

**TITLE: LOCAL IMPROVEMENT BY-LAW**  
**SECTION: OPERATIONAL SERVICES**  
**BY-LAW NO: D-02**

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**APPROVAL DATE:** \_\_\_\_\_

**CAO Signature:** \_\_\_\_\_

## 1. SHORT TITLE

1.1. This by-law shall be known as by-law D-02 and may be cited as the “Local Improvement By-law”.

## 2. PURPOSE

2.1. The purpose of this by-law is to establish the manner in which the Town shall impose, fix, and enforce payment of Charges for Local Improvements.

## 3. DEFINITIONS

- (a) “Corner Lot” means a Property situated at the intersection of and abutting upon two or more Streets;
- (b) “Charge” means a charge imposed pursuant to Section 81 of the *Municipal Government Act* in an amount to be determined pursuant to this by-law for the Cost of a Local Improvement;
- (c) “Cost of a Local Improvement” means the capital cost of service provision and shall include but is not limited to the costs of study, design, construction, installation and administration, engineering, surveying, municipal staff time, and other incidental expenses as well as the costs of financing including bridge financing, if any, and the cost of financing throughout the amortization period of the project whether or not the money is financed internally or externally. The cost of any particular Local Improvement may be reduced by its proportionate share of financial contribution from federal, provincial or municipal grant dollars;
- (d) “Council” means the Council of the Town of Amherst;
- (e) “Engineer” means the Town employee designated as Town Engineer pursuant to the provisions of the *Municipal Government Act*;
- (f) “Frontage” means the linear measurement of the Property line which abuts a Local Improvement, irrespective of whether the Property line is a front, rear, side or flanking lot line;
- (g) “Local Improvement” means and includes Charges for:
  - i) wastewater facilities or stormwater systems, the use of wastewater facilities or stormwater systems and connecting to wastewater facilities or stormwater systems;

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- ii) expenditures incurred for the wastewater management system in a wastewater district;
  - iii) the capital cost of installing a water system;
  - iv) laying out, opening, constructing, repairing, improving, and maintaining Streets, curbs, sidewalks, gutters, bridges, culverts, and retaining walls, whether the cost is incurred by the Town directly or by, pursuant to, an agreement with His Majesty In Right of the Province, the Minister of Public Works or any person;
  - v) 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 Town or ii) under an agreement between the Town and a person;
  - vi) the Town portion of the cost of a major tree removal program or the cost of removing trees from a private Property;
  - vii) the Town portion of the capital cost of placing the wiring and other parts of an electrical distribution system underground; and
  - viii) depositing in a special purpose tax account to provide for future expenditures for wastewater facilities, stormwater systems, water systems, transportation facilities or other anticipated capital requirements.
- (h) “Majority Approval” means majority approval based on the signatures from Owners representing at least two-thirds of all Properties in the area that Council has determined to benefit from a Local Improvement and at least two-thirds of the methodology chosen as set out in Section 9.8;
- (i) “Town” means the Town of Amherst;
- (j) “Owner” has the same meaning as set out in the *Municipal Government Act*, except where the context requires otherwise;
- (k) “Property” means a parcel or lot of property which is in an area determined by Council to benefit from a Local Improvement;
- (l) “Schedule A” means a list of projects and properties subject to a local improvement, as amended from time to time, and shall include at a minimum; a brief description of the project, PID number of all properties subject to the local improvement, charges imposed, terms of repayment, any exceptions/adjustments to charges, and any other project relevant project information.

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- (m) “Subdividable Lot” means, for the purpose of this by-law, a Property which is capable of being subdivided into at least two buildable lots if, taking into consideration the lot Frontage, lot area, zoning and the location of existing buildings, the Town would approve the subdivision of the Property into at least two lots;
- (n) “Street” means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts, and retaining walls in connection therewith located within the Town whether vested in the Town or the Province of Nova Scotia;
- (o) “Through Lot” means a Property bounded on two opposite sides by two or more Streets;
- (p) “Usable Frontage” means Property Frontage that has not been determined to be unusable under Section 7.2;

