

M A N I T O B A) **Order No. 145/13**
)
THE PUBLIC UTILITIES BOARD ACT) **December 2, 2013**

BEFORE: Susan Proven, P.H.Ec., Acting Chair
Marilyn Kapitany, B.Sc. (Hons.), M.Sc., Member
Régis Gosselin, B ès Arts, MBA, CGA, Chair

**MR. JOSEF HASSNER AND
MUNICIPALITY OF KILLARNEY - TURTLE MOUNTAIN
APPLICATIONS TO REVIEW AND VARY BOARD ORDER NO. 70/13**

TABLE OF CONTENTS

Executive Summary3
Background3
Submissions.....5
Board Findings9
IT IS THEREFORE ORDERED THAT:19
Annex A..... 20
Annex B..... 29

Executive Summary

The Board conducted a hearing process commencing in February 2013 to consider a water disconnection appeal by Mr. Josef Hassner, respecting two properties he owns in the Rural Municipality of Killarney-Turtle Mountain (the "Municipality").

The Board considered submissions of Mr. Hassner and the Municipality and issued Order 70/13. Upon a review and vary application filed by Mr. Hassner in July 2013, and following preliminary submissions of counsel for the parties, the Board determined that it would conduct a review and vary hearing to consider all aspects of Order 70/13. A written review and vary process was established which involved both Mr. Hassner and the Municipality. By this Order, the Board has determined that it did not, and does not have jurisdiction to consider Mr. Hassner's disconnection appeal. The Board therefore rescinds Order 70/13.

Background

The Municipality commenced a comprehensive program to replace analog water meters with remote read water meters in 2012. Mr. Hassner would not permit the installation of the remote meters on the two properties which he owns in the Municipality located at 204 Park Street, Killarney, Manitoba and 506 Broadway Avenue, Killarney, Manitoba.

On notice to Mr. Hassner and from August 24, 2012 to October 11, 2012, the Municipality disconnected the water supply to these properties. Mr. Hassner notified The Public Utilities Board ("PUB" or "Board") of the disconnection and filed a complaint with the Board on October 10, 2012. The Board wrote to the Municipality on October 11, 2012 and requested that the Municipality consider remedying the situation on an urgent basis. On October 11, 2012 the Municipality restored water to the properties. There was no hearing and no determination of jurisdiction by PUB.

The Municipality passed By-Law 14–2012 on February 13, 2013. In accordance with the By-Law the Municipality again sought compliance of Mr. Hassner, on notice of disconnection, with respect to installation of the mandatory remote read water meters. Mr. Hassner filed an appeal of the disconnection notice with the Board in February 2013. The Board dealt with the appeal as a disconnection matter under Section 104.1 of *The Public Utilities Board Act* (“*The PUB Act*”). The Board received submissions and filings of Mr. Hassner and the Municipality and circulated the filings as received to each party. The Board considered the submissions of the parties in Order 70/13.

The Board considered the disconnection principles under s.104.1 of *The PUB Act* and the hardship to the customer versus the hardship to the Municipality of allowing the continued use of the analog meter at Mr. Hassner’s properties.

The Board found that the hardship with respect to lack of water supply to the residential property of Mr. Hassner was greater than the hardship to the Municipality and ordered an exemption from Mr. Hassner with respect to his residential property.

The Board was satisfied with regard to the commercial building that Mr. Hassner should comply with the By-Law.

Mr. Hassner sought to review and vary Order 70/13. The Municipality filed a Notice of Motion with the Manitoba Court of Appeal for leave to appeal Order 70/13. In September 2013, the Board was notified that Darcy & Deacon LLP had commenced acting as counsel for Mr. Hassner.

The Board requested preliminary submissions to determine if the review and vary application should proceed. The Board requested that preliminary submissions include not only the grounds raised by Mr. Hassner, but all aspects of Order 70/13.

Upon reviewing preliminary submissions the Board determined that it would conduct a review and vary hearing process to review all aspects of Order 70/13. A Notice of

Review was sent to counsel for the parties. The Board directed a process and set deadlines for filing of new relevant evidence and for filing of written submissions of both parties. Both parties requested and were provided with a full record of proceedings by the Board. Both parties filed further evidence and written submissions in accordance with the timelines in PUB's Notice. The Municipality adjourned its Court of Appeal motion pending this decision.

The Board considered the record and filings of the parties. The Board through its legal advisors conducted its own review of the legal principles informing the question of jurisdiction.

In accordance with the review and vary process, both parties have been provided with a copy of this Order.

Submissions

Mr. Hassner

Throughout the initial disconnection appeal hearing process and in the review and vary hearing process, Mr. Hassner maintained his objection to the installation of the remote read water meters on the basis of health, privacy, safety and security concerns which he has identified from his own research. Indeed, the same grounds of objection were made by Mr. Hassner to the Municipality during the community wide installation process. All properties in the Municipality, except for Mr. Hassner's two properties, have been converted to the new meters. Mr. Hassner initially filed his own argument and a large volume of internet information on the subject of these remote read meters and alleged problems arising from use of the meters. Mr. Hassner also asserted that the Municipality's actions were illegal and criminal, and contrary to *The Canadian Charter of Rights and Freedoms*. He further submitted that the new meters are uneconomic.

