

This paper contains the following Parts:

- I. Relationship Between Provincial Subdivision Regulations and Municipal Subdivision Bylaws
- II. The Subdivision Approval Process, Including Appeals
- III. Excerpts Respecting Subdivision Taken from The Planning Act, R.S.N.S., 1989, c.346
- IV. Questions and Discussion

Section references throughout this paper are to the Planning Act.

I RELATIONSHIP BETWEEN PROVINCIAL SUBDIVISION REGULATIONS AND MUNICIPAL SUBDIVISION BYLAWS

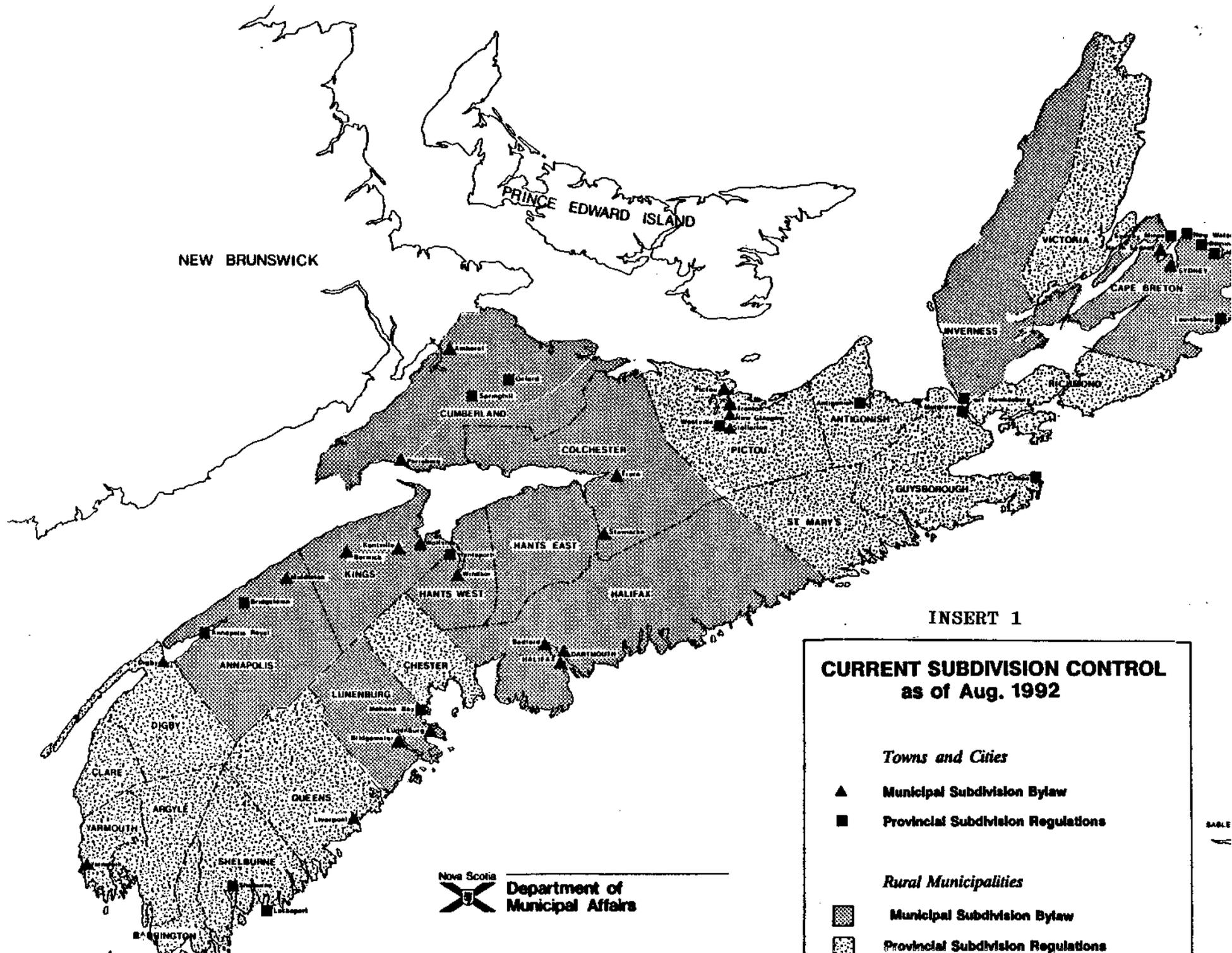
The Planning Act requires in Section 98 that the Minister of Municipal Affairs prescribe provincial regulations for the subdivision of land. Each municipality has the option of adopting and administering its own subdivision bylaw which is effective upon approval by the Minister (Section 100 (8)) and which "shall not be inconsistent" with the provincial subdivision regulations applicable to the particular municipality (Section 98 (1)). Where subdivision bylaws are not in place, provincial subdivision regulations apply and are administered by or on behalf of the Province. Current Subdivision Control across the Province is summarized on Insert 1.

The provincial subdivision regulations are not repealed when a municipal subdivision bylaw becomes effective but are no longer used in administration of the subdivision approval process (Section 98 (2)). Their ongoing use is as a means of maintaining consistency in the basics of the subdivision process since proposed amendments to subdivision bylaws are assessed against the applicable set of provincial subdivision regulations.

The prescription of provincial subdivision regulations on August 6, 1984 marked the first time a subdivision approval process was in place everywhere in the Province. These modernized regulations have greatly improved consumer protection of land purchasers and have contributed to a much better property information system. As well, those municipalities with regulations prescribed pursuant to the 1969 Planning Act had a different definition of subdivision which created uncertainty as to when approval was required. The current Planning Act (originally enacted in 1983) and modernized provincial subdivision regulations have eliminated this uncertainty by requiring subdivision approval

(except for situations specified in the Act) for any change of a property boundary line or the establishment of a new line.