#### **4. CHARGE IMPOSED**

4.1. Where a Local Improvement has been carried out:

- 4.1.1. by the Town in an area identified in Schedule “A”, as defined in section 3, and as amended from time to time, a Charge is hereby levied upon every Owner of Property situated in whole or in part within the identified area except to the extent that any Property or the Owner thereof is totally or partially exempt from the Charge by provisions in this by-law or the provisions of Schedule “A”; or
- 4.1.2. as a result of a petition receiving Majority Approval and the project having been adopted and approved by Council, a Charge is hereby levied upon every Owner of Property situated in whole or in part within the area identified in the petition except to the extent that any Property or Owner thereof is totally or partially exempt from the Charge by provisions in the petition or in this by-law;

4.2. Municipally, provincially and federally owned land may be exempt from Charges arising from the provisions of this by-law unless otherwise indicated in the approved petition or Schedule “A”.

4.3. An interim Charge may be imposed when Council approves the project to proceed based on the best estimate of the cost of the project at that time. The interim Charge will be adjusted at the completion of the project.

#### **5. AMOUNT OF CHARGE**

5.1. The Charge levied pursuant to Section 4 shall be determined in accordance with the provisions of this by-law and, if applicable, of the approved petition or Schedule “A” and may be calculated based on:

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- (a) a uniform amount for each Property in existence or subsequently created by subdivision;
- (b) the Frontage of the Property on any Street;
- (c) the use of the Property;
- (d) the area of the Property;
- (e) the assessed value of the Property;
- (f) any combination of two or more such methods of calculating the Charge; or
- (g) such other method as Council deems fit.

## **6. VARIATIONS IN CHARGES**

- 6.1. The Charge levied pursuant to this by-law may be fixed at different rates for different classes or uses of Properties and may be fixed at different rates for different areas or zones as outlined in the approved petition and/or as outlined in Schedule “A”.

## **7. FRONTAGE CHARGE**

- 7.1. If the Charge contains a component calculated in whole or in part based upon the Frontage of the Property on a Street, the component of the Charge which is based upon Frontage shall be calculated in accordance with this section unless otherwise outlined in the approved petition, if applicable, or in Schedule “A” or an agreement.

FC = Frontage Charge

TF = Total of all individual Frontages (IF) determined as per the provisions of this by-law

IF = Total Frontage of an individual Property (as possibly adjusted by any Frontage reductions or Frontage adjustments as per the provisions of this by-law

TC = Total cost of the Local Improvement

GC = Municipal/Provincial/Federal contribution towards the Local Improvement

$FC = [IF/TF] \times [TC - GC]$

- 7.2. Subdivisions plans, deed descriptions, retracement plans and/or geographical information as deemed appropriate by the Town shall be used to determine the total Frontage of an individual Property
- 7.3. In the event of a dispute between a Property Owner and the Town as to any measurements of a Property, the Owner shall retain, at his or her sole expense, a Licensed Nova Scotia

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Land Surveyor, who shall certify the measurements of the Property and submit the same to the Town.

### **Frontage Reduction**

- 7.4. Where an Owner can reasonably demonstrate, and provide evidence such as an environmental study or written confirmation from Nova Scotia Department of Environment and Climate Change, that the Property is unusable for development by reason of soil type, environmental hazard, or other natural factors that do not permit the land to be subdivided for the purpose of creating a lot, a Frontage reduction of up to 75 percent may be applied to the portion of unusable Frontage. This proof must be provided prior to the inclusion of the Local Improvement into Schedule "A", if applicable, or approval of a petition by Council.

### **Frontage Adjustments**

- 7.5. A minimum Frontage may be established for each Local Improvement.
- 7.6. For Corner Lots and Through Lots, where both Streets adjacent to the Property are subject to a Local Improvement, the total Frontage will be adjusted as follows:
- (a) For the longest Frontage, the Frontage will not be subject to any adjustment and will be Charged 100 percent of the Frontage;
  - (b) For the shortest Frontage, the Frontage may be reduced by 50 percent.
- 7.7. For Corner Lots and Through Lots, where one of the two Streets is subject to a Local Improvement and the other Street has previously been the subject of a Local Improvement, the Property will only be Charged for the portion of the Frontage subject to the current Local Improvement.
- 7.8. For Corner Lots or Through Lots, where one of the two Streets is subject to a Local Improvement and the other Streets has not been the subject of a Local Improvement, the Property will only be Charged for the portion of the Frontage subject to the Local Improvement and there shall not be any adjustments to the total Frontage.
- 7.9. For greater clarity, a Corner Lot will be deemed to benefit from a Local Improvement on all Streets that the Property has Frontage

