

**Southeast Planning Review and Adjustment Committee /  
Comité de révision de la planification de la Commission du Sud-Est**

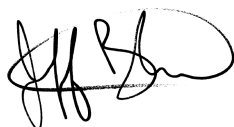
**Staff Report / Rapport du personnel**

**Subject / Objet :** to create a lot on an access other than a public street

**File number / Numéro du fichier** 21-1249

**From / De :**

**Reviewed by / Révisé par :**




Jeff Boudreau

Dylan Geldart

Development Officer / Agent d'aménagement

Development Officer / Agent d'aménagement

**General Information / Information générale**

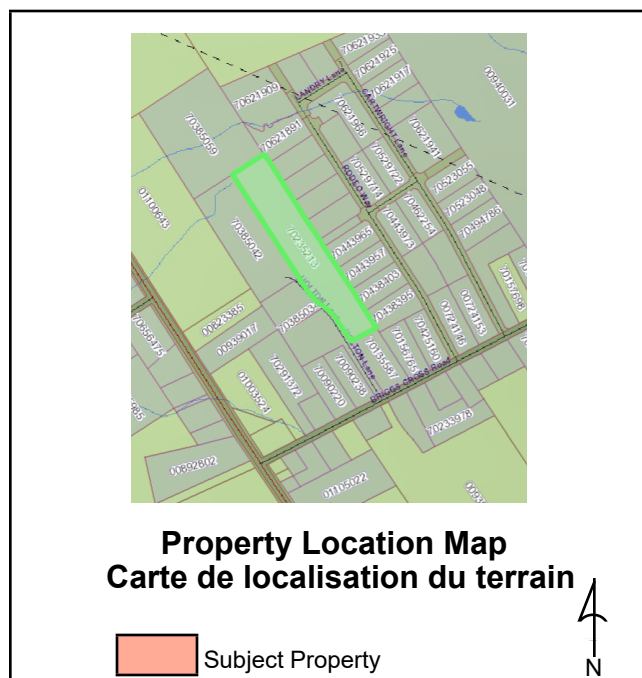
**Applicant / Requéant :**

**Landowner / Propriétaire :**

Darlene Smith

**Proposal / Demande :**

to create two new residential building lots on an access other than a public street / *créer deux nouveaux lots résidentiels sur un accès autre qu'une rue publique.*



**Site Information / Information du site**

**PID / NID:** 70235213

**Lot Size / Grandeur du lot:** 4 ha

**Location / Endroit :**

Briggs Cross rd.

**Current Use / Usage présent :**

residential / *résidentiel*

**Zoning / Zonage :**

A

**Future Land Use / Usage futur :**

**Surrounding Use & Zoning / Usage des environs & Zonage :**

residential / *résidentiel*

**Municipal Servicing / Services municipaux:**

N/A / *S.O*

**Access-Egress / Accès/Sortie :** Holton Lane

## **Policies / Politiques**

### **Residential Uses / Usages résidentiels**

#### **Policy / Principe**

**5** It is a policy to conserve the rural residential nature within the area of the Regulation by considering existing residential uses and historical developments. / *En principe, il faut sauvegarder le caractère résidentiel rural du secteur visé par le règlement, tout en tenant compte des usages résidentiels et des aménagements historiques actuels.*

#### **Proposals / Propositions**

**6(2)** It is proposed to permit residential development only on lots that have Department of Environment and Local Government and department of Health and Wellness approvals as required. / *Il est proposé d'autoriser les aménagements résidentiels uniquement sur les lots qui ont été approuvés par le ministère de l'Environnement et des Gouvernements locaux et par le ministère de la Santé et du Mieux-être au besoin.*

### **Zoning and/or Subdivision Regulation / Réglementations de zonage et/ou de lotissement**

#### **GENERAL PROVISIONS / DISPOSITIONS GÉNÉRALES**

##### **Lot Sizes / Dimensions des lots**

**34(4)** Where a lot is not serviced by a sewer system for public use, the lot / *Les lots non desservis par un réseau public d'égout*

**(a)** shall have and contain / *doivent avoir*

**(i)** a width of at least 54 metres, / *une largeur minimale de 54 mètres,*

**(ii)** a depth of at least 38 metres, and / *une profondeur minimale de 38 mètres,*

**(iii)** an area of at least 4,000 square metres; and / *une superficie minimale de 4 000 mètres carrés;*

**(b)** shall not be used as the location for a two-unit dwelling or multiple dwelling. / *ne peuvent servir à l'implantation d'une habitation à deux logements ou à logements multiples.*

##### **Provincial Subdivision Regulation / Règlement provincial sur le lotissement**

#### **LOTS, BLOCKS AND OTHER PARCELS / LOTS, ÎLOTS ET AUTRES PARCELLES DE TERRAIN**

**6(1)** Every lot, block and other parcel of land in a proposed subdivision shall abut / *Chaque lot, îlot ou autre parcelle de terrain d'un projet de lotissement doit donner*

**(a)** a street owned by the Crown, or / *sur une rue appartenant à la Couronne, ou*

**(b)** such other access as may be approved by the regional service commission as being advisable for the development of land. / *sur une autre voie d'accès que la commission de services régionaux peut approuver comme étant utile à l'aménagement du terrain.*

### **Internal Consultation & External Consultation / Consultations internes et externes**

Staff consulted internally / *Le personnel a communiqué à l'interne*

## **Discussion**

On June 3rd, an application was received to create two new residential building lots on Holton Lane (private road). The parcel of land (PID 70235213) is currently land locked and was created in 1991 as a land locked parcel. Staff were unable to find information for that application. In 2002, a second subdivision plan was proposed on Holton Lane to create three additional building lots. This second plan had been refused by the Greater Moncton District Planning Commission but was overturned by the Provincial Assessment and Planning Appeal Board (see attached). / *Le 3 juin, une demande a été reçue qui propose la création de deux nouveaux lots sur l'allée Holton (chemin privé). La parcelle de terrain (NID 70235213) est présentement sans accès public et a été créée en 1991. Le personnel n'a pas d'information sur ce dossier. En 2002, un deuxième plan fut proposé sur l'allée Holton pour créer trois lots supplémentaires. Ce plan fut refusé par la Commission du district d'aménagement du Grand Moncton, mais cette décision fut renversé par la Commission d'appel en matière*

*d'évaluation et d'urbanisme.*

When considering what is advisable for the development of land, a publicly maintained road is the best means of providing access. This provides the assurance of public services including snow plowing, garbage collection, school busing and more importantly, emergency services, amongst others (ex: Ambulance and Fire Truck accessibility). If the lot does not front a public street, then the above services are not guaranteed at the time of development or in the future. / *Étant donné ce qui est recommandé pour l'aménagement d'un terrain, le meilleur mode d'accès constitue d'une route qui fait l'objet d'un entretien public. Ainsi, les services publics sont garantis dans ce secteur, comme le déneigement, la collecte des déchets, le transport scolaire et surtout, les services d'urgence (p. ex. : facilité d'accès pour les ambulances et les camions d'incendie). Si le lot n'est pas situé sur une rue publique, les services susmentionnés ne sont pas garantis lors de la mise sur pied de l'aménagement ou à l'avenir.*

**In this case, the lots are intended for residential building purposes and any subdivision of the land should include the extension of a public road to each lot.** This could be accomplished by upgrading the future street at the end of Terron Way or by working with the residents along Holton Lane to upgrade it to a public road. Other means of developing the property would be to convert this to a bare land condominium corporation which would create parcels without subdividing the land. / *Dans ce cas, les lots sont pour usage résidentiel, alors le plan devrait inclure l'extension d'une rue publique jusqu'à chaque lot. Ceci pourrait être accompli en améliorant la rue future au bout de la rue Terron Way, ou en travaillant avec les résidents des lots existants de l'allée Holton pour en faire une rue publique. Une autre option serait de convertir le terrain à une corporation de condominiums, ce qui crée de nouveaux terrains sans passer par un lotissement.*

**Provincial Subdivision Regulation establishes that, a) each lot shall abut a public street, alternatively section b) allows for the creation of a lot on an access other than a public street if it is deemed advisable for the development of the land by the Regional Service Commission.** Using the such other access provision for the creation of new residential building lots is contrary to the first provision that states every lot shall abut a street owned by the Crown. The provision of approving lots on an access other than a public street should be limited to uses which do not require full time public access, such as public utilities, industrial land uses, crown or municipal lands. / *Le règlement provincial de lotissement établi que a) chaque lot doit donner sur une rue appartenue par la Couronne. Il y a ensuite une option de créer un lot sur un autre accès que la Commission d'aménagement juge convenable pour le développement du terrain. Utiliser cette provision pour la création de nouveaux lots résidentiels va à l'encontre de la première section qui dit que chaque lot doit donner sur une rue publique. De l'autre côté pas inclure l'option de crée un lot sans rue publique.*

