 1 January 1998 NOT Connected to Available Town Water".

The draft **Amending By-law 1-18-1** and **Appendix A** can be found [here](#) and is available for review in the Clerk's Office at Rothesay Town Hall during normal business hours (exclusive of civic holidays).

1st Reading was given to **By-law 1-18-1** at the October 15, 2019 Council meeting.

Comments will be received by the undersigned until **Wednesday, November 6, 2019 at noon**. Any written comments provided will become part of the public record. Anyone wishing to speak may do so at the public hearing on **November 12, 2019**. You may also register your wish to speak in advance by contacting the Clerk's office.

Mary Jane Banks, BComm
Town Clerk



ROTHESAY MEMORANDUM



TO : Mayor and Council
FROM : Town Clerk Mary Jane Banks
DATE : 7 November 2019
RE : Amending Water By-law 1-18-1

RECOMMENDATION:

- Council give 2nd Reading by Title, to By-law 1-18-1, “A By-law of the Municipality of Rothesay to Amend the Rothesay Water By-law”
- Council give Reading in its Entirety, to By-law 1-18-1, “A By-law of the Municipality of Rothesay to Amend the Rothesay Water By-law”
- Council give 3rd Reading by Title, and Enactment to By-law 1-18-1, “A By-law of the Municipality of Rothesay to Amend the Rothesay Water By-law”
- Council adopt Appendix A, entitled “ Requirements for Existing Residential Apartment Complexes established Prior to January 1, 1998 NOT Connected to Available Town Water”, as attached to By-law 1-18-1

BACKGROUND:

Water By-law 1-18 was enacted by Council in January 2019. Subsequently, concerns were raised by owners of a number of rental apartment buildings and a meeting was held with affected property owners, Council and staff.

The Works and Utilities Committee reviewed the By-law and recommended changes to address the concerns raised. Council also received recommendations from the Town Manager and Deputy Mayor Alexander. The Clerk's office reviewed the recommendations, and subsequent motions of Council (September 9, 2019), and prepared draft By-law 1-18-1, “Amending Water By-law”, in consultation with senior staff.

Council gave 1st Reading to By-law 1-18-1 at the October Council meeting, scheduled a public hearing for November 12, 2019 and directed staff to notify affected Residential Apartment Complex owners. Town Treasurer MacDonald sent copies of the amending By-law and the public hearing notice by mail to the affected property owners on Friday, October 18, 2019.

The attached notice of Public Hearing was posted to the Town website on 17 October 2019 and social media messages were scheduled for October 21, October 30, November 6 and November 9 to advertise the Hearing.

BY-LAW NO 1-18-1

**A BY-LAW OF THE MUNICIPALITY OF ROTHESAY
TO AMEND THE ROTHESAY WATER BY-LAW**

The Council of Rothesay, under the authority vested in it by Section 10 of the *Local Governance Act S.N.B* (2017), Chapter 18, and amendments thereto, hereby enacts as follows:

1. **The current definition for “Specifications for Developers” is amended by inserting “Rothesay Standard Front End Specifications” so as to read:**

“Specifications for Developers” means the standards entitled “*Rothesay Standard Front End Specifications*”, adopted by the municipality as a minimum standard for new construction of streets and services within the Town;

2. **Section 4.15 is amended by inserting “... , with the following exception: Where an Owner of a Residential Apartment Complex established prior to 1 January 1998 has provided proof of a clean, safe, and reliable supply of potable water as required by Appendix “A”, the requirements set out in Sections 4.15 and 7.6.1(d) are not applicable. Appendix A may be amended from time to time by resolution of Council” so as to read:**

Any owner of a commercial property, institutional property or residential apartment complex situated on land abutting a street, right-of-way, or public place in which there is a watermain shall connect to the main in a manner approved by the Town and use such watermain as its sole source of water, with the following exception:

Where an Owner of a Residential Apartment Complex established prior to 1 January 1998 has provided proof of a clean, safe, and reliable supply of potable water as required by Appendix “A”, the requirements set out in the preceding paragraph and Section 7.6.1(d) are not applicable. Appendix “A” may be amended from time to time by resolution of Council.