In the review and vary process, Mr. Hassner's counsel filed additional evidence on his behalf, including:

- (i) facts respecting the current and intended residential occupancy and use of both properties owned by Mr. Hassner;
- (ii) Mr. Hassner's willingness to accept a different kind of analog meter;
- (iii) reference to a class action in British Columbia respecting remote read meters;
and
- (iv) reference to a World Health Organization cancer research report.

Mr. Hassner's submission in the review and vary process addressed the jurisdiction of the Board to consider the disconnection complaint due to a failure to comply with an "equipment-related service standard". The submission also addressed the correctness of the findings in Order 70/13.

Mr. Hassner submitted that the Board has jurisdiction over the Municipality under s.77(b) of *The PUB Act* to make Orders regarding standards, regulations, practices, measurements or services to be furnished, imposed, observed and followed. Section 74(1), submits Mr. Hassner, gives PUB general supervisory powers over all public utilities and specifically grants the Board the power to make orders regarding equipment and appliances.

Mr. Hassner submitted that the Board had authority to make Order 70/13 and has the power to vary the Order as he has requested.

Mr. Hassner seeks to have his second property at 506 Broadway Avenue, Killarney, Manitoba exempted from the remote read meter By-Law application. He wished to maintain a form of analog meter at both properties, both to be used as residences for his family members. Mr. Hassner submits that the Board was correct in weighing the

hardship to be suffered by the Municipality and by the property owner/occupants and concluding that the residential hardship supports an accommodation to keep the analog meters in place. Mr. Hassner says the same should apply to the second property at 506 Broadway Avenue, since it is to be used as a residence. Here too, says Mr. Hassner, the balance of hardship favours the occupants. Mr. Hassner submits that the original Order should be upheld but varied to permit the maintenance of an analog meter at 506 Broadway Avenue.

Municipality

The Municipality responded to Mr. Hassner's February 2013 disconnection appeal by letter of February 28, 2013, received by the Board March 4, 2013. By-Law 14 – 2012 being “a By-Law of the Municipality of Killarney-Turtle Mountain respecting the management and regulation of the waterworks system” provides in part:

21. No owner of a property or consumer may use a water meter unless the meter is approved and provided by the Municipality, and has remote automatic reading capacity.
22. No owner shall refuse or obstruct the Municipality in the installation of a water meter and related items, including the installation of automatic meter reading equipment.
23. No owner of a property or consumer shall fail to install a water meter and related items, including the installation of automatic meter reading equipment as required by the Municipality.

By-Law 14-2012 is appended as Annex “A” to this Order for ease of reference. The preamble of the By-Law references the jurisdiction of the Municipality respecting enactment of the By-Law pursuant to *The Municipal Act*, sections 250(2), and 252(1)

and (2). These sections give authority to municipalities to operate utilities and to establish terms and conditions in respect of users. The technical validity of the By-Law and the jurisdiction of the Municipality to enact the By-Law are not disputed.

The Municipality submitted it has the right to determine which type of meter and reading device is installed in residences. The Municipality noted the appeal provisions built into the By-Law. Mr. Hassner did not seek an appeal to the Municipal Council under the By-Law process.

The Municipality advised the Board that an alternative for Mr. Hassner, upon approval by the Municipality, is the installation of a water meter vault, located on property outside of the affected buildings.

The Municipality submitted that it requires all users to have the remote read meters installed. Mr. Hassner's non-compliance is unfair to all other users and impacts the integrity and administration of the By-Law and the water service. Many municipalities, it says, are switching to remote read technology for a more efficient and accurate water service system.

In the review and vary process, the Municipality confirmed that Mr. Hassner is the only customer who is not using the new water meter. The Municipality described the operation of the old meters as compared to the new meters. The Municipality described a meter vault as a manhole constructed on the municipal right of way, and meeting certain specifications. The estimated cost of a meter vault is in the range of \$5,000.00.

In the Board's review and vary process, the Municipality submitted that the Board does not have authority under *The PUB Act* to exempt Mr. Hassner from complying with the By-Law.

The Municipality argues that *The Municipal Act* authorizes and entitles the Municipality to set the use of remote read water meters as a mandatory requirement under the By-Law. The Municipal Council passed the By-Law.

The Municipality submits that s.104.1 of *The PUB Act* does not extend disconnection review jurisdiction beyond issues of non-payment of rates or charges. Further, says the Municipality, s.74(1) of *The PUB Act*, being the general utilities supervisory provision, does not provide authority to PUB to exempt a single customer from this public utility mandatory equipment standard fixed under the By-Law.

