

**TO:** Mayor Savage and Members of Halifax Regional Council

**SUBMITTED BY:** Original Signed by   
Jacques Dubé, Chief Administrative Officer

**DATE:** May 5, 2022

**SUBJECT:** **Petition for Private Right-of-Way**

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## **ORIGIN**

This report arises out of a petition received from both Nicole Harris (“Harris”), as owner of PID 00533448, and Ron and Johanna Melchiore (the “Melchiores” and together with Harris, the “Petitioners”), owners of PID 00533505 to Council to lay out a private right-of-way across lands for the benefit of their property located at Beaver Harbour. The petition has been made pursuant to the *Private Ways Act*, R.S.N.S. 1989, c. 358. (“PWA”)

## **LEGISLATIVE AUTHORITY**

*Private Ways Act*, R.S.N.S. 1989, c. 358:

16(b) "council" means the council for the municipality in which the road, alteration, landing or work is situated;

### **Petition for private way or road**

17 (1) Any freeholder or freeholders of any municipality may present a petition to the council praying for the obtaining and laying out of a private way or road, either open or pent.

(2) Where the council is satisfied that the application should be granted, it shall order a precept to be issued to a competent person as a commissioner, directing him, within a convenient time, to

(a) examine whether the proposed private way or road is the most practicable and reasonable means of access for the person or persons petitioning for the way or road to his or their lands or property or rights;

(b) if satisfied with respect thereto, lay out the same in the manner most advantageous to the person or persons applying for the way or road and least detrimental to the owner or owners of the land through which the same shall pass; and

(c) mark out the same on the land.

## **RECOMMENDATION**

It is recommended that Halifax Regional Council

1. Appoint a Commissioner pursuant to section 17 of the *Private Ways Act*, to consider the petition of the Petitioners; and
2. Before the Commissioner starts work on the Petition, Regional Council enter into an agreement with each of the Petitioners for reimbursement to HRM of any and all expenses incurred by HRM which are recoverable by HRM under the *PWA*. Specifically, all expenses associated with the Commissioner, Arbitrators, and any compensation payable to the adjacent landowners.

## **BACKGROUND**

The Petitioners have filed a petition pursuant to the *PWA* to Council for the laying out of a private way across the property of Mr. Deobald and Mr. Shonfield. A copy of the Harris petition is attached as Appendix "1", while a copy of the Melchior's petition is attached as Appendix "2".

Harris is the owner of PID 00533448 and the Melchiores are the owners of PID 00533505, both properties sits on the end of the peninsula of Beaver Harbour and bordered to the east, south and west by the Atlantic Ocean. To the north of their properties are lands owned by the Federal Government of Canada, Department of Fisheries and Oceans (PID 00533307). The Petitioners have not requested a formal easement over these lands at this time, but that easement will be necessary for the ultimate access the Petitioners' land. To the further north of the Petitioner's lands are the lands of Steven Deobald, owner of PIDs 00533737 and 41356700, and the lands of Alexander Shonfield, owner of PID 00533927. Mr. Deobald and Mr. Shonfield's lands are the subject lands that the Petitioners request Council proceed with the petition under the *PWA* in order to grant them access. To the north of Mr. Deobald's land is a historic K Class road which would provide public access to the Petitioners. The Petitioners currently only have access to their property by way of the waters of the Atlantic Ocean. The location of the Petitioners' property and the surrounding landscape is outlined in the map contained at Appendix "3".

A copy of the *PWA* is attached as Appendix "4". Part 2 of the Act provides a means whereby landlocked property owners can acquire a right-of-way across neighboring lands. Under the *Act*, a property owner may apply to Council asking for the laying out of a private way or road. Council must hear the application, but has the discretion as to whether or not to grant it. If Council is not satisfied that the application should be granted, that is the end of Council's involvement.

The Melchiores purchased their property in December of 2015 with no established right or way or access, while Harris inherited her property through family.