Staff is of the opinion that this form of access is not advisable for the development of the land as residential building lots. / *Le personel est de l'opinion que cet accès n'est pas propice pour le développement du terrain comme lot résidentiel.*

### **Public Notice / Avis public**

Notice was sent to land owner's within 100m of the subject property / *Un avis public a été envoyé aux propriétaires immobiliers à l'intérieur de 100 m de la propriété proposée.*

### **Legal Authority / Autorité légale**

### **The Provincial Subdivision Regulation / Règlement provincial sur le lotissement**

### **Lots, Blocks And Other Parcels / Lots, Îlots Et Autres Parcelles De Terrain**

**Section 6(1)** every lot, block and other parcel of land in a proposed subdivision shall abut / *Chaque lot, îlot ou autre parcelle de terrain d'un projet de lotissement doit donner*

(a) a street owned by the Crown, or / *sur une rue appartenant à la Couronne, ou*

(b) such other access as may be approved by the commission as being advisable for the development of land. / *sur une autre voie d'accès que la commission de services régionaux peut approuver comme étant utile à l'aménagement du terrain.*

### **Recommendation / Recommandation**

Staff respectfully recommends that the Southeast Planning Review & Adjustment Committee **refuse** the lots **21-1 and 21-2** on the Ronald MacDonald subdivision plan because the access is not advisable for the development of the land. / *Le personnel recommande respectueusement que le Comité de révision de la planification du Sud-Est **refuse** les lots **21-1 et 21-2 sur le plan Ronald MacDonald** parce que l'accès n'est pas convenable pour le développement résidentiel.*

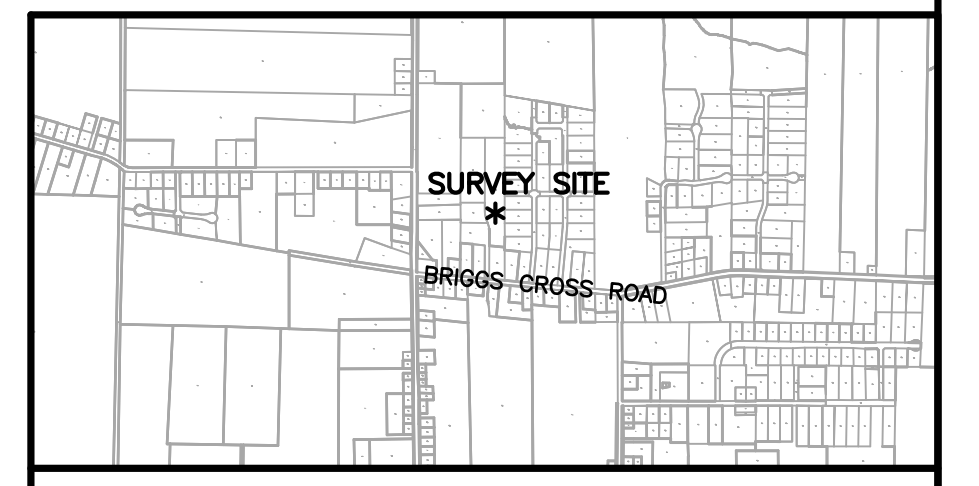
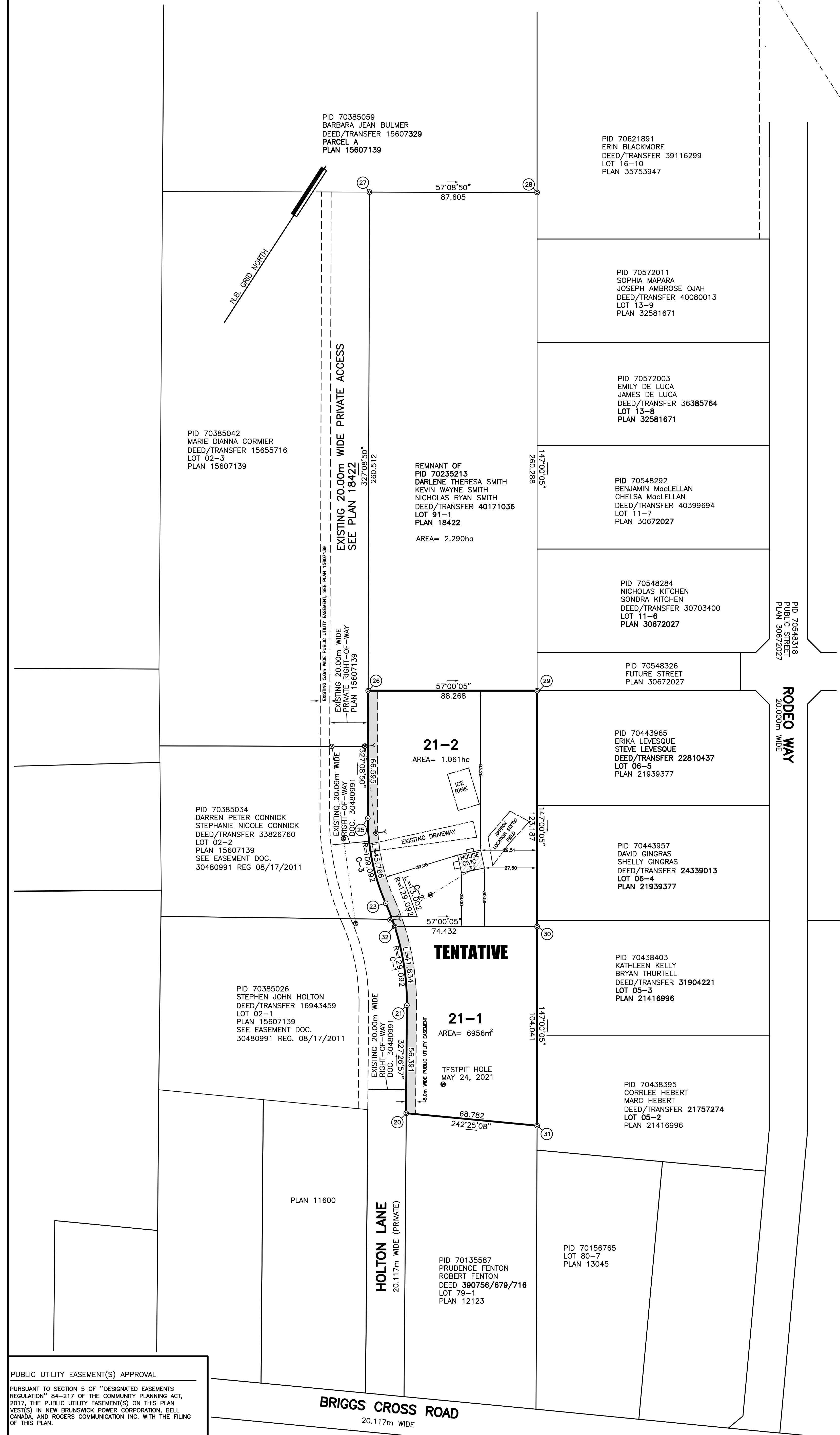
**Note:** This report was written in english and translated to a bilingual document. Where a conflict exists between the two languages, the language the report was written shall prevail. / **Note:** *ce rapport a été rédigé en anglais et traduit en version bilingue. En cas de conflit entre les deux langues, la langue dans laquelle le rapport a été rédigé a préséance.*

N.B. GRID COORDINATE VALUES NAD83 (CSRS)			
POINT	EASTING (m)	NORTHING (m)	DESCRIPTION
20	2622407.872	7461707.572	SMSET
21	2622377.531	7461755.105	CP
22	2622268.718	7461685.647	RP
23	2622339.235	7461793.777	CP
24	2622398.828	7461885.154	RP
25	2622307.183	7461825.973	CP
26	2622271.057	7461881.918	SMSET
27	2622129.734	7462100.765	SMSET
28	2622203.328	7462148.289	SMSET
29	2622345.086	7461929.990	SMSET
30	2622412.175	7461826.675	SMSET
31	2622468.536	7461739.418	SMSET
32	2622349.750	7461786.138	SMSET
28155	2628800.997	7456492.126	MONCTON (HPN)

CURVE TABLE					
CURVE	RP	LENGTH	RADIUS	CHORD	AZIMUTH
C1	22	41.834	129.092	41.652	318°09'55"
C2	22	13.002	129.092	12.997	305°59'46"
C3	24	45.766	109.092	45.431	135°07'44"

ALL COMPUTATIONS PERFORMED AND COORDINATES SHOWN ON THIS PLAN ARE BASED ON THE NEW BRUNSWICK STEREOGRAPHIC DOUBLE PROJECTION AND THE NAD83(CSRS) ELLIPSOID AS REALIZED BY SERVICE NEW BRUNSWICK'S HIGH PRECISION CONTROL NETWORK



