

LOCAL IMPROVEMENT APPROVAL

Section 16 of *The Municipal Board Act* and
Subsection 5(1)(c) and Section 12 of *The Local Improvements Act, 1993*

Date and Location: August 21, 2018 – Macklin, SK

APPEARED FOR:

The Applicant,
Town of Macklin: Kim Gartner, Chief Administrative Officer

Affected Property Owners,
Oral Submissions: Charlotte Ollenberger
Don McIntyre
Sam McCurry (also representing Jake Volk in his submission)
Jennifer McConnell
Cindy Thompson
Ron Veller
Betty Shapka

Affected Property Owners,
Written Submissions: 23 Submissions – See Schedule “A” attached

HEARD BEFORE: John Eberl, Panel Chair
Paul McIntyre, Member

Kris Pennete, Director

INTRODUCTION:

- [1] The Town of Macklin (Town) seeks the approval of the Local Government Committee (Committee) to undertake certain works as local improvement projects. The projects proposed include the installation, renewal or replacement of pavement, and of sidewalk, curb and gutter combined (sidewalk) in various areas of the Town under subsection 5(1)(c) of *The Local Improvements Act, 1993*, SS 1993, c L-33.1 [Act]. In such applications, section 11 of the Act states owners of land to be specially assessed do not have the right by petition to prevent the Council from doing the works as local improvements.
- [2] The works are extensive and proposed to take place over multiple years. The chart below provides a general description of the project areas (by proposed work) and identifies the year the work is to proceed:

Year and Project Description	Street Description	FROM	TO
2018 - Pavement and Sidewalk	Press Avenue	Times Street	Highway #31
2019 - Pavement and Sidewalk	Post Place Telegram Avenue Empire Street	Surveyed Road Post Place Press Avenue	Telegram Avenue Leader Street Star Avenue
2020 - Pavement	Leader Street Leader Street Leader Street Sun Avenue	Surveyed Road Express Avenue Globe Avenue Leader Street	Express Avenue Globe Avenue Star Avenue Highway #31
2020 Sidewalk	Leader Street East Leader Street Leader Street Sun Avenue North	Surveyed Road Express Avenue Globe Avenue Leader Street	Express Avenue Globe Avenue Star Avenue Highway #31
2021 Pavement	Telegraph Street Courier Avenue Herald Street	Surveyed Road Telegraph Street Surveyed Road	Express Avenue Herald Street Courier Avenue
2021 Sidewalk	Courier Avenue Herald Street	Telegraph Street Surveyed Road	Herald Street Courier Avenue
2022 - Pavement and Sidewalk	Empire Street Empire Street Post Street Post Street Post Street Leader Street	Express Avenue Globe Avenue Express Avenue Globe Avenue Star Avenue Star Avenue	Globe Avenue Star Avenue Globe Avenue Star Avenue Press Avenue Globe Avenue

Year and Project Description	Street Description	FROM	TO
2023 - Pavement and Sidewalk	Herald Street Herald Street Herald Street	Courier Avenue Express Avenue Globe Avenue	Express Avenue Globe Avenue Star Avenue
2024 - Pavement and Sidewalk	Tribune Street Telegraph Street Telegraph Street	Surveyed Road Express Avenue Globe Avenue	Express Avenue Globe Avenue Press Avenue
2025 - Pavement and Sidewalk	Times Street Times Street Times Street	Surveyed Road Express Avenue Globe Avenue	Express Avenue Globe Avenue Press Avenue
2026 - Pavement and Sidewalk	Times Street Highway #31 Service Roads	Express Avenue Express Avenue	Press Avenue Star Avenue

- [3] The estimated total cost of the proposed works (pavement and sidewalk combined) for all years is shown below. The percentages include costs to undertake the works through intersections and abutting Town-owned property, as applicable. The Town-to-property-owner ratio of the costs to be specially assessed against property owners for pavement is two-thirds Town to one-third property-owner and for sidewalk is one-third Town to two-thirds property-owner:

Total Estimated Cost (100%)	Town of Macklin's Share (67.16%)	Property Owners' Share (32.84%)
\$6,181,419	\$4,151,703	\$2,029,716

- [4] The estimated special assessment rates proposed by the Town to be levied are based on the number of lineal metres of frontage of lands benefited:
- Pavement:** \$150.00 per lineal metre of frontage if prepaid or \$34.65 per lineal metre of frontage if paid annually over five years with simple annual interest of 5.0% per annum included.
 - Sidewalk:** \$ 115.00 per lineal metre of frontage if prepaid or \$26.56 per lineal metre of frontage if paid annually over five years with simple annual interest of 5.0% per annum included.
- [5] Additional, relevant information provided by the Town as part of its application included:
- An affidavit by Mr. Kim Gartner, Chief Administrative Officer of the Town, certifying that notice of this hearing was provided to the public and affected property owners, and affected property owners were also provided with additional, pertinent project information.

- The consulting engineers for the project are SAL Engineering Ltd. They certified the lifetime of both proposed works at 20 years. The *Act* provides the proposed number of annual levies against property cannot exceed the certified lifetime of any work [s. 31(2)].
- There are no charges proposed against the flank or longer side of any properties. All properties proposed to be specially assessed will only be levied against the shortest side benefiting from the works.

ANALYSIS:

- [6] Council may finance local improvement projects by charging property owners for some or all of the costs. Council has the option to prevent property owners from petitioning against the project under section 11 of the *Act*. When this option is chosen, Council shall provide the reason(s) for proceeding in that manner in its report [s. 6(i)] and the Committee must conduct a hearing into the proposed local improvement [s. 12(1)].
- [7] The *Act* provides the Committee review the project and consider the following:
- a) if the proposed project is a local improvement [ss. 2(1)(p), 3 and 8(2)(a)];
 - b) if the proposed project will benefit the properties to be specially assessed differently or greater than the benefit to the community as a whole [ss. 2(1)(c) and 3];
 - c) if the applicant's financial arrangements for undertaking the proposed works are satisfactory [ss. 8(2)(b) and 44(1)]; and
 - d) if the costs are proposed to be shared equitably based upon the relative degree of benefit and more or less equally with other land involved [s. 18].
- [8] The Committee has no authority to change the Council's determination of the relative shares of the project cost between property owners and the Town, the lifetime of the work, or the calculation of an individual property owner's special assessment. The *Act* does not give the Committee authority to review Council's policy dealing with the flank of a lot. We have no authority to change project specifics or timing and neither do we have any oversight of the project if the application is approved.
- [9] We note sections 32 to 40, inclusive, of the *Act* provides a special assessment roll be prepared and individual property owners have a right of appeal to the Town's Board of Revision (Board) if they believe a mistake was made. Certain restrictions apply to the mistakes that can be alleged to the Board. There is a further right of appeal to the Committee from decisions of the Board, again with certain conditions. These rights of appeal are subsequent to, and different from, this hearing for the Town's application under subsection 5(1)(c) and section 11.

- [10] Section 12 of the *Act* further provides the Committee may overrule the decision of Council with respect to the proposed works, or approve Council's decision and attach any conditions to the approval considered "appropriate in the circumstances."
- [11] Sections 19 and 20 of *The Municipal Board Act*, SS 1988-89, c M-23.2, provide general powers to the Committee. That legislation supplements the powers specifically designated in the *Act* and supports allowing us to consider matters reasonably associated with the application as we see fit.

Issue a): Are the reasons provided by the Town for proceeding under section 11 of the *Act* sufficient?