3. **Section 7.6.1(d) is amended by inserting “with the exception of Residential Apartment Complexes established prior to 1 January 1998 as described in Section 4.15” and “unless as otherwise recommended by the Committee and approved by resolution of Council” so as to read:**

For Commercial properties, Institutional properties and Residential Apartment Complexes, **with the exception of Residential Apartment Complexes established prior to 1 January 1998 as described in Section 4.15**, the following User Class Structure and payment schedule applies:

Class A) existing properties where water is available but not currently used:

- connection to the water system required on or before March 31, 2022;
- connection permit fee due at the start of construction;
- water system access fee payable in 40 equal quarterly instalments starting in the first quarter of water use but not later than June 30, 2022
- the Town is responsible for the cost and installation of service from the main line to the residents property line (i.e. to the “curb stop”)
- water meter rental charges payable over 5 years
- interest will be charged on payments in arrears

Class B) existing properties where water is not currently available but could be installed in the future:

- connection to the water system required on or before September 30 of the year *following installation of the water line (i.e. the end of the next construction season)*
- connection permit fee due at the start of construction
- water system access fee payable in 40 equal quarterly installments starting in the first quarter of water use but not later than Sept. 30th
- the Town is responsible for the cost and installation of service from the main line to the residents property line (i.e. to the “curb stop”)
- water meter rental charges payable over 5 years
- interest will be charged on payments in arrears

Class C) new construction where water is available:

- no proposed changes (ie. All fees are payable upon issuances of the connection permit ***unless as otherwise recommended by the Committee and approved by resolution of Council.***)

4. Section 7.11 is amended by deleting “water connection permit” and adding “unless as otherwise recommended by the Committee”, so as to read:

Every person connecting to the water system shall pay a meter connection permit fee and water system access fee as outlined in Schedule “E”. The fees shall include all inspection fees and charges associated with processing of the application, control and enforcement of “Specifications for Developers” and shall be paid in full prior to the issuance of a building permit ~~water connection permit~~, ***unless as otherwise recommended by the Committee and approved by resolution of Council.***

5. Council hereby authorizes the consolidation of By-law 1-18 and By-law 1-18-1.

EFFECTIVE DATE

This By-law comes into effect on the date of final enactment thereof.

FIRST READING BY TITLE 15 October 2019

SECOND READING BY TITLE _____

READ IN ITS ENTIRETY _____

THIRD READING BY TITLE AND ENACTMENT _____

Dr. Nancy Grant
MAYOR

Mary Jane E. Banks
CLERK



ROTHESAY

2019 November 13 Amending Water Hrg FINAL_006

APPENDIX A

Water By-law 1-18

Requirements for Existing Residential Apartment Complexes established Prior to 1 January 1998 NOT Connected to Available Town Water



It is an objective of Rothesay that residents of any Residential Apartment Complex be served by a clean, safe, and continuous supply of potable water. When the Owner of an existing Residential Apartment Complex established prior to 1 January 1998 chooses not to connect to the available municipal potable water distribution network operated by the Town, such Owner is responsible for providing proof to the Town that a clean, safe, and reliable supply of potable water is provided to their tenants. Proof of a clean, safe, and reliable supply of potable water shall be demonstrated by the following methods:

- (a) The Owner shall submit to the Town Clerk results of water quality testing from the potable well supplying the tenants of the Residential Apartment Complex, conducted within the previous 30 days on or before 30 April and 31 October each year for the following sampling:
 - (i) Total coliforms and *Escherichia coli*; and
 - (ii) Inorganics.
- (b) The testing set out in paragraph (a) shall be conducted by the Provincial Analytical Services laboratory or by a laboratory accredited under the International Organization for Standardization standard ISO/IEC 17025:2005, entitled *General Requirements for the Competence of Testing and Calibration Laboratories*.
 - (i) In the event the sampling set out in paragraph (a) produces an unacceptable result the owner shall submit to the Town Clerk results of a subsequent test no later than 15 days following the date of the initial test.
 - (ii) In the event the two consecutive water quality tests fail to produce acceptable results, the data will be forwarded to the Department of Environment and Local Government for appropriate action, and shall require immediate connection to the Town water system as required in section (f).
- (c) The Owner shall obtain an electrical permit from the Town for the installation of an approved electrical interface of the building electrical panel with a generator of capacity sufficient to power emergency lighting and the pump for the private water supply.
- (d) Receipt by the Town Clerk of an affidavit from a licensed electrician that such an electrical interface has been installed.
 - (i) Receipt by the Town Clerk of an affidavit from a licensed electrician every twelve (12) months, confirming the electrical interface has been tested and performed satisfactorily.