The Municipality further submitted that there is no factual foundation on the record which supports Mr. Hassner's allegations that remote read meters are unhealthy, unsafe and not secure. Mr. Hassner's filings of articles and commentary are not evidence before the Board, argues the Municipality. As a result, the Municipality submits that in the event the Board finds it has authority to make a decision, there is no factual foundation which supports exempting the two properties from the By-Law. The Municipality asks that Mr. Hassner's original appeal and the review and vary application be dismissed and that the By-Law be applied to both properties without exemption.

Board Findings

In Order 70/13, the Board considered the pending disconnection of water supply to Mr. Hassner's properties to be governed by s.104.1 of *The PUB Act* and to the Board's established Conditions Precedent to disconnection pursuant to Board Orders 127/08 and 39/09. The Board also proceeded on the basis that it could exempt a customer from compliance with the By-Law on a hardship basis on the circumstances presented. Accordingly, the Board ordered that compliance was required by Mr. Hassner for his commercial property but permitted an exemption from the installation of the remote read meter at his residential property on certain conditions regarding meter reading and reporting.

The Board did not accept the factual allegations of risk put forward by Mr. Hassner, but only considered the necessity of water supply and the family's hardship in the circumstances.

The Board noted its support for the remote read meter technology and the Municipality's decision to install these meters.

In the review and vary process, the Board's jurisdiction to make Order 70/13 and its power to grant relief to Mr. Hassner was argued by both parties. Given that relief to Mr. Hassner arising from a decision on the facts must rest upon the foundation of proper jurisdiction, the Board considered the submissions of the parties and advice from PUB's legal advisors on this threshold issue.

The Board has determined that it did not have jurisdiction to issue Order 70/13 and that it does not have jurisdiction to grant the relief requested by Mr. Hassner on review. Under section 44(3) of *The PUB Act*, the Board can rescind its own Orders. The Board hereby rescinds Order 70/13.

For the purpose of this analysis, the Board recognizes that, if it has jurisdiction, such jurisdiction must be found in *The PUB Act*. PUB is a statutory creation and does not have any inherent power. It cannot unilaterally extend its power where the statute will not bear such interpretation.

A longstanding governing principle of statutory interpretation requires the Board in this exercise to interpret the words of *The PUB Act* "in their entire context and in the grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the Parliament." This principle of statutory interpretation was famously cited by the Supreme Court of Canada in *Rizzo and Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27.

Application of this guiding principle of interpretation directs the importance of reading the words of a statute within the context of the entire statute. A further principle is the presumption that language is used consistently within a statute; the same words have the same meaning and different words have different meanings.

Applying these principles, the Board must ask itself: does s.74(1) or s.77 of *The PUB Act* empower the Board to consider the Hassner disconnection complaint and to grant the relief sought?

Sections 74(1) and 77 are appended to this Order as Annex B.

The Board must consider if the interpretation of s.74(1) of *The PUB Act* submitted by Mr. Hassner is correct, in accordance with these principles. To begin, there are a number of dictionary definitions of the word “public” including as follows:

- People in general; belonging to an entire community; rate payers;
- The people as a whole;
- Relating to or affecting all the people, or service of the community or nation (the “public interest”).

Reading the word “public” within the context of s.74(1), and within the context of Part II of *The PUB Act* that deals with supervision over public utilities, the Board concludes that s.74(1) does not empower it to make a decision where an individual property owner/utility user seeks such relief. This finding is supported by many other provisions within this Part of *The PUB Act*.

For example, as to use of the word “public”, s.82(1) of The Act specifically provides:

No owner of a public utility shall...

- (j) discontinue service to the public without authorization of the board at least one year prior to discontinuance, unless otherwise provided in the statute or agreement under which the public utility is operated.
(emphasis added)

By contrast, s.104.1(1) contains the following regarding a “person” in default:

Where, before or after the coming into force of this section, a person is in default in the payment of any rate, toll, fare or charge due to the owner of the public utility for any product supplied or service rendered, the owner or its authorized agent may, subject to this section,

- (a) Discontinue to supply the product or to render the service, as the case may be;
- (b) Remove from the affected premises any meters, pipes, facilities or equipment belonging to the owner;
- (c) By action in a court of competent jurisdiction recover the rate, toll, fare or charge, together with any expense of carrying out the discontinuance or removal and the costs of the action;

Notwithstanding any obligation the owner may have under this or another Act of the Legislature or any law or pursuant to any franchise granted under this Act or *The Municipal Act*, to supply the product or to render the service for an indefinite period or for a definite period that has not expired.
(emphasis added)

These sections using the words “public” and “person” contain distinct use of words denoting the whole versus the individual. The Board recognizes the need for consistency of interpretation respecting the provisions that govern the Board’s powers. When the jurisdiction vested under s.74(1) is considered within the entire framework of *The PUB Act* and in particular under Part II of *The PUB Act*, the Board concludes that the word “public” cannot bear the suggested meaning of a single property owner or ratepayer.

Likewise, the Board finds that the language in s.77 permits PUB supervision where the public as a whole is affected by a decision of a utility. The Board finds that s.77 cannot support jurisdiction as suggested by Mr. Hassner whereby an individual can seek PUB’s intercession with regard to individual properties and compliance with an equipment standard.