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## **8. EXEMPTIONS/ADJUSTMENTS TO CHARGES**

- 8.1. A Property may be exempt from or given an adjustment to a Charge if the Property is considered to not benefit from the Local Improvement. An adjustment or exemption may be given when:
- (a) a Property is already serviced; or
  - (b) a Property does not directly benefit from a Local Improvement and it cannot be reasonably argued that the Local Improvement provides an indirect benefit to the Property, such as the ability to further subdivide and develop the Property.
- 8.2. If Frontage is the method of Charge, the Property may also be subject to any adjustment or reductions available in Section 7.
- 8.3. An additional exemption or adjustment may be given to a Lot because of the size, configuration, topography, or ground conditions of the Property.
- 8.4. Properties given an exemption or adjustment to the Charge under this Section will be identified in Schedule “A” or, if applicable, within the approved petition or agreement.

## **9. ADMINISTRATIVE GUIDELINES**

- 9.1. Council may proceed with a Local Improvement at its own discretion or in response to a petition which receives Majority Approval.
- 9.2. Where a petition has been conducted and does not receive Majority Approval, Council will not proceed with a Local Improvement, at its own discretion, for a minimum of three years. Property Owners are not prevented from requesting subsequent petitions within the three-year timeframe.

### **Initiating a petition**

- 9.3. The petition process may be initiated by:
- (a) a request from the sole owner of Property(s) or at least two Properties that would be subject to the petition; or
  - (b) a motion from Council directing Town staff to initiate the petition process.

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- 9.4. The petition request from Property Owners and the motion from Council must include a description of the proposed Local Improvement, the desired method of Charge, and the proposed Charge area.
- 9.5. At Council's discretion, a petition may include Properties fronting onto more than one Street, whether those Streets are contiguous or not.

#### **Processing a Petition**

- 9.6. The following steps shall be followed:
- a) The petition will be conducted by Town staff and they will be responsible for preparing the petition documents and package.
  - b) The petition documents will include: a description of the Local Improvement and the method of Charge, a map of the proposed Charge area, the estimated total cost of the Local Improvement, the estimated cost for each Property and the financing options.
  - c) The petition documents will also include a letter explaining the Local Improvement process and will give each Property Owners an opportunity to vote YES or NO for the Local Improvement.
  - d) The petition package and documents with a stamped return envelope will be sent by mail to the Owners representing each Property.
  - e) The petition shall give Owners at least 30 days to respond.

#### **Approval of the Petition**

- 9.7. Where Council considers carrying out a Local Improvement on the basis of a petition, such Charges would be considered only where there is at least Majority Approval.
- 9.8. The Properties representing at least 2/3 of the methodology used for the Charge must be in favor of the petition. For example,
- (a) if the Charge is based on the area of the Property, the Properties representing at least 2/3 of the area would have to vote in favor;
  - (b) if the Charge is based on the assessed value of the Property, the Properties representing at least 2/3 of the assessed value would have to vote in favor;
  - (c) regardless of the methodology used for the Charge, the Owners representing at least 2/3 of the total Properties must be in favor for a petition.



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- 9.9. Successful petitions are considered to be valid for a period of 5 years from the date of approval by Council. Within that time frame, the validity of the petition is not affected by the number of times any Property may have changed Owners.
- 9.10. In the event that the information relied upon by Council or staff to assess whether a petition has received Majority Approval later proves to be wrong, the decision based upon such information shall be as valid as if the information were correct.
- 9.11. If the Town does not receive a response from the Owners by the petition deadline, the Owners will be deemed to have voted NO and not being in favor of the Local Improvement.
- 9.12. In circumstances where there is more than one Owner of a Property, the Property will be considered to be in favor of the Local Improvement when the majority (50 percent) of the Owners have voted "YES" for the Local Improvement.