**KEY PLAN**

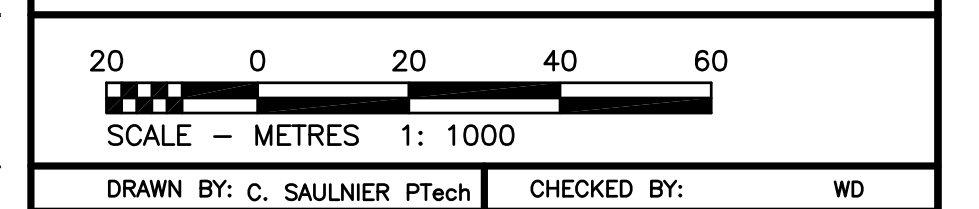
**LEGEND**

STANDARD SURVEY MARKER PLACED (SMSET)	⊙
STANDARD SURVEY MARKER FOUND (SMFD)	⊙
IRON PIPE FOUND (IPFD)	⊙
IRON BAR FOUND (IBFD)	⊙
WOODEN POST	⊙
CALCULATED COORDINATE POINT (CP)	⊙
TABULATED COORDINATE REFERENCE NUMBER	⊙
CENTRELINE	— — — — —
EASEMENT	— — — — —
FENCE	— X — X — X —
OVERHEAD UTILITY LINE	— — — — —
UNDERGROUND UTILITY LINE	— — — — —
SANITARY SEWER LINE	— — — — —
STORM SEWER LINE	— — — — —
STORM SEWER LATERAL/ LEAD	— — — — —
COMBINED STORM/ SANITARY SEWER	— — — — —
WATER MAIN	— — — — —
GAS MAIN	— — — — —
RAILWAY TRACKS	—   —   —   —   —
SQUARE METRES	m <sup>2</sup>
NEW BRUNSWICK LAND SURVEYOR	N.B.L.S.
N.B.L.S. REGISTRATION NUMBER	#306
ORDINARY HIGH WATER MARK	OHWM
PARCEL IDENTIFIER NUMBER	PID
SERVICE NEW BRUNSWICK	SNB
INSTRUMENT / VOLUME / PAGE	123456/1234/123
TRANSFER NUMBER	TRANSFER 12345678
DISTANCE OR AZIMUTH CALLED FOR IN DEED	(DEED)
DISTANCE OR AZIMUTH CALLED FOR ON PLAN	(PLAN)
CURVE NUMBER	C-1
POINT OF CURVATURE/ BEGINNING OF CURVE	PC
POINT OF COMPOUND CURVATURE	PCC
POINT OF TANGENCY/ END OF CURVE	PT
RADIUS POINT/ CENTER OF ARC	RP
LAND DEALT WITH BY THIS PLAN BOUNDED THUS:	— — — — —
LAND DEALT WITH BY THIS PLAN BOUNDED THUS:	— — — — —
UTILITY POLE/ TELEPHONE POLE/ ANCHOR POLE	⊙
CITY WIRE AND ANCHOR	⊙
CIVIC NUMBER	123
HECTARE	ha
SPOT ELEVATION (m)	12.34m
MANHOLE SANITARY	⊙
MANHOLE STORM	⊙
CATCHBASIN	⊙
SLUICE BOX	⊙
WATER VALVE	⊙
SHUTOFF VALVE/ WATER STOP	⊙
VALVE CHAMBER	⊙
FIRE HYDRANT (BENCHMARK)	⊙

- NOTES:**
- AZIMUTHS AND COORDINATES WERE DERIVED FROM SERVICE NEW BRUNSWICK'S HIGH PRECISION CONTROL NETWORK, NAD83(CSRS), REFERENCED TO MONUMENT 28155 (HPN).
  - THE SCALE FACTOR USED IS EQUAL TO 1.000017.
  - THE DOCUMENT NUMBERS REFERRED TO ON THIS PLAN ARE THOSE OF THE APPLICABLE COUNTY REGISTRY OFFICE.
  - AZIMUTHS ARE ROUNDED TO THE NEAREST 01".
  - CERTIFICATION IS NOT MADE AS TO LEGAL TITLE, BEING THE DOMAIN OF A LAWYER, NOR TO THE ZONING AND SETBACK BY-LAWS OR REGULATIONS, BEING THE DOMAIN OF THE DEVELOPMENT OFFICER.
  - CERTIFICATION IS NOT MADE AS TO COVENANTS SET OUT IN THE DOCUMENT(S), NOR TO THE LOCATION OF ANY UNDERGROUND SERVICES AND/ OR FIXTURES, PERMANENT OR OTHERWISE.

- PURPOSE OF PLAN:**
- TO AMEND LOT 91-1 (PID 70235213) ON PLAN 18422 REGISTERED SEPTEMBER 30, 1991.
  - TO CREATE LOT 21-1 FOR RESIDENTIAL BUILDING PURPOSES.
  - TO CREATE LOT 21-2 TO ACCOMMODATE EXISTING CONDITIONS.
  - TO CREATE A 5.0m WIDE PUBLIC UTILITY EASEMENT, PURSUANT TO SECTION 5, REGULATION 84-217, COMMUNITY PLANNING ACT, 2017, SHOWN THUS: — — — — —

AMENDING SUBDIVISION PLAN  
**RONALD MacDONALD**  
**SUBDIVISION UNIT 1**  
 AMENDING SUBDIVISION PLAN 18422  
 LOCATED ON THE EAST SIDE OF  
 HOLTON LANE  
 LUTES MOUNTAIN  
 PARISH OF MONCTON  
 COUNTY OF WESTMORLAND  
 PROVINCE OF NEW BRUNSWICK



DRAWN BY: C. SAULNIER P.Tech CHECKED BY: WD

**SURVEYOR'S STATEMENT:**

I, WARREN E. DAIGLE N.B.L.S., DO HEREBY CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND ABILITY THIS PLAN CORRECTLY DEPICTS ANY RESEARCH, FIELD WORK AND COMPUTATIONS UNDERTAKEN FOR THIS PROJECT.

DATE: MAY 27, 2021 **TENTATIVE** N.B.L.S.  
 WARREN E. DAIGLE N.B.L.S.

SURVEYED BY: WARREN E. DAIGLE N.B.L.S. # 306  
 FIELD SURVEY COMPLETED: MAY 24, 2021

**PUBLIC UTILITY EASEMENT(S) APPROVAL**

PURSUANT TO SECTION 5 OF "DESIGNATED EASEMENTS REGULATION" 84-217 OF THE COMMUNITY PLANNING ACT, 2017, THE PUBLIC UTILITY EASEMENT(S) ON THIS PLAN SUBDIVIDED HEREON AND DO HEREBY GRANT APPROVAL TO THIS PLAN, AS OUR INTERESTS APPEAR.

DARLENE THERESA SMITH (PID 70235213)  
 KEVIN WAYNE SMITH (PID 70235213)  
 NICHOLAS RYAN SMITH (PID 70235213)

**PROPERTY INFORMATION**

DEED/TRANSFER TO DARLENE THERESA SMITH KEVIN WAYNE SMITH NICHOLAS RYAN SMITH

REGISTERED: JUNE 22, 2020 INSTRUMENT: 40171036

PID: 70235213 LOT: 91-1, PLAN: 18422

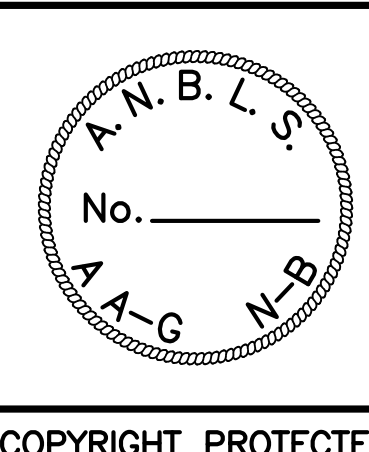
**OWNER'S STATEMENT**

WE, THE UNDERSIGNED, DO HEREBY CERTIFY THAT WE ARE THE REGISTERED OWNERS OF THE PROPERTY BEING SUBDIVIDED HEREON AND DO HEREBY GRANT APPROVAL TO THIS PLAN, AS OUR INTERESTS APPEAR.