To administer provincial subdivision regulations, the Province established two provincial subdivision offices, one in the Town of Yarmouth and the other in the Town of Port Hawkesbury. Other areas of the Province are administered from District Planning Commissions and three towns are administered directly from the Department of Municipal Affairs in Halifax. Insert 2 shows the current situation with respect to administration.



INSERT 1

**CURRENT SUBDIVISION CONTROL
as of Aug. 1992**

Towns and Cities

- ▲ Municipal Subdivision Bylaw
- Provincial Subdivision Regulations

Rural Municipalities

- ▨ Municipal Subdivision Bylaw
- ▩ Provincial Subdivision Regulations

Nova Scotia

**Department of
Municipal Affairs**

**ADMINISTRATION OF
PROVINCIAL SUBDIVISION REGULATIONS - 1990**

Office Location

Areas Covered

Provincial Subdivision Office
Department of Municipal Affairs
Port Hawkesbury

Towns of Antigonish, Mulgrave, and Port
Hawkesbury. Rural Municipalities of
Antigonish, Guysborough, St. Mary's,
Richmond, and Victoria.

Provincial Subdivision Office
Department of Municipal Affairs
Yarmouth

Towns of Clark's Harbour, Lockeport,
and Shelburne. Rural Municipalities of
Argyle, Barrington, Clare, Digby,
Shelburne and Yarmouth.

Lunenburg District Planning Commission
Bridgewater

Town of Mahone Bay. Rural Municipality
of Chester.

Cape Breton Metro Planning Commission
Sydney

Towns of Dominion, Glace Bay,
Louisbourg, New Waterford and Sydney
Mines.

Annapolis District Planning Commission

Towns of Annapolis Royal and
Bridgetown.

Pictou District Planning Commission
Pictou

Town of Westville. Rural Municipality of
Pictou.

Department of Municipal Affairs
Halifax

Towns of Hantsport, Oxford and
Springhill.

II THE SUBDIVISION APPROVAL PROCESS, INCLUDING APPEALS

A. Applications

An application for subdivision approval (Section 105) is made to the municipal development officer if a subdivision bylaw applies to the area being subdivided and to a provincial development officer otherwise. (Refer to Inserts 1 and 2). Upon receipt of an application, the development officer has 15 days to advise the applicant whether the application is complete. Complete applications are those which contain all the information required by the development officer to assess whether the proposed subdivision meets the legal requirements for approval. Within 30 days of receiving a completed application the development officer must:

- (i) approve the application if it conforms to the subdivision regulations or bylaw and has received any required approvals (Section 105 (3));
- (ii) notify the applicant in writing of all approvals received and not received; or
- (iii) notify the applicant in writing of a refusal to approve including reasons for refusal.

B. Stages of Subdivision Approval Process

Depending on the particulars of the subdivision, there may be as many as three stages of the subdivision approval process, preliminary, tentative and final.

(1) Preliminary Plan of Subdivision

The first stage of the subdivision approval process, the submitting of a preliminary plan, is an optional one but one which can save unnecessary cost. Rather than undertaking the expense of having survey work done without knowing whether the subdivision will meet the requirements of the provincial subdivision regulations or municipal subdivision bylaw, a subdivider need only submit a sketch of his or her proposal. This sketch is known as a preliminary plan and is sent to the relevant government departments and/or agencies for review. The subdivider is then informed as to the acceptability of the proposed subdivision. There have been many instances where a subdivider has submitted final plans of subdivision, fully surveyed, only to learn that major changes would be required before subdivision approval could be obtained. The development officer reports to the subdivider regarding the status of the application rather than approving or refusing the application as is required for tentative and final applications. No effective right of appeal lies with respect to preliminary (or tentative) applications. The Municipal Board in David Walsh v. Zwicker and Town of Bedford (NSMB-11-19-P) found that technically all refusals (preliminary, tentative and final) of a development officer under Section 105 (3) of the Planning Act are appealable but that the Board lacked jurisdiction to allow appeals from preliminary or tentative plan refusals. Although the Board refused to grant the appeal against the preliminary plan refusal in this case, the Supreme Court subsequently granted an order for mandamus directing the Town of Bedford to give tentative approval to Mr. Walsh's subsequent application for tentative approval (251 A.P.R. 1990 p.377 (95 N.S.R. 2d)). The Municipal Board confirmed its lack of jurisdiction on appeals against preliminary and tentative plan refusals in Marriott and Baker v. Bond and County of Halifax (NSMB-32-89-P).

(2) Tentative Plan of Subdivision

The next stage in the process, the submitting of a tentative plan, is mandatory where a new road is proposed or central water and/or sewer services are to be installed. The only survey requirement is for the boundary of the area proposed to be subdivided. For example, if a subdivider were proposing to subdivide 20 acres into 80 serviced lots, only the 20 acres need be surveyed. The road system and the individual lots have only to be drawn to scale. Except where a new private road is proposed, plans showing contours, the intersection of the proposed street and existing street and the connection of the proposed services with the existing services are to be submitted.

As with preliminary plans, tentative plans are sent to the relevant government departments and/or agencies, and if all requirements are met, tentative approval is given. This approval lapses after two years if the proposed lots are not shown on a final plan of subdivision (Section 105(5)).

(3) Final Plan of Subdivision

If one or both of the previous stages have been used, approval of the final plan, if it contains the same proposal as either the preliminary or tentative plan, should be easily obtained, as problems should have been resolved prior to submission of the final plan. The final plan must meet the survey requirements of the regulations.

