

Private Road Access to Public Roads

A recent subdivision application in Digby Municipality, which was refused approval, and subsequently lost an appeal to the Utility and Review Board raises an issue of access to public roads for private road subdivisions.

The Issue:

The Provincial Subdivision Regulations require all private roads to have a deeded right-of-way when they cross land that is not owned by the subdivider. In addition all private roads must connect to a public road which is either owned by the municipality or owned and maintained by the province. The problem arises when a public road which is owned but not maintained by the province, a "K" class road, crosses a property, essentially cutting off the ability to subdivide behind it using a private road. Because a "K" road is owned by TPW a private road must have a deeded right-of-way to cross it. TPW will not give a private right-of-way across any of its public roads.

There are 2500 km. of "K" class roads in Nova Scotia. It is reasonable to assume that there are numerous cases where this issue would arise across the province.

Options:

1. Allow a deeded right-of-way across "K" class roads. This is not an option because it would place a legal encumbrance on the road and limit the Department of Transportation and Public Works in any future plans they may have for the road.
2. Officially close the road and sell it to the adjoining property owners. This is an option but would require cooperation and expense from each of the adjoining property owners and a decision from the province that the road would no longer be needed. All of these things may be very difficult to achieve.
3. Upgrade the road to a minimum standard and petition for a change in classification. This again could work but would require the adjoining property owners to pay for the upgrade.
4. Amend the definition of "private road" in the Provincial Subdivision Regulations to allow "K" roads to be crossed by a private road provided a license or other permit is issued by TPW. Access is not as secure as a right-of-way would provide but would permit the private road to serve the lots it was intended to do.

The preferred option is number 4. It offers the most reasonable solution for everyone involved. The subdivider can proceed with the subdivision without the complication and expense of upgrading the "K" Class road. TPW can continue to own the road without the encumbrance of a right-of-way crossing it.

This concept is very similar to what CN does now when a road crosses a rail line.

Action Required:

There is no action required on the part of TPW. It is understood that the required permitting system is already in place.

The Provincial Subdivision Regulations would have to be amended. This requires a 30 day notice to all municipalities and an ad in the newspaper. The Minister of Service Nova Scotia and Municipal Relations can then approve the amendments.

Municipal Options

Some rural or regional municipalities may not want to allow private road subdivision or even if they do they may not want to allow this type of private road. The MGA does give Councils power to be more stringent than the Provincial Subdivision Regulations when adopting a Subdivision Bylaw. Changes such as those we are proposing would have to be adopted into the respective subdivision bylaws before they could be effective since all existing bylaws would have the existing, more restrictive, provision.