## **DISCUSSION**

### *Commissioner*

If Council decides to proceed with the petition, then the next step is for Council to appoint a Commissioner. The Commissioner is to:

1. Examine whether the proposed private way or road is the most practicable and reasonable means of access for the persons petitioning for the way or road to his or her land;
2. If satisfied that the proposed private way or road is the most practicable and reasonable means of access, the Commissioner is to lay out the private way or road in the manner most advantageous to the persons applying for the private way or road and least detrimental to the owner of the land through

which the private way or road shall pass; and

3. Work with the owners of the properties over which the right of way will pass and the Petitioners under the *PWA*, to attempt to reach an agreement as to the compensation to be paid for the land.

If the Commissioner cannot get the parties to agree to compensation, there is a procedure under the *PWA* for determining the amount to be paid. This procedure involves the appointment of three arbitrators. One is appointed by the Commissioner, one is appointed by the owner of the land over which the right of way will go, and a third is to be appointed by the Mayor.

The compensation ascertained by either agreement or by appraisal, and the expenses occurred in respect thereto, shall be paid by Council under the *PWA*. However, these expenses may be charged against and recovered from any polling district in which the private way or road is made or may be recovered in whole or in part from the applicant, as Council may direct.

Once the Commissioner has fulfilled his or her duties and either an agreement is reached or an award for compensation is made, the Commissioner will prepare a report to Council, setting out his or her findings and recommendations. Council may accept or reject any recommendations contained in the report, including recommendations made with respect to compensation. If a private way is ultimately granted to the Petitioner, by Council, a copy of the plan setting out the private way shall be registered in the Registry of Deeds.

It is recommended that Council appoint a Commissioner pursuant to the *PWA* to consider the application of the Petitioners.

#### *Financial Commitment*

Council is required to expend funds under this process, and there is no certainty that these funds will be recovered. The financial implications are as follows:

1. Council is required to pay for the remuneration of the Commissioner, in an amount as allowed by Council. Under section 19 of the *PWA* the Commissioner may make an agreement in writing as to the compensation therefor with the owners of the land, which could include the cost of the Commissioner.
2. Under the *PWA*, if an agreement for compensation cannot be reached, arbitrators must be appointed to enter the land and appraise the compensation payable to the owner. The expenses associated with the arbitrators, including compensation for their time, are to be paid by Council. However, it may be charged against and recovered from any polling district in which such private way or road is made or may be recovered in whole or in part from the applicant, as Council may direct.
3. Should a right-of-way be granted to the Petitioners over the property of Mr. Deobald and Mr. Shonfield, the compensation payable to Mr. Deobald and Mr. Shonfield is to be paid by Council. However, it may be charged against and recovered from any polling district in which such private way or road is made or may be recovered in whole or in part from the applicant, as Council may direct.

Staff recommends that an agreement between the Petitioners and HRM should be entered into to provide security to the costs incurred by HRM as part of the process as outlined under the *PWA* this could be an expensive outlay of funds, the result of which would be a private right of way for two parties looking to sell the subject property. It is not fully guaranteed that these funds will be recoverable.

#### *Easement with Department of Fisheries and Oceans*

The Petitioners state in their petition that they have secured an email confirmation from the Federal Government of Canada, Department of Fisheries and Oceans to allow an easement over PID 00533307. There is no current legal right established, nor any formal confirmation that this right will be established. It would not be prudent to go forward with this costly and time intensive process under the *PWA* only to have

the Federal Government of Canada not grant rights to the Petitioners, leaving them still without access over the lands. A condition of proceeding further with this process should be the Petitioners obtaining and register an easement over PID 00533307 from the Federal Government of Canada, Department of Fisheries and Oceans. The PWA does not grant municipal government the power to impose such an easement on a Federally owned parcel of land.

### **FINANCIAL IMPLICATIONS**

As outlined in the discussion portion of this report, Council would incur costs associated with the process outlined under the PWA. There is an expectation that these costs would be recoverable from the petitioners, but it is not fully guaranteed that the funds will be recoverable.

There are many unknowns regarding this process and the time investment which may be required. If Council accepts the recommendations in this report the estimated cost for Commissioner engagement remuneration would be at a rate of \$250 per hour plus HST and disbursements. The overall estimated time and cost associated with the Commissioners engagement would be:

<b>Task</b>	<b>Estimated Hours</b>	<b>Cost per Task</b>
Site Visit, Initial Fact Gathering, Preliminary Discussions	15 hours	\$3,750
Preparation of location of Right of Way, Negotiations between parties, Appointment of Arbitrators	17 hours	\$4,250
Attend Arbitration, submit evidence, support process	12 hours	\$3,000
Final Report to Council, attend to necessary registrations, finalize file	6 hours	\$1,500
	<b>TOTAL:</b>	<b>\$12,500*</b>

\* - plus HST and disbursements

These amounts would be charged to M310 – 6301 (Other Fiscal Services – Professional Fees) with the expectation that this cost would be recoverable from the petitioners.

### **RISK CONSIDERATION**

There are no significant risks associated with the recommendations in this report. The risks considered rate Low.

### **COMMUNITY ENGAGEMENT**

Community engagement was not required.

### **ENVIRONMENTAL IMPLICATIONS**

No environmental implications were identified.

### **ALTERNATIVES**

Regional Council could reject the Petitioners' application and not proceed with their application under the PWA.

**ATTACHMENTS**

- Appendix 1 – Petition of Nicole Harris
- Appendix 2 – Petition of Ron and Johanna Melchiore
- Appendix 3 – Map of Land
- Appendix 4 – *Private Ways Act*

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A copy of this report can be obtained online at [halifax.ca](http://halifax.ca) or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Trevor J. MacDonald, Solicitor, Legal & Legislative Services 902.490.1036

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## **APPENDIX “1” - Petition of Nicole Harris**

I Nicole Harris, from 63 Brandon St of Rusagonis, NB, state the facts truthfully to the best of my knowledge as follows:

1. I own 19.5 acres (PID 00533448) at the very southern end of the Beaver Harbour peninsula which is located in Halifax County. Currently, there is no clear legal access to my property.

2. I respectfully submit this petition to the Halifax Regional Municipal Council utilizing the Private Ways Act. (cited as the Private Ways Act. R.S., c. 358, s. 1. REVISED STATUTES, 1989 amended 2011, c. 25) An Act Relating to Necessary Private Ways.

That Act, (PART II AUTHORITY OF MUNICIPAL COUNCIL) States:

### **Petition for private way or road**

17 (1) Any freeholder or freeholders of any municipality may present a petition to the council praying for the obtaining and laying out of a private way or road, either open or pent.

(2) Where the council is satisfied that the application should be granted, it shall order a precept to be issued to a competent person as a commissioner, directing him, within a convenient time, to

(a) examine whether the proposed private way or road is the most practicable and reasonable means of access for the person or persons petitioning for the way or road to his or their lands or property or rights;

(b) if satisfied with respect thereto, lay out the same in the manner most advantageous to the person or persons applying for the way or road and least detrimental to the owner or owners of the land through which the same shall pass; and

(c) mark out the same on the land. *R.S., c. 358, s. 17.*

3. I do not have a legal background, but I understand to be technically compliant with the submission of evidence, I will cite the *Evidence Act, Chapter 154 Revised Statutes 1989*.

4. This is an accessibly fight not only for me but for the future of all Beaver Harbour peninsula property owners. It's inconceivable in this modern age, there are properties that had access years ago but somehow are now landlocked.

(a) There were a total of 8 landlocked properties on this peninsula. If I am successful in this petition, I will have played a part in unlocking all properties on the Beaver Harbour Peninsula.

5. I would point out that any development in the area supports the local businesses, especially the nearby town of Sheet Harbour. Sheet Harbour has restaurants, building supplies, insurance, banks, grocery and shopping all of which will benefit from any additional commerce. As well, any development increases the tax base for HRM.

6. I'd further point out, the Nova Scotia News story: *New legislation to clarify rights of way* dated May 5th, 2011

(<https://novascotia.ca/news/release/?id=20110505009>) notes "Not having road access can be a real headache." and "Modern life requires access to a public street for important services we take for granted, like waste collection or power and phone repair," said Minister of Service Nova Scotia and Municipal Relations John MacDonell. I wholeheartedly agree with the Minister and I'd add emergency services such as fire, ambulance and police to that important list of services taken for granted by most. Government departments and the Nova Scotia legislature recognize the need for landowner road access to their properties.

7. As background, this piece of property has been in my family for many years and was handed down to me as an inheritance.

8. For the last several years, my Beaver Harbour property has been up for sale. Multiple people contacted my real estate agent expressing interest. I keep getting low ball offers from the other property owners around me. They will not accept NO.

9. My property and my neighbors Ron and Johanna Melchiore, had our respective properties under contract summer 2020 to a buyer contingent on us gaining right of way. This couple wished to build their dream retirement home on the property. When I requested right of way from our neighboring property owners (Deobald/Shonfield), both rejected any notion of granting access. We lost our respective sales immediately at that point.

10. Both Steven Deobald and Alex Shonfield are either members of or associated with a co-op of perhaps 6 members who have a desire to own the whole peninsula. Over the years, I have had multiple low ball offers from Alex Shonfield. The neighboring property owned by Ron and Johanna Melchiore has had multiple low ball offers from Geoff Sinfield. We've emphatically told them not interested over the years.

(a) In the summer of 2020, just 2-3 days after ROW was denied, our sales contracts were terminated and our respective properties went back on the market. At that point Alex Shonfield wrote to my real estate broker asking if I was ready to accept the same low ball offers I have refused in the past. I understand Geoff Sinfield at the very same time wrote to Ron and Johanna asking if they were ready to negotiate. I believe denying access was a tactic employed by the co-op to pressure me into selling at a low price.

(b) Oceans Canada is/was willing to grant right of way as soon as I had some means of right of way across the Deobald/Shonfield properties. Those 2 properties account for  $\approx$  504 feet. ( $\approx$ 273 feet width of Deobald's Property and  $\approx$ 231 width of Shonfield's property). The length of their properties is approx. 4000 feet. I am asking for a narrow corridor of 25 feet.



11. I do not want to duplicate the information and evidence submitted by Ron and Johanna Melchiore's petition regarding maps and aerial images. I defer to their information which is the same I would have presented to you.

12. I as owner of the southern most property at the point of the peninsula am exposed 100% to the open Atlantic ocean without any chance of safe boat access. Why should any property owner be expected to risk their life to enjoy their property?

(a) Obviously boat access puts deep restrictions on what anyone can do with their land. Even if I had a protective cove of some sort, commuting to a job, lugging food and supplies in, accessibility and enjoyment as one gets older are just some of the issues in dealing with boat access.

(b) Fog, storms, treacherous navigational obstacles such as reefs and islands, rough seas, currents and tides are obvious hazards. There are no long term safe public places to launch a boat or to park a vehicle for an extended period of time.

(c) The recent heart breaking loss of the scallop boat the Chief William Saulis off Digby December 2020 proves even the most professional of seamen can lose their lives on the water. There's no safe place on my property to protect a boat if seas became unmanageable. How can I justify risking the lives of rescue personnel if there's an emergency while someone is either in transit from the property or actually on the property?

(g) Access to emergency services such as ambulance, fire and police would be a major challenge to any landowner who wishes to make a property without road access their home.

Given all of the above facts, I am praying Council grant me a simple right of way of 25 feet width from the end of the public road that

currently sits at Mr Deobald's property line across Mr. Deobald and Mr Shonfield's properties, a distance of a mere 504 feet, and help formalize the easement across the Oceans Canada property which will give me access to my property. That in turn will ensure all property owners on the Beaver Harbour peninsula will forever have access to their land.

In respect to the Private Ways Act: 17 (2)(a) this proposed private way is the most practicable and reasonable means of access for myself and Ron and Johanna, who are petitioning for a road to each of our properties and it is by far, the safest. I appeal to your sense of fairness to give me the help I seek.

Thank you,

Nicole Harris

## **APPENDIX “2” - Petition of Ron and Johanna Melchiore**

My wife Johanna and I, Ron Melchiore of 401 Off Grid Lane, Isaac’s Harbour Nova Scotia state the facts truthfully to the best of our knowledge as follows:

1. We own 19.5 acres (PID 00533505) at the southern end of the Beaver Harbour peninsula which is located in Halifax County. Currently, there is no clear legal access to our property.

2. We respectfully submit this petition to the Halifax Regional Municipal Council utilizing the Private Ways Act. (cited as the Private Ways Act. R.S., c. 358, s. 1. REVISED STATUTES, 1989 amended 2011, c. 25) An Act Relating to Necessary Private Ways.

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(c) mark out the same on the land. *R.S., c. 358, s. 17.*

3. Neither of us have legal background, but we understand to be technically compliant with the submission of evidence, we will cite the *Evidence Act, Chapter 154 Revised Statutes 1989*.

4. This is an accessibly fight not only for us but for the future of all Beaver Harbour peninsula property owners. It's inconceivable in this modern age, there are properties that had access years ago but somehow are now landlocked.

(a) There were a total of 8 landlocked properties on this peninsula. We have unlocked 2 of them. If we are successful in this petition, we will have unlocked all properties on the Beaver Harbour Peninsula.

5. We would point out that any development in the area supports the local businesses, especially the nearby town of Sheet Harbour. Sheet Harbour has restaurants, building supplies, insurance, banks, grocery and shopping all of which will benefit from any additional commerce. As well, any development increases the tax base for HRM.

6. We'd further point out, the Nova Scotia News story: *New legislation to clarify rights of way* dated May 5th, 2011 (<https://novascotia.ca/news/release/?id=20110505009>) notes "Not having road access can be a real headache." and "Modern life requires access to a public street for important services we take for granted, like waste collection or power and phone repair," said Minister of Service Nova Scotia and Municipal Relations John MacDonell. Johanna and I wholeheartedly agree with the Minister and we'd add emergency services such as fire, ambulance and police to that important list of services taken for granted by most. Government departments and the Nova Scotia legislature recognize the need for landowner road access to their properties.

7. As background, my wife Johanna and I purchased PID 00533505 in December 2015 with the intent of building our last homestead on the property. From the time of purchase, we have strongly believed that

when the peninsula was originally laid out, all properties had access. We were confident a deep historical search would provide proof of access. See map and aerial image evidence.

(a) We believe we have that proof. Historical evidence over three centuries. We have a map showing the access these properties enjoyed years ago. Map sheet 91 dated July 13, 1773 clearly shows a road accessing most of the peninsula right across to Beaver Point. In the surveyors map Expropriation 191 of 1887 (114 years later), the most prominent eastern point of land on the peninsula is shown as being our property. Arguably the 1773 road shown on the map bisects or at the very least appears to terminate on our property.

(b) We have historical aerial photos from August 1931, November 1947, July 1954 and October 1960. All show a public road part way in and various cut trails across and along the peninsula, one of which is a trail right out to our property. As near as we can tell, our property had potential access as recently as 1960.

(c) We recently hired a title search firm and surveyor to research some properties on the peninsula. We learned it is not unusual for there to be significant gaps in deeded ownership, where property was passed on, subdivided etc. from generation to generation without recorded deeds. Right of way agreements that may have existed are gone. Referenced plans can't be found.

8. Shortly after our purchase, we made contact with Steven Deobald, owner of PID's 00533737, 41356700 and Alex Shonfield owner of PID 00533927. We explained our desire for access and both were quite receptive to the idea. Through the years, up to spring 2020, Alex Shonfield has very much wanted access himself. See email exchange evidence highlighted in yellow.

(a) It should be noted that both owners live out of Province. Neither dwelling is occupied year round and it is unknown if the properties are inhabited for more than a few weeks out of the year. Yet they now wish to deny us road access to our property.

(b) Neither land owner will live forever. Presumably within the next 20-30 years, these properties will be sold to others who may appreciate a road.

9. Due to the time needed to formalize ROW and build a road, we ultimately decided we would build on other land we owned in the Province and we did not follow through with formalizing right of way several years ago.

10. For the last several years, our Beaver Harbour property has been up for sale. At least 20 people contacted us or our real estate agents expressing interest but lost it when they realized it would take some effort to secure access.

11. We had our property and our neighbor to the south had her property under contract summer 2020 to a buyer contingent on us gaining right of way. This couple wished to build their dream retirