

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

From: **Planning Staff (EDPC)**

Date: **April 16<sup>th</sup>, 2024**

Reference: **Review of Variance Notification Procedures and Amendments to the Richmond County Subdivision By-law**

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**Recommendations:**

1. That no change be made to the Variance notification process. No motion is required; and
2. That Council approves the proposed amendments to the *Richmond County Subdivision By-law* as laid out in Appendix B of the Staff Report that remove the term “clearly surveyed” for clarity.

**Background Information:**

On December 19, 2023, Planning Advisory Committee asked the Eastern District Planning Commission to review its variance procedure to potentially implement the use of registered mail as opposed ordinary mail to serve neighbour notifications regarding variances and to review the Richmond County Subdivision By-law and propose options to improve clarity, specifically the following terms: “right-of-way” and “clearly surveyed”.

Like many other municipal planning departments within the Province, the Eastern District Planning Commission uses the variance procedure laid out by the *Municipal Government Act (MGA)*. All Municipalities are legally required to follow the *MGA’s* variance procedure at a minimum.

**Analysis:**

***Variance Procedure Review***

A policy analysis was conducted that examined the Land Use By-laws of twenty rural municipalities (not including the other municipalities serviced by the Eastern District Planning Commission) in the Province of Nova Scotia. It should be noted that there are some municipalities that have more than one plan area (secondary plan areas) and that there is not always consistency among the policies in each plan area, similar to Richmond County. The Table in Appendix A summarizes the findings.

Of the twenty rural municipalities examined, two currently do not have planning documents for developments aside from wind turbine developments and one municipality did not mention variances in its planning documents at all. All remaining rural municipalities, the other seventeen, have sections on variances in either their Municipal Planning Strategy or Land Use By-law or both

that in some way defers to the *Municipal Government Act* regarding the process of administering a variance.

Seven of the seventeen, or approximately 40%, of the rural municipalities specifically state that the method of notification regarding variances shall be the procedure laid out by the *Municipal Government Act*. Three of these seven municipalities specify and reiterate, as per the variance procedure of the MGA, that notification will be served by ordinary mail.

Only two municipalities of the seventeen added extra procedure to the standard MGA variance procedure. In both cases, this additional policy was not about the type of mail delivery but increased the notification radius from 30 m (100 feet) to 60 m (200 feet).

The American Planning Association Rhode Island Chapter (APA -RI) published a document titled *"Better Land Use 2021: APA RI's Recommendations for Improved Land Use in Rhode Island"*. The document contains the organization's recommendations for improved efficient land-use regulation. Part H of the Process and Procedure chapter examines the use of certified mail for the delivery of planning notices. Certified mail in the US is equivalent to registered mail in Canada. The findings refer to certified mail as "more expensive and complicated" when compared to the use of other mailing options and less effective in achieving the desired public notification result. The General Assembly recommended and approved the use of mailings which eliminated the need for requiring a recipient's signature. This was because *"when no adult is home, a notification card is left in the mailbox indicating the need for the owner to pick up certified mail at the local post office. It was recognized that the actual success rate of meeting the notice requirement has decreased over the years due to a decreasing number of homes with an adult present during the day. The result has been a decreasing number of residents being notified of pending public hearings for zoning changes, variances and special use permits"* (APA -RI, 2021).

Regarding registered mail in Canada, the procedure is the same. If an adult is not home to sign for the registered mail, a notification card is left, and the mail is taken to the local post office for pickup because a signature is required. In the rural areas this is another barrier to notification. Instead of a variance notification letter being left in the mailbox at home for the property owner to pickup, they must now go out of their way to travel to the local post office. In some cases, this would potentially result in delays in arranging pickup such that they miss the timelines specified in the notice.

Finally, regardless of when the mail is received and if it is signed for or not, the variance notification letter would still be considered delivered three days after it was sent in accordance with the *Municipal Government Act*. Besides being an additional barrier for notification, registered mail costs more than ordinary mail, which places an extra financial burden on a variance applicant for an arguably inferior result.

Staff therefore recommend that there be no changes made to the variance notification process.