As argued by the Municipality, the By-Law is properly enacted under *The Municipal Act*. Under that statute the Municipality has jurisdiction to determine what kind of water consumption meters are to be installed for the whole community within the territory of Killarney-Turtle Mountain.

The Board finds that its general supervisory power must be also interpreted within the larger statutory framework of all Provincial laws. Jurisdiction is given to various statutory bodies and is presumed to be designed within an integrated plan of the Legislature. The legislation of the Province is meant to work harmoniously.

Division 2 of *The Municipal Act*, entitled “spheres of jurisdiction”, provides as follows:

Guide to interpreting power to pass by-laws

231 The power given to a council under this Division to pass by-laws is stated in general terms

- (a) to give broad authority to the council and to respect its right to govern the municipality in whatever way the council considers appropriate, within the jurisdiction given to it under this and other Acts; and
- (b) to enhance the ability of the council to respond to present and future issues in the municipality.

Spheres of jurisdiction

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

...

- (l) public utilities;

...

- (o) the enforcement of by-laws.

Exercising by-law-making powers

232(2) Without limiting the generality of subsection (1), a council may in a by-law passed under this Division

- (a) regulate or prohibit;

...

The Board concludes that *The Municipal Act* gives the Municipality authority to require compliance by Mr. Hassner. The Board finds support for this conclusion in the recent decision of The Manitoba Court of Appeal in *The Rural Municipality of St. Clements v. Zucawich*, 2013 MBCA 65.

In *Zucawich*, The Manitoba Court of Appeal commented on the power granted to a municipality to pass by-laws under Division 2 of *The Municipal Act*.

The Court of Appeal held:

[52] Section 3 of the *Act* states that the purpose of the legislation is to give municipalities the ability to provide good government, to provide necessary or desirable services, or other things, that, in its opinion, are necessary or desirable for all parts of the municipality, and to develop and maintain safe and viable communities.

[53] Section 231(a) of the *Act* confers broad powers on a municipal council to govern the municipality as it sees fit and to pass by-laws in this regard. It specifically states that the power given to the municipality is stated in general terms “to respect [the municipality’s] right to govern the municipality in whatever way the council considers appropriate,” within its jurisdiction. This power includes the ability to pass by-laws regarding unsightly property (see ss. 232(1)(c) and (f) and ss. 233(a), (b) and (d)). The *Act* also seeks to enhance the ability of a municipal council to respond to issues within the community by passing by-laws (see s. 231(b)).

[54] Furthermore, the *Act* gives a municipal council the ability to pass enforcement by-laws, including by-laws that would permit the expeditious enforcement of by-laws through the issuance of time-sensitive enforcement orders by designated officers (see s. 232(1)(o) and ss. 242(1) and (2)).

[55] The *Act* also gives municipal councils broad authority to take any actions or measures necessary to remedy by-law violations or to prevent a re-occurrence of contraventions, such as seizing or removing items that contravene the by-law and pursuing penal proceedings, costs or restraining orders through the courts (see ss. 236(1)(b), 240(1) and 245(1)).

[56] In summary, these provisions suggest that the purpose of the *Act* is to give the council of a municipality broad powers of governance through its by-laws, and the ability to expeditiously enforce them in a variety of ways. In this regard, consider specifically s. 231(a), which indicates that the power given to a municipal council to pass by-laws “is stated in general terms ... to give broad authority to the council and to respect its right to govern the municipality in whatever way the council considers appropriate.” Clearly, the legislature intended to give great deference to a municipal council’s governance. ...

It is obvious, from both the plain wording of sections 231 and 232 of *The Municipal Act*, and from the decision of the Manitoba Court of Appeal, that the Legislature intended to give broad powers to a municipality to pass by-laws that it considers to be appropriate. Those powers extend to the passing of specific by-laws relating to public utilities. A municipality may exercise its authority to pass by-laws within its jurisdiction, as it has done here. The Board cannot grant relief which has the effect of overriding that clear authority.

In considering the authority conferred by s.77, it is helpful to refer to *Sullivan and Driedger on the Construction of Statutes*, where they note: “statutes enacted by a legislature that deal with the same subject are presumed to be drafted with one another in mind, so as to offer a coherent and consistent treatment of the subject.” If section 77 of *The PUB Act* allowed PUB to make orders specifically relating to a municipality’s utility specifications for a single customer it would be in conflict with the provisions of *The Municipal Act* giving a municipality the same authority.

The better conclusion is that the two statutes were drafted to work together coherently. *The Municipal Act* was drafted in order to give municipalities the authority to make and enforce specific decisions relating to the provision of utility services, while *The PUB Act* was drafted to give the PUB the authority to oversee the provision of those services generally, and to serve the public in circumstances where the Board determines such

supervision is required. This interpretation is consistent with the principles of statutory interpretation and maintains the relationship between PUB and public utilities on one hand, and municipalities and their residents on the other.

No provision of *The PUB Act* gives PUB the jurisdiction to hear applications or to make orders relating to the validity or enforcement of a municipality's by-laws. Furthermore, there is no provision in *The Municipal Act* that grants any right of appeal to PUB on an issue relating to the validity or enforcement of a by-law.

The Municipality's decision to replace the analog meters with remote read meters was a policy decision, and one that was well within its broad powers of governance. In making that decision, the Municipality would have considered a number of factors. In this instance, the Board finds that it does not have the power to interfere with the policy decision that the Municipality made with respect to the installation of these remote read devices, especially where that decision falls within the power conferred upon the Municipality by the Legislature.

Here, the Municipality is carrying out its legislative role in deciding on a community wide and comprehensive basis that conversion to remote read meters for tracking water usage is in the best interest of its citizens. The Municipality appears to be within its jurisdictional power to make this decision and By-Law 14-2012 has been enacted to ensure full compliance with the decision, amongst other things.

Mr. Hassner had the right to appeal the Municipality's installation directive to the Municipal Council under the By-Law. However, he did not appeal. Whatever other remedies, if any, Mr. Hassner may pursue are not for this Board to address.

Section 104.1 of *The PUB Act* permits the Board to set terms and conditions for disconnection of supply of public utilities services by municipalities, but only with respect to non-payment. Mr. Hassner argues that the Board is not limited by this provision, and

it can act on such jurisdiction even where non-compliance arises from failure to meet a service standard, at issue in this circumstance. The Board disagrees. Section 104.1 is specific and the Board infers that if the Legislature wished to empower the Board to set terms for disconnection beyond non-payment, it would have included provisions in *The PUB Act* to this effect.

Applying the principles of statutory interpretation and on the basis that the language of *The PUB Act* must contain the provisions establishing jurisdiction, the Board concludes it did not, and does not, have the power to intercede in the face of the Municipality's water service By-Law.

As a result of the Board's determination that it does not have jurisdiction, the Board has not considered in this Order the merits of the relief granted to Mr. Hassner in Order 70/13, or specific facts and matters argued by the parties respecting the original Order in the review and vary process.

Order 70/13 is rescinded.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pub.gov.mb.ca

IT IS THEREFORE ORDERED THAT:

1. Public Utilities Board Order No. 70/13 is hereby rescinded.
2. No cost award is made with respect to this Order.

THE PUBLIC UTILITIES BOARD

“Susan Proven, P.H. Ec., Acting Chair”

Acting Chair

“H.M. Singh”

Secretary

Annex "A"

**MUNICIPALITY OF KILLARNEY - TURTLE MOUNTAIN
BY-LAW NO. 14 - 2012**

Being a By-Law of the Municipality of Killarney - Turtle Mountain respecting the management and regulation of the waterworks system.

WHEREAS, it is deemed advisable to revise and consolidate all by-laws relating to the management and regulation of the waterworks system.

AND WHEREAS, The Municipal Act reads in part as follows:

250(2) Without limiting the generality of subsection (1), a municipality may for municipal purposes do the following:

- (b) construct, operate, repair, improve and maintain works and improvements;
- (c) acquire, establish, maintain and operate services, facilities and utilities;
- (e) use municipal equipment, materials and labour to carry out private works on private property.

252(1) A municipality exercising powers in the nature of those referred to in clauses 250(2)(b), (c) and (e) may set terms and conditions in respect of users, including:

- (a) setting the rates or amounts of deposits, fees and other charges, and charging and collecting them;
- (b) providing for a right of entry onto private property to determine compliance with other terms and conditions, to determine the amount of deposits, fees or other charges, or to disconnect a service; and
- (c) discontinuing or disconnecting a service and refusing to provide the service to users who fail to comply with the terms and conditions.

252(2) A charge referred to in clause (1)(a) may be collected by the municipality in the same manner as a tax may be collected or enforced under this act.

NOW THEREFORE, the Council of the Municipality of Killarney - Turtle Mountain, in council duly assembled, hereby enacts as follows:

1. Definitions
 - a) “Consumer” means any person to whom water is supplied by the Municipality and/or a person who uses the sewer system of the Municipality and includes a builder or contractor using water in connection with any work or contract;
 - b) “Finance Manager” means the Manager of Finance of the Municipality or their designate;
 - c) “Meter vault” means an underground structure designed and constructed to accommodate a water meter or waste water meter and associated piping only.
 - d) “Person” includes a person, firm, partnership or corporation;
 - e) “Sewer Service” means the sewer service system owned and operated by the Municipality consisting of the sewer main saddle, riser, bends, adaptors and piping between the sewer main and the street boundary;
 - f) “Utilities Manager” means the Manager of Utilities of the Municipality or their designate;
 - g) “Water Service” means the water service system owned and operated by the Municipality consisting of the main stop, curb stop, fitting and piping between the water main and the street boundary;
 - h) “Waterworks System” means the sewer collection and treatment system and the water supply and treatment system owned and operated by the Municipality, consisting of the operating branch, the revenue branch and the waterworks office, which shall be the Civic office.
2. The collection of revenues derived from the waterworks system, the payment of all disbursements connected therewith and the supervision of all books, accounts and records shall be under the general direction of the Finance Manager.
3. The operation, construction and maintenance of all works relating to the waterworks system shall be under the general direction and control of the Utilities Manager. The position of Utilities Manager is a designated officer for the purposes of the administration and enforcement of this By-law. The Utilities Manager shall have all the powers provided to a designated officer under the Municipal Act.
4. Subject to Section 250 (2) of the Municipal Act:
 - a) The Municipality shall pay the cost of installing and maintaining the water service from the waterworks mains to the nearest point on the street boundary of the premises served.
 - b) The owners of all premise serviced shall pay the entire cost of installing and maintaining the sewer service actually installed from the sewer main to the street boundary of the premises serviced.