DARLENE THERESA SMITH (PID 70235213)  
 KEVIN WAYNE SMITH (PID 70235213)  
 NICHOLAS RYAN SMITH (PID 70235213)

**DEVELOPMENT OFFICER'S APPROVAL STAMP**

**REGISTRY OFFICE STAMP**



**DAIGLE SURVEYS LTD**  
 1090 COVERDALE ROAD, RIVERVIEW, NB E1B 5G5  
 TELEPHONE: (506) 387-4073 FAX: (506) 387-7926

Citation: MacDonald v. Greater Moncton P.D.C., 2002 NBAPAB 32

Date: 20020909  
Docket: 20020909

PROVINCE OF NEW BRUNSWICK ASSESSMENT  
AND PLANNING APPEAL BOARD  
REGION ONE

BETWEEN:

**Ronald MacDonald,**

Appellant

and

**Development Officer, Greater Moncton  
Planning District Commission,**

Respondent

Board: Scott R. MacGregor, Chairman  
Maurice Gallant, Member  
Sib Preston, Member

Appearances: For the Appellant: Ronald MacDonald

For the Respondent: Gordon Locke

### **DECISION**

This hearing comes before the Board as a result of a Notice of Appeal (Form 1), dated May 23, 2002 wherein the Appellant appeals the refusal of the Respondent to approve a tentative subdivision *plan submitted for his* property at Lutes Mountain in the County of Westmorland.

The hearing took place on September 5, 2002 at Moncton, New Brunswick and after hearing from the parties and upon due deliberation, the Board made the following decision.

FACTS:

The Board admitted the following documents as Exhibits, which became part of the hearing record.

Exhibit A-1 Notice of Appeal dated May 23, 2002

Exhibit R-1 Notice of Decision dated July 2, 2002

By way of preliminary matters, and in the practice of this Board, the Appellant was questioned as to the statutory provisions relied upon in bringing the appeal before the Board. This is done to establish both the procedure to be followed, in light of the provisions of Sec. 7 of the *Provincial Planning Appeal Board Regulation*, and also to ensure a valid basis for appeal is not defeated through technical irregularity.

In this regard, it was clear that the appropriate ground for appeal, which is an appeal of a decision to refuse a tentative subdivision plan, was under the provisions of Sec. 86(2)(d) of the *Community Planning Act*.

Support for this opinion that Sec. 86(2)(d) is the proper basis for appeal when the issue is the refusal of a plan, is found in *Fairvale (Village) v. Solid Woodworks Ltd. (Bankrupt)*, (1988) 83 N.B.R. (2d) 166 and *Madawaska Planning Commission v. Provincial Planning Appeal Board and Grondin*, (1987) 72 N.B.R. (2d) 214.

The Appellant is the owner of a parcel of land on the north side of Briggs Cross Road at Lutes Mountain in Westmorland County, just north of the Moncton city limits. It contains approximately 9 hectares of land and is illustrated on the plan of lands in Exhibit R-1.

The Appellant decided to subdivide this property, and to that end retained the services of Brian M. Pettipas, a licensed New Brunswick land surveyor, to prepare a subdivision plan. This plan, referred to as "Tentative Plan Unit No. 2, Subdivision Plan, Ronald MacDonald Subdivision" proposed the creation of 3 building lots, a Parcel "A" of lands to be annexed to an adjacent landowner, and a 5.0 metre wide joint utility easement.

The plan was submitted to the GMPDC on January 28, 2002 along with a form entitled "*Application For Subdivision Approval* ", signed by the Appellant.

This plan of subdivision is regulated by Regulation 80-159 to the *Community Planning Act*, which is applicable throughout the Province, except to a city or town, or a village which has a subdivision by-law in effect (Sec. 3(2)).

The area in question does not fall within any of these exceptions.

Sec. 6(1) of this Regulation, known as the *Provincial Subdivision Regulation*, provides;

**6(1)** Every lot, block and other parcel of land in a proposed subdivision shall abut

- (a) a street owned by the Crown, or
- (b) such other access as may be approved by the commission as being advisable for the development of land.

The authority of the Development Officer results from Sec. 7 of the same Regulation.

It states:

7(1) Subject to subsection (2), the development officer may approve a subdivision plan.

7(2) The development officer shall not approve a subdivision plan if, in his opinion and in the opinion of the commission,

- (a) the land is not reasonably suited or cannot be economically suited to the purpose for which it is intended or may not

reasonably be expected to be used for that purpose within a reasonable time after the plan is approved, or

- (b) the proposed manner of subdividing will prejudice the possibility of further subdividing the land or the convenient subdividing of adjoining land.

Although not required by Regulation, the Respondent asked the Department of Transportation for their input on the tentative plan.

Gary M. Hallett, Manager of Corridor Management, commented:

"The existing 20 m. wide "access" shown on the above mentioned tentative plan intersects the Briggs Cross Road at a location that does not negatively impact the traffic movements along the road and the maintenance activities performed by the Department of Transportation. The Briggs Cross Road is designated for regular maintenance services by the Department of Transportation.

If the Greater Moncton Planning District Commission approves the existing access as being advisable for the development of land and the proposed lots are approved, the Department of Transportation recommends that the surveyor mark the "access" shown on the plan with the words "**Private Access**" and put the following note on the final subdivision plan before it is approved."

The note referred to had already been placed on the Tentative Plan in question.

Mr. Hallett went on to add:

"The private "access" is not suitable in its present form to be developed as a public street for the following reasons:

- ! The layout of this development does not include a second entrance to the public highway. A second entrance maybe required should the cul-de-sac exceed the maximum allowable length of 365 in.
- ! The "access" does not terminate at a suitable turning area.
- ! The existing 20 m. wide "access" leading to the Briggs Cross Road had not been constructed to meet the public street construction standards specified in the guide.

The Department of Health - Public Health Inspection Services, had already commented favourably on the Appellant's proposed subdivision as to lot size and soil type.

As is policy, a Staff Report was prepared for the GMPDC meeting which would take up the matter of the Appellant's tentative plan. This Report gave background to the authority of the commission to approve "such other access" if they found it "advisable for the development of land".

It also noted the favourable attitude of the Department of Health and Department of Transportation, toward the proposed subdivision.

It was the recommendation of Staff that the access be approved as being advisable for the development of land. The report is dated May 7, 2002 and is signed by Murray Godfrey for the Planning Director, Greater Moncton Planning District Commission.

On May 15, 2002, the GMPDC met in regular session to consider, among other matters, the Tentative Subdivision, and access approval, for the Appellant.

It appears from the Minutes of the meeting that the commissioners were concerned about future demands by purchasers of the proposed lots that this "private access" be serviced like public roads in the area.

The result was that the application for the tentative subdivision was refused. It is from this refusal that the Appellant now appeals.

**DECISION:**

As with any administrative tribunal, this Board is a creature of the legislature and as such has only as much authority as the legislation provides.

In the instant case, this matter comes before the Board pursuant to Sec. 86(2) of the *Community Planning Act* which provides:

86 (2) Subject to subsection (3), any person including the Director may appeal to the Board if he alleges that

(d) The refusal of the development officer to approve a tentative plan under paragraph 44(1)(j) or a subdivision plan under paragraph 44(1)(k), or to approve an instrument for registration in the registry office under paragraph 44(1)(1) or to exempt an instrument under section 48, resulted from misapplication of this Act or a subdivision by-law hereunder.

Although Sec. 44(1) refers to a "subdivision by-law", we are satisfied that provision also covers a "subdivision regulation", which is the legislation covering the land use in the subject appeal.

It is clear from the evidence before this Board that the Respondent refused to approve a tentative plan under paragraph 44(1)(j), and therefore the Board has jurisdiction to hear this appeal.

The sole basis upon which an appeal may be brought forward under Sec. 86(2)(d) is "misapplication". It is the only ground of appeal referred to in that subsection and will be the only ground for appeal considered by this Board.

The onus of demonstrating there has not been any "misapplication", falls upon the Respondent. Sec. 7 of Regulation 84-59 to the *Community Planning Act* provides:

7. The onus of supporting an appeal shall be upon the person appealing in the case only of this appeal falling within subparagraph 86(2)(a)(ii), (b)(ii) or (c)(ii) of the Act.

The Provincial Planning Appeal Board, in the case of *Jean-Guy Arsenault and Susan Arsenault v. Town Planning Commission for the Greater Moncton Planning District, a*

decision dated May 10, 1989, had set out minimum requirements for those matters that must be explained or discussed when "misapplication" has been alleged.

Furthermore, it must be added that since the planning commissions have been given legislative authority to exercise their judgment and therefore their "opinion", it would seem only natural that the Board be aware of the information that was before the planning commission, and the matters which were discussed, and the tone and context in which they were discussed.

This being so, it appears then to make common sense that a member of the planning commission, who was present at the meeting in question, and who participated with other commission members in the decision-making process and discussion, be present to be examined by the Board and the Appellant on the issue of misapplication.

There is all the more reason for such attendance when the decision of the planning commission is contrary to the recommendations in a Staff Report, the product of the work of trained professionals.