**Richmond County Subdivision By-law Review**

Council has several options in how they would like to address changes, if any, to the *Richmond County Subdivision By-law*:

1. *Approve the proposed amendments to the Richmond County Subdivision By-law as laid out in Appendix B of the Staff Report that remove the term “clearly surveyed” for clarity.*

In the *Municipal Government Act’s Provincial Subdivision Regulations*, there is no listed definition of “easement”, “right-of-way” or “right of-way easement”. However, Section 2(f)(iv) states:

“(f) “private road” means any road which  
...  
(iv) where not totally located within the area of land being subdivided, has an easement for right-of-way and access that is assignable and perpetual and has been clearly granted by deed, registered in the registry of deeds,  
...”

In this case, a definition for an “easement for right-of-way (and access)” is defined within the definition of “private road”. In this definition, an easement for right-of-way and access only needs to be granted by deed and registered in the Registry of Deeds. There is no mention of the easement for right-of-way and access to be “clearly surveyed”. Removing the wording “clearly surveyed” from the *Richmond County Subdivision By-law* would bring the document closer in conformity with the *MGA’s Provincial Subdivision Regulations*.

Additionally, whether a right-of-way is surveyed or not, should not be a determining factor of whether an “easement/right-of-way” exists. If an “easement/right-of-way” is in a deed, then it exists. Requiring a survey showing the “easement/right-of-way” as a determinant for an “easement/right-of-way” to be required for subdivision is an added unnecessary hurdle. It potentially removes a property owner’s legal right where an “easement/right-of-way” in a deed lawfully exists, due to a technicality in the municipal *Subdivision By-law*.

For these reasons, removing the wording “clearly surveyed” from the *Richmond County Subdivision By-law* is Staff’s recommended option.

2. *Remove the right-of-way easement requirement to subdivide a landlocked parcel altogether.*

The *Municipal Government Act’s Provincial Subdivision Regulations* originally permitted the creation of a lot from a landlocked parcel so long as each lot or lot and remainder were served by a right-of-way easement. The condition of service by right-of-way easement has since been removed. Removing the requirement of a right-of-way easement in order to create a lot from a landlocked parcel from the *Richmond County Subdivision By-law* is an option as *the Municipal Government Act’s Provincial Subdivision Regulations* has done this already.

The expectation would still be that property owners secure a right-of-way easement, but we would not require it. Removing this requirement, however, would not guarantee that the property owner secures an easement. Additionally, it would be possible for land locked lots without right-of-way easements to receive a Building/Development Permit depending on the wording of the corresponding Plan Area's Planning Documents. Going with this option may also lead to an increase in civil disputes.

While this is an option open to Council staff believe the drawbacks outweigh the benefits and therefore do not recommend this option.

3. *Add the definition of "clearly surveyed"*

"Clearly surveyed" was intended to mean an easement shown on a survey that was surveyed to the accepted standard of the day. This meaning ties the required survey to the standards and regulations of the profession while allowing for flexibility for amendments and changes over time. Defining "clearly surveyed" would also better clarify the definition and requirements of "right-of-way easement". Staff are of the opinion that the definition is already clear and, with only one exception, has been the accepted interpretation of the by-law.

4. *Keep the Richmond County Subdivision By-law unchanged*

Council may keep the *Richmond County Subdivision By-law* as it is. This option is self explanatory.

**Conclusion:**

Staff are of the opinion that the Eastern District Planning Commission's procedural policy for variance notification is standard and in line with rural municipalities within the province. Furthermore, Staff find that there appears to be little to no benefit in using registered mail for variance notification. If anything, the use of registered mail for variance notification creates more barriers for both neighbouring property owners of a development and the variance applicant.

Council has a few different options with how they could proceed from this Staff Report with respect to the *Subdivision By-law*, however staff recommend simply removing the term "clearly surveyed" from the *By-law* and replacing it with wording, consistent with the Provincial Subdivision By-law regulations, as laid out in Appendix B. This recommended amendment removes an unnecessary requirement thus cutting some of the red tape associated with land development in Richmond County.

**Proposed Motions for the Planning Advisory Committee:**

Based upon the staff recommendation, the proposed motions for PAC are:

1. *That the Planning Advisory Committee recommend that Municipal Council approve the proposed amendments to the Richmond County Subdivision By-law as laid out in Appendix B that remove the term “clearly surveyed” for clarity; and  
That Municipal Council give First Reading and schedule a Public Hearing.*

**Proposed Motions for Council:**

Based upon a positive recommendation from the PAC, the proposed motions for Council are:

FIRST READING AND SETTING A PUBLIC HEARING DATE:

1. *That Municipal Council give First Reading and schedule a Public Hearing regarding approving amendments to the Richmond County Subdivision By-law as laid out in Appendix B that remove the term “clearly surveyed” for clarity.*

SECOND READING AND APPROVAL:

1. *That Municipal Council give Second Reading and approve amendments to the Richmond County Subdivision By-law as laid out in Appendix B that remove the term “clearly surveyed” for clarity.*

**Appendices:**

Appendix A: Nova Scotia Variance Policy Analysis (20 Rural Municipalities)

Appendix B: Amending Pages

**Appendix A: Nova Scotia Variance Policy Analysis (20 Rural Municipalities) Tables**

<b>Nova Scotia Variance Policy Analysis (20 Rural Municipalities)</b>		
<b>Municipality</b>	<b>MPS &amp; LUB Policy</b>	<b>Notes on Notification Policies</b>
Cape Breton Regional Municipality	LUB defers to MGA	No
Queens Regional	Defers to MGA	Urban Service Area - 30 m Rural Development Area & Hamlets - 60 m
West Hants Regional	LUB defers to MGA	Specifically defers to MGA
Annapolis County	Reiterates/Defers to MGA	No
Colchester County	MPS defers to MGA	No
Cumberland County	LUB defers to MGA	No
Kings County	LUB defers to MGA	No
Pictou County	N/A (No General Municipal Planning Strategy & Land Use By-law)	
District of Argyle	No MGA References	No
District of Barrington	MPS defers to MGA	No
District of Chester	Defers to MGA	60 m (200 feet) Notification Radius Specifies "ordinary mail" Specifically defers to MGA
District of Clare	Does not mention Variances	No
District of Digby	Defers to MGA	Specifically defers to MGA
District of East Hants	Defers to MGA	No
District of Guysborough	Defers to MGA	Specifically defers to MGA
District of Lunenburg	Defers to MGA	Specifies "ordinary mail" Specifically defers to MGA
District of Shelburne	N/A (No General Municipal Planning Strategy & Land Use By-law)	
District of St. Mary's	Defers to MGA	Specifies "ordinary mail" Specifically defers to MGA
District of Yarmouth	Defers to MGA	Specifically defers to MGA Reiterates MGA 30 m radius

Appendix B: Amending Pages

**A BYLAW TO AMEND THE RICHMOND COUNTY SUBDIVISION BY-LAW  
FOR THE MUNICIPALITY OF THE COUNTY OF RICHMOND**

The Richmond County Subdivision By-law for Municipality of Richmond County is hereby amended by:

1. Part 2: "Interpretation" of the Subdivision By-law is hereby amended by removing the following text in strikethrough and adding the text in **bold** to Subsection (j)(i) "Private Road Right-of-Way":

...

- (i) extends to and has access to a public street and where not totally located within the area of land being subdivided, the private road right-of-way shall have an easement for right-of-way and access ~~which has been clearly surveyed and~~ **that is assignable and perpetual and has been clearly granted by deed,** registered in the registry of deeds, and

...

2. Part 2: "Interpretation" of the Subdivision By-law is hereby amended by removing the following text in strikethrough and adding the text in **bold** to Subsection (n):

...

- (n) "Right-of-way easement" means an easement for right-of-way and access, extending to and having access to a public street or highway, and where not totally located within the area of land proposed to be subdivided the right-of-way easement shall be ~~clearly surveyed and~~ **assignable and perpetual and clearly** granted by deed, registered in the Registry of Deeds for the County of Richmond:

...

3. Part 18 of the Subdivision By-law (Subdivision of an Island) is hereby amended by removing the following text in strikethrough and adding the text in **bold** to Subsection (2)(c):

...

- (c) the subdivider provides an easement for right-of-way and access, ~~clearly surveyed and~~ **assignable and perpetual and clearly** granted by deed registered in the Registry of Deeds having minimum width of 15 metres (49.2 feet) extending from a public street or highway or a private road to the parking area and to the shoreline of the navigable watercourse where there exists suitable boat launching facilities, and

...