



Planning Review Adjustment Committee

Monday, June 19, 2023

6:30 PM at Simonds Fire Hall, 184 Range Road, Saint John

Minutes of the meeting of the Planning Review Adjustment Committee of the Fundy Regional Service Commission held on Monday, June 19, 2023 at 6:30 PM at Simonds Fire Hall, 184 Range Road, Saint John.

1. Call to Order

The Vice-Chairperson, John Cairns, called the meeting to order at 6:32 p.m.

2. Record of Attendance

BOARD MEMBERS

John Cairns (Vice-Chair)

Ron Bridges

Bernard Brideau

Shawn Brown

Rob Jeffrey

Gregory Moran

(1) VACANCY

Absent

Cindy MacCready

STAFF

Nick Cameron, Assistant Development Officer

Cassie Silhanek, Recording Secretary, FRSC

Guests:

Joe Roberts, Don More Surveys & Engineering

3. Approval of Order of Business

The Vice-Chairperson asked for approval of the agenda as presented.

Motion: To approve the June 19, 2023 Agenda as circulated.

Moved: Shawn Brown
Seconded: Bernard
Vote: *Motion Carried*

4. Disclosure of Conflict of Interest

Gregory Moran disclosed that he is an employee of Don More Surveys & Engineering for the engineering branch of services. Mr. Moran stated that he has had no involvement with the proposal on this agenda.

5. Approval of Minutes

The Vice-Chairperson, John Cairns, called for a motion to approve the minutes as circulated.

Motion: To approve the February 23, 2023 minutes as circulated.

Moved: Ron Bridges
Seconded: John Cairns
Vote: *Motion Carried*

6. Presentation of Applications

a. Subdivision on a private access (type II subdivision) – PID – Off Tynemouth Creek Road, Tynemouth Creek, Fundy-St. Martins Village

Nick Cameron, Development Officer, FRSC, presented the report for the application for a Subdivision on a private access.

Applicant: Alex Long

Request: Alex Long has made an application to subdivide a portion of his property off Tynemouth Creek Road in Tynemouth Creek, Fundy-St. Martins Village. The proposal is to create two new building lots (2023-1 and 2023-2) along an existing right-of-way, which is also known as Old Shore Road. The remaining land (remnant) is accessed by the same existing right-of-way. A tentative subdivision plan is attached to the Agenda.

PRAC Function and Legal Authority:

Excerpt from New Brunswick Subdivision Regulation 80-159:

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.

Site Description:

Current Land Uses: Vacant

Environment & Location: Located southwest of the Tynemouth Creek Road (public road), accessed by an existing right-of-way beginning on the western side of the Tynemouth Creek Covered Bridge. Land uses in the area are residential, agricultural, and seasonal camps.

Mapping from GeoNB shows regulated wetlands and provincially significant wetland buffers on the subject property. See Appendix B – Aerial Image & Appendix C – Site photos

Services: Power utility poles travel through lot 2023-1 to service an adjacent lot (PID 55240972). No public water or sewage services are available.

Consultation:

Notice to Neighboring Residents: As per section 6.2 of the PRAC By-law and Operating Procedures, notices were sent to property owners within 100m of the subject property on June 5th, 2023. In total, notices were sent to eight property owners. A deadline for written submissions was set for June 13th, 2023. To date, no written comments have been received.

Local Government: Fundy-St. Martins Village Council was provided an overview of the proposal at their open meeting on June 6th, 2023. Council did not provide any comments to PRAC regarding this application.

Government Agencies: As noted, the proposed lots contain regulated water features, therefore the tentative plan has been provided to the Department of Environment and Local Government for review. Their response is provided in Appendix E.

Overview and Evaluation of Application:

A tentative subdivision plan was prepared by Don More Surveys – surveyor for property owner Alex Long. The tentative subdivision plan proposes two new building lots and the remaining land (lot 2023-1, lot 2023-2 and remnant) would be accessed by an existing right-of-way (also known as Old Shore Road). The right-of-way begins at Tynemouth Creek Road at 336 Tynemouth Creek Road (PID 55106272) just west of the Tynemouth Creek Covered Bridge. The right-of-way travels west across PID 55106272, PID 55106264, enters the parent PID from the eastern most side, travels along the entire width of lots 2023-1 and 2023-2, and enters the remnant at its eastern most side.

As per the New Brunswick Subdivision Regulation, to subdivide a property, all lots must abut a public street or “such other access as may be approved by the regional service commission as being advisable for the development of land.”

