

To: **Antigonish Planning Advisory Committee
Antigonish County Council**

From: **Planning Staff (EDPC)**

Date: **January 29, 2013**

Reference: **Amendments to the *Subdivision By-law for the Municipality of the County of Antigonish* regarding private roads and privately built public streets and services**

Recommendation:

That Council **approve** amendments to the *Subdivision By-Law for the Municipality of the County of Antigonish* to:

- 1.) allow private roads in areas serviced by municipal water only, and require these private roads to be brought to public street standards in order to be eligible for municipal sewer extension,
- 2.) require new private roads accessing six (6) or fewer lots to be designed by a licensed professional engineer, and
- 3.) increase the length of time a maintenance bond must be posted for privately constructed public streets or services from a period of twelve (12) months to a period of twenty-four (24) months.

Discussion:

The first proposed amendment is in two parts and regards the fact that private roads are currently not permitted in serviced areas or areas that have access to the municipal water and/or sewer system. The first part of the amendment would allow the construction of private roads in areas where municipal water (but not sewer) services are available. The second would require that these private roads be brought up to municipal public street standards in order for municipal sewer services to be extended to them. In the present situation, a developer cannot create a private road subdivision in an area serviced only by municipal water. With the proposed amendment the developer would be permitted to create a private road subdivision serviced by municipal water, but would be required to upgrade the private road to public street standards in order for public sewer to be extended to it. Authorization for this amendment is found in Section 271 (4) (b) of the Municipal Government Act (MGA), which permits municipal subdivision by-laws to “regulate or prohibit subdivisions on private roads in all, or part, of the municipality.” Further, Section 271 (3) (g) permits municipal subdivision by-laws to include “requirements for the design and construction of streets, private roads, wastewater facilities, stormwater systems, water systems and other services.”

The second proposed amendment regards private roads that provide access to six (6) or fewer lots. Currently these roads are not required to be designed or constructed according to the standards set for other private roads. The purpose of the proposed amendments is to ensure that the proposed design of the private access road meets the standards set out in the Subdivision By-law. The amendments would only require the private road to be designed – the road would still be waived the requirement to be constructed. This would help protect the developer, landowner, and Municipality from potential future costs of reconfiguring the road if eventually constructed. The amendment would require any such private road to be designed by a licensed professional engineer in accordance with existing design requirements for proposed municipal public streets. Section 271 (3) (d) of the MGA authorizes municipal subdivision by-laws to include “provisions allowing a waiver of certain requirements of the by-law and the circumstances in which a waiver may be allowed.” This amendment would continue to permit the waiver of construction requirements (but not the waiver of design requirements) for private roads accessing six (6) or fewer lots.

The third proposed amendment would require the posting of a maintenance bond for a period of twenty-four (24) months following construction of public streets or services by a developer. Currently the bond is only required for twelve (12) months. The bond requirement is simply to ensure the developer will pay to maintain or repair the street or service if its construction proves deficient. The proposed amendment is a response to circumstances where repairs have been necessary after the twelve month period has elapsed. In those circumstances, the Municipality was forced to carry out the repairs instead of the developer. Section 271 (5) of the MGA authorizes municipal subdivision by-laws to require an applicant to provide a maintenance bond or other security for “[...] a maximum of two years from the date the services are accepted by the municipality as having been installed to the standards prescribed by the municipality.” This amendment would take advantage of the full allowable time of two (2) years, or twenty-four (24) months.

Conclusions:

The first proposed amendment would make it easier for individuals to subdivide land that is serviced only by municipal public water. With this in mind, it is reasonable for Council to expect that the amendment would result in more subdivisions and therefore more development taking place in these semi-serviced areas. However, the resulting development should be equivalent in form to that currently permitted in completely unserviced areas. The second and third proposed amendments, while they would make it more difficult for individuals to subdivide land or construct public streets or services, are intended to protect both the landowner and Municipality from future (likely unexpected) costs of upgrading or maintaining streets or services. Since Staff are of the opinion that the amendments are consistent with the provisions of the MGA regarding municipal subdivision by-laws, they recommend that Council **approve** the amendments of *the Subdivision By-law for the Municipality of the County of Antigonish*.

A By-law to Amend the Subdivision By-law for the Municipality of the County of Antigonish

The Subdivision By-law for the Municipality of the County of Antigonish is hereby amended as follows by replacing the current text with that indicated in bold italics and by inserting text indicated in italics:

1) (a) 30. NOT PERMITTED IN SERVICED AREAS

Notwithstanding any other provision of this By-law, no private roads shall be permitted in serviced areas, or areas of the Municipality that have access to the Municipal sewer and/or water system.

To be replaced with:

30. NOT PERMITTED IN SERVICED AREAS

Notwithstanding any other provision of this By-law, no private roads shall be permitted in areas of the Municipality that are depicted as serviced in Schedule "G" of this By-law, or that have access to the Municipal sewer system.

1) (b) To be inserted:

37A. PUBLIC STREET STANDARDS REQUIREMENT

All private roads approved in areas that have access to the Municipal water system will not be entitled to an extension of the Municipal sewer system unless they are brought up to public street standards in accordance with Parts 5, 6, 7, and 8 of this By-law.

2) 31. DESIGN AND CONSTRUCTION REQUIREMENTS WAIVED

Subsections 29 (1) (b) and (c) shall be waived where a private road provides access to six or fewer lots.

To be replaced with:

31. CONSTRUCTION REQUIREMENT WAIVED

Subsection 29 (1) (c) shall be waived where a private road provides access to six or fewer lots.

3) 53. PRIOR TO FINAL APPROVAL AND ACCEPTANCE BY THE MUNICIPALITY

Within thirty (30) days following completion of any public streets and services and prior to final approval and acceptance by the Municipality of any streets and services, the subdivider shall:

- (a) post a maintenance bond [...]. The bond shall be for a period of twelve (12) months and shall state that it is a guarantee against deficiencies in the construction and installation of streets and services. [...]

To be replaced with:

- (a) *post a maintenance bond [...]. The bond shall be for a period of twenty-four (24) months and shall state that it is a guarantee against deficiencies in the construction and installation of streets and services. [...]***

This is to certify that the By-law, of which this is a true copy, was duly passed at a duly called meeting of the Municipal Council of the Municipality of the County of Antigonish held on the ____ day of _____, 2013.

Given under the hand of the Municipal Clerk and under the corporate seal of the said Municipality this ____ day of _____, 2013.

Mr. Alan Bond, Municipal Clerk