BY-LAW NO. HAM-2024-17
SUBDIVISION BY-LAW

The Council of the town of Hampton, under authority vested in it by section 74 of the *Community Planning Act*, and amendments thereto, hereby makes the following by-law:

1. TITLE

This By-law may be cited as the *Subdivision By-Law*.

2. DEFINITIONS

In this By-Law, words used which are not defined herein but are defined in the *Community Planning Act*, shall have the same meaning as defined therein:

"Act" means the *Community Planning Act* including any amendments thereto.

"Agreement" means a formal agreement entered into between Hampton and the Owner regarding the development of a specific parcel of land.

"Artificial Features" means buildings, structures, and any other feature that is not developed naturally.

"Council" means the duly elected Council of the town of Hampton.

"Cash-in-lieu" means a sum of money, provide at the discretion of Council, is to be paid to the local government, in lieu of setting aside land as land for public purpose, not to exceed the percentage, indicated in the By-law, of the market value of land in the subdivision at the time of submission for approval of the subdivision plan, exclusive of land indicated as streets intended to be publicly owned.

"Development" means:

(a) the erecting, placing, relocating, removing, demolishing, altering, repairing or replacing of a building or structure other than utility poles and wires, traffic control devices and pipelines defined in the *Pipeline Act, 2005* except for buildings and structures remote from a pipeline used for management and administration or housing or storing of moveable equipment or statutory notices;

(b) where the purposes for which land, buildings and structures may be used are set out in the *Hampton Municipal Plan*, development scheme or the *Hampton Zoning By-law* or regulation, any change in the purpose for which any land, building or structure is used;

(c) any excavation of sand, gravel, clay, shale, limestone, or other deposit for a development mentioned in (a) or for purposes of the sale or other commercial use of the material excavated; or

(d) the making of land by cutting or filling to a depth in excess of one metre except in the case of laying pipelines defined in the *Pipeline Act, 2005*.

"Development Officer" means a development officer as defined in the *Community Planning Act*.

"Duly Authorized Person" means a person who is given the authority to stand in the place of another.

"Hampton" means the town of Hampton as governed by *Local Governance Act*.

"Highway" as defined in the *Highway Act*.

"Land for Public Purposes (LPP)" means land other than streets, that is acquired and vested in Hampton, for the recreational or other use for the enjoyment of the general public such as:

(a) an access to a lake, river, stream, sea, or other body of water;

(b) a beach or scenic area along the shore of a lake, river, stream, sea, or other body of water;

(c) a conservation area;

(d) land adjoining a school for joint recreational purposes;

(e) land for a community hall, public library, recreation use or other similar community facility;

(f) open space to provide air and light to afford a view to or from a development, or to a lake, river, stream, sea, or other body of water, or for other purposes;

(g) a park, greenbelt or buffer area dividing developments, parts of highway or development and a highway;

(h) an active transportation way to a school, shopping center, recreational area or other facility;

(i) an area designated for protection and/or enhancement of a natural feature;

(j) a public park, playground, or other recreational use;

(k) a visual feature;

(l) a wooded area, slope area or a sight giving view to a scenic area to provide diversity; or

(m) an area reserved for naturalized and/or enhanced stormwater management feature.

"Lot" means a parcel of land, or two or more adjoining parcels held by the same owner and used or intended to be used as the site for a building or structure or an appurtenance thereto.

"Natural Feature" means a water course, stream, wetland, water supply, lake or other body of water.

"Owner" means the registered landowner, which may be an individual or corporation, according to Service New Brunswick Land Registry Office or a duly authorized person (i.e. contractor, engineer etc.) seeking to obtain the approval of a subdivision plan and/or who enters into a Developers Agreement with Hampton.

"Planning Advisory Committee" means the committee established by Council under section 3 of the *Community Planning Act*.

"Planning Director" means a planning officer as defined in the *Community Planning Act*.

"Private Access" means a parcel of land created for the purpose of a private access, which has one or more of the following characteristics:

(a) title to the land is held by a private owner(s),

(b) guaranteed right-of-way over the private access,

(c) it is delineated on a subdivision plan as a "Private Access.", and

(d) its maintenance is not the responsibility of a provincial department or agency or Hampton.

"Provincial Authority" means the Crown as defined in the *Community Planning Act*.