ROTHESAY

Appendix A

Water By-law 1-18

- (e) The Owner shall sign a waiver releasing the Town from any liability associated with water quality and quantity supplied by Owners to their tenants.
- (f) Failure to meet any of the requirements as outlined above may result in penalties under Section 8.1 of this By-law, and will require immediate connection to the Town's water system in a manner approved by the Town, and use of the municipal water system as a sole source of water.

Mary Jane Banks

From: Cheryl Kennedy [REDACTED]
Sent: November 5, 2019 4:29 PM
To: Don Shea; Nancy Grant; Miriam Wells; Matthew Alexander; Grant Brenan; Tiffany Mackay French; Peter Lewis; Bill McGuire; Mary Jane Banks
Cc: Charles Turnbull; Mark Hatfield; Dino Cipolla; Andrew Baskin; Carol Anne Murphy; Mel Clark; Lynn Flynn; Doug Ramier
Subject: Water By-law 1-18

Dear Mayor & Council,
Reviewing the information that was sent out to the property owners regarding the Public Hearing Amending By-law 1-18-1 and Appendix A we have a few concerns/questions with reference to section E. This section states that "the owner shall sign a waiver releasing the Town from any liability associated with water quality and quantity supplied by Owners to their tenants".

Questions:

1. Under the current conditions, with our properties being on well water, how is the town responsible?
2. If the Town has no current responsibilities regarding our well water - its quantity and quality, what is the purpose of this "waiver"?
3. Have waivers been signed by all property owners in Rothesay on well water?
4. Does the Town know something about our water that we are not aware of?

We would like these questions address as signing a waiver without knowing its purpose or intent leaves us perplexed. As a property owner of 84 Hampton Rd. for the past 15 years, at no time did I believe that the Town of Rothesay was or would be responsible for our well water if something were to occur to the quality or quantity. Correct me if I am wrong but I don't believe that any single family property owner on well water believes the Town of Rothesay is responsible in any way for their water quality and quantity.

Signing a waiver implies that the Town of Rothesay is responsible for properties on well water.

Thanks!

Mary Jane Banks

From: Mark Hatfield <mark@homestarinc.ca>
Sent: November 6, 2019 10:44 AM
To: Cheryl Kennedy; Don Shea; Nancy Grant; Miriam Wells; Matthew Alexander; Grant Brennan; Tiffany Mackay French; Peter Lewis; Bill McGuire; Mary Jane Banks
Cc: Charles Turnbull; Dino Cipolla; Andrew Baskin; Carol Anne Murphy; Mel Clark; Lynn Flynn; Doug Ramier
Subject: Water By-law 1-18
Attachments: 19_By_Law_1-18-1_Appendix_A_Notes.docx

Dear Mayor & Council,
I have attached questions and comments that I would like address at the up coming Public meeting on nov 12.
Please see the attached

Mark Hatfield
Owner & CEO
Homestar Inc
11 Elliott Road, Quispamsis, NB E2E 2B5
www.homestarinc.ca
o: 506.847.3202
m: 506.333.3202

Notes/Questions/Observations on Appendix A Water By-law 1-18

Appendix A – Section (a)

Four tests a year, two for coliforms & E-coli and two for inorganics

August 12, 2019 Council Meeting Minutes – Page 9

“Town Manger Jarvie advised after meeting with property owners..... regular water testing, and the submission of proof that a building can connect to an emergency power source.”

“Councilor Brennan cautioned that the testing schedule should not exceed other testing schedules implemented by the Provincial government. It was noted further investigation is required to determine an appropriate coliform and inorganic testing schedule.”