It is clear the Board has legislative authority to examine how planning officials reach their decisions. In *Acadian Peninsula District Planning Commission and Robert Branch v. New Brunswick Provincial Planning Appeal Board and Fernande Dugas*, (1997) 184 N.B.R. (2d) 241, at page 268, Deschênes, J. had this to say about the issue of a planning commission which had interpreted how to measure the height of a fence:

"As we saw earlier, the APDPC granted the building permit based on its interpretation of the municipal by-law and of certain provisions of the *Act*. Consequently, the Appeal Board had to decide whether or not the APDPC had misinterpreted these provisions and if the permit had been granted as a result of a "misapplication" of the *Act* or municipal by-law. In my view, this duty lies at the heart of the Appeal Board's jurisdiction since this is specifically the mandate the Legislature had given the Board. In short, it

is for the Appeal Board to resolve these questions because the Legislature has asked it to."

Furthermore, the role and authority of this Board was examined in the appeal of that case to the New Brunswick Court of Appeal, reported as *Acadian Peninsula District Planning Commission and Doctor Robert Branch v. The New Brunswick Provincial Appeal Board and Fernande Dugas*, (1998) 190 N.B.R. (2d) 137. At page 152 of the decision, Bastarache, J.A. (as he then was) stated:

"...the jurisdiction of an administrative tribunal extends to questions of law, and in particular to the interpretation of its enabling Legislation and related statutes. This is all the more obvious in the case of a specialized tribunal like the Provincial Board, whose specific mandate is to interpret and apply the Act and the bylaws adopted thereunder."

In the instant case, Gordon Locke, who is the Senior Development Officer with the GMPDC appeared as agent of the Respondent, and testified on its behalf. He testified in generalities as to the procedure to be followed, but in fact he had no specific knowledge of the Staff Report, as he did not prepare it, nor did he "sign o f' on it.

Also, Mr. Locke was not present at the meeting of May 15, 2002 at which the application for the approval of the Tentative Subdivision Plan was considered. He has no knowledge as to what took place there, other than what is contained in the minutes of the meeting, part of the contents of Exhibit R-1.

Mr. Locke testified there was no evidence Mr. MacDonald was notified that his application was going to be discussed, and a final decision made, at the meeting of May 15, 2002. He further testified there was no evidence Mr. MacDonald was ever notified as to why his application was turned down.

On the issue of the failure of the Planning Commission to notify Mr. MacDonald of the meeting, and to advise he had a right to be heard at the meeting, a very thorough decision of the

Provincial Planning Appeal Board in *Murphy v. The Greater Moncton Town Planning Commission & Nu-East Corporation*, [1991] P.P.A.B.D. (April), has established that a clear "misapplication" exists where the Appellant was not given the opportunity to present his or her case before the commissioners. Such an omission offends all principles of *natural justice*.

Mr. Locke testified it is the policy of the GMPDC that any time a final determination is to be made of an application, notice of the meeting at which this is to be considered is given to the applicant.

The failure to notify Mr. MacDonald, and as a result him not being able to speak to the application, is a clear "misapplication".

Furthermore, the law requires that the Respondent must provide a detailed explanation of the process followed to demonstrate there has not been a "misapplication". It is a total lack of respect for this Board that a person is sent to represent a planning commission who has so little knowledge of the subject matter, was not present at the planning commission meeting, and is a member of the staff which made a recommendation that is contrary to the decision of the planning commission.

In this case, not only has the Respondent not failed to demonstrate there was not a "misapplication", all evidence points to about as clear-cut a case of "misapplication" as we would hope to ever have before the Board.

Because of this "misapplication", the Appeal is hereby granted.

The *Community Planning Act* provides the following remedies:

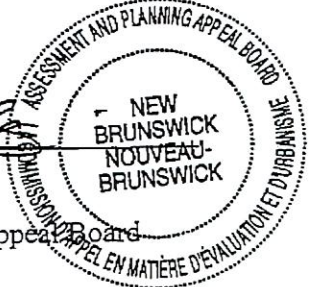
**Sec. 87(4)** With respect to an appeal under paragraph 86(2)(d), the Board may

- (a) dismiss it; or
- (b) order the development officer to approve, subject to such terms and conditions as the Board considers necessary to ensure consistency with this Act or a bylaw or regulation hereunder, the tentative or subdivision plan, or to approve the instrument for registration in the registry office or to exempt it.

In the instant case, the Development Officer for the Greater Moncton Planning District Commission is ordered to approve the Tentative Plan submitted by the Appellant, subject to any and all standard approvals from government departments and agencies to ensure consistency with this Act.

Dated at Fredericton, New Brunswick this 9<sup>th</sup> day of September, 2002.

  
Scott R. MacGregor  
Chairman  
Assessment and Planning Appeal Board



Subdivisions using Private Access Position Paper  
September 2014

Background

The Provincial Subdivision Regulation has been adopted to regulate Subdivisions in the Unincorporated Areas of the Province as well as in Municipal jurisdictions within the Province who have chosen not to enact their own Subdivision By-law. When subdividing land which is governed by Provincial Subdivision Regulation the following section applies:

- “6(1) Every lot, block and other parcel of land in a proposed subdivision shall abut
- (a) a street owned by the Crown, or
  - (b) such other access as may be approved by the regional service commission as being advisable for the development of land.”

Section 6(1)(a) can take two forms: (1) lots created on an existing public road, and (2) subdivision involving the creation of a new public road. Subdivisions which result in lots being created along an existing public road are relatively straight forward, requiring just the approval of the Development Officer.

Subdivisions which require the creation of a new public road/street are more complex. A street owned by the Crown (a public road) in the Unincorporated area is a road that is owned and maintained by the Department of Transportation and Infrastructure (DTI). Any necessary upgrades to the road and maintenance such as snow removal, is the responsibility of the Province. *Everyone* is entitled to use and drive on a public road whether you are a property owner accessing your property or a member of the public traveling between locations. As well, you can expect certain public services when you own property on a public street such as garbage pickup, school bus service, emergency response, etc.

Figure 1 is an example of a proposed new public road. When a new road is proposed, the Planning Review and Adjustment Committee are required to recommend the location of the new public road to DTI. The regulation provides criteria for the assessment of the recommendation including consideration of the topography, suitability for intended use, angle of intersection, convenient access and further subdivision of adjoining land (s. 5(4) Provincial Subdivision Regulation). The Subdivision Regulation also establishes minimum requirements for the road such as minimum widths, lengths and grade (s. 5). The authority legislated to give final approval of a new public roads is the Minister of Transportation.

- (b) such other access as may be

Creation of Lots on a New Public Street

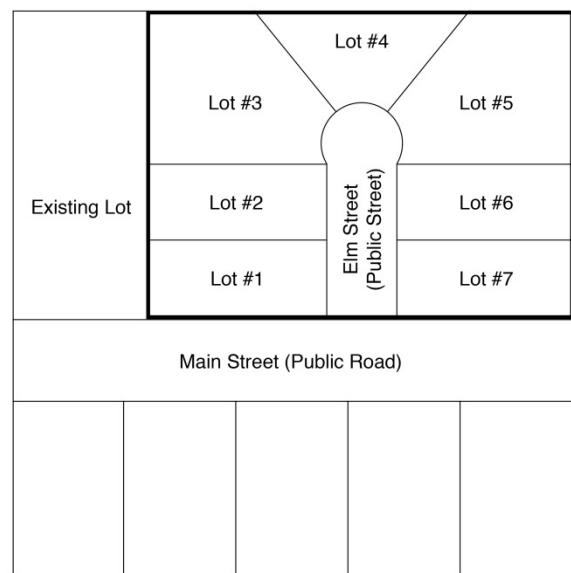


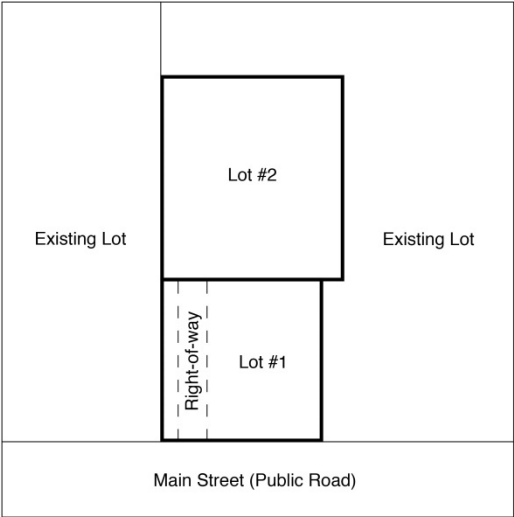
Figure 1

approved by the regional service commission as being advisable for the development of land.”

When a subdivision of land involves land which does not have direct access to a public road, Section 6(1)(b) of the Regulation may be utilized. This section of the Regulation should be used with caution, as it results in the creation of land locked property. As this section involves special consideration to be given to permit the creation of a lot by an access which is deemed “advisable for the development of the land”, these subdivisions require the approval of the Planning Review and Adjustment Committee.

