

RURAL MUNICIPALITY OF ST. ANDREWS

BY-LAW NO. 4205

BEING A BY-LAW OF THE RURAL MUNICIPALITY OF ST. ANDREWS to govern certain aspects of drains and drainage on public or private property.

WHEREAS Section 232(1)(h) of The Municipal Act, S.M. 1996, c.58 (the "Act") states as follows:

232(1) A council may pass by-laws for municipal purposes respecting the following matters:

.. (h) drains and drainage on private or public property.

AND WHEREAS Section 239(1)(3) of the Act provides for entering onto private lands to enforce by-laws as follows:

239(1) If this or any other Act or a by-law authorizes or requires anything to be inspected, remedied, enforced or done by a municipality, a designated officer of the municipality may, after giving reasonable notice to the owner or occupier of land or the building or other structure to be entered to carry out the inspection, remedy, enforcement or action,

- a) enter the land or structure at any reasonable time, and carry out the inspection, enforcement or action authorized or required by the Act or by-law;
- b) request that anything be produced to assist in the inspection, remedy, enforcement or action; and
- c) make copies of anything related to the inspection, remedy, enforcement or action.

239(3) In an emergency, or in extraordinary circumstances, the designated officer need not give reasonable notice or enter at a reasonable hour and may do the things referred to in clauses (1)(a) and (c) without the consent of the owner or occupant.

AND WHEREAS Section 294.1 of the Act states as follows:

294.1(1) In this section, "drain" means a culvert, drain, drainage ditch or dike, constructed or maintained by a municipality but does not include a provincial waterway as defined by *The Water Resources Administration Act*.

294.1(2) Subject to the rights vested in any other party under The *Water Resources Administration Act* or *The Water Rights Act*, a municipality has jurisdiction over every drain within its boundaries.

294.1(3) A municipality must maintain every drain within its boundaries to a standard that is appropriate for the use to which the municipality expects the drain to be put.

294.1(4) A municipality may require a person who without written authority from the municipality obstructs a drain to remove the obstruction, and if the person fails to do so, the municipality may remove the obstruction and recover any expense it incurs from the person who caused the obstruction:

- a) by levying and collecting the amount of the expense as a tax; or
- b) by any other means.

AND WHEREAS the Council of the Rural Municipality of St. Andrews deems it expedient and in the best interests of the Municipality to pass a By-Law to regulate and control certain aspects of drains and drainage on private and public property within the Municipality.

NOW THEREFORE the Council of the Rural Municipality of St. Andrews enacts as follows:

1. TITLE

This by-law shall be referred to as the "Drainage By-law".

2. DEFINITIONS

Where used in this By-law, the following terms shall have the following meaning:

- (a) "Act" means *The Municipal Act*, S.M. 1996, c.58 as amended from time to time.
- (b) "Drain" means a culvert, drain, drainage ditch or dike, constructed or maintained by the Municipality but does not include a Provincial Waterway.
- (c) "Drainage Works", includes:
 - i) constructing, opening, making, improving, deepening, contracting, widening, altering, diverting, straightening, discontinuing, or stopping up any drain on a natural watercourse or surface watercourse, providing outlets, therefore preventing surface water flooding into or within the Municipality;
 - ii) maintaining, cleaning, repaving, or flushing any drain or natural watercourse or surface watercourse;

- iii) determining the course of and regulating, draining or natural watercourses or surface watercourses in the Municipality, preventing the obstruction thereof in any manner and protecting them from encroachment and injury;
 - iv) damming drains or natural watercourses or surface watercourses in the Municipality.
- (d) "Municipal Drain" means any drain, drainage ditch or dike either owned by the Municipality or for which the Municipality has obtained an Easement Agreement, notice of which has been registered by way of Caveat;
- (e) "Municipality" means the Rural Municipality of St. Andrews.
- (d) "Person" means and includes any individual, corporation, partnership, firm, joint venture, syndicate, association or trust, and any other form of entity or organization, and includes both the plural and the singular.
- (e) "Provincial Waterway" means a Provincial Waterway as defined by *The Water Resources Administration Act*, R.S.M. 1987, c.w70 as amended from time to time.
- (£) "*The Water Rights Act*" - means The Water Rights Act R.S.M. 1988, c. w80 as amended from time to time.