- c) The owner of every premises served shall pay the full cost of installing and maintaining the water and sewer service between the street boundary and the building served.
 - d) Where the sewer service is shared the Municipality will pay the cost of maintaining the service from the Y connection to the sewer main.
 - e) The Municipality shall reimburse the owner of every premise the full cost of clearing a blockage in the sewer service to the premises, if the blockage is from tree roots from trees on the Municipal property.
5. The standard water service from the water main to the street boundary shall be a 5/8" or 3/4" standard pipe and a 5/8" or 3/4" main stop.
 6. The Municipality shall place in each water service a curb stop and box between the street gutter and the street line for the purpose of turning the water supply on or off. The size of the curb stop or any other cut-off to be inserted in the water service under any application shall be the same size as the service applied for. The position in the street in which any water service is to be laid shall be approved by the Utilities Manager prior to installation.
 7. The service pipes from the street line to the inside of the foundation wall of any building into which a service is introduced, shall be placed not less than 2.4 m below the surface of the ground level, unless the Utilities Manager otherwise determines.
 8. A bronze valve connected to the water service pipe shall be placed inside the wall of the building as close as possible to the point of entry of the water service pipe. The owner shall maintain the bronze valve to ensure that it is in a good mechanical condition and available in an emergency.
 9. No branch pipe or branch service shall be taken from that part of the water service pipe between the curb stop and the water meter, but all such branches shall be taken from within the premises, beyond the water meter. The water meter shall be placed in the water service pipe as close as possible to the valve, downstream from the water supply.
 10.
 - a) Each owner shall keep his water service pipe, bronze gate valve and other fixtures on his premises, and between such premises and the street line, including the connection to that part of the service within the municipal street, in good order and repair, and protected from frost, at their own risk and expense.
 - b) The water service pipe from the line in the street to the water meter in the building supplied, together with all couplings, valves and apparatus placed thereon shall be under the control of the Municipality and if any damage is done to this portion of the water service pipe or its fittings, whether by neglect or otherwise, the Municipality may repair same or have it repaired and charge the costs to the occupier or owner of the premises, which may be collected either as water rates or may be added to the taxes on the property and collected in the same manner as ordinary municipal taxes.

11. The waterworks system including the water service, sewer service and every apparatus connected or related thereto shall be of the design and quality approved by the Utilities Manager.
12. Every owner to whose property the Municipality has made a service connection shall connect to that service within 3 months of the date the service was provided.
13. Applications for water and sewer service shall be made to the Municipal office on the form provided for the purpose, and such application shall be the contract between the Municipality and the consumer for the supply of water and sewer service. In certain cases, the Municipality may accept other forms of application and such other forms of application shall be the contract between the consumer and the Municipality for the supply of water and sewer service.
14. a) No person except an authorized Municipal employee shall:
 - i) tap or make any connection or communication with any pipe or main which is part of or connected to the water works system;
 - ii) open, close or in any manner interfere with any curb stop, main stop or valve, which is part of or connected to the water works system.b) No person shall make any connection or communication of an independent water supply with a; pipe or main which is part of or connected to the waterworks system.
15. All plumbing fixtures below ground level shall be protected by a back water valve which shall be placed inside the basement wall of the building as close as possible to the point of entry of the branch sewer service pipe draining the fixtures into the main sewer service pipe. The owner shall maintain the backwater valve to ensure that it is in good mechanical condition and is available and accessible in case of emergency. A sewer cleanout connected to the sewer service pipe shall be placed inside the wall of the building between the wall and the backwater valve. The owner shall maintain the cleanout and keep the cleanout visible and serviceable in case of emergency. The minimum size of cleanout shall be 4 inches in diameter.
16. Upon vacating any building or premises, the occupier shall turn off the water supply at the valve inside the wall of such buildings, and shall give immediate written notice to the Municipality that the premises are being vacated. In case the water is not turned off, the Municipality may cut off the water from such building without notice and charge the cost thereof to the owner to be collected in the same manner as water rates, or the costs may be added to the taxes on the property and collected in the same manner as ordinary municipal taxes. Nothing contained or implied herein shall be deemed to place any responsibility duty or liability on the Municipality.

