



**Subject:** *Plan Update - Private Roads*  
**To:** CAO for Planning Advisory Committee, September 21, 2021  
**Date Prepared:** September 16, 2021  
**Related Motions:** PAC20(58) and C20(293)  
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**Approved by:** John Woodford, Director of Planning and Development

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### Summary

As part of the ongoing plan update, Planning staff are preparing background papers to discuss and propose approaches to different land use issues within the Municipality. The current background paper discusses private roads, as directed by Council at their October 14, 2020 meeting.

The following report reviews what constitutes a private road and looks at the positives and negatives of private road development in East Hants. A series of recommendations have been developed based on the discussion.

### Financial Impact Statement

The Community Plan Update has been budgeted for in the 2021/2022 Municipal Budget.

### Recommendation

That Planning Advisory Committee recommend that Council authorize staff to draft proposed amendments to the Subdivision Bylaw in regards to private roads as presented to Executive Committee on September 21, 2021 and outlined in this staff report.

### Alternative Motion 1

*Planning Advisory Committee recommends that Council:*

- *authorize staff to draft proposed amendments to the Subdivision Bylaw in regards to private roads as presented to Executive Committee on September 21, 2021 and outlined in this staff report.*

### Alternative Motion 2

*Planning Advisory Committee recommend that Council:*

- *authorize staff to maintain the current private road regulations.*

### Alternative Motion 3

*Planning Advisory Committee recommend that Council:*

- *authorize staff to create regulations that permit private roads by development agreement.*

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## Background

At their October 14, 2020 meeting, Council directed Planning staff to put the issue of private roads aside to be more fully considered through the next plan review or when brought forward by Council prior to the plan review. Staff's report will discuss what private roads are, where they are allowed, the positives and negatives of allowing private roads and their socio-economic issues, and propose a direction for the Plan Update.

### History

Many of the lake front cottage properties in East Hants were developed in the 50's, 60's and 70's, and at the time were not intended to be used for year-round purposes but were allowed to be developed on private roads. Since their initial development, these properties have been redeveloped and many residents now live on their lands all year. Since these roads were never built to meet public road standards, it would be difficult and expensive to upgrade them to a public road standard now; therefore, the history of the development dictates the road type and design for many of these lake front developments.

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## Discussion

A private road is defined in the Subdivision Bylaw as follows:

*Private Road means any road, which is not public, where:*

- a) the design of the road has been reviewed by the Municipality of East Hants pursuant to the Municipal Government Act;*
- b) the road extends to and has access to a public street or highway;*
- c) the road must be its own parcel and shall not be a right-of-way easement.*

In East Hants, private roads are permitted in all areas (RU lands have to be rezoned) of the Municipality except the Growth Management Areas and the Growth Reserve Areas. With the exception of the Regional Commercial (RC) Zone in Elmsdale and Village Core (VC) Zones where private roads are permitted to service large commercial developments, with multiple tenants, such as Mason Lane in Elmsdale that runs through the Crombie Property Holdings Limited lands (Sobeys lands). These roads have to be built to Municipal standards for public roads.

There are dozens of private roads in East Hants. These roads have been developed at different points in the history of the Municipality. Many of these roads started out to service old water front cottage developments and later Developer's started to use private roads for traditional subdivision development.

### Negatives of Private Roads

1. **Maintenance:** private roads are not upkept by the municipality or province; it is the responsibility of the property owners who use the private road to maintain the road and to undertake major repairs.
2. **Costs:** the cost to maintain and repair a private road comes from the property owner. Many property owners on private roads form private road associations, where each property is charged a fee that goes towards the upkeep of the private road. This money is often collected by the Municipality. The largest fee collected by East Hants, for a private road association, from a property owner is \$1,200, with the average fee for a property with a house being \$433. This money is in addition to their normal property taxes.

3. **Waste Collection:** East Hants provides different types of waste collection to property owners on private roads depending on the condition of the private road and the ability of the waste collection vehicles to access and maneuver on the private road. The Manager of Solid Waste has provided the following information:

- Curbside Collection:

This is year-round services provided for residents at the end of their driveways (includes green carts for organics). This service is provided to all road ownership types. Private roads can request the service, discussions occur with road owners/municipal staff/collection contractor to ensure all requirements are met (turning area, commitment on road maintenance, etc).

- End-of-Lane Collection:

This is year-round collection at the intersection of a private road and main serviced road. These residents are not provided with a green cart for organics, and instead are provided paper compostable bags (as needed). This is only for private roads.

- Seasonal Collection:

This is a hybrid service where residents are provided curbside collection (noted above) during the fair-weather months and then over the winter/early spring residents must bring material to a main road intersection. Residents have green carts for curbside collection use. During those winter months paper compostable bags are provided as green carts are not able to be transported down these roads and/or there is no space to place them for collection.

Roads that receive either end-of-lane or seasonal collection typically have similar issues:

- Messes at collection points (could be illegal dumping, could be residents putting materials out late or wrong days)
- Complaints of the service type (people not aware prior to moving to the road)
- Complaints of road ownership, road association or lack of an association
- Service issues (ie. the collection staff do not service the road) typically due to (a) limited/poor winter road maintenance - snow removal, sanding by the time of day the contractors arrive to do the service; (b) turning area access blocked - typically parked vehicles therefore the 1 truck will advise the rest of the fleet not to go in; (c) leaving collection points littered with materials (cleaning torn bags and litter is not in the scope of work for the contractor).

4. **Liability:** If an accident were to occur on a private road, which related to the condition of the road, the owner of the private road may be liable. Some private road owners may have liability insurance but not all.

5. **Conflict:** Through much of the research that was conducted for this report there was one common issue that came up in reading material and conversations with staff, which is that there tends to be more conflict between property owners on a private road. East Hants staff have received complaints and have witnessed the turmoil in private road associations. Conflict may occur for a variety of reasons, and not all private road dwellers experience conflict, but the following are the most common conflicts in relation to private roads (staff experience & online information):

- One property owner uses the road more than the other property owners; therefore, there is a feeling the one property owner should pay more maintenance;

1. Grant, J and L Carson, 2007 "Privatizing the fringe: the design of private streets", Private urban governance conference, Paris, 2007.

- Strangers, these could be visitors of a private road owner or simply someone who took a wrong turn or is looking to purchase a home or lot on a private road. Conflict can occur when someone unfamiliar uses the private road and others on the road are not familiar with the visitor.
  - When one private road property owner takes the enforcement of speed and parking into their own hands and has disagreements with their neighbours.
  - Construction vehicles accessing a private road to build a house or accessory structure and add extra wear and tear on the road or damage the road and may cause negative feelings and conflict between property owners.
6. **Emergency Response:** Emergency response vehicles may have a difficult time responding to emergencies if a private road is not well maintained or is in need of major repair.
  7. **Open Space:** Public parks and open space should be located on public roads. This insures there are no issues with who has the right to use a private road to access a public park. As well, it negates the issue of paying into a road association for the upkeep and maintenance of the road, or being partially liable for an accident if it were to occur on the private road.

#### Positives of a Private Road

1. **Developer Costs:** It cost a developer less to develop a private road compared to a public road. In some instances, the costs of the lot may be cheaper for the purchaser if located on a private road compared to a public road. However, the initial cost savings from the lot is often negated after a few years of paying maintenance costs for a private road.
2. **Municipal Costs:** East Hants does not maintain private roads; therefore, there are fewer KMs of Municipal roads to maintain. Although, it should be noted that there is still a Municipal cost in relation to private roads - the cost of Municipal staff time to administer Private Road Associations and the onboarding of new private road associations (we charge a 5% admin. fee). As well as staff time in responding to complaints and inquiries regarding private roads.
3. **Lifestyle:** Some property owners choose to live on a private road because of the lifestyle choice it offers them. They like the idea of seclusion.

#### Socio-Spatial Issues of Private Roads

In 2007, Doctor Jill Grant and Leah Carson of Dalhousie University completed a research paper on private roads, *Privatizing the fringe: the design of private streets*, which studied private roads in Halifax and East Hants. The research paper looked at the socio-spatial implications of private streets and noted that “*by building on private streets residents seek to extend the private residential realm to the neighbourhood level, distancing themselves from the public realm.*” This was illustrated by the special efforts that many residents went to discourage traffic or to manage vehicles that might enter<sup>1</sup> their private road. The researchers noticed that “*Private road quality is much more clearly linked to socio-economic status than is the quality of public roads in Canada. In poorer neighbourhoods private roads often have large potholes and show evidence of flooding. Some of the private lanes have poor access for fire services and face problems with people dumping wastes.*” The research paper concludes that, “*To substantiate the argument that private roads reflect growing socio-spatial inequality and segregation we need further research on the land values associated with different kinds of private roads. However, this survey of a sample of streets in Nova Scotia suggests that the*

1. Grant, J and L Carson, 2007 “Privatizing the fringe: the design of private streets”, Private urban governance conference, Paris, 2007.

*proliferation of private roads facilitates the class marking of residential spaces and exacerbates inequalities in the condition of the built environment experienced by people with different incomes.”*

East Hants Council may wish to consider socio-spatial conditions as part of their consideration of private roads.

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## Proposed Direction

Based on Planning staff’s review of private roads, staff feel that the use of private roads in the development of new communities is not reflective of good planning principles, the maintenance of these roads can cause undue financial hardship on property owners using the roads, and the quality of the road exacerbates class inequalities of East Hants residents. For these reasons, Planning staff are recommending that use of private roads in new development is prohibited through-out the Municipality, unless the new development is on a continuation of an existing private road or through a Rural Comprehensive Development District. An example of a Rural Comprehensive Development District, is the Villages of Long Lake. Approval of the development would be determined by Council and could not be approved as-of-right.

Any changes to the private road regulations will impact all of the Municipality, including lands in the future planned area of the Municipality.

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## Alternatives

If Planning Advisory Committee determines that private roads are a tool they would like to continue to have as an option for Developers outside of GMAs and GRAs, then staff have prepared two alternative options for PAC to consider.

1. To maintain the current private road regulations.
2. To permit private roads to be considered by development agreement.

If Council chooses option number two, staff will prepare detailed regulations as part of the draft East Hants Community Plan documents.

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## Conclusion

As per the direction of Council, Planning staff are addressing the issue of private roads as part of the Plan Update. Staff have identified many issues with the development of private roads. One of the most difficult for residents of private roads is the cost of upkeep and maintenance of the road. Upkeep and maintenance fees may seem quite low at first, but they increase, and over time, the private road property owners will be expending thousands of dollars more than they would if the home was located on a municipally dedicated road. In addition, development of new private road communities is not reflective of good planning principles and the quality of the road exacerbates class inequalities of East Hants residents.

Requiring developers to only construct public roads will result in a better built environment, safer and more equitable roads, and roads that are accessible to all East Hants residents. By not allowing development of new private roads developer’s will lose their cost savings and future residents who want to live on a private road will lose their exclusivity. For these reasons, and others identified in the staff report, Planning staff are recommending that new private roads are no longer permitted in the Municipality.

Engagement with the community on the issue of private roads will take place as part of our fall and spring open houses. In addition, developers will be consulted as part of future developer consultation.

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## Recommendation

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