"Public Right of Way (ROW)" means property owned by Hampton or the provincial authority, including roads and streets whether provincially designated or not; also includes storm water conveyance systems along roads & streets.

"Qualified Profession" means a person licensed to practice the work concerned in the Province of New Brunswick, this includes, but is not limited to, Architect, Professional Engineer or Land Surveyor.

"Recreational Use (Private)" means use of land for activities or services of a recreational nature. Recreational nature shall include, but not be limited to private beaches, lodges, cottages and similar uses and facilities.

"Reserve Strip" means a strip of property overlaying a dedicated street which is reserved to the municipality for control of access until such time as additional right-of-way is accepted by the municipality for continuation or widening of the street.

"Services" means streets, curbing, sidewalks, streetlights, water and sewer lines, trunk sewer lines, water mains, storm water retention facilities, lift stations, culverts, drainage ditches, and any other service or infrastructure deemed necessary by Hampton.

"Street" means the entire width between the boundary lines of a street, road or highway with the function of providing land access and traffic movement, and would include the following types:

(a) Local: primary function to provide access to residential, commercial and industrial lots or abutting property.

(b) Other: access other than a street that may be approved by the Planning Advisory Committee, as the case may be.

"Stormwater Management Plan" means a system that is designed to collect, convey, or retain stormwater on a lot, right-of-way, easement or other parcel of land that has been constructed in accordance with an engineering drawing approved by the Hampton Engineer, or designate.

"Subdivide" means to divide a parcel of land into two or more parcels.

"Subdivision" means a plan which divides a parcel of land into two or more parcels;

(a) Subdivision – Type 1: a subdivision that does not create a new public street and services;

(b) Subdivision – Type 2: a subdivision that creates a new public street or other access.

"Unserviced" refers to a right of way where the maintenance is not the responsibility of a provincial department agency or Hampton. Any maintenance services and/or improvements are the responsibility of the property owner.

"Utility Authority" means a local supplier and/or corporation operating an electrical power utility, natural gas utility, telecommunication provider and railway provider.

3. SCOPE

This By-law provides for regulation of the subdividing of land in the municipality.

4. STREETS

In a subdivision, unless otherwise stipulated by Council,

4.1 All lots, streets and services vested to Hampton shall be constructed in accordance with the *Hampton Standard Specification and Stormwater Management Guideline*, unless otherwise stipulated, which includes:

(a) every street shall have a width of 20 metres;

(b) a cul-de-sac shall not exceed 180 metres in length, and shall terminate with a circular area having a diameter of 35 metres; and

(c) no street may have a gradient in excess of 8 percent (8%).

4.2 All public or future streets vested in the provincial authority shall be constructed in accordance with the minimum standards as determined by the provincial authority.

4.3 Where entry to a subdivision will be gained by means of an existing unserviced street or other access, by whomever owned, the plan shall not be approved unless the person seeking approval of such plan shall make provision to bring the existing access to the same standard as is required for streets pursuant to subsection 3 and 4.2.

4.4 A new private access may be considered by the Planning Advisory Committee for the subdivision of lands within a rural land use designation, if:

(a) a subdivision creates:

(i) three or less lots for residential use and is less than 110 metres from the public street;

(ii) a lot for aggregate extraction and/or forestry use; or

(iii) a block of lots for recreational uses, that is greater than 300 metres from the public street.

(b) the private access conforms to the following:

(i) minimum width of twenty-four metres,

(ii) access has been granted from the public street,

(iii) lot area and dimension meet the requirements of the *Hampton Zoning By-law*,

(iv) the remnant parcel, including the private access, has a minimum lot area of 0.7 hectares,

(v) use of an easement as a private access is prohibited, and

(vi) is advisable for the development of land.

4.5 In instances where the proposed subdivision may have more than three permanent year-round dwellings and/or will prejudice the possibility of further subdividing the land or the convenient subdividing of adjoining land, Hampton shall not recommend

any private access to such lots. Subdivision plans in areas with a high probability of being predominantly composed of year-round residential development should be serviced by an adequate public road.

4.6 Creating a subdivision using an existing private access shall be permitted subject to subsections 4.4(b)((iii)) and 4.4(b)((iv)).