17. The owner or occupier of any premises who request the Municipality to turn off the water service to such premises shall, before making such request, close the valve and drain all water from the water pipes in the premises and the appliances free from water until the Municipality is notified that water service is again required for the premises.
18. In the course of making repairs to the street mains, or in constructing new work, or in connecting or repairing water service pipes, whether by the Municipality or by some other person, the Municipality shall have the right to shut off the water from any consumer, without notice and keep it shut off as long as may be deemed necessary.
19. The Municipality shall not be liable for any damages as the result of suddenly, with or without notice, shutting off the supply of water to a consumer.
20. A plumber employed by the owner or occupier of premises connected to the waterworks system shall be deemed to be the agent of such owner or occupier and the Municipality will not be responsible for the acts of the plumber.
21. No owner of a property or consumer may use a water meter unless the meter is approved and provided by the Municipality, and has remote automatic reading capability.
22. No owner shall refuse or obstruct the Municipality in the installation of a water meter and related items, including the installation of automatic meter reading equipment.
23. No owner of a property or consumer shall fail to install a water meter and related items, including the installation of automatic meter reading equipment as required by the Municipality.
24. Despite section 22, an owner of a property may apply to the Municipality to have the water meter and automatic meter reading equipment installed and placed in a meter vault. Upon receipt of an application, the Utilities Manager shall determine if a meter vault may be reasonably used on the property, and if it can be to identify the works and specifications required to install a meter vault on the property. The Municipality may require the owner of the property to enter into an agreement providing for the terms for the installation, operation and maintenance of the meter vault on the property.
25. The owner of the property or consumer shall be responsible for the Municipality's costs for the operation and maintenance of the meter vault.
26. a) The Municipality may refuse to supply water to any person unless the person requiring the water signs an agreement to take, use and pay for the water according to the Waterworks Rate By-Law.

- b) The consumer shall notify the Municipality as soon as they become aware of breakage or stoppage or irregularity in water meter or an automatic reading device.
 - c) All disconnections, removals, alterations and repair of water meters and automatic reading devices shall be done by a Municipal employee only and no other person shall install, disconnect, repair, remove, tamper with, alter, damage or paint a water meter or an automatic reading device, or the pipes and wiring connected thereto.
 - d) The Municipality shall seal all water meters and no person except an authorized employee of the Municipality shall break or in any way interfere to tamper with such seal.
 - e) If a water meter is damaged by the backflow of hot water from a water heating apparatus, tank of boiler, the Municipality shall repair and if necessary, replace the meter and all charges for repairing or replacing the meter shall be paid by the owner or occupier of the premises in which the meter is situated.
 - f) If a water meter is damaged by frost, or from any other cause, the Municipality may repair or replace the meter and all charges for repairing or replacing the meter shall be paid by the owner of the property or the consumer in which the meter is situated.
27. The water meters shall remain the property of the Municipality. An owner of property or a consumer shall ensure that the water meters and automatic reading devices on the premises shall at all times be accessible to authorized Municipality employees, so that they may be examined, read, inspected and if necessary, repaired.
28. When a meter is found not to be in proper working order, or a meter reading is not obtained, the Utilities Manager shall estimate the amount of water consumed for any quarter or other period, based on the amount of water consumed during the time the meter was working, or on any other information available, and such estimate shall be the basis for billing the consumer for water used.
29. Where an apartment block, tenement, duplex or other multiple occupied building, or a trailer park with a meter house, has one service connection, the owner shall pay for water supplied to the property, but where any suite, or any portion of such building, or a trailer, has a separate service connection, it shall be rated as separate building, and the occupier thereof shall be a consumer and shall pay for the water consumed therein.
30. The supply of water through each separate service shall be recorded by one meter only, for which only one account will rendered. If additional or auxiliary meters are required by the consumer for reporting the subdivision of any such supply, they shall be furnished and set up by the consumer at his expense and as designated by the Utilities Manager, and the consumer shall assume all responsibility for the reading and maintaining of said additional meters.

31. Notwithstanding the provisions of the Water Rate By-law, water and sewer services supplied may, in the case of commencement or termination of service, be billed monthly or otherwise, and the rates prorated accordingly and, in the case of termination of service, such prorated billings may be made payable by the customer earlier than the immediately ensuing quarterly billing in the normal course.
32. Water meters shall be read in whole thousands of gallons with the exception of the initial and final reading upon commencement or termination of the water supply contract.
33. The Municipality shall have the right to limit the amount of water supplied to any consumer.
34. The Municipality may, by resolution or by-law, discontinue, prohibit, or limit the supply of water for fountains, jets, garden hoses, sprinklers or swimming pools, or limit the hours that water may be used for those purposes.
35. The rate for turning water on and off and the rate for repairs to meters and the rates for all other charges payable by the user of the water works system shall be the rates fixed by the Water Rate By-law.
36.
 - a) In this section, contractor means a contractor, sub-contractor, owner or any one or more of them and their agents and employees.
 - b) At least 7 days prior to commencing the construction of a building or structure which by nature of its intended use will be connected to the Municipal water and sewer system, on a site where a water line and curb stop are in place, the contractor shall notify the Municipality in writing of the date of commencement and the Municipality shall forthwith do all things necessary to ensure that the water line and curb stop are functional and in good repair.
 - c) Upon receiving an application for water turn on following the issue of an occupancy permit for the building or structure, the Municipality shall inspect and test the water line and curb stop. If the curb stop is damaged from any cause whatsoever, the contractor shall, at his own cost and expense, repair the damage as prescribed by the Municipality and the Municipality shall not be obligated to turn on the water until the damage is repaired.
37. The Utilities Manager or their designate may upon giving reasonable notice, enter any property or premises connected to the Water Service at a reasonable time to inspect any equipment or other installations to determine compliance with this By-law, whether the actions or measures set out in an order have been taken, and to remedy or prevent a re-occurrence of a contravention of this By-law.