#### **Local improvement without a petition**

- 9.13. Where a Local Improvement is approved by Council without a petition, Council shall, by policy, determine a suitable method for advising residents affected by the decision taken under this by-law.
- 9.14. Where a request for a Local Improvement is made by one or more Property Owners collectively owning 100% of the Properties in the area to be affected by the Local Improvement, there shall be no need to follow the petition process set out in this by-law and the Town may enter into an agreement with those Property Owners with respect to the carrying out and payment for the Local Improvement Charge and any matters incidental thereto.

#### **Municipal contribution to local improvement**

- 9.15. For Local Improvements on Streets owned by the Town, at its own discretion, Council may choose to make a financial contribution up to ten (10) percent towards the cost of the Local Improvement or in special circumstances a percentage higher than ten (10) percent at the discretion of Council.

### **10. LIEN**

- 10.1. A Charge imposed pursuant to this by-law constitutes a first lien on Property in the same manner and with the same effect as rates and taxes under the *Municipal Government Act* (Section 81(3)(f)).



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- 10.2. A Charge imposed pursuant to this by-law is collectable in the same manner as rates and taxes and, at the option of the Treasurer, collectable at the same time and by the same proceedings, as rates and taxes.
- 10.3. The liens against the Property become effective on the earliest of the date on which the interim Charge is imposed or the Engineer files with the Treasurer a certificate that the improvement has been completed.
- 10.4. The lien provided for in this by-law shall remain in effect until the Charge plus interest has been paid in full.
- 10.5. Where a Property subject to a lien is subdivided, the unpaid amount of the Charge plus interest shall be apportioned among the new subdivided lots according to the assessed value that the new lots have in relation to the total assessed value of the Property before subdivision.

## **11. INTEREST**

- 11.1. Interest shall accrue on Charges outstanding from the due date forward, at a rate approved by Council. The due date is the date of completion or the date that installments are due if the annual payment option is available.

## **12. REPAYMENT OF THE CHARGE**

- 12.1. At the option of the Owner(s) of a Property which is subject to a Charge, the Charge may be paid in either of the following ways:
- (a) by payment, in full, at the time of invoicing by the Municipality;
  - (b) by annual installments. In the event of default of payment of an installment, the whole balance shall become due and payable without notice or demand; or
  - (c) as otherwise set out in an agreement with the Property Owners.
- 12.2. The term of repayment shall be outlined in Schedule “A”, in the wording of the approved petition or in the Council motion approving the project and, where applicable, in the agreement with the Town. Annual installments shall not exceed 25 years.
- 12.3. Where applicable, the Property Owner(s) shall have one month from the date of their initial notice of amounts owing, to notify the Treasurer, in writing, which financing option has been selected. If there is no written notification, the Property Owner(s) shall be deemed to have selected the annual payment option.

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### 13. AMENDMENT TO THE BY-LAW

13.1. Any amendment to this by-law shall not affect existing projects outlined in Schedule “A” unless expressly intended to do so through an amendment to the Schedule.

### 14. REPEAL AND REPLACE

14.1. The previous version, and all other versions of the By-law, are repealed and replaced by this version.

For Administrative Use Only

Local Improvement By-law D-02] Adoption	
First reading:	
Notice of Publication:	
Second Reading:	
Notice of Publication and Effective Date of By-law:	
Notice to Service Nova Scotia & Municipal Relations:	

### VERSION LOG

By-law Owner	Amendment Description	Council Approval Date
Director of Operations, Bourgeois	The Civic Improvement Charges By-law as approved by the Minister of Municipal Affairs on May 22, 1968 and all amendments thereto are repealed.	October 31, 1995
	The Local Improvement By-law as approved on October 31, 1995 and all amendments thereto are repealed.	April 24, 2023
	Add Russell Street Alders Development to Schedule ‘A’	

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**Schedule ‘A’**

1.	Russell Street Development Aalders Agreement
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**1. Details of Russell Street Alders Development**