After it is approved by the development officer, the final plan is sent to the registry of deeds for filing, accompanied by a Notice of Approval

(Section 110(2)-(4)). A Notice of Approval is registered as a conveyance out of the owner shown on the approved plan. The Notice specifically references the approved and filed plan of subdivision by plan number.

C. Referral of Plans of Subdivision

Once a development officer receives a plan of subdivision, the development officer is required to refer the plan to a number of provincial and/or municipal offices. This referral procedure is basically the same whether the application is preliminary, tentative or final.

(1) Department of Transportation and Communications

Where the proposed subdivision is in a rural municipality, the plan is sent to the Department of Transportation and Communications (Section 108(1)). If the proposed lots abut a public road, the Department confirms that it is a public road, which is defined as being owned and maintained by the Department, and also checks the proposed lots to determine whether there is a safe access point from each lot to the public road. If a private road is proposed, the Department approves the intersection of the private road with the public road. In addition, the private road must be 66 feet wide (Section 108(2)). If a new public road is proposed, it is important to inform the Department of Transportation and Communications as early as possible as it must be willing to take over the road before final approval is given, which means the subdivider will have to construct the road to the Department's specifications.

(2) Town Engineer or Committee on Streets

If the proposed subdivision is occurring in a Town, the plan is sent to the Town Engineer, or in some cases the Committee on Streets, to determine if the lots abut a public street. Again, if a new street is proposed, the subdivider should contact the town early in the process to determine whether the Town is willing to take over the street and what construction standards and specifications apply. This is also relevant when the subdivider is proposing to install central water and/or sewer services.

(3) Department of Health and Fitness

Where the subdivision involves lots which are proposed to be serviced by on-site sewage disposal systems, the plan is sent to the Department of Health and Fitness. In most cases, the subdivider will be required to dig test pits in order for the health official to determine lot suitability for on-site sewage disposal systems. Again, if the proposed lots are too small to accommodate on-site sewage disposal, the preliminary stage would have identified this problem and saved the subdivider the cost of having changes made in surveyed plans of subdivision.

(4) Department of Environment

The plan may also be sent to the Department of Environment for comment. This is always done if four or more lots are involved but the plan may also be sent if the Development Officer thinks it is necessary, for example, if a watercourse is directly involved.

(5) Municipal Development Officer

Where the subdivision is occurring in an area which is covered by a land use bylaw, the plan must be reviewed by the municipal development officer to determine if the proposed lots meet the requirements of that bylaw. Where a subdivision bylaw is in place, the municipal development officer is the official administering it as well as the land use bylaw. This review is important to ensure that the proposed lots meet minimum area and frontage requirements as well as to put the municipal development officer on notice of the subdivision activity, which is usually associated with development activity. With involvement of the municipal development officer it is hoped to avoid situations in which subdivision approval is obtained but the lot is ineligible for the type of development intended by the subdivider.

(6) Building Inspector

If a plan of subdivision shows a proposed boundary line close to a building, the plan is sent to the building inspector to determine if the limiting distance requirements of the Building Code Act are met. If they are not, the subdivider may have to move the lot boundary further away from the building.

D. Instruments of Subdivision

There are different sets of provincial subdivision regulations for towns and for rural municipalities. The two main differences between the sets of regulations is that in rural municipalities, subdivision is permitted on private roads and by instrument, rather than by plan of subdivision.

Two requirements must be met before a private road is approved. It must be at least 66 feet in width and its intersection with the public road must be approved by the Department of Transportation and Communications (Section 108).

Instruments of subdivision are unsurveyed plans, drawn to scale, and are only eligible for approval under the following circumstances:

- i) each lot being created must have a minimum area of 9,290 metres square (100,000 square feet) and dimensions that would permit it to contain a circle with a diameter of 76 metres (249.3 feet) within its boundaries, or
- ii) be an existing lot that is being increased in size.

Instruments of subdivision are designed so as to make it clear that the subdivider is responsible for all the information shown and Section 109 of the Planning Act specifically says that the development officer has no duty to verify information provided by the applicant as to lot size, location or boundaries.

The instrument also states on it that approval does not in any way imply that the lots created are eligible for any permits such as a building or municipal development permit. Section 109 also specifically says that in approving an instrument of subdivision a development officer does not warrant the size, location or boundaries of the lots described in the instrument.

Unless required by the subdivider, an instrument is not sent to government departments or agencies. One exception to this occurs where a land use bylaw is in effect, in which case the instrument is sent to the municipality to determine if the minimum lot size requirements are met.

E. APPEALS

Section 115 of the Planning Act gives a right of appeal to the Municipal Board (Nova Scotia Utility and Review Board if S.N.S. 1992, c. 11 is proclaimed) where a development officer refuses to approve a plan or an instrument of subdivision. An appeal must be filed within 15 days after service of the development officer's written decision. The jurisdiction of the Board upon appeal is to determine whether the proposed plan or instrument of subdivision complies with the subdivision regulations or subdivision bylaw.