- [12] The Town stated in its report required under section 6 of the *Act* that a comprehensive paving project was proposed as a local improvement in 2010. A public meeting was held to discuss the project and its implications on local property owners. At that meeting, Council stated it would proceed with completing pavement on streets abutting the flank of lots with financing out of general revenues should property owners indicate a desire that the project not proceed as a local improvement. A vote (there was no evidence whether the vote was informal or conducted pursuant to municipal legislation) was subsequently held with a slight majority voting against the project. The Town now indicates it wishes to proceed as a local improvement with the paving and has added the sidewalk work to the project. As the projects are multi-year and comprehensive, Council fears the possibility of owners petitioning out certain areas and thereby affecting the overall viability of the proposed projects.
- [13] We find the Town's reasons provided under section 11 of the *Act* are sufficient for the application to proceed. Given the history and extensive nature of the projects, we see the prospect of interruptions to the plan as a threat in terms of the positive impact on benefiting landowners and the community. Tendering efficiencies would be lost with respect to cost-savings and timing.
- [14] Further, we find the sidewalk project to be ancillary to the paving project. In fact, the definition provided for curbing in the *Act* [s. 2(1)(i)] somewhat ties together with paving, sidewalk and gutter as the Town proposes. Therefore, having the sidewalk work proceed at the same time as the paving project is a reasonable proposition and we include that project in our determination that the paving application may proceed under section 11.

Issue b): Are the proposed works local improvements as defined in the Act?

- [15] Subsection 3(a) of the *Act* specifically lists “oiling or paving a street or lane” as a work that may be undertaken as a local improvement where land proposed to be specially assessed is benefited by the work. That subsection also mentions culverts, dikes or embankments forming part of the street as eligible works, which we see as equating to the gutter work proposed by the Town. Further, subsection 3(b) specifically mentions sidewalk and curbing as local improvement works.
- [16] We find all of the works proposed to be undertaken by the Town are local improvements.

Issue c): Will the proposed projects benefit the properties to be specially assessed differently or greater than the benefit to the community as a whole?

- [17] Some of the submissions to us suggested the project should be funded out of general municipal revenues and the proposed rates were not affordable. However, none of the submissions (oral or written) provided concrete evidence there would be no benefit to their property beyond the general benefit received by all land owners in the Town. Further, the *Act* provides no authority for the Committee to consider owners’ ability to pay or any other aspect of their personal financial situations; only Council can offer owners payment options.
- [18] Section 3 of the *Act* sets out most of the works and services Council may carry out as a local improvement, provided the land to be specially assessed receives benefit. As noted in paragraph 15 above, the proposed works are specifically listed in that section.
- [19] Further, “benefited” is defined in section 2 of the *Act*. We concluded the proposed work meets the legal test arising from the definition provided. That is, we find the work will provide a direct benefit to land that is different from and greater than the work generally benefiting the land owners (collectively) in the Town.

Issue d): Are the Town’s financial arrangements for undertaking the proposed works satisfactory?

- [20] Our examination of the current financial status and implementation plan of the Town indicates the proposed projects are well within its fiscal capacity to undertake.
- [21] Municipal financial statements are public documents and Committee staff obtained those documents for our review. Our analysis of the Town’s financial status at the time of this application indicated the proposed projects are fiscally manageable. The most recent audited statements (2016 and 2017) show modest but substantive surpluses realized in both years. While the Town may have future long-term borrowing planned, it is not intending to exceed short-term borrowing guidelines to finance these proposed works, including its own share of the project. The Town’s application calls for the work to be spread out over nine years (2018-2026, inclusive), which enhances its viability. The Town appears to be active in

capital acquisition and asset replacement and this can lead to infringement on certain financial benchmarks. Nonetheless, we find the Town's proposed financing for undertaking the works is satisfactory.

Issue e): Are the costs proposed to be shared equitably based upon the relative degree of benefit and more or less equal to other land involved?