38. If in the opinion of the Utilities Manager there is a violation under this By-law, the Utilities Manager may issue an order in writing, and may provide that if the person does not comply with the order within the specified time, the Municipality will take the actions or measures at the expense of that person.
39. A person served with an order may request that Council to review the order, by written notice to Council within 14 days after the date of receipt of the order.
40. Upon receiving a request for review, the Chief Administrative Officer shall set a date and time for the review of the order, and shall notify the person of the date of the review. The notice shall include a statement:
 - (a) of the time, place and purpose of the hearing; and
 - (b) that if the person does not attend the hearing, the matter will be dealt with in their absence and there will be no further notice of this proceeding.
41. At the time and place set out in the notice, Council shall hold a hearing to consider the request for review and the order. The person may appear in person or by counsel. The person is entitled to hear the material presented at the hearing and to inspect any documents filed.
42. Following the hearing, Council shall determine and decide any matter respecting the review and the order. Council may confirm, vary, substitute or cancel the order.
43. If the person does not attend the hearing, the matter may be dealt with in their absence and the person shall not be entitled to any further notice in the proceeding.
44. The decision of Council on a review shall be final.
45. The time specified in an order is suspended from the date of receipt of a request for review to the date upon which Council makes its decision.
46. If the person has not remedied the non-compliance within the time provided in the order, the Utilities Manager is authorized to carry out any repairs, or any remedial or enforcement action under this By-law. The Utilities Manager is authorized to suspend or terminate the supply of water to the property or premises until the non-compliance has been remedied.
47. The Utilities Manager may suspend or terminate water service on the first working day after the due date posted on the waterworks bill. The water shall remain cut off until the account and all penalties are paid and the Municipality shall not be obliged to turn on the water earlier than the first working day following payment of the account and penalties.

48. If the order of the Utilities Manager so provided, the actions or measures will be taken at the person's expense. The costs of any actions or measures taken will be an amount owing by the person to the Municipality, and may be collected in any manner in which a tax may be collected or enforced under the Act.
49. A person who contravenes this By-law is guilty of an offence and is liable on summary conviction to a fine of not more than \$1000.00. Any costs associated with or resulting from enforcing this By-law are in addition to any such fine, and are an amount owing to the Municipality and may be collected in any manner in which a tax may be collected or enforced under the Municipal Act.

DONE AND PASSED by the Council of the Municipality of Killarney - Turtle Mountain in Council duly assembled this 13th day of February, A.D. 2013.

Mayor

Chief Administrative Officer

Read a first time this 24th day of October, A.D. 2012.
Read a second time this 13th day of February, A.D. 2013.
Read a third time this 13th day of February, A.D. 2013.

Annex “B”

The Public Utilities Board Act

General supervision over utilities

[74\(1\)](#) The board has a general supervision over all public utilities and the owners thereof subject to the legislative authority of the Legislature, and may make such orders regarding equipment, appliances, safety devices, extension of works or systems, reporting, and other matters, as are necessary for the safety or convenience of the public or for the proper carrying out of any contract, charter, or franchise involving the use of public property or rights.

Orders as to utilities

- [77](#) The board may, by order in writing after notice to, and hearing of, the parties interested,
- (a) fix just and reasonable individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates that shall be imposed, observed, and followed thereafter, by any owner of a public utility wherever the board determines that any existing individual rate, joint rate, roll, charge or schedule thereof or commutation, mileage, or other special rate is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential;
 - (b) fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed thereafter by any such owner;
 - (c) direct any railway, street railway, or traction company, to establish and maintain at any junction or point of connection or intersection with any other line of the road, or with any line of any other railway, street railway, or traction company, such just and reasonable connections as may be necessary to promote the convenience of shippers of property, or of passengers, and in like manner may direct any railway, street railway, or traction company engaged in carrying merchandise to construct, maintain, and operate, upon reasonable terms a switch connection with any private side-track that may be constructed by any private shipper to connect with the railway or street railway where, in the judgment of the board, the connection is reasonable and practicable and can be put in with safety, and will furnish sufficient business to justify the construction and maintenance thereof.