Motion moved and carried “By-Law 1-18 revisions be tabled pending further information with respect to provincial water testing requirements?”

Questions & Thoughts

Motion that was passed required that By-Law 1-18 be tabled until further information on provincial water testing requirements was received.

- Has further information been gathered?
- Has this information been shared to council?
- Do the testing requirements in Appendix A follow provincial guidelines?

It is my understanding that provincially regulated daycares must be tested for organics once every 5 years. Where is and what is the data backing up the town position that inorganics need to be tested twice a year.

Appendix A – Section (b), (i), (ii)

- (i) **“In the vent sampling set out in paragraph (a) produces an unacceptable result the owner shall submit to the Town Clerk results of**

- a subsequent test no later than 15 days following the date of the initial test.”
- (ii) In the event the two consecutive water quality tests fail to produce acceptable results, the data will be forwarded to the Department of the Environment and Local Government for appropriate action and **shall require immediate connection to the Town water system....”**

Questions & Thoughts

In the case of an issue there appears to be very little if any at all chance to fix the water issue before being forced to hook up to town water.

For instance if there was an E-Coli problem to investigate and find the source of the contamination, eliminate the cause, shock the well water if that is what is required and test and have the results back to the town all within 15 days doesn't seem responsible. Our emergency plans and procedures provide for drinkable and potable water for our tenants in the small chance this issue occurs.

Shutting down the well and providing tenants with drinkable potable water until the issue is fixed is a more reasonable response.

The way this is written we could end up being forced to go to town water because of a back log at the testing lab or a testing lab mistake.

Appendix A – Section (c)

“The Owner shall obtain an electrical permit from the Town for the installation of an approved electrical interface of the building electrical panel with a generator of capacity sufficient power emergency lighting and the pump for the private water supply.”

Questions & Thoughts

This late in the process why is emergency lighting requirements being inserted without any prior discussion? What does emergency lighting have to do with By-law 18-1?

Appendix A – Section (d)

Requirement of an affidavit from a licensed electrician that the electrical interface has been installed and then an affidavit every 12 months saying that the electrical interface works.

Questions & Thoughts

Costs are more than what first may meet the eye. With the town requiring affidavits there will be legal costs to get the affidavit drawn up and signed.

Appendix A – Section (e)

“The owner shall sign a waiver releasing the Town from any liability associated with water quality and quantity supplied by Owners to their tenants.”

Questions & Thoughts

Don't like the broad scope of the wording here. So, we agree to hold the Town harmless from “any liability”? What happens in the case of town actions, procedures, policies, and or negligence being the root cause of a long-term water supply disruption?

Under current statutes can the town be held liable know for well water issues? If not, why is this even a topic? Who would draft up the waiver, town lawyers? We would then have our legal reps review and possibly go back and forth with the town legal counsel.

Is this something that doesn't offer any real value to the town or the property owners and ends up only generating legal fees.

Appendix A – Section (f)

“Failure to meet any of the requirements as outlined above..... and will require immediate connection to the Town's water system.....and use of the municipal water system as a sole source of water”

Questions & Thoughts

Basically, same concerns as expressed above under (b)(ii). There is no chance for remediation of issues regardless of root causes, even ones outside of the owners' control.

The way it is written it is akin to being set up to fail with big brother chomping at the bit to exercise its will. You get the feel that staff wrote it up in a way that allows them to back door forcing us to hook up while saving face and saying they did everything they could.

Summary

Once again, the latest from town staff shows that this is all a money grab and not the safety issue that they are hiding behind. No reasonable time to correct an issue, additions that are outside the scope of the By-law (emergency lights), and testing requirements that although directed by council to follow provincial guidelines appear to be excessive when compared to current provincial guidelines.

Residents with two-unit homes (duplexes) and on well water, are they going to be forced to comply to this By-law? We have proven that safety and reliability concerns about well water in Rothesay is a false flag, we have shared our internal policies and processes regarding emergency response plans for water issues at our locations, we have agreed to provide access to our panels for generators large enough to keep the water supply running during power outages, and so on.

The majority of council have agreed with us and instructed staff to get this resolved but it appears that staff have their own agenda and lend a deaf ear to council's directions.