- [22] The Committee is bound by the *Act*, as is the council of any municipality, to ensure special assessment rates are fair and equitable. Sections 18, 19 and 20 of the *Act* envision the calculation of rates based on the relative benefit the property receives from the local improvement. In other words, if Property “A” benefits more or less the same from the work as Property “B,” the special assessment rate applied to each property should be the same. We believe section 18 of the *Act* sets out the basic assessment principle for local improvements, which is equity among properties affected by the same works.
- [23] Most of the oral and written submissions from land owners spoke to costs in some manner. The majority of those submissions referred to the affordability of the overall project costs to the Town or to individual property owners. Many stated the project costs should be assumed entirely from within general municipal funds. Some stated the project should not be undertaken at all, as it was “too expensive.”
- [24] In applying our standard of review for this question, we first note individual affordability is not a matter the legislation empowers us to consider. While we may empathize with affected land owners, we note first the Town is cost-sharing the work to a significant degree. Second, and as already stated, the *Act* specifically lists the works proposed to be undertaken as eligible local improvements. It follows, and we further confirm, there is a benefit to the land for both the pavement and sidewalk works.
- [25] We were presented with no evidence to support any allegation the costs were not proposed to be shared more or less equitably within the project areas. There was no evidence costs should be adjusted at certain locations to reflect a varying degree of benefit. While there were concerns raised regarding the potential of ancillary problems (e.g., flooding) perhaps related to the works at specific locations, these matters are unrelated to the equitable distribution of the costs of the project more or less equally with other land.
- [26] We find the Town’s local improvement proposal is equitable within the framework of the *Act* and the costs are proposed to be shared equally among the properties affected.

Issue f): Are there other issues to consider?***Matters Raised in Submissions***

- [27] We have already referred to matters raised in the majority of the submissions. Mr. Gartner made himself available during breaks and following the hearing to answer questions from owners applicable to particular circumstances and conditions relating to the proposed projects.
- [28] When Mr. Gartner made his oral submission to us, he spoke to Council's concern over the length of time of the proposed project and the impact cost-inflation may have on the rates proposed to be charged. This was also a concern raised by property owners in their submissions. As a part of our overall review, we identified the matter as a potential issue requiring attention.

Length of Proposed Project and Inflationary Costs

- [29] In its report required under section 6 of the *Act*, the Town stated as follows:

There is a realization that inflation will occur and the additional costs due to inflation will be borne by the Town of Macklin and not by the individual local improvement charges. This is proposed in an effort to ensure a consistent property owner rate no matter the year in which an individual street is completed under the program.

- [30] This is a matter related to the issue already dealt with of maintaining equitable rates for equally benefited land and is unique to the multi-year plan proposed. In order to ensure the Town can manage the project in terms of the human and fiscal resources necessary, it is proposed the works take place over nine years. We accept that our approval extends into future years for that reason. Whether or not there is a valid argument that cost-inflation is matched by a similar increase in property owners' ability to pay, all parties (the Town, affected land owners and the Committee) to this application express concern.
- [31] The Town's proposal within its report refers to "additional costs due to inflation" being financed from the general tax base and not the affected property owners as individuals. Section 16 of the *Act* itemizes the costs and expenses that may be included to determine the cost of a proposed local improvement. The list is broad and all-encompassing. It would be difficult to differentiate any additional costs that would **not** be inflationary from those identified and estimated to apply to the proposed works for 2018.

- [32] Subsection 12(2)(b) of the *Act* specifically states the Committee may “attach any conditions to (an) approval that (the Committee) considers appropriate in the circumstances.” Further, we have canvassed all the issues, legislative and otherwise, that we see as necessary to review in order to fulfil our mandate regarding the Town’s application. The issue of protecting affected land owners from inflating costs due to the time encompassed by the proposed works will be addressed by attaching an appropriate condition to the approval.

CONCLUSION:

- [33] The Committee hereby approves the decision of Council to proceed with local improvement projects as described in paragraph 2, subject to the following condition:

The rates levied against benefiting property owners for both pavement and sidewalk projects shall remain the same throughout all years of the projects as those levied in the first year (proposed as 2018), considering the projects are not proposed to change from year to year. If necessary, **additional** (non-inflationary) costs are incurred beyond those forming the basis of property owner levies in the first year of the projects are eligible under section 16 of the *Act*, such necessary, additional costs could result in increased levies in future years.

Dated at REGINA, Saskatchewan this 3rd day of October, 2018.

Per: 
John Eberl, Panel Chair

Per: 
Kris Pennete, Director