**STREET CONSTRUCTION AND FINANCING AGREEMENT**

Made in duplicate

**BETWEEN**                    **Town of Amherst**, a corporation under the laws of the Province of Nova Scotia, carrying out business at 98 Victoria Street East, Amherst, NS B4H 4A1, (the “**Town**”)

- AND -

**Tony Aalders (or Corp name)**, a corporation under the laws of the Province of Nova Scotia, carrying out business at ....., Amherst, NS B4H, (the “**Developer**”)

(Collectively referred to as the “**Parties**”)

WHEREAS the Parties have a common interest in the development of a new subdivision on the subject property;

AND WHEREAS the Town is willing to build the required water and sanitary sewer infrastructure to create the new subdivision;

AND WHEREAS the Town is willing to finance each phase of the cost of the development over a 5-year time period;

AND WHEREAS the Developer is willing to pay back the cost of each phase of the said infrastructure over a 5-year time period;

AND WHEREAS the parties are desirous of moving forward with this development in a cooperative manner;

AND WHEREAS the Developer, through this agreement, has petitioned the Town through By-law D-02 The Town of Amherst Local Improvement By-law, this agreement and all charges and payments will be processed through the said By-law;

NOW THEREFORE the Town and the Developer AGREE AS FOLLOWS:

**GENERAL**

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1. This agreement applies to and for the benefit of Town and the Developer.
2. The agreement will outline the various responsibilities for the Town and the Developer in relation to the construction, sale, financing and marketing for the development.
3. The Town will be responsible for:
  - 3.1. Constructing, commissioning and maintenance of all water, sanitary sewer and storm sewer infrastructure for the development; and
  - 3.2. Improving the park located at Ernie Lane in the fiscal year after the first 10 houses are constructed.
4. The Developer will be responsible for:
  - 4.1. Fees for professional services, including but not limited to, legal, surveying, engineering and any other professional service that may be related to the development of the subdivision.
  - 4.2. Being in compliance with any Federal, Provincial and Town law, regulation or By-law.
  - 4.3. Constructing and commissioning of all street infrastructure for the development, including:
    - 4.3.1. Road bed
    - 4.3.4. Asphalt street surface
    - 4.3.5. Curbs
    - 4.3.6. Sidewalks
    - 4.3.7. Overhead Electrical Infrastructure
    - 4.3.8. Street signage;
    - 4.3.9. Trail connection to Ernie Lane Park
  - 4.4. Payment of the cost to install all infrastructure, excluding the additional cost to deal with the Town storm water currently being discharged onto the property, as well as any costs associated with Town Policy 31600-09 Paving New Residential Subdivision Streets which will be paid for by the Town;
  - 4.5. Actively marketing the lots / homes for sale both locally and outside the Town of Amherst, including payment for such services;
  - 4.6. Receiving offers to purchase lots / homes;
  - 4.7. Negotiating all lot / home sales;
  - 4.8. Processing all lot / home sales;
  - 4.9. Payment of any real-estate fees;

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- 4.10. Payment of a public land dedication fee equal to 5% of the value of each vacant lot at the time the lot / home is sold;
  - 4.11. Deed to the town all street right of ways required for each phase of the development prior to development;
  - 4.12. Provide any required easements to public utilities operating in Nova Scotia.
  - 4.13. Provide any required easements to the Town for water, sanitary sewer, storm sewer or trail infrastructure.
5. The Developer will not implement restrictive covenants on the property that limit the use of the property to single detached dwellings.
6. Phases, Scheduling and Payment
- 6.1. The development will be constructed in four phases;
  - 6.2. For clarification, the Developer costs in Phase 1 represent water and sewer connection costs only. The Town is responsible for the replacement of the sanitary sewer line and street re-instatement;
  - 6.3. Prior to the construction of each phase of the development, a cost estimate will be developed by the Town for the infrastructure they will construct, and by a qualified professional for the infrastructure the developer will construct. These two estimates will be agreed to by both parties prior to construction.
  - 6.4. Should the Town experience construction problems in relation to bedrock, water table, 'soft ground', cultural artifacts, etc., during the installation of the water and sanitary sewer infrastructure, the Town will immediately suspend work and:
    - 6.4.1 Notify the Developer;
    - 6.4.2 Meet with the Developer to determine a course of action;
    - 6.4.3 Confirm the Developer will pay the additional costs required as per the payment schedule (which will be financed by the Town of Amherst);
  - 6.5. Should any cost increase be greater than 25% of the estimated cost, a motion of Amherst Town Council to proceed will be required.
  - 6.6. The Town will carry/finance the costs of the required and agreed to infrastructure;
  - 6.7. The developer will pay for the infrastructure over a 5-year period. Payments will be paid quarterly. An interest rate of 3 percent will be applied to the balance owing, calculated annually;

