



Rothesay

Subdivision By-law No. 4-10

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1. ADMINISTRATION

1.1. Purpose

- 1.1.1 This By-law may be cited as "The Rothesay Subdivision By-law".
- 1.1.2 This By-law regulates the subdivision of land within Rothesay.
- 1.1.3 The purpose of this By-law and accompanying schedules is to provide for the orderly development of land, including municipal services, within the Rothesay. The By-law provisions conform to the requirements of the Community Planning Act, Rothesay Municipal Plan, Rothesay Zoning By-law, the National Building Code of Canada and industry standards. The By-law is intended to ensure that our residents continue to live and work in a community that is serviced in an organized and sustainable manner. This By-law provides clear, concise design standards to be used by development applicants. When followed it optimizes staff review time and minimizes delays in processing development applications.
- 1.1.4 The provisions of this By-law are severable. If any provision is for any reason held to be invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this By-law.

1.2 Application

Except as otherwise provided for in the Act, no land within Rothesay shall be subdivided except in accordance with the provisions of this By-law.

A person who seeks to subdivide land within the municipality shall submit a subdivision application including a tentative plan prepared in a manner consistent with the Act and this By-law, in addition to any required supporting documentation to the Rothesay Development Officer for consideration. The application requirements for subdivision are outlined in Schedule "A" of this By-law.

1.3 Variance

A person who seeks a variance from this By-law shall address a written and signed application in a form acceptable to the Development Officer to the Planning Advisory Committee (PAC) along with the applicable fee. Before granting or rejecting a variance the PAC may carry out such investigation as it deems necessary. Approval of a variance may be subject to terms and conditions imposed by the PAC. The Council may enter into an agreement to assure the performance of the conditions required by the PAC.

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2. INTERPRETATION

2.1 Calculation of Numerical Requirements

All numerical requirements in this By-law are provided in metric units of measurement. Imperial units of measurement, where provided, are for user convenience only. Where a discrepancy between metric and imperial measurements occurs, the metric measurement shall prevail.

2.2 Frontage when Lot Lines are not Parallel

For lots where the front lot line is a curved line or the side lot lines are not parallel a minimum lot width, equal to the minimum lot frontage required by this By-law, shall be required in lieu of a minimum lot frontage. The minimum lot width shall be measured along a horizontal line drawn between points on each side lot line that are setback from the front lot line a distance equal to the minimum front yard requirement.

2.3 Other By-laws Permits and Licences

Nothing in this By-law shall relieve any person from the obligation to comply with the requirements of the Zoning By-law, Building By-law or any other by-law of Rothesay in force from time to time, or the obligation to obtain any license, permit, authority or approval required under any by-law of Rothesay or act or regulation of the Provincial or Federal Government. In the event of conflict between this By-law and any other by-law, act or regulation, the most restrictive obligation shall prevail.

2.4 Definitions

The following definitions describe terms and words used in this By-law and they are provided for words with a specific meaning in the context of this By-law:

ABUTTING means a lot line that has any point in common with another lot line that is not part of the street line.

ACT means the Community Planning Act, Chapter C-12, R.S.N.B. 1973 and amendments thereto.

BOULEVARD means the portion of a highway not occupied by the roadway or sidewalk and includes plantings, surface finishing or treatment.

DEVELOPMENT means any activity which changes or modifies the use of land or buildings or structures located upon land and which is not exempt from this By-law by provisions of an Act of the Legislature or Parliament; or the erecting, placing, relocating, removing, demolishing, altering, repairing or replacing a building or structure.

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DEVELOPMENT OFFICER means the person appointed by Council in accordance with Section 16(2) of the Act.

LAND FOR PUBLIC PURPOSES means land other than streets transferred to the town for recreation or other uses for the enjoyment of the general public as defined in the Act.

LOT AREA means the total area within the property lines of a lot, excluding the horizontal area of such lot usually covered by water or marsh, or beyond the rim of a river bank or watercourse, or between the top and toe of the cliffs or embankment having a slope of thirty degrees or more from the horizontal.

LOT DEPTH means the average horizontal distance between the front and rear lot lines.

LOT FRONTAGE means the horizontal distance measured along a public street. Where a lot abuts two streets, the lesser lot line shall be deemed the lot frontage. For lots where the front lot line is a curved line or the side lot lines are not parallel lot frontage means the length of a horizontal line drawn between points on each side lot line that are setback from the front lot line a distance equal to the minimum front yard requirement.

MAY is construed as permissive

LOT means a parcel of land, whether or not it is shown as a lot on a filed plan of subdivision, which is occupied or to be occupied by one or more main buildings, structures or uses, and including all yards and landscaped open spaces required by this By-law.

PLANNING ADVISORY COMMITTEE (PAC) means the Planning Advisory Committee and its successors appointed under By-law 1-99 and the Act, and amendments thereto.

ROTHESAY means the town of Rothesay as incorporated under New Brunswick Regulation 85-6 to the Municipalities Act as amended.

SETBACK means the minimum horizontal distance between a lot line and the nearest point of the foundation or exterior wall of the building, whichever is the lesser, or another part of a building or structure if specified elsewhere in this By-law.

SIDE LOT LINE means a lot line other than a front or rear lot line.

SHALL is construed as mandatory.

WORKS AND SERVICES means any public service, facility or utility which is required by this By-law and without restricting the generality of the

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foregoing includes: the supply and distribution of water; collection and disposal of sewage; collection and disposal of drainage water; street lighting; access roadways, bike lanes, curbs, gutters, sidewalks, street trees and boulevard plantings; and the supply and distribution of electrical power, natural gas, telephone or cable vision.

3. LOT STANDARDS

3.1 Minimum Requirements

Each lot created by subdivision in Rothesay shall have the minimum lot frontage, lot area and lot depth requirements as specified in the Rothesay Zoning By-law No. 2-10 as amended or replaced from time to time for the zone in which it lies. Easements located on a lot that exceed 10 percent of the lot area or are wider than 6 meters shall **not** be included in the calculations for determining minimum lot area.

3.2 Access

Every lot, block and other parcel of land within a subdivision shall abut a public street owned by the crown or a municipality. In cases where a lot does not abut a public street owned by the crown or municipality the Planning Advisory Committee may approve alternate access provided that the access is advisable for the development of the land.

Lots created specifically for the purpose of providing municipal utility infrastructure need not abut a public street provided that legal access is secured.

4. SUBDIVISION APPLICATION REVIEW FEE

No tentative plan shall be approved until a non-refundable processing fee is paid to the municipality. Subdivision application review fees are specified in Schedule B to this By-law.

5. LAND FOR PUBLIC PURPOSES

5.1 Amount of Land to be Provided to the Town

As a condition of approval of a subdivision plan, land in the amount of ten percent (10%) of the area of the subdivision, exclusive of the public streets, at such a location as assented to by Council pursuant to the Act, is to be set aside as "Land for Public Purposes" and so indicated on the plan.

5.2 Extent of Land Preparation and/or Disturbance

Given that Lands for Public Purpose are intended to be used for recreation or used for enjoyment by the general public, Rothesay, as a condition of subdivision approval, shall specify the degree of land preparation necessary to be completed by the developer prior to

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dedication of Land for Public Purposes to the Town. Land for Public Purposes shall not be disturbed, graded, cleared or used to store soil or debris prior to dedication to the Town unless prior approval is granted by Rothesay.

5.3 Cash in Lieu - Land for Public Purposes

In lieu of land set aside under Section 5.1, Council may require that a sum of money be paid to the municipality in the amount of 8% of the market value of the land in the proposed subdivision, exclusive of streets intended to be publically owned. When the subdivision plan is submitted for approval the market value of the land will be calculated by the town for all proposed vacant lots within the subdivision using the value per square meter stated in Schedule C. If the applicant disputes the town's calculation of the land's market value they may retain, at their cost, a certified, independent appraiser to determine the true market value of the land. The town will then use the land value, as determined by the appraiser as the market value of the land.

Council shall adopt, and from time to time amend, a value per square meter that reflects the value of a representative lot that has been assessed for the town by an independent, accredited professional, **to be appended to this By-Law as Schedule "C"**.

5.4 Exemptions - Land for Public Purposes

The provision of Land for Public Purposes does not apply to that part of a subdivision plan solely for the purpose of:

- 1) Land assembly when adding lands or portions thereof to an existing lot or lots; or
- 2) Adjusting an existing lot line or lines should the number of lots existing prior to the subdivision not be increased.

6. DEVELOPMENT STANDARDS FOR MUNICIPAL INFRASTRUCTURE AND UTILITIES

6.1 Works and Services Generally

Owners are required as a condition of subdivision approval, rezoning or building permit issuance to provide Works and Services in accordance with the requirements and standards prescribed in this By-law as follows:

- 6.1.1 On-site Works and Services as determined by the Town Manager, Director of Operations, or Development Officer;
- 6.1.2 Off-site Works and Services within the Municipal Right of Way and Road Allowance.

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Standard Specifications for Developers adopted by resolution of Council outline the minimum standards for the construction of Works and Services associated with development within Rothesay.

6.2 Cost Recovery Extended Services

Where required by Council, in situations where the lands affected by subdivision benefit from the existence of Works and Services previously installed by another owner or are the financial responsibility of the municipality, the Development Officer shall not approve the plan unless the person proposing to subdivide pays or agrees to pay to the municipality, in some cases the Town collecting for the owner, an amount equal to the initial cost of the facilities, or an amount equal to a proportionate share of such costs for installing these facilities.

6.3 Streets and Sidewalks

All streets and sidewalks whether required in respect of subdivision or development shall be dedicated and constructed by the owner in accordance with the standards prescribed in the Standard Specifications for Developers.

In cases where entry will be gained to the subdivision by means of an existing street or other access, the person seeking approval shall make provision to bring the existing access to the same standard as may be required for streets within the subdivision or contribute to the cost of the work in accordance with the Act.

6.4 Sanitary Sewer

The owner of any lands proposed to be subdivided or developed shall provide each parcel of land within the proposed subdivision or development with a sanitary sewage collection and disposal system and the sewage system shall be connected by sewer mains to the existing Municipal Sanitary Sewer System as prescribed in the Standard Specifications for Developers.

Notwithstanding the above, in unserved areas of the municipality, on-site sewage disposal systems complying with Provincial Regulations may be permitted following approval from the appropriate Provincial authority.

6.5 Drainage Collection and Disposal System

The owner of any lands proposed to be subdivided or developed shall provide each parcel of land within the proposed subdivision or development with a drainage collection and disposal system and a standard service connection which shall be constructed in accordance with the standards prescribed in the Standard Specifications for Developers.

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For subdivision of land involving in excess of 5 lots and in situations where deemed appropriate by the Planning Advisory Committee, a detailed drainage plan shall be prepared and submitted to the Town for approval.

Storm water retention and treatment may be required at the discretion of Rothesay as a condition included in a development agreement in order to mitigate the downstream effects of new development.

6.6 Water Distribution System

The owner of any lands proposed to be subdivided or developed shall provide each parcel of land within the proposed subdivision or development with a water distribution system and a fire hydrant system including a standard service connection which shall be constructed in accordance with the standards as prescribed in the Standard Specifications for Developers.

Notwithstanding the above, in unserviced areas of the municipality, on-site water distribution systems complying with Provincial Regulations may be permitted following approval from the appropriate Provincial authority.

In situations where it is excepted that water will be supplied within 10 years to all lots within development sites north of the Mackay Highway, the owner shall be responsible for the installation of water lines necessary to service the proposed lots.

Developers may be responsible to contribute to the cost of upgrading of water infrastructure to provide necessary fire flows, water treatment capacity and source of supply.

6.7 Development Agreement

Where Works and Services are required to be provided with respect to the land being subdivided, the owner of the land being subdivided shall provide within that subdivision such facilities as streets, curbing, sidewalks, culverts, drainage ditches, water and sewer lines, storm sewer, walkways, streetlights, street trees and such person shall enter into an agreement with the municipality that is binding upon their heirs, successors and assigns to construct and pay the cost of facilities required within the subdivision and shall deposit a sum of money, or an irrevocable letter of credit, with Rothesay sufficient to guarantee the faithful performance of said agreement.

Developers shall be responsible for submitting a letter of engagement from the project engineer retained by the owner to design the proposed works, along with engineering design drawings and shall further provide

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certification from the project engineer that all Works and Services have been constructed as approved by Rothesay.

No work shall be commenced on any subdivision until such time as a development agreement has been filed in the registry office and the required sum of money, or an irrevocable letter of credit, has been received by the Town.

7. STREET NAMES AND STREET SIGNAGE

When new streets are proposed the owner of lands being subdivided shall submit proposed street names to the Planning Advisory Committee for consideration. Street names with spelling or pronunciation similar to existing street names in Rothesay or the immediately surrounding communities shall not be considered acceptable.

The Town shall supply signs and materials at its cost plus a 15% administration fee for installation by the developer. The developer shall be responsible for all street signs during the one year maintenance period.

8. STREET TREES AND LANDSCAPING

Every owner of lands to be subdivided or developed within Rothesay shall provide street trees and boulevard landscaping designed, constructed and installed in accordance with the minimum requirements, standards and specifications as prescribed in the Standard Specifications for Developers.

9. LOT GRADING AND EXCAVATING

Natural vegetation, mature trees and natural topography shall be retained wherever possible. Clearing and grading of the land should be confined to areas to be built upon or which provide access; all other land should remain undisturbed and not compacted.

All grading, clearing and development shall comply with Sections 5.10 and 5.11 of the Rothesay Subdivision By-law.

10. OVERHEAD UTILITIES

Utilities such as hydro, cable and telephone shall be either buried in underground ducting or designed with overhead connections along rear lot lines.

11. REJECTION OF SUBDIVISION PLAN

11.1 The Development Officer shall not approve a subdivision plan unless:

- a) the proposed subdivision plan is consistent with the Community Planning Act, Municipal Plan and Zoning By-law;
- b) in the opinion of Council,

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- i. the Council will be able in the foreseeable future to provide the proposed subdivision with streets, water, sewer lines, light, recreational areas or other facilities, OR
- ii. the person subdividing has made satisfactory arrangements for providing such facilities and has entered into a Development Agreement with the town as specified in this By-law and either deposited with the municipality a sum sufficient to cover the cost with respect to the facilities that the By-law requires or delivered to the municipality a sum of money, or an irrevocable letter of credit acceptable to the Council, in an amount to cover the cost of the required works plus applicable taxes;
- c) in the opinion of the Development Officer and the Planning Advisory Committee the land is suited to the purpose which is proposed.

11.2 The Development Officer shall not approve a subdivision plan if the proposed manner of subdividing will prejudice the possibility of further subdividing the land or the convenient subdividing of adjoining lands.

12. REPEAL OF EXISTING BY-LAWS

- (a) This Subdivision By-law repeals and replaces any previous subdivision by-laws and amendments thereto; specifically it repeals and replaces Subdivision By-law 3-02.
- (b) Notwithstanding the repeal of the by-laws noted, variances granted to the By-law set out in 11(a), terms and conditions thereunder or developers' agreements entered into pursuant to Section 39 of the Act are expressly continued and remain in effect as though granted under this By-law.

FIRST READING BY TITLE: 9 August 2010

SECOND READING BY TITLE: 9 August 2010

READ BY SECTION NUMBER:
(Advertised as to content on Rothesay website
in accordance with Municipalities Act,
R.S.N.B. (1973) Chapter M-22) 10 August 2010

THIRD READING BY TITLE AND
ENACTMENT: 13 September 2010

William J. Bishop – Mayor

Mary Jane E. Banks - Clerk

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Schedule A

APPLICATION PROCEDURE AND REQUIREMENTS

To initiate the approval process for a subdivision application the owner must submit a letter of application as well as a tentative plan to the Development Officer for consideration. The application requirements are summarized as follows:

- Application form signed by the registered owners
- Application Fee
- A copy of the property title and or property deed
- A tentative plan which shows:
 - a) the name of the proposed subdivision;
 - b) the boundaries of the subdivision marked by a heavy black line;
 - c) the locations, widths and names of existing and proposed streets;
 - d) the approximate dimensions and layouts of the proposed lots, blocks, land for public purposes;
 - e) the nature, location and dimensions of any existing or proposed restrictive covenant, easement or right-of-way;
 - f) natural and artificial features such as buildings, railways, highways, watercourses, drainage ditches, swamps, trees etc;
 - g) the availability and nature of domestic water supplies;
 - h) the nature and porosity of the soil;
 - i) such contours or elevations as may be necessary to determine the grade of the streets and the drainage of the land;
 - j) the municipal services available;
 - k) a small key plan acceptable to the Development Officer showing the site location;
 - l) plans for landscaping and tree planting;
 - m) the location of all existing buildings; and
 - n) any further information required by the Development Officer to assure compliance with the Subdivision By-law.

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SCHEDULE B

APPLICATION FEES

Every applicant shall at the time of subdivision application pay the non-refundable fee set out below:

Number of Lots	Applicable Fee
Two lots or fewer	\$250
Greater than two lots	\$250 plus \$150 per lot

The developer shall also be responsible for all costs associated with the preparation and registration of a development agreement.

SCHEDULE C

The town shall calculate the value of all vacant lots within a subdivision at a value of \$13.50 per square meter.