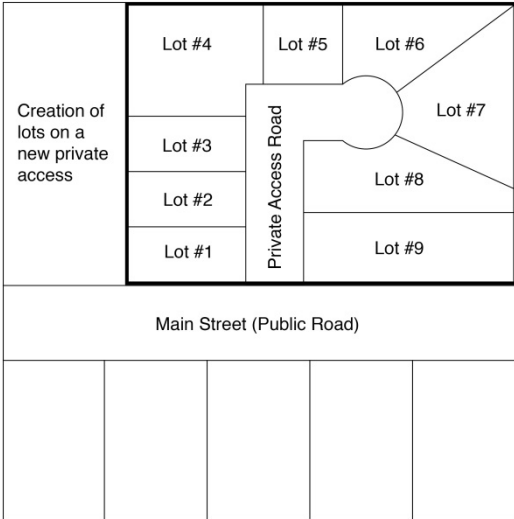
A form this type of subdivision could take is the creation of a lot with a right-of-way. A right-of-way is the legalized right to access the property by crossing another property that does not form part of the property being accessed. See Figure 2. In this diagram, lot #2 is land locked as it has no road access except for a right-of-way across lot #1. The right-of-way allows lot #2 to have access to the public road. In these subdivisions the Planning Review and Adjustment Committee must make a determination that this is “advisable for the development of the land” before the subdivision can be approved. Careful consideration should be taken by the PRAC before approving this as access disputes may arise. As well, Lot#1 now has a portion of the property which is impeded by a restriction which affects its future development as this right-of-way needs to remain unobstructed (i.e. no sheds, fences, tree/shrubbery).

Creation of Lot #2 by a Right-of-Way



Private accesses are also proposed under this section of the regulation. A private access, or a private road, is when lots are accessed off a road which is not owned and maintained by the Province. Most private accesses are usually owned by the developer of the subdivision, with an interest deeded to each of the landowners that access their property from it. Private Roads differ from the right-of-way in figure 2, as the private road becomes a separate parcel of land is created and held in separate ownership. They differ from roads as public services are not offered to residents who live on these roads such as clearing of snow by Department of Transportation, garbage pickup and school bus pickup. Although there are lots within the Region that are accessed by this means, this type of access creates the greatest potential for

Creation of Lots on a Private Access Road



conflict and has a number of liability issues. As this is considered “such other access as being advisable for the development of the property”, approval of this type of subdivision is the responsibility of the PRAC. Therefore, PRACs should use extreme caution when considering subdivisions proposing the use of this form of access.

The remainder of this report will focus on the position of the Staff of the Southeast Regional Service Commission regarding subdivisions proposing private access roads.

### *Private Access Road Issues*

There are many issues associated with the approval of subdivisions. Including:

- As the Regulation and Act, do not use the term private road (see further discussion in the *Interpretation* section) there are no minimum road construction standards or parameters for assessing their location/use. Therefore, lots created on a private road would be accessible on paper, but not be passable in reality. This not only poses problems regarding passage for property owners but also limits accessibility of emergency response vehicles such as ambulance, police and fire. The failure for an emergency response vehicle is not only a liability for the owner of the private road, but also those people who rely on it to access their property. The Municipality and/or PRAC may also be held liable for approving the access as being “advisable for the development of the property”.
- As ownership changes, new property owners may not be fully aware of the impediments they may encounter such as the potential inability of service vehicles (home fuel delivery, phone, construction vehicles, visitors, etc.) or that they will not have public services available curb side such as garbage pick-up or school bus pick-up.
- Conflicts/confusion arises over maintenance of the private road. Amongst property owners there may be varying opinions on what is an acceptable road condition or whether it should be cleared of snow in the winter. Who should pay for the upkeep and repairs of the road (the original developer, all property owners or those who use it in the season needing extra maintenance ie. winter snow removal is necessary). Who is liable/responsible if a visitor (invited or uninvited) sustains vehicular damage or personal injury while on a private road?
- Ownership of the private road becomes unclear/changes. Private roads are created as separate parcels of land, they are generally undersized for development and most often remain in the ownership of one individual. This can become problematic when the owner no longer has a vested interest in the subdivision (the developer has sold all of the lots) or when a person inherits the property –becoming liable and responsible for it not by their own choice. A developer may sell the lots as cottage lots with the intention of only maintaining summer passage, when owners of the lots may want to become a permanent resident or access throughout the winter. Now the developer has added maintenance costs and repair costs associated with winter clearing.
- As year round residency on private accesses are established, there is often pressure applied by the landowners to have the Province to make it a public road. The taxpayers that live on the private access often pay the same taxes as those that live on public roads, but do not receive all of the public services (snow removal, road maintenance, streetlights, garbage collection, mail service, school bus services, etc). It can be very

costly to bring these substandard roads up to Provincial road requirements, a cost that neither the general public or property owners want to incur.

- Conflicts have even been known to occur when some of the property owners would like the road to remain private (limits who has accessibility to their land) and other owners would like to have it made public.

### *Subdivision Regulation Authority of the PRAC*

Both the Community Planning Act and the Provincial Subdivision Regulation are written with the intention of ensuring that lots abut a public street (street owned by the Crown). This is evident from the onset of the Provincial Subdivision as it specifies “*Every lot, block and other parcel of land in a proposed subdivision shall abut (a) a street owned by the Crown*”. It also clearly identifies minimum criteria for the creation of public streets, as well as establishes clear parameters for PRACs when recommending approval of street locations to the Minister of Transportation. It should be clearly noted that the authority vested to the PRAC during the creation of new public roads is of a recommending nature and not as an approving body. If the local planning authorities were not provided the authority to approve the primary road network (public roads) it is unlikely that it was the intention of the legislation and regulation to give them the authority to create a secondary road network (private roads) within the Province. It is more consistent with the limited legislative authority of PRAC’s, that the intention was to permit some minor alleviation from the requirements of the regulation under exceptional circumstances such as to accommodate an existing condition, or for a public utility / Municipal use.

The PRACs have been given the authority under the Provincial Subdivision Regulation to consider approving lots and parcels which abut “(b) *such other access as may be approved by the regional service commission as being advisable for the development of land.*” The use most commonly associated with a proposed subdivision on a private access road in the unincorporated areas/rural communities is residential. From a land use planning perspective, the creation of new residential lots should protect and enhance the quality of life of the rural environment, ensure sustainable and orderly development, and provide safe access to and from lots. Any landuse which requires the use of public services or is a form of development synonymous with requiring year round access, such as residential development, needs to be serviced by an adequate public road system. This along with the liability issues listed above, mean that it is not justifiable that a private access for residential purposes could be considered as being “advisable for the development of the land”.

There is a responsibility on the part of development officers and PRACs that they are not creating conditions in which future access to lots are restricted or impeded or creating a risk to public safety. Both of these authorities do not have the expertise in the development of standards of infrastructure nor have they been given the authority to do so under the legislation. Under the CPA, the PRACs are only ever treated as a recommending body in the creation of roads and under such situations are given clear parameters for their recommendation. None of which include the requirements for the road construction standards. Therefore, staff and committee members should not be putting themselves in the position of creating inadequate infrastructure which will lead to intensifying land use conflicts in the future.

## Conclusion/Position of the Southeast Regional Service Commission

The intention of the Act and the regulation is that lots should abut a publically owned street, with some exceptions being granted to unique circumstances. The latter is demonstrated in the legislative authority given to the PRACs to consider subdivision of land which abuts “such other access as may be approved as being *advisable* for the development of land.” This section should be used sparingly and considered under exceptional circumstances such as to accommodate an existing condition. This section should not be misused to create a secondary road system, or as a low cost means of land use intensification such as residential subdivisions on a private access road. Given the liability issues and the high potential for land use conflict which arises from the creation of lots on a private road, this cannot be considered as being advisable for the development of residential land. Furthermore, it could be argued that it is a misinterpretation of the act to consider such forms of development.

As a land use authority, we are taxed with ensuring the orderly development of land and limiting land use conflict. Although every case should be considered on its own merits, there are a few key questions which need to be addressed before exercising authority under this section of the Act/Regulation:

- What is the intended purpose of the land? If it is for land use intensification and land uses which require the use of public services and year round accessibility, than it is not advisable for the development of the land to use a private road or right-of-way.
- Can a public street be built? The intention of the Act and Regulation is to have all lots accessed through a publicly owned street. Therefore, staff should not be recommending a private access road where a public road could be used.
- Are there any other tools under the Community Planning Act which would be more desirable for the development of the land? A private road, or right-of-way, is a strip of land which is owned by someone else but used by another individual to access their property. The person accessing their land by this means, simply has the “right” to pass over the land. This is where land use conflicts and liability issues arise. In situations of creating a single residential lot, it may be more desirable to create a flag lot by varying to the frontage requirements of the lot. This ensures that the travelled portion of access remains in the ownership of the individual who is accessing the lot – eliminating land use conflict and confusion over liability.
- Would the proposal be better suited for consideration under another piece of legislation? If the intention of the proposal is to create a low cost alternative to future occupants who would prefer to limit public access to their land, receive fewer public services and determine the level of maintenance and year round accessibility, than the proposal may better be suited for consideration under the Condominium Act where corporate funding could be established.