III EXCERPTS RESPECTING SUBDIVISION TAKEN FROM THE PLANNING ACT
R.S.N.S. 1989, C. 346 (AS AMENDED BY S.N.S. 1990, C. 19)

Purpose of Act

2 The purpose of this Act is to

(a) enable the Governor in Council to identify and protect the interests of the Province in the use, development and subdivision of land through the adoption and administration of provincial land-use policies and regulations and provincial subdivision regulations;

Interpretation

3 In this Act, unless the context otherwise requires,

(r) "subdivision" means the division of any area of land into two or more parcels, and includes a resubdivision or a consolidation of two or more parcels;

Provincial land-use policies

7

Content of policies

(2) Without restricting the generality of subsection (1), provincial land-use policies may consist of statements of policy with respect to any or all of the following:

(g) the subdivision and development of land;

Applicable provincial policies

38

Statements of policy

(2) A municipal planning strategy or an inter-municipal planning strategy may include statements of policy with respect to any or all of the following:

(m) subdivision of land;

Subdivision of land

95 (1) Subdivision of land shall be

(a) in any municipality, by a plan of subdivision; or

(b) in a rural municipality, by an instrument of subdivision,

(i) where provincial subdivision regulations so provide or a subdivision by-law incorporates such a provision from provincial subdivision regulations, and

(ii) where the subdivision results in

(A) each lot created being one hundred thousand square feet or more in area and having dimensions that would permit it to contain a two hundred and fifty foot diameter circle within its boundaries, or

(B) the increase in size of an existing lot by the addition of a part of an abutting lot, where the lot reduced in area complies after the subdivision with the frontage and area requirements set out in the provincial subdivision regulations or municipal subdivision by-law, as the case may be.

Instrument of subdivision

(2) An instrument of subdivision shall be in the form prescribed pursuant to subsection (3) of Section 96 and shall include

(a) a description of the area of land being subdivided; and

(b) a graphic representation showing the new lots being created. R.S., c. 346, s. 95.

Provincial subdivision regulations

96 (1) The Minister shall prescribe provincial regulations for the subdivision of land.

Mandatory content

(2) Provincial subdivision regulations shall include

(a) procedure for the approval of tentative plans of subdivision including the form of application for approval;

(b) requirements for approval of tentative plans;

(c) procedure for the approval of final plans of subdivision including the form of application for approval;

(d) requirements for approval and filing of final plans and for registration of notices of approval of final plans including the form of notice of approval;

(e) fees to be charged for the filing of plans of subdivision and for notices of approval of final plans;

(f) referral of plans of subdivision to the Department of Health and Fitness under the *Health Act*; and

(g) referral of plans of subdivision to the Department of Transportation and Communications for approval pursuant to Section 108.

Permissive content

(3) Provincial subdivision regulations may include

(a) waivers from compliance with certain requirements of regulations enacted pursuant to subsection (2) or this subsection;

(b) requirements for lot frontage;

(c) size and shape of blocks;

(d) in rural municipalities, procedure for approval of instruments of subdivision including form of instruments of subdivision;

(e) in rural municipalities, requirements for approval and registration of instruments of subdivision;

(f) fees to be charged for the registration of instruments of subdivision;

(g) reasonable fees to be charged for the processing by a provincial development officer of plans of subdivision and instruments of subdivision;

(h) minimum lot dimensions for frontage and lot area where no applicable land-use by-law deals with these matters;

(i) referral of a plan of subdivision to any other department or agency of the Province or of a municipality;

(j) provisions for the limitation of the number of lots that can be subdivided from an area of land where the lots are not on a street or road owned or maintained by the Province, a city or a town;

(k) requirements for the right of way, alignment and gradients of proposed streets or roads, whether or not they are to be owned or maintained by the Province, an incorporated town or a city, and provided that the town or city does not have requirements applicable to the streets or roads;

(l) any other matter necessary to carry out the intent of a provincial land-use policy with respect to the subdivision of land.

Territorial application

(4) Provincial subdivision regulations may apply to all or part of the Province and there may be different regulations for different parts of the Province.

Administration

(5) The provincial subdivision regulations shall be administered by such provincial development officers as the Minister may designate. R.S., c. 346, s. 96.

Notice of intention to adopt

97 At least thirty days before prescribing provincial subdivision regulations, the Minister shall

(a) give written notice of his intention to each council affected by the proposed regulation, and seek the comments of each council; and

(b) give public notice of his intention by advertisement in a newspaper circulating in the area affected, which notice shall state where the proposed regulations may be inspected and invite written comments. R.S., c. 346, s. 97.

Subdivision by-law

98 (1) A municipality may adopt a subdivision by-law, which shall not be inconsistent with the subdivision regulations which apply to the municipality at the date of adoption of the by-law.

Regulations do not apply

(2) When a subdivision by-law comes into effect, the provincial subdivision regulations no longer apply to the municipality.

Variation of requirements

(3) A subdivision by-law shall apply to the entire municipality, but there may be different requirements for different parts of the municipality. R.S., c. 346, s. 98.

Mandatory content

99 (1) A subdivision by-law shall include any requirements of provincial subdivision regulations applicable to the municipality, but these requirements may be waived or varied where

(a) the municipality adopts a more stringent requirement; or

(b) the requirements are dealt with in a municipal planning strategy.

Permissive content

(2) Subject to subsection (1), a subdivision by-law may

(a) where not dealt with in a land-use by-law, require areas to be reserved for public purposes;

(b) where not dealt with in a land-use by-law, regulate the minimum lot dimensions and building lines, and the size and shape of blocks and lots;

(c) in the case of a city or incorporated town, set standards and requirements regarding the construction, width, gradients and location of

streets and roads, and the widening and modifying of existing streets and roads;

(d) in the case of a rural municipality, set standards and requirements regarding the construction, width, gradients and location of private streets and roads servicing two or more lots, or such greater number of lots as the by-law specifies, and the widening and modifying of such existing streets and roads;

(e) set standards and requirements regarding the construction and installation of water services, sanitary sewers, storm drainage works and other services and utilities;

(f) require the transfer to the municipality of useable land or payment of cash in lieu of equivalent value for park, playground and similar public purposes, provided that the land required to be transferred does not exceed five per cent of the area shown on the final plan of subdivision;

(g) where the municipal planning strategy so provides, limit the number of lots that may be subdivided from an area of land in a calendar year;

(h) provide for waivers from compliance with certain requirements of the by-law.