To aid the evaluation of the proposal, this report uses the ‘Fundy Regional Service Commission’s Guide to Lot Creation on an Access Other than a Public Street’ (FRSC guidelines). Site visits were also conducted. Site photos are attached in Appendix C.

When evaluating whether a private access is advisable for the development of a lot, FRSC guidelines recommend consideration of the topography, sensitive areas, safety, speed, sight visibility, width of the right-of-way, continuity of the access and the proposed type of development.

The right-of-way is paved from its beginning at Tynemouth Creek Road and along lot 2023-1. The pavement ends as it reaches the eastern bounds of lot 2023-2 – approximately 364 metres from the public road to this point. The right-of-way continues as an unpaved road along lot 2023-2 and to the remnant land – a distance of approximately 76 metres from the beginning of the unpaved road. The beginning of the unpaved road has a gate which is currently left open, but typically locked over the winter.

The existing access point at Tynemouth Creek Road has good sight distance in both directions. From this point, the access climbs a noticeable grade through the above mentioned PIDs. The parent PID in this proposal has legal right-of-way over this section of paved private road. The grade along the right-of-way within the proposed lots is mostly flat or modest. The right-of-way is contiguous within the subject property with no interruption. The surface of the right-of-way is in good condition with no signs of erosion.

There are wetlands on lot 2023-1 according to reference mapping available on GeoNB, the provincial mapping service. According to the tentative subdivision plan, lot 2023-1 is 1.7 hectares in area when the wetland is included and 1.2 hectares when the wetland and 30-meter buffer is removed from the total area, providing enough area for development outside of the wetland and its buffer. The tentative subdivision plan has been sent to the Department of Environment and Local Government, Surface Water Management Branch (DELG), for further review. DELG has indicated that the wetland that is currently mapped may be larger than currently shown. Therefore, anyone seeking development approval on the proposed lot must screen their project with DELG prior to a building permit being issued. This requirement is a legal obligation of any present or future developer as per the Clean Water Act and Pre-Requisite Regulation (2020-20).

Mr. Long has no immediate plans to develop the proposed lots. He has indicated that the lots maybe used for personal use, conveyed to family or sold. Developments located on a private access do not receive public services such as school bussing, snow plowing, road maintenance and garbage must be brought to the public road for pickup. It is the responsibility of the landowner to maintain a private access. FRSC guidelines advise that this is noted on a subdivision plan.

Due to the lack of public services on a private access and as a measure to control sprawl, principles contained within FRSC guidelines encourage year-round residential developments to be located on a public road rather than a private access. The subject property in this application is 51.4 hectares in area with no frontage on a public road, therefore the only available means for access is over a private access. The proposal is to create two larger lots, each over a hectare in area, and utilize an existing right-of-way kept in good condition, rather than constructing a new private access. Utilizing the existing right-of-way reduces the impact to the land and creates the least amount of lot frontage along a private access, which could facilitate further development. Considering this, FRSC staff are not concerned about sprawl development with the layout in this proposal. However, in keeping with the principles of the FRSC guidelines, it is recommended that a note is included on the subdivision plan that lots 2023-1 and 2023-2 are approved for uses other than year-round residential, such as agricultural, recreational, conservation or utility uses. This note does not prevent a building from being used as a year-round residence but would advise an application to further subdivide the properties or a variance application.

Recommendation:

Whereas the proposed lots would be accessed using an existing right-of-way with a well maintained surface;

And whereas the proposed lots meet the minimum dimensions of the Provincial Subdivision Regulation and the Simonds Parish Planning Area Rural Plan Regulation for unserved lots;

And whereas the proposed lots are over 1 hectare in size, limiting their potential for residential sprawl;

And whereas the proposed lots contain enough area for development outside of wetlands shown on the Department of Environment and Local Government's WAWA Reference Map (GeoNB);

And whereas, FRSC guidelines encourage year-round residential development to be accessible from a public road rather than a private access;

Therefore, it is recommended that PRAC approve the provided tentative subdivision plan of PID 00420117 as being advisable for the development of the land with the following conditions:

1. Legal right of access, whether by deeded right-of-way, conveyance of right of way or other means, must be assured to subsequent owners, assigns, heirs and successors.
2. The access must be suitable for emergency vehicles.
3. A utility easement shall be shown on any new lots, as requested by NB Power or other utilities providing services in the area.
4. If a locked gate is used at any point on the private access, the local fire department shall be provided with a key or combination to unlock the gate for emergency response.
5. Sensitive areas such as wetlands shall be identified on the subdivision plan, as instructed by the Department of Environment and Local Government.
6. The subdivision plan must include appropriate notes, approved by a development officer, that advise the following:
 - a. The created lots shall not receive public services.
 - b. Construction and maintenance of the private access is the responsibility of the developer/owner.
 - c. The private access is not suitable for a public street.
 - d. Lot 2023-1 and lot 2023-2 are approved for agricultural, recreational, conservation or utility uses.

Discussion:

The Vice-Chairperson opened the floor to committee members for questions regarding the staff report.

Ron Bridges asked whether it was considered that the road may become a public road in the future? Nick Cameron responded that the private access is not suitable as a public road and it is recommended this is noted on the plan along with other notes that there are no public services provided on a private access, and that the lots are approved for uses other than year-round residential due to the lack of public services. Mr. Cameron stated that the last note does not prevent a year-round residence from being constructed but would advise future landowners and subsequent applications regarding the lots' suitability for further development.

Mr. Bridges asked for clarification regarding the width of the private access. Mr. Cameron answered that FRSC guidelines advise a width 20 metres when multiple lots are using the access and that the New Brunswick Department of Transportation uses 24 metres as their guideline for public roads, which is not legislated.

Gregory Moran asked whether there are specifications to provide Emergency Services an area to turn around on this private road? Mr. Cameron noted that there are guidelines for public roads and PRAC could impose it as a condition for the private access.

A committee member asked how other landowners that use the right-of-way are affected by this proposal? Mr. Cameron answered that the owner of a property with a right-of-way is obliged to provide access according to the original deed or subsequent amendments.

A committee member asked Mr. Cameron, when he would recommend a public road be put in place. Mr. Cameron answered that an application for a subdivision involving a public road would come to PRAC for approval as being advisable for the development of the land and the Department of Transportation would evaluate the design of the road, as per the Provincial Subdivision Regulation and their guidelines.

The Vice-Chair invited Joe Roberts from Don More Surveys. Mr. Roberts spoke to the committee on behalf of the applicant Mr. Long, adding only that Mr. Long expressed that he would like no restrictions around this development, like the year-round residential developments.

A committee member asked Mr. Roberts if he saw any issues with adding a turn around area to the plan. Mr. Roberts said that he does not see an issue.

The Vice-Chair invited anyone wishing to speak against the proposal. Beverly Franklin spoke to the committee about the abutting properties, her property sits above the proposed Lot 2023-1. Ms. Franklin's stated concerns regarding wetlands, impact to the environment, removal of trees, water supply, privacy, property damage, and safety with people using the existing right-of-way as if it were a public road. Ms. Franklin noted recent increases in littering within this area, and her hopes that the site maintains its environmental integrity.

A committee member asked Mr. Cameron if it is possible to make sure that there is appropriate environmental protections to address Ms. Franklin's concerns? Mr. Cameron answered that the Department of Environment has reviewed the application and their recommendations have been included in the staff recommendation. Future building application must comply with environmental legislation such as the Clean Water Act and Clean Environment Act. Mr. Cameron said PRAC has the authority to impose further conditions but advised that conditions must be supported with reason and an opinion of PRAC.

Motion: To approve the recommendation made by the FRSC to approve the provided tentative subdivision plan of PID 00420117 as being advisable for the development of the land with the conditions outlined in the recommendation in the report, with an addition to provide an emergency vehicle turnaround area within the private access road.

Moved: Shawn Brown
Seconded: Rob Jeffery
Vote: *Motion Carried*

6. Other Business

a. Planning Areas

Mr. Cameron made a clarification for the committee regarding the new local government boundaries and planning areas established by rural plans which are still in effect. A map was shown to the committee detailing these boundaries. The map is available to the public on the FRSC website.

b. Mailing List

Mr. Cameron introduced a new email mailing list to receive notice on planning matters in the area. The public can subscribe on the FRSC website. A physical mail notice is still used for property owners within 100 metres of a subject property applying for PRAC approval.

c. PRAC Vacancy

Mr. Cameron mentioned that applications for the current vacancy on the committee are open and will close on July 21st, 2023. Please consider passing this opportunity along to people who are interested and who live within the Rural District or Fundy St. Martin's.

Motion: The Vice-Chairperson, John Cairns, called for a motion to adjourn at 7:57 p.m.

Moved: Shawn Brown
Seconded: Ron Bridges
Vote: *Motion Carried*

APPROVED (date) _____

John Cairns, Vice-Chairperson

Cassie Silhanek, Recording Secretary