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- 6.8. The Town will place a first priority mortgage on all of the land subject to the active phase of the development. This mortgage will be partially released as each lot is sold provided the Developer is up to date on all payments to the Town;
- 6.9. If the developer fails to make payments for a period exceeding 90 days the Town may foreclose on the mortgage and acquire the said property;
- 6.10. The land will be developed in four phases as shown on Schedule A;
- 6.11. Completed 'back fill inspections' for foundations for a minimum of 5 dwellings units in each phase must be completed prior to proceeding to the next phase of the development;
- 6.12. While the Town would prefer that each phase of the development be paid off by the developer prior to moving to the next phase, the Town will move forward with each subsequent phase provided that no more than \$50,000 from the prior phases of the development are owing to the Town. For further clarity, at no point will the Town finance more than \$250,000;
- 6.13. Subject to all relevant sections of this agreement, the Town will construct the infrastructure they are responsible for according the following schedule:
  - 6.13.1 Phase 1 – within 8 weeks of notification of moving forward;
  - 6.13.2 Phase 2, 3 & 4 – within 12 weeks of notification of moving forward, or if notified after August 15, June 15 of the following year;
- 6.14. Should the second or any subsequent phase of the development not be triggered within 18 months of the previous phase the Town has the right to decide not to move forward with the next phase of the agreement;
- 6.15. Subdivision of lots may occur any time after water and sewer construction commences, and individual dwellings may be constructed provided safe access (including for emergency vehicles) can be available at the sole discretion of the Town of Amherst;
- 6.16. Prior to constructing any infrastructure, the Town will place a lien on the property in that phase;
- 6.17. Street construction is considered complete when the street is accepted as a Town Street by the Town Engineer;
- 6.18. The Developer may pay off the financial obligations to the Town early;
- 6.19. Where not specifically governed by this agreement, the number, location, layout and type of streets, lots, dwellings, buildings and uses within the development will be subject to the Town of Amherst Land Use By-law.
- 6.20. The current cost estimates for each phase of the development are provided in Appendix B. These are the current costs approved in the agreement. These estimates will be updated prior to each phase of the development. Should the estimated costs increase by more than 25% a motion of Amherst Town Council will be required prior to proceeding with construction of that phase.



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6.21. Cost estimates contained in schedule B may be converted to a Frontage Charge, as per the Local Improvement By-law.

**TERMINATION**

- 7. This Agreement may be terminated by mutual consent at any time.;
- 8. Failure to proceed to the subsequent phase does not release the Developer of any financial, or other obligations outlined in this agreement for current or prior phases of the development.

**SUCCESSION**

- 9. This agreement shall be registered on title of the property.
- 10. This agreement will automatically be transferred to any subsequent owners of the property.

**SIGNATURES**

Town of Amherst:

\_\_\_\_\_  
Jason MacDonald, MCIP, LPP  
Chief Administrative Officer

\_\_\_\_\_  
David Kogon, MD  
Mayor

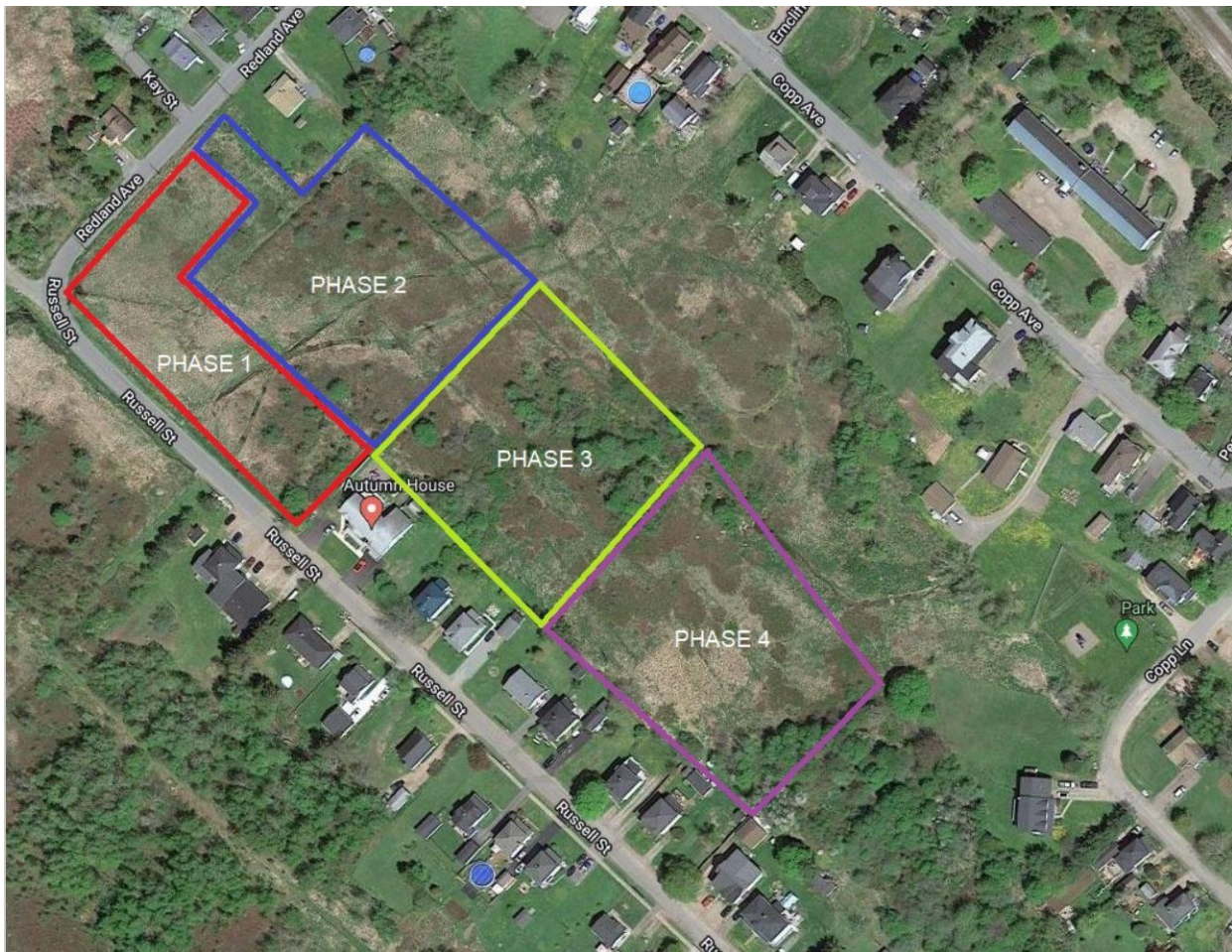
The Developer:

\_\_\_\_\_  
Tony Aalders

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**SCHEDULE 'A'**

**MAP OF THE DEVELOPMENT**



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**SCHEDULE "B"**

**Cost Estimates**

**Phase 1**

<b>Town of Amherst</b>	<b>\$135,000 (Sewer main and street re-instatement)</b>	<b>Developer</b>
	<b>\$22,000 (usual water and sewer hookup charges per lot)</b>	

**Phase 2**

<b>Town of Amherst</b>	<b>\$150,000</b>
<b>Developer</b>	<b>\$200,000</b>

**Phase 3**

<b>Town of Amherst</b>	<b>\$120,000</b>
<b>Developer</b>	<b>\$170,000</b>

**Phase 4**

<b>Town of Amherst</b>	<b>\$150,000</b>
<b>Developer</b>	<b>\$175,000</b>