Services

(3) A subdivision by-law may require a subdivider, before approval is endorsed on a final plan of subdivision, to

(a) install water, sewer, storm drainage work and other services;

(b) construct, lay out, grade and pave, or any of them, any proposed street in the subdivision,

or, in the alternative to clauses (a) and (b), to

(c) enter into a bond or other security satisfactory to the council to install and provide the streets, sewer, water and other services to the standards set out in the by-law;

(d) provide a bond or other security for the maintenance of the installations, for a maximum period of one year from the date of installation.

Fees

(4) A subdivision by-law may prescribe a schedule of reasonable fees to be paid by the applicant for the review and approval of a plan of subdivision. R.S., c. 346, s. 99.

Public hearing

100 (1) Before adopting or amending a subdivision by-law, the council shall hold a public hearing at which oral and written submissions shall be received.

Notice of hearing

(2) The council shall cause notice to be given of the public hearing and of its intention to adopt or amend a subdivision by-law by an advertisement inserted at least once a week for two successive weeks in a newspaper circulating in the municipality, the first of such notices to be published at least twenty-one clear days before the date fixed for the hearing.

Contents of notice

(3) The notice of the public hearing shall state the place where and the hours during which the proposed by-law may be inspected by the public and the date, time and place set for the public hearing.

Description of area

(4) The notice of the public hearing shall describe the area affected by the by-law by metes and bounds, by a plan, map or sketch, or by other description adequate to identify the area.

Provision of copies

(5) Subject to subsection (6), the council shall provide copies of the proposed by-law or portions thereof to interested persons.

Fee for copies

(6) The council may charge a fee for copies sufficient to cover the cost of reproduction of any copies provided pursuant to subsection (5).

Voting restrictions

(7) The adoption or amendment of the subdivision by-law shall be done after consideration of the submissions received and shall be by a majority vote of the whole council, but only those councillors present at the public hearing shall vote upon the adoption or amendment of the by-law.

Approval of Minister

(8) A subdivision by-law or an amendment thereto comes into force on, and not before, approval by the Minister.

Copies to Minister

(9) Four duly certified copies of the by-law or amendment shall be submitted to the Minister for the Minister's approval, together with a copy of any written submissions in respect of the by-law, and the clerk shall provide, by statutory declaration, proof of compliance with this Section. R.S., c. 346, s. 100.

Open space dedication or cash in lieu

101 (1) A council may accept, under clause (f) of subsection (2) of Section 99, a combination of land and cash in lieu of land equal to the amount of the transfer required.

Size of open space

(2) The size of an open-space transfer required by a subdivision by-law shall be calculated on the basis of the area shown in the final plan of subdivision, excluding streets, roads and the residue of land owned by the subdivider.

Amount of cash

(3) The amount of the cash in lieu of the open-space transfers shall be calculated on the assessed value of the new lots created, excluding streets, roads and the residue of land owned by the subdivider.

Use of cash

(4) Any cash contributions made pursuant to the subdivision by-law shall be used by the council for the acquisition of and capital improvements to park, playground and public open-space areas.

Outside open space

(5) A subdivider may, in lieu of complying with a by-law made pursuant to clause (f) of subsection (2) of Section 99, offer to the council, and the council may accept, an area of land of equivalent value outside the area being subdivided and within the boundaries of the municipality. R.S., c. 346, s. 101.

Act applies

102 (1) For greater certainty, this Act also applies to

(a) a partition of land pursuant to the *Partition Act* or the *Probate Act*;

(b) a division of land resulting from a sale of land for taxes pursuant to the *Assessment Act*; and

(c) a division of land pursuant to the *Matrimonial Property Act*.

Act does not apply

(2) Notwithstanding subsection (1), this Act does not apply to

(a) a division of land resulting from a devise of real property by a testamentary instrument;

(b) a division of land resulting from an expropriation;

(c) a division of land resulting from an acquisition of real property by any means whatsoever by Her Majesty in right of the Province or of Canada or by any agency thereof;

(d) a division of a cemetery into burial lots;

(e) a division of land resulting from an acquisition or disposal of real property by a municipality where the instrument creating the division expressly and *bona fide* states therein that the acquisition or disposal is for the purpose of altering the boundaries of an existing or creating a new public street or walkway;

(f) a division of land resulting from an acquisition of real property by a municipality where the instrument creating the division expressly and *bona fide* states therein that the acquisition is for the purpose of transferring land to the municipality as required by a subdivision by-law;

(g) a division of land which is a railway right of way and is abandoned according to law or a consolidation of any part of such land with adjacent land;

(h) a division of land resulting from a lease of real property for, directly or by entitlement to renewal, a term of twenty years or less;

(i) a division of land resulting in lots which are all twenty-five acres or more in area, where the instrument creating the division expressly and *bona fide* states therein that the lot and all others created by the instrument, including any remainder lot, are twenty-five acres or more in area, and which is supported by an affidavit of the person making the transfer affixed to the instrument; or

(j) a division of land where there is no provincial subdivision regulations or subdivision by-law of a municipality in force in respect of that land at the time of the division.

Affidavit

(3) Where an affidavit of the person making a transfer purports to verify that the transfer relates to a parcel in excess of twenty-five acres in area, the parcel is deemed to come within the exemption contained in clause (i) of subsection (2). R.S., c. 346, s. 102.

Initiation of amendment by Minister

103 (1) Where the Minister has prescribed subdivision regulations and where, in the opinion of the Minister, an existing subdivision by-law is inconsistent with the regulations, the Minister shall provide for the amendment of the by-law, in accordance with this Section, to the extent necessary to make the by-law consistent with the regulations.

Duty on initiation

(2) Where the Minister proceeds pursuant to subsection (1), he shall

(a) advise the council of the particulars of the conflict; and

(b) request the council to submit proposals for resolution of the conflict within such number of days, not less than ninety, as the Minister determines.

Direction to amend

(3) Where the council fails to respond to the notification of the Minister under subsection (2) or where, after consultation with the council, the Minister and the council cannot agree on a method to resolve the conflict, the Minister may direct the council to amend its subdivision by-law in the manner prescribed by the Minister.

Amendment by Minister

(4) Where the council does not amend its subdivision by-law as directed, the Minister may amend it.

Duty upon amendment

(5) Where the Minister has amended a subdivision by-law in accordance with subsection (4), the Minister shall

(a) file a copy of the amendment with the clerk of the municipality; and

(b) give notice of the amendment in a newspaper circulating in the municipality, which provides a synopsis of the amendment and provides where it can be inspected by interested persons. R.S., c. 346, s. 103.

Municipal development officer

104 (1) A council shall appoint a municipal development officer to administer its subdivision by-law and to approve plans of subdivision and endorse final plans of subdivision and file them in the office of the appropriate registrar of deeds.

Commission employee

(2) Where a municipality participates in a commission, the council may appoint a development officer in the employ of the commission to be the municipal development officer.

Substitute

(3) A council may from time to time authorize any other person to act in the municipal development officer's stead. R.S., c. 346, s. 104.

Application for subdivision approval

105 (1) An application for approval of a plan or instrument of subdivision shall be made to the development officer.

Completeness of application

(2) Within fifteen days of receiving an application pursuant to subsection (1), the development officer shall inform the applicant whether his application is complete.

Duty of development officer

(3) Within thirty days of receiving a completed application, the development officer shall

(a) approve the plan or instrument if it

(i) conforms to the subdivision regulations or by-law, and

(ii) has received all approvals, if any, of departments or agencies of the Province or of the municipality or an agency thereof in addition to those set out in the regulations or by-law, as the case may be;

(b) notify the applicant in writing of all approvals received and, where necessary, departments or agencies of the Province which have not approved the plan or instrument as submitted, where such approval is required; or

(c) notify the applicant in writing of his decision refusing to approve the plan or instrument as submitted, which decision shall contain the reasons for the refusal.

Deemed approval by department

(4) Where a department or agency of the Province is required by an enactment to approve a final plan of subdivision and the decision by the department or agency has not been received by the development officer within six months from the date that the completed application for approval of the final plan was forwarded to the department or agency by the development officer, the department or agency is deemed to have approved the final plan.

Duration of tentative plan approval

(5) The approval of the lots shown on a tentative plan of subdivision lapses if the lots are not shown on a final plan of subdivision approved within two years of the date of the approval of the tentative plan. R.S., c. 346, s. 105.

Plan implementing agreement

106 (1) A municipal development officer may approve a plan of subdivision prepared to implement an agreement authorized by a municipal planning strategy and land-use by-law, notwithstanding that it does not comply with the subdivision by-law, providing that it complies with the agreement.

Additional powers

(2) Where the approval of a plan of subdivision by a department or agency of the Province is required by an enactment, a plan prepared pursuant to subsection (1) shall also be subject to those approvals. R.S., c. 346, s. 106.

Relaxation of requirement

107 (1) Where provincial subdivision regulations or a subdivision by-law specifies minimum lot dimensions or lot area and where the regulations or by-law so provides, the development officer may approve a plan of subdivision which shows not more than two lots which do not meet these requirements, provided that the lot area and dimensions are no less than ninety per cent of the required minimums for the lot area and dimensions.

Restriction

(2) No approval shall be granted where the difficulty experienced is general to the properties in the area or results from the intentional disregard of the requirements of the subdivision regulations or subdivision by-law. R.S., c. 346, s. 107.

Department of Transportation and Communications

108 (1) Unless a provincial subdivision regulation otherwise provides or did so provide prior to the adoption of a subdivision by-law, no plan of subdivision in a rural municipality shall be approved until the Minister of Transportation and Communications or an official in his department, nominated by him for the purpose, has approved

(a) all public streets and roads shown on the plan of subdivision, or part thereof to be approved, or on which lots on the plan of subdivision, or part thereof to be approved, abut; and

(b) of the intersection with public streets and roads of all proposed streets and roads that are not to be owned and maintained by the Province.

Minimum width of right of way

(2) In a rural municipality, the minimum width of the right of way of all streets and roads not owned and maintained by the Province and shown on a plan of subdivision approved on or after the first day of August, 1987, shall be sixty-six feet unless a provincial subdivision regulation otherwise provides or did so provide prior to the adoption of a subdivision by-law.

Limit on Provincial expenditures

(3) The Province shall not in a rural municipality expend any money on a street or road that is not owned and maintained by the Province and is shown on a plan of subdivision approved on or after the first day of August, 1987.

Specifications

(4) In a rural municipality, a street or road that is not owned and maintained by the Province and is shown on a plan of subdivision approved on or after the first day of August, 1987, shall not become a public street or road until it is constructed in accordance with specifications issued from time to time by the Department of Transportation and Communications for that purpose. R.S., c. 346, s. 108.