As a final note, in those situations where staff are presenting a subdivision requesting approval for lots by “such other access”, the recommendation for or against needs to expressly state why it is considered “advisable for the development of the land”. Likewise, should the PRAC decide to exercise their approval authority under this section, a reason for why the request is considered advisable needs to be clearly stated as part of the motion to approve.

# Position sur les Lotissements utilisant les accès privé

Septembre 2014

## Mise à jour

Le règlement Provincial sur le lotissement a été adopté pour gérer les Lotissement dans les territoires de la Province, ainsi que dans les administrations municipales qui ont choisi de ne pas adopter leurs propres arrêtés de lotissement. Lorsqu'un lotissement est proposé sur des terres qui sont sujet au règlement Provincial sur le lotissement, la section suivante s'applique :

*"6 (1) chaque lot, ilot ou autre parcelle de terrain d'un projet de lotissement doit donner."*

*a) sur une rue appartenant a la Couronne, ou*

*b) sur une autre voie d'accès que la commission peut approuver comme étant utile à l'aménagement du terrain.*

L'article 6(1)a) peut prendre deux formes: (1) les lots créés sur une voie publique existante et (2) Les lotissement impliquant la création d'une nouvelle rue publique. Les lotissement qui créent des nouveaux lots le long d'une rue publique existante sont relativement simples, n'exigent que l'autorisation de l'agent d'aménagements.

Les lotissements qui nécessitent la création d'une nouvelle rue publique sont plus complexes. Une rue appartenant à la Couronne (voie publique) dans les régions non-incorporée, est une route qui appartient et est gérée par le ministère des transports et des infrastructures (DTI). Les améliorations nécessaires aux routes et l'entretien, tels que l'enlèvement de la neige, sont la responsabilité de la Province. Le public a le droit d'utiliser une voie publique, que vous soyez propriétaire d'un immeuble, come accès à

vosre propriété, ou comme membre du public qui voyage entre différents sites. Ainsi, vous pouvez vous attendre à certains services publics lorsque vous possédez la propriété sur une rue publique tels que, le ramassage des ordures, service d'autobus scolaire, intervention d'urgence, etc. La figure 1 est un exemple d'une nouvelle route publique proposée. Lorsqu'une nouvelle route est proposée, le comité de révision de la planification sont tenus de recommander l'emplacement de la nouvelle route publique au Ministre. Le règlement prévoit des critères pour l'évaluation de la recommandation, y compris l'examen de la topographie, l'aptitude à l'utilisation prévue, l'angle d'intersection des rues

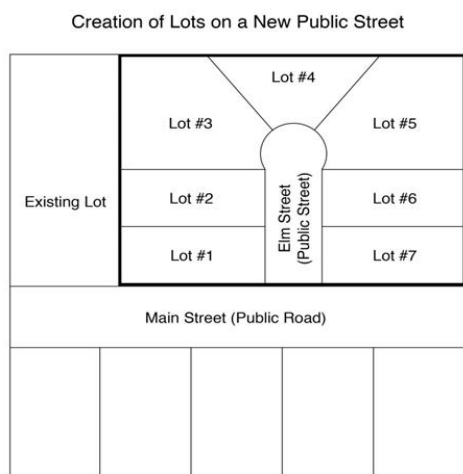


Figure 1

proposées, assurer un accès propice au lotissement proposé, le lotissement ultérieur des terrains visé par le projet, ou des terrains attenants. Le règlement de lotissement établit également des exigences minimales pour la route comme, les largeurs minimales, les longueurs d'un cul-de-sac, et les pentes des rues. L'autorité finale d'approbation d'une nouvelle rue publique est le ministre des transports.

Lorsqu'un lotissement comporte des terres qui n'a pas d'accès direct à une voie publique, l'article 6(1)b) "tel autre accès que peut approuver la commission des services régionaux comme étant utile à l'aménagement du terrain" du règlement peuvent être utilisées. Cet article devrait être utilisé avec prudence, car il entraîne la création de propriété de terres entouré (land locked). Comme cette section demande une attention particulière afin de permettre la création d'un lot par un accès qui est jugé «souhaitable pour le développement de la terre», ces subdivisions sont soumis à l'approbation du Comité de Révision de la Planification.

Ce type de lotissement pourrait prendre la forme d'un lot avec un droit de passage. Un droit de passage est un droit d'accès accordé par le propriétaire à une autre personne. Voir la Figure 2. Dans ce diagramme, lot #2 est une terre entouré qu'il n'a aucun accès routier à l'exception d'un droit de passage

sur le lot #1. Le droit de passage permet le lot #2 d'avoir accès à la voie publique. Dans ces lotissement, le Comité de Révisions de la Planification doivent rendre une décision que c'est « souhaitable pour le développement du terrain » avant que le terrain peut être créé. Un examen sévère devrait être pris par le Comité avant d'approuver en raison de possibilité de conflits qui peuvent survenir. Le Lot #1 a maintenant une partie de sa propriété qui est pris par une restriction qui affecte son développement futur du fait que ce droit de passage doit rester dégagée (sans abris, clôtures, arbres/arbustes).

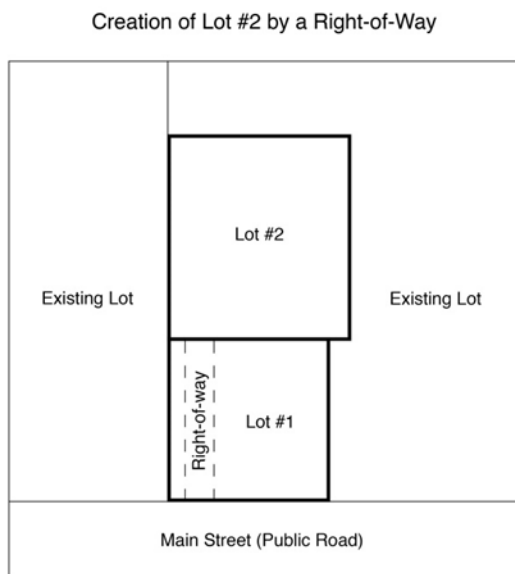


Figure 2

Les accès privés sont également prévues au présent chapitre du règlement. Un accès privé, ou un chemin privé, est quand plusieurs lots ont

accès sur une route qui n'est pas appartenue où entretenue par la Province. Les accès privés sont normalement la propriété du développeur du projet, avec possiblement un accord/portion de titre cédé à chacun des propriétaires qui accèdent à leur propriété par l'accès privé. Les chemins privés diffèrent du droit de passage sur la figure 2 car le chemin privé devient une nouvelle parcelle de terre créée et qui est tenue come propriété distinct. Ils diffèrent des rues publics car les services publics ne sont pas offerts aux résidents qui vivent sur ces routes tel que, le déneigement des rues, le ramassage des ordures, et l'autobus scolaire. Bien qu'il existe dans la région plusieurs lots qui sont accessibles par ces moyens, ce type d'accès crée le plus gros potentiel de conflit et a un certain nombre de questions de responsabilité. Du fait que ces accès sont considérés comme « tel autre accès comme étant souhaitable

pour le développement du terrain», l'approbation de ce type de subdivision est la responsabilité du Comité. Par conséquent, le Comité devrait être très prudent lorsque l'on considère les subdivisions proposant l'utilisation de ce formulaire d'accès.

