



**BY-LAW NO. 51.1  
LOT GRADING BY-LAW**

WHEREAS the Council may, by By-Law to be known as the Lot Grading By-Law, control the lot grading and water drainage of land in the Town;

BE IT ENACTED by the Council of the Town of Nackawic as follows:

## **TITLE**

1(1) This By-Law may be cited as the Lot Grading By-Law.

## **INTERPRETATION**

In this By-law,

**2.1** "Applicant" is an individual or entity applying for a permit under the provisions of this By-law.

**2.2** "Applicant Undertaking for Completion" is a written undertaking by the Applicant with respect to completion of construction requirements identified in the Deficiency Report.

**2.3** "Approved Subdivision Grading Plan" means a grading plan filed after the effective date of this By-law, by an applicant for final approval of a subdivision, which is approved by the Municipality and illustrates the drainage systems and patterns common to two or more lots in a subdivision. The Approved Subdivision Grading Plan shall be retained by the Municipality and amended from time to time as required to reflect revisions arising from lot and building construction. For the purposes of this By-law, the subdivision grading plans listed in Schedule 'A' shall be considered Approved Subdivision Grading Plans.

**2.4** "Council" means the Council of the Municipality.

**2.5** "Deficiency Report" means a report prepared by a New Brunswick Land Surveyor, a Landscape Architect, or a Professional Engineer describing the uncompleted construction requirements, as related to the grading and drainage works shown on the Lot Grading Plan.

**2.6** "development" includes any erection, construction, alteration, replacement or relocation of or addition to any structure and any change or alteration in the use made of land or structures as defined within the Community Planning Act, RSNB 1973, c C-12, as may be amended from time to time.

**2.7** "drainage" means a system of natural or artificial drains.

**2.8 (a)** "dwelling" means a building or part of a building, occupied or capable of being occupied as a home or residence by one or more persons, and containing one or more dwelling units but shall not include a hotel, a motel, apartment hotel or hostel.

**(b)** "dwelling unit" means one or more habitable rooms designed, occupied or intended for use by one or more persons as an independent or separate housekeeping establishment in which a kitchen, sleeping and sanitary facilities are provided for the exclusive use of such persons.

**(c)** "dwelling, single unit" means a building which is a completely detached dwelling unit and having a minimum width of any main wall of not less than twenty (20) feet (6.1m), and

shall include a mobile dwelling where mobile dwellings are specifically provided for within a land use by-law.

(d) "dwelling, two unit" means a building containing two dwelling units.

(e) "dwelling, mobile" means a detached dwelling designed for transportation after fabrication, whether on its own wheels or on a flat bed or other trailer, and arrives at the site where it is to be occupied as a dwelling complete and ready for occupancy, except for minor and incidental unpacking and assembling, and the foregoing shall include mobile homes or modular dwellings having any main walls with a width less than twenty (20) feet (6.1m). This By-law shall apply to mobile homes installed on permanent foundations only and shall exclude replacement of existing mobile homes.

**2.9 "Engineer"** means the Development Officer of the Municipality, and includes a person acting under the supervision and direction of the Development Officer.

**2.10 "grading"** means the alteration of land levels, including the addition or removal of topsoil or other material of any kind.

**2.11 "Landscape Architect"** means a person who has successfully completed a program in landscape architecture accredited by the Canadian Society of Landscape Architects or approved by the Atlantic Provinces Association of Landscape Architects, and who through this education, training, and experience, is skilled in the principles and practice of landscape architecture.

**2.12 "Lot Grading and Drainage General Specification"** means the latest edition of the specifications approved by a resolution of the Council and containing the objectives, design requirements, information requirements, and administrative procedures with respect to this By-law.

**2.13 "Lot Grading Certificate"** means a plan and/or report, prepared in accordance with the Lot Grading and Drainage General Specification, depicting the recorded grading and drainage works on a lot of land as proposed on the Lot Grading Plan.

**2.14 "Lot Grading Permit"** means a permit issued under the provisions of the Lot Grading By-law.

**2.15 "Lot Grading Plan"** means a plan of final grading of land for an individual lot of land prepared in accordance with the Lot Grading and Drainage General Specification.

**2.16 "Municipality"** means Town of Nackawic.

**2.17 "New Brunswick Land Surveyor"** is a registered or licensed member, in good standing, of the Association of New Brunswick Land Surveyors.

**2.18 "Professional Engineer"** is a registered or licensed member, in good standing, of the Association of Professional Engineers and Geoscientists of New Brunswick.

**2.19 "sanitary sewerage system"** means a system which is publicly owned and maintained and which consists of pipes or conduits receiving or carrying water-borne wastes and includes any trunk sewers, pumping stations and treatment plants.

**2.20** "subdivision" means the division of any area of land into two or more parcels, and includes a resubdivision and a consolidation of two or more parcels as defined within the Community Planning Act, RSNB 1973, c C-12, as may be amended from time to time.

**2.21** "water distribution system" means a system which is owned and maintained by a public water utility and which consists of pipes and appurtenances carrying and distributing potable water for domestic and/or fire protection purposes and includes any pumping stations and reservoirs.

### **PART 3: APPLICATION AND ADMINISTRATION**

**3.1** This By-law shall apply to, and a Lot Grading Permit is required for, the development of all lots, designed and intended for new single and two unit dwellings, for which a building permit is required, and which are located within an area where a sanitary sewerage system and water distribution system or a sanitary sewerage system only is provided or is to be provided anywhere in the Municipality.

**3.2** Notwithstanding Section 3.1, this By-law does not apply to the development of lots where a building permit is required for the following developments:

- (a) a renovation of an existing building, or
- (b) an addition to a single or two unit dwelling.
- (c) new building construction other than for single or two unit dwellings.
- (d) new building construction where log grading is regulated by the Development Agreement.
- (e) any area regulated by a Development Agreement in existence on the date this by-law takes effect in those areas of the municipality.

### **PART 4 : GENERAL REQUIREMENTS**

**4.1** Nothing in this By-law shall exempt any person from complying with any other by-law or requirement of the Municipality, or from obtaining any license, permission, permit, authority or approval required by any other by-law of the Municipality or statute or regulation of the Province of New Brunswick.

**4.2** Where the provisions of this by-law conflict with those of any other by-law of the Municipality or any statute or regulation of the Province of New Brunswick, the higher or more stringent requirements shall prevail.

### **PART 5: LOT GRADING PERMIT APPLICATION PROCEDURE**

**5.1** No lot to which this By-law applies shall be developed unless a Lot Grading Permit has been issued by the Municipality.

**5.2** An application for a Lot Grading Permit shall be made at the time of application for a building permit. The procedure that will be followed shall be as provided for in the Building By-law. The application for a Lot Grading Permit shall include the following:

- (a) a Lot Grading Plan, prepared in accordance with the Lot Grading and Drainage General Specification, by qualified individuals as follows:

- (i) where an Approved Subdivision Grading Plan exists, and the drainage patterns depicted on the Approved Subdivision Grading Plan are to be preserved, the Lot Grading Plan is to be prepared by a New Brunswick Land Surveyor, a Landscape Architect, or a Professional Engineer; or
- (ii) where an Approved Subdivision Grading Plan does not exist, or the drainage patterns depicted on the Approved Subdivision Grading Plan are to be varied, the Lot Grading Plan is to be prepared by a Professional Engineer; and

**5.3** When a Lot Grading Plan is prepared for a lot shown on the grading plans listed in Schedule 'A':

- (i) the qualified individual who prepares the Lot Grading Plan is to confirm in writing that the grading and drainage patterns in the area of the subject individual lot are consistent with the applicable grading plan listed in Schedule 'A' relative to the manner that they affect the subject individual lot; or
- (ii) if the grading and drainage patterns in the area of the subject lot are not consistent with the applicable grading plan listed in Schedule 'A' relative to the manner that they affect the subject individual lot, then the Lot Grading Plan shall be prepared in accordance with Section 5.2. (a) (ii).

**5.4** Where an Approved Subdivision Grading Plan exists, the Lot Grading Plan shall be consistent with the Approved Subdivision Grading Plan, subject to variations approved by the Municipality.

**5.5** A Lot Grading Plan is deemed to be approved when it meets the requirements of this By-law and a Lot Grading Permit has been issued by the Municipality.

## **PART 6: OCCUPANCY PERMIT**

**6.1** Consistent with the Building By-law, no Occupancy Permit shall be issued unless:

- (a) A Lot Grading Certificate is submitted to the Municipality confirming that the lot has been constructed in accordance with the Lot Grading Plan as approved by the Engineer, or the requirements of Section 6.2 are met. The Lot Grading Certificate shall be prepared by qualified individuals, as follows:
  - (i) Where variations depicted on the Lot Grading Plan do not exist, the Lot Grading Certificate shall be prepared by a New Brunswick Land Surveyor, a Landscape Architect, or a Professional Engineer.
  - (ii) Where variations depicted on the Lot Grading Plan exist, the Lot Grading Certificate shall be prepared by a New Brunswick Land Surveyor, a Landscape Architect, or a Professional Engineer. Variations from the Lot Grading Plan shall be subject to review and approval by the Municipality prior to issuance of the Occupancy Permit.

**6.2** Notwithstanding 6.1, an Occupancy Permit may be issued prior to receipt of a Lot Grading Certificate where the Applicant files the following with the Municipality:

- (a) a Deficiency Report prepared by a New Brunswick Land Surveyor, a Landscape Architect, or a Professional Engineer setting forth details of the work to be completed; and
- (b) an Applicant Undertaking for Completion stating that the uncompleted work required

by the Lot Grading Plan and the Deficiency Report will be completed within a period of nine (9) month, and

(c) a security deposit in the amount of \$1,000 in a form acceptable to the Municipality which shall be returned to the applicant on the receipt by the Municipality of a lot grading certificate for the lot.

**6.2A** When the applicant fails to present a lot grading certificate within 9 months, the Municipality may use the security to bring the lot into compliance with the by-law and the lot grading permit.

**6.3** Where an Occupancy Permit has been issued in accordance with the procedures set out in 6.2, and the Applicant fails to complete the work and file a Lot Grading Certificate within the nine month period, the Municipality shall be entitled to undertake the completion of work and all costs incurred in so doing shall be recovered from such security. Where the amount recovered from such security is not sufficient to cover the cost of completing the work, the Applicant shall be responsible to pay the amount of the deficiency to the Municipality immediately upon demand.

**6.4** Where security is provided under Section 5.2 (b) by an Applicant for more than one lot in areas subject to this By-law, the following shall apply:

(a) for up to five lots at any one time, the maximum total security shall be \$5,000.

(b) for more than five lots but less than twenty-five lots at any one time, the maximum total security shall be \$10,000.

(c) for more than twenty-five lots at any one time, the maximum total security shall be \$15,000.

## **PART 7: PERMIT FEES**

**7.1** An application for a Lot Grading Permit shall be accompanied by a payment of the prescribed fee.

**7.2** Notwithstanding the provision of Section 7.1, no Lot Grading Permit fee as described in Section 7.1 shall be required where the Applicant for the Lot Grading Permit is the Municipality.

## **PART 8: PENALTY**

**8.1** A person who violates any provision of this By-law or any agreement made pursuant to this By-law is guilty of an offence and is liable on summary conviction to a fine of not less than one hundred dollars (\$100.00) and not exceeding five thousand dollars (\$5,000.) and in default of payment to imprisonment for a term not exceeding six (6) months and in case of a continuing offence to a further fine not exceeding five hundred dollars (\$500.) for each day during which the offence continues and in default of payment to imprisonment for a term not exceeding thirty (30) days.

**PART 9 : COMING INTO FORCE**

Notice of Motion to Introduce: #12-34


First Reading: April 16, 2012

Second Reading: April 16, 2012

Third Reading: May 7, 2012

GIVEN under the hands of the Mayor and the Chief Administrative Officer and under corporate seal of the Town of Nackawic this 7th day of May, A.D. 2012.

  
Rowena Simpson  
Mayor

  
Duncan Walker  
Chief Administrative Officer