No warranty as to fitness of lot

109 The approval by a development officer of an instrument of subdivision does not warrant the size, location or boundaries of the lots described in the instrument and the development officer has no duty to verify the information submitted by the applicant as to the size, location or boundaries of the lots. R.S., c. 346, s. 109.

Registry of deeds

110 (1) No plan of subdivision shall be filed and no instrument of subdivision shall be registered in the office of any registrar of deeds until the plan or instrument has been approved by a development officer in accordance with this Act, and no registrar of deeds shall accept or file any plan of subdivision or instrument of subdivision until a certificate of approval is endorsed thereon in accordance with this Act.

Endorsement and filing

(2) A development officer shall endorse his approval on a final plan of subdivision and file the final plan of subdivision in the office of the registrar of deeds for the registration district in which the land is located, within thirty days after having been endorsed with his approval, unless the applicant has failed to comply with the subdivision regulations or subdivision by-law.

Endorsement of approval

(3) A development officer shall endorse approval on an instrument of subdivision and register the instrument of subdivision in the office of the registrar of deeds for the registration district in which the land is located, within thirty days after having been endorsed with the development officer's approval, unless the applicant has failed to comply with the subdivision regulations or subdivision by-laws.

Registration of notice

(4) At the same time as the development officer files an approved final plan of subdivision at the registry of deeds in accordance with subsection (2), the development officer shall register a notice in the registry of deeds which indicates approval of the final plan of subdivision.

Indexation

(5) The instrument or notice referred to in subsection (3) or (4) shall be indexed at the registry of deeds as if the instrument or notice were a conveyance by the person who is shown as the owner of the land in the instrument or on the final plan of subdivision.

Content of endorsement

(6) The endorsement of approval on a plan or instrument of subdivision by the development officer shall indicate

(a) what other approvals have been granted or refused pursuant to any other enactment by other departments or agencies of the Province; and

(b) which streets and roads, if any, shown on the plan are to be owned and maintained by the Province.

Indication of deemed approval

(7) Where pursuant to subsection (4) of Section 105 there is a deemed approval by a department or agency of the Province of a final plan of subdivision or instrument of subdivision, the endorsement of the development officer pursuant to subsection (6) shall indicate that the approval of the department or agency is a deemed approval pursuant to subsection (4) of Section 105.

Notice of approval

(8) A provincial development officer shall give notice of the endorsement of approval on a final plan of subdivision or an instrument of subdivision to the council of the municipality in which the land which is the subject of the plan or instrument is located and to the Director within two days of the endorsement.

Installation of services

(9) When a final plan of subdivision has been approved, an applicant may lay out and construct streets, blocks, lots and land for public purposes, and any other services or utilities required, in such phases as may be agreed upon at the time of approval of the final plan and before endorsement of approval on the final plan. R.S., c. 346, s. 110.

Subdivision effective upon filing of plan

111 (1) No subdivision of land takes effect except upon a plan or instrument of subdivision endorsed in accordance with Section 110 being filed in the office of the registrar of deeds for the registration district in which the subdivision is situate.

Instrument ineffective

(2) No deed, mortgage, lease or other instrument which would result in the subdivision of land has effect until subsection (1) is complied with.

Execution of instruments before approval

(3) A deed, mortgage, lease or other instrument which purports to make a subdivision and which is executed before the approval and the filing or registration, as the case may be, of a plan or instrument of subdivision in the registry of deeds pursuant to Section 110 is deemed

(a) to have been executed immediately after the filing or registration of the plan or instrument of subdivision; and

(b) where the deed, mortgage, lease or other instrument has been registered in the registry of deeds, to have been duly registered at the time of the actual registration.

Two or more instruments

(4) Where two or more deeds, mortgages, leases or other instruments are deemed by subsection (3) to have been executed at the same time, they are deemed to have been executed in the same order as they were actually executed. R.S., c. 346, s. 111.

Subdivisions not subject to Act

112 Nothing in this Act prevents

(a) a person from applying for approval of;

(b) the approval of,

a subdivision which is not subject to this Act. R.S., c. 346, s. 112.

Amendment of plan of subdivision

113 (1) Where a final plan of subdivision or instrument of subdivision has had approval endorsed thereon in accordance with this Act, the former *Planning Act* or a former *Town Planning Act*, it may be amended or repealed upon the application of the owner or the initiative of the council, where the council has a subdivision by-law in effect.

Act applies to amendment

(2) The provisions of this Act with respect to the approval of a plan or instrument of subdivision apply to its amendment or repeal.

Initiation by council

(3) Notwithstanding subsection (2), where the amendment or repeal of a plan or instrument of subdivision is being initiated by the council, the council shall cause

(a) thirty days notice to be given to the owner either by personal service or registered mail;

(b) a notice to be published in a newspaper published or circulating in the area affected at least once a week for two successive weeks, the first of such notices to be published at least three clear weeks before the date fixed for the hearing, at the time and place at which interested persons will be heard.

Consent of owner

(4) Except as provided in subsection (3), no amendment of a plan or instrument of subdivision may be made without the consent in writing of the owner of the land.

Effect on ownership

(5) An amendment of a plan or instrument of subdivision does not affect the ownership of the land.

Registry of deeds

(6) An amendment to a plan or instrument of subdivision shall be approved and filed in the office of the registrar of deeds in the same manner as required for an original plan or instrument of subdivision, notwithstanding that the original plan or instrument was not approved and filed under this Act, and any original plan or instrument which is subject to amendment by this Section shall also be filed.

Instrument ineffective

(7) No deed, mortgage, lease or other instrument which would result in the subdivision of land in

accordance with an amending plan or instrument of subdivision has effect until subsection (6) is complied with.

Instrument executed before approval

(8) A deed, mortgage, lease or other instrument which purports to make a subdivision and is executed before the approval and the filing or registration, as the case may be, of an amending plan or instrument of subdivision in the registry of deeds pursuant to this Section is deemed

(a) to have been executed immediately after the filing or registration of the amending plan or instrument of subdivision; and

(b) where the deed, mortgage, lease or other instrument has been registered in the registry of deeds, to have been duly registered at the time of the actual registration.

Two or more instruments

(9) Where two or more deeds, mortgages, leases or other instruments are deemed by subsection (8) to have been executed at the same time, they are deemed to have been executed in the same order as they were actually executed.

Instruments not restricted

(10) Where a deed, mortgage, lease or other instrument has been made which results in the subdivision of land in accordance with a plan or instrument of subdivision duly approved and filed in the office of the registrar of deeds, the amendment of that plan or instrument shall not restrict the right to the owner, mortgagee, lessee or other holder to execute other deeds, mortgages, leases or instruments in which property is described as in the deed, mortgage, lease or other instrument first herein mentioned. R.S., c. 346, s. 113.

Title unaffected

114 (1) The failure to comply with this Act or the former *Planning Act* or any regulation or by-law made pursuant to either Act does not affect and is deemed not to affect the creation of any title or interest in real property conveyed or purported to have been conveyed by deed, lease,

mortgage or other instrument before the sixteenth day of April, 1987.

Rights acquired unaffected

(2) This Section does not affect the rights acquired by any person from any judgment or order of a court given or made in litigation or proceedings commenced before the sixteenth day of April, 1987. R.S., c. 346, s. 114.

Appeal

115 (1) Where a development officer refuses to approve a plan or an instrument of subdivision, the applicant therefor may appeal the decision to the Board.

Limitation period

(2) An appeal pursuant to subsection (1) shall be filed with the Board within fifteen days after the written decision of the development officer is served on the applicant.

Determination by Board

(3) In considering an appeal pursuant to this Section, the Board shall determine whether the proposed plan or instrument of subdivision complies with the subdivision regulations or subdivision by-law, as the case may be.

Decision by Board

(4) The Board shall

(a) confirm the decision of the development officer; or

(b) allow the appeal by directing the development officer to approve the plan or instrument of subdivision.

Restriction on decision

(5) Where and only where the plan or instrument of subdivision is in accordance with the subdivision regulations or the subdivision by-law, whichever is applicable, the Board shall allow the appeal. R.S., c. 346, s. 115.

Former subdivision regulations

126 Subdivision regulations made by the Minister pursuant to the former *Planning Act* or any former *Town Planning Act* are and are deemed to be subdivision regulations within the meaning of this Act, and may only be amended or repealed in accordance with this Act. R.S., c. 346, s. 126.

Former subdivision by-law

127 (1) A subdivision by-law passed under the former *Planning Act* or any former *Town Planning Act* is and is deemed to be a subdivision by-law within the meaning of this Act, and may be amended in accordance with this Act.

Regulations deemed part of by-law

(2) Subdivision regulations referred to in Section 126 are and are deemed to be, for the purposes of this Act other than their amendment or repeal, part of any subdivision by-law referred to in subsection (1) applying to the same municipality or part thereof. R.S., c. 346, s. 127.

Conflict with other Act

130 In the event of conflict between this and any other Act, the provisions of this Act shall prevail. R.S., c. 346, s. 130.

IV. QUESTIONS AND DISCUSSION

1. **Q. Do Boundary Line Agreements and Quieting of Titles Certificates of Title create subdivisions?**

D. A clarification of boundary lines or title to land will not in most instances create a subdivision of land. What the boundary line agreement is doing is stating where the boundary is between two lots for which there is a valid subdivision but where there is some uncertainty about the location of the actual division line between those two approved lots. No new lots are being created. However, there may be some cases where a line agreement may result in a subdivision: not in and of itself but because there are exchanges of deeds for parcels of land that create new lots.

In the case of a Quieting of Titles application, the Certificate of Title which is issued by the Court states who is the owner of land but does not create a new lot. There may be a question of where lot boundaries are as between two or more competing land owners which is resolved as a result of the Quieting application, but the lots around which the dispute revolves are existing lots.

The red flag for conveyancing lawyers is the creation of a plan which shows a parcel or parcels being added to an existing lot or lots.

2. **Q. Does subdivision approval equate with development approval?**

D. No. Although the Planning Act governs land use as well as subdivision, it deals with development rights independently of subdivision approval. There is no legal authority to refuse subdivision approval based on proposed use.

If a land use bylaw is in place, the lot area and frontage requirements of the subdivision regulations or subdivision bylaw, as the case may be, are taken from the land use bylaw. However, conveyancing lawyers should be aware that subdivision approval does not guarantee a right to develop a lot as intended by a subdivider. The use proposed for the lot still must be assessed in light of all the relevant provisions contained in the land use bylaw. A lot may be eligible for some permitted uses in the zone in which it is located but not for others.

3. Q. Is there anyway of curing a failure to comply with the Planning Act subdivision approval requirements?

D. The Planning Act recognizes three possibilities:

- (i) Section 114 validates conveyances made prior to April 16, 1987;
- (ii) Section 111 (3) recognizes the possibility of approval and filing of a plan of subdivision subsequent to the execution of the deed;
- (iii) Section 113 (2) provides (as do other provisions in the Planning Act) for repeal of a plan or instrument of subdivision. At present there are no provincial subdivision regulations governing repeal applications but a limited number have been processed.