### Problèmes de chemin d'accès privé

Il y a plusieurs questions liées à l'approbation des lotissements. Y compris :

- Comme la Loi n'utilise pas le terme chemin privé (voir la discussion ultérieure dans la section *interprétation*) il n'y a aucune norme de construction permettant d'évaluer leur emplacement/utilisation. Par conséquent, les lots créés sur une route privée seraient accessibles sur papier, mais possiblement pas être utilisables en réalité. Non seulement cela pose des problèmes concernant le passage aux propriétaires, mais limite également l'accessibilité des véhicules d'urgence tels que des ambulanciers, policiers et pompiers. L'accès pour un véhicule d'intervention d'urgence n'est pas seulement une obligation pour le propriétaire de la route privée, mais aussi ceux qui comptent sur elle pour accéder à leur propriété. Le Comité aussi peut être tenu responsable en approuvant l'accès comme étant «souhaitable pour le développement de la propriété».
- Après la vente de terrain, les nouveaux propriétaires ne sont pas toujours conscients des obstacles qu'ils peuvent rencontrer comme l'incapacité potentielle des véhicules de service (livraison de carburant maison, téléphone, véhicule de travail, visiteurs, etc.) ou qu'ils n'auront pas de services publics tels que le ramassage des ordures ou l'autobus scolaire.
- Conflits/confusion survient au cours de l'entretien de la voie privée. Entre propriétaires ils peuvent avoir des différentes opinions sur ce qui est une condition de la route acceptable ou si le déneigement est nécessaire. Qui doit payer pour l'entretien et les réparations de la route (le développeur original, tous les propriétaires fonciers ou ceux qui l'utilisent dans la saison qui ont besoin d'entretien supplémentaire. Qui est responsable/responsable si un visiteur (invités ou sans y être invité) subit des dommages à ses véhicules ou se blesse sur une route privée ?
- Les chemins privés sont créés sous forme de parcelles distinctes, ils sont généralement trop petits pour le développement et plus souvent demeurent la propriété d'un individu. Cela peut devenir problématique lorsque le propriétaire n'a plus d'intérêt direct dans le projet (le développeur a vendu tous ces lots) ou lorsqu'une personne hérite de la propriété (devenir responsable pas de leur propre choix. Un développeur pourrait aussi vendre les lots que pour des usages saisonniers avec l'intention de maintenir seulement un passage l'été mais les propriétaires des lots pourraient vouloir devenir des résidents permanents avec accès pendant la période hivernale. Maintenant, le développeur a des frais ajoutés d'entretien sans compensation.
- Une fois que les résidences toute l'année sont établies sur un accès privé, il y a souvent des pressions exercées par les propriétaires afin que la Province rende le chemin public. Les contribuables

qui vivent sur l'accès privé souvent paye les mêmes taxes que celles qui vivent sur les voies publiques, mais ne reçoivent pas tous les services publics (dénégement, entretien des routes, lampadaires, collection d'ordures, service de courrier, services d'autobus scolaires, etc.). Il peut être très coûteux de modifier ces routes inférieures, pour les amener aux normes provinciales, un coût que ni les propriétaires ou le public en générales souhaitent subir.

- Des conflits peuvent aussi se produire lorsque certains des propriétaires préfèrent que la route demeure privé (limites qui a accès à leurs terres) et autres propriétaires voudraient qu'elle soit rendue publique.

### Autorité du Comité

La Loi sur l'urbanisme et le règlement Provincial sur le lotissement sont rédigés dans le but de veiller à ce que les lots aboutissent sur une rue publique (rue de la Couronne). Cela est évident dès le début de le règlement provinciale des lotissements, comme il le précise «*chaque lot, ilot ou autre parcelle de terrain d'un projet de lotissement doit donner (a) sur une rue appartenant à la Couronne*». Elle identifie aussi clairement les critères minimaux pour la création des voies publiques, ainsi qu'établit des paramètres clairs pour le Comité lors d'une recommandation d'approbation d'emplacements des rues au ministre des transports. Il faut bien noter que le pouvoir conféré aux Comité lors de la création de nouvelles voies publiques est de nature recommandation et pas une approbation. Si les autorités locales de planification n'ont pas été fournies le pouvoir d'approuver le réseau routier primaire (voies publiques), il est peu probable que l'intention de la loi est de donner le pouvoir de créer un réseau de routes secondaires (routes privées) dans la Province. Il est plus probable, donnant les limites législative du Comité, que l'intention était de permettre certains atténuation mineure des exigences du règlement en vertu exceptionnelle tel en ce qui concerne les circonstances d'accommoder une condition existante, ou pour une entreprise de service public / municipaux.

Les Commission d'aménagements ont reçu l'autorité d'approuver des lots et parcelles donnant sur «une autre voie d'accès que la commission peut approuver comme étant utile à l'aménagement du terrain.» L'utilisation le plus fréquemment associée à un projet de lotissement sur un accès privé se trouve dans les endroits ruraux et non incorporé, pour usage résidentielle. D'une perspective de planification, la création de nouveaux lots résidentiels devrait protéger et améliorer la qualité de vie du milieu rural, assurer un développement durable et ordonné et fournir un accès sécuritaire aux propriétaires. Toute occupation du sol qui nécessite l'utilisation des services publics ou est une forme de développement exigeant l'accès quatre saisons, telles que le développement résidentiel, doit être desservi par un réseau routier public adéquat. En considérant tous les problèmes énuméré ci-dessus, on doit dire que ce n'est pas justifiable qu'un accès privé pour fins d'usage résidentielles pourrait être considéré comme "souhaitable pour le développement de la terre".

Il y a une responsabilité de la part des agents d'aménagement et les Commission qu'ils ne doivent pas créer des conditions dont l'accès futur aux lots sera limité ou créer un risque pour la sécurité publique. Ces entités n'ont pas l'expertise dans l'élaboration de normes d'infrastructure ni ont-ils été donnés l'autorité de le faire en vertu de la loi. Les Comité sont traités comme un corps recommandant la création de routes publiques, et en vertu de telles situations, sont donnés des paramètres clairs pour les recommander. Ils ne sont pas responsables des exigences des normes de construction de route. Les membres du personnel et le Comité ne devraient pas se mettre eux-mêmes en position de créer une infrastructure inadéquate qui conduira à l'intensification des conflits d'usage de terrains dans le futur.

### Conclusion/Position de la Commission Régionale au sud-est

L'intention de la Loi, est que chaque lot doit aboutir sur une rue publique, avec quelque exception sous condition unique démontré dans l'autorité législative donnée aux terrains qui aboutissent " sur une autre voie d'accès que la commission peut approuver comme étant utile à l'aménagement du terrain." Cette section doit être utilisée avec précaution et seulement dans des circonstances exceptionnelles. Cette section ne devrait pas être utilisée pour créer un système de routes secondaires, ou comme un moyen abordable d'intensification d'occupation des sols, tels que des lotissements résidentiels sur une route d'accès privée. Étant donné les questions de responsabilité et le fort potentiel de conflit d'utilisation de terres qui découle de la création de lots sur un chemin privé, cela ne peut pas être considérée comme souhaitable pour le développement de terrains résidentiels. On pourrait même prétendre que c'est une mauvaise interprétation de la Loi de considérer ces formes de développement.

Comme une autorité d'utilisation des terres, nous sommes mandater d'assurer le développement ordonné des terres en limitant les conflits d'utilisation. Bien que chaque cas doive être envisagé pour ses mérites, il y a quelques questions clé qui doivent être abordées avant d'exercer le pouvoir en vertu de cet article de la loi/règlement :

- Quelle est l'usage intentionné? Si c'est pour intensification d'utilisation de terres qui nécessitent des services publics et l'accessibilité quatre saisons. On ne doit pas conseillé pour le développement de la terre en utilisant un chemin privé ou droit de passage.
- Peut-on construire une rue publique ? L'intention de la Loi et le règlement dit que tous les lots doivent être accessibles via une rue publique. Donc, le personnel ne devrait pas recommander un chemin d'accès privé, quand une voie publique peut être utilisée.
- Existe-t-il d'autres outils en vertu de la Loi sur l'urbanisme de la communauté qui serait plus souhaitable pour le développement de la terre ? Un chemin privé, ou droit de passage, est une bande de terre qui appartient à quelqu'un mais qui est utilisé par une autre personne pour accéder à leur propriété. Une personne accédant à leurs terres par ce moyen, a tout simplement le « droit » de passer sur la terre. C'est d'où surgissent des conflits d'usage de terres et les questions de responsabilité. En

cas de création d'un terrain résidentiel unique, il peut être préférable de créer un lot de forme « drapeau » en faisant déroger les exigences de la façade du lot. Cela garantit que la partie servant d'accès reste la propriété de la personne qui accède au lot – éliminant les conflits d'utilisation terrestre et de la confusion sur la responsabilité.

- Est-ce que la proposition serait mieux adaptée aux fins d'examen en vertu d'un autre acte législatif? Si la proposition est de créer une alternative peu coûteuse aux futurs occupants et qu'ils préféreraient limiter l'accès public à leurs terres, recevoir moins de services publics et déterminer le niveau d'entretien et d'accessibilité toute l'année, la proposition peut mieux convenir aux fins d'examen en vertu de la Loi sur les condominiums où les responsabilités financières retombe sur une corporation.

Comme note finale, dans les cas où le personnel présentent un lotissement demandant l'approbation pour un lot sur « autre accès », la recommandation pour ou contre doit bien préciser pourquoi il est ou n'est pas considéré comme « souhaitable pour le développement de la terre ». De même, une raison de pourquoi la demande est considérée comme souhaitable par le Comité doit être clairement indiquer dans le cadre de la motion d'approbation.