(a) Extension of an existing private access may be considered by the Planning Advisory Committee under section 4.4.

4.7 Reserve strips abutting a street in a subdivision are prohibited, except where such strips are vested in the provincial authority or in Hampton.

4.8 In arriving at a decision regarding a recommendation with respect to the location of streets in a proposed subdivision, the Planning Advisory Committee shall give consideration to the relationship between such location and:

(a) the topography of the land;

(b) the provision of lots suitable for the intended use;

(c) street intersections and interceptions being as nearly as possible at right angles;

(d) convenient and safe access to the proposed subdivision and to lots within it; and

(e) the convenient further subdividing of the land or adjoining land.

4.9 The names of streets in a subdivision are subject to the approval of the Planning Advisory Committee.

5. LOTS, BLOCKS AND OTHER PARCELS

5.1 Every lot, block and other parcel of land in a subdivision, unless otherwise stipulated in the *Subdivision By-law*, shall abut a street owned by the provincial authority or Hampton.

(a) In the case of lands owned or to be acquired by the municipality, public utilities or telecommunications and existing conditions only, such access other than a street may be approved by the Planning Advisory Committee as being advisable for the development of land.

5.2 The dimensions and area of a lot in a subdivision are subject to the requirements of the *Zoning By-law*.

5.3 Subject to subsection 5, a block in a subdivision:

(a) shall be at least 120 metres and not more than 300 metres long; and

(b) shall have a depth of not less than two lots.

5.4 Where a proposed subdivision contains a series of crescents and cul-de-sacs, a block may exceed 300 metres in length if pedestrian walkways are provided for access or circulation to schools, libraries, playgrounds or other such facilities.

5.5 Easement shall be provided for public utilities and local government services when necessary and shall be of a width deemed necessary by the provincial authority, Hampton and/or utility authority.

6. LAND FOR PUBLIC PURPOSE

6.1 As a condition of approval of a subdivision plan, land in the amount of ten percent (10%) of the area of the proposed subdivision exclusive of streets intended to be publicly owned or access intended to be privately owned, at such location as assented to by Council pursuant to the *Community Planning Act*, is to be set aside as "Lands for Public Purpose", and so indicated on the plan.

6.2 This section does not apply in the case of:

(a) a parcel of land that is being created for the purpose of being added to and forming part of an adjoining parcel;

(b) a subdivision plan that involves assembly of land for future subdivision; or

(c) a subdivision plan that creates a lot which abuts a publicly owned street that on the coming into force of this By-law was paved.

(i) In cases where the street is publicly owned by the provincial authority, on the coming into force of this By-law was designated under the *Highway Act*.

(d) a lot that is being created to accommodate a useable main building, provide such building existed prior to this By-law coming into force; or

(e) a subdivision plan that involves the division of lands owned by Hampton, or its agencies, at the time of subdivision.

6.3 Council may require, in lieu of land set aside under subsection 6.1, a sum of money be paid to the municipality in the amount of eight percent (8%) of the market value of land in the proposed subdivision at the time of submission for approval of the subdivision plan, exclusive of streets intended to be publicly-owned.

6.4 Nothing in this section shall affect the ability of the applicant and Council to enter into an agreement providing for setting aside of part land and part cash-in-lieu, provided that the aggregate value to Hampton shall not be less than that provided in subsection 6.

6.5 Where, as a condition of approval of a subdivision plan, land has been set aside under subsection 6 or provisions of subsection 6.3 have been satisfied, no further setting aside of land for public purposes or payment of additional sums shall be required as a condition of approval of any further, or other subdividing, of the land with respect to which the land has been set aside or sum paid.

(a) Any land set aside in excess of the amount required by the By-Law, that has vested to Hampton with the filling of the subdivision in the land registration office, Council may:

(i) credit the excess amount against any further requirement in respect of any land of which the land comprised in the filed subdivision plan formed a part, <u>or</u>

(ii) use the excess amount for the purposes of conservation, protection and/or enhancement of a natural feature and/or an area reserved for a naturalized and/or enhanced stormwater management feature.

6.6 In formulating a recommendation under subsection 6 and 6.2, Council and/or the Planning Advisory Committee may take into consideration any recommendations of the Leisure Service Advisory Committee as to the suitability of any proposed lands for public purposes.