3. AUTHORITY TO ESTABLISH MUNICIPAL DRAINS

- a) Where, in the opinion of the Council of the Municipality, it is necessary or desirable, the Municipality shall construct, open, make, improve, deepen, contract, widen, alter, divert, straighten, discontinue, or stop up any drain or natural watercourse or surface watercourse, or shall provide outlets therefore or prevent surface water flooding into or within the Municipality, and shall acquire by expropriation, easement or otherwise, any land in or adjacent to the Municipality to establish drains;
- b) The Municipality may determine the course of, and regulate, drainage or natural watercourse or surface watercourses in the Municipality, prevent the obstruction thereof in any manner, and protect them from encroachment and injury;
- c) The Municipality may dam drains or natural watercourses or surface watercourses in the Municipality, and require the erection of stop logs in any dam so erected and protect them from molestation or injury.

4. AGREEMENTS WITH LANDOWNERS

- a) Where, in the opinion of the Council of the Municipality, it is necessary or desirable, the Municipality may enter into agreements with landowners to permit the Municipality to carry out any Drainage Works and in that respect to obtain an easement of the landowner's lands in favor of the Municipality.

5. INTERFERENCE WITH DRAINS

- a) Where any Person, without having written authority from the Municipality, deposits or puts into any Drain, culvert, natural watercourse or surface watercourse any soil, stones, refuse, waste, brush, trees or other matter whatsoever, the Municipality may require that Person to remove the soil, stones, refuse, waste, brush, trees or other matter, the Municipality may, in writing require that person to remove any hazard; and, if the Person fails to do so, the Municipality, at the expense of the Person in default, may remove the soil, stones, refuse, waste, brush, trees or other matter and, if necessary to do so, may enter onto any lands in accordance with the powers and procedures set out under the Act.
- b) Where any Person, without having written authority from the Municipality, deepens, widens, alters, diverts or stops-up or in any way interferes with any Drain, culvert, natural watercourse or surface watercourse the Municipality may require that Person to return the said Drain to its previous state, and if the Person fails to do so, the Municipality, at the expense of the Person in default, may return the municipal drain to its previous state and, if necessary to do so, may enter onto any lands in accordance with the powers and procedures set out under the Act.
- c) Where any Person causes the diversion or discharge of water or other liquid into a Drain without being licensed to do so under The Water Rights Act, the Municipality may require such Person to stop the discharge of water or other liquid into the Drain, and if the Person fails to do so, the Municipality, at the expense of the Person in default, may stop the discharge of water or liquid into the Drain and, if necessary to do so, may enter onto any lands in accordance with the powers and procedures set out under the Act.

6. MUNICIPALITIES POWER TO RECOVER EXPENSES

The Municipality may recover any expense that it incurs under Section 5 above from the Person who is in default:

- a) by levying or collecting the amount of the expense as a tax; or
- b) by any other means.

7. OFFENSES AND PENALTIES

- a) Every Person who contravenes, refuses, neglects, omits, or fails to obey or observe any provision of this By-Law is guilty of an offense, as listed in Section 5, and is liable to a fine not exceeding \$500.00.

- b) Where the contravention of Section 5. c) above continues for more than one day the person contravening this section is guilty of a separate offense for each day that the offense continues.

8. OVERRIDING JURISDICTION OF THE WATER RIGHTS ACT

Nothing herein shall effect the rights granted to any Person by license granted under *The Water Rights Act*, and the Municipality in enforcing its rights under Section 5 herein, shall act in accordance with any policy directives, protocols, memorandums of understanding or any other procedures that may be binding upon a Municipality that are established by or in consultation with the Province of Manitoba from time to time for the purpose of complying with *The Water Rights Act*..

9. ENFORCEMENT

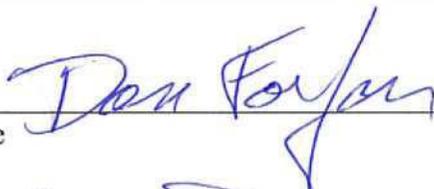
The designated officer of the Municipality are hereby authorized and directed to do all acts and things necessary for the proper implementation of the provision of the within By-Law.

10. REPEAL

By-Law No. 3568 of the Rural Municipality of St. Andrews is hereby repealed.

DONE, PASSED and ENACTED by the Rural Municipality of St. Andrews
this 20th day of March, 2012.

THE RURAL MUNICIPALITY OF ST. ANDREWS



Reeve



Chief Administrative Officer

Given First Reading this 28th day of February, 2012

Given Second Reading this 20th day of March, 2012

Given Third Reading this 20th day of March, 2012