6.7 Council may sell the lands set aside as land for public purposes, if:

(a) Council receives the consent of the Planning Advisory Committee for the sale or six weeks have elapsed from the date a request in writing was made for the consent, and

(b) a majority of the members of Council vote in favour of the sale.

6.8 All money received by Council under subsection 6.3 and 6.7 is to be paid into a special account, and the money in that account is to be expended by Council for acquiring or developing land for public purposes and for no other purpose.

7. AGREEMENTS

7.1 In a subdivision where services are required, the owner proposing to subdivide land shall provide such services as deemed required by Hampton. The Development Officer shall not approve a subdivision plan unless, in the opinion of Council,

(a) Council will be able in the near future to provide services, recreational areas or other facilities, to the boundaries of the subdivision, or such owner has made satisfactory arrangements for providing such services, recreational area or other facilities, and

(b) the owner proposing the subdivision has:

(i) deposited with Hampton a sum sufficient to cover the cost with respect to facilities that the By-law requires the owner to pay, or

(ii) delivered to Hampton a performance bond acceptable to Council in an amount sufficient to cover the cost referred to in clause 7.1(b)((i)), and

(c) the owner has made satisfactory arrangements to enter into an agreement with Council, to comply with the requirements of the By-law, that is binding on their heirs or successors and assigns to pay the cost to construct services and facilities required within the subdivision.

(i) No work shall be commenced on any subdivisions until such time as the owner and Hampton have entered into an agreement.

7.2 Where any subdivision being proposed benefits from services previously constructed, whether by Hampton or another person, the Development Officer shall not approve the plan unless the owner pays or agrees to pay to Hampton, an amount:

(a) equal to the initial cost of such services, or

(b) equal to their proportional share, calculated as a percentage of the area benefiting from said previously installed services.

8. APPLICATION REQUIREMENTS

8.1 A complete subdivision application shall include an application form signed by the registered property owners and a tentative subdivision plan. A tentative subdivision plan shall include:

(a) the location of all existing and proposed artificial and natural features,

(b) topography to include contours and elevations,

(c) existing conditions, if available, which may include, but not limited to:

(i) access(es);

(ii) aerial photography;

(iii) utilities and local government service easement; and

(iv) flood level information for the following natural features: Kennebecasis River, Hammond River and Hampton Marsh.

(d) any further information required by the Development Officer to assure compliance with Hampton By-Laws and the *Community Planning Act*.

9. CONDITIONS PRECLUDING APPROVAL OF A SUBDIVISION PLAN

9.1 The development officer shall not approve a subdivision plan if,

(a) In the Development Officer's opinion and in the opinion of the Planning Advisory Committee,

(i) the land is not suited to the purpose for which it is intended or may not reasonably be expected to be used for that purpose within a reasonable time after the plan is approved; or

(ii) the proposed manner of subdividing will prejudice the possibility of further subdividing the land or the convenient subdividing of adjoining land;

(b) the owner has failed to receive the approval for municipal services.

(c) the owner has failed to demonstrate that groundwater of sufficient quantity and quality is available for development of the subdivision with individual and communal wells;

(d) the owner has failed to receive assent of the streets and land for public purposes.

10. FEES

A person proposing to subdivide land shall at the time of submission of an application, pay a fee in such amount as determined by Council and described in the *Hampton Annual Rates Schedule*, for:

(a) tentative approval of a Type 1 and Type 2 subdivision;

(b) each lot for final approval of a Type 1 and Type 2 subdivision;

(c) instances where an agreement is required as a condition of approval, as provided for in Section 7; and

(d) an instrument submitted to the Development Officer for approval or exemption pursuant to section 77(1)(l) of the *Community Planning Act*.

11. BY-LAW REPEALED

By-law No. 95-122, being the *Subdivision By-law*, enacted March 14, 1995, and amendments thereto, is hereby repealed.

12. VALIDITY

The invalidity of any section, clause, sentence or provision of this By-law shall not affect the validity of any other section, clause or provision of this By-law which can be given effect without such parts.

First Reading: March 12, 2024

Second Reading: April 9, 2024

Third Reading and Enactment: May 14, 2024

Robert Doucet
Mayor

Richard Malone
Clerk

HAMPTON INCORPORATED 1966 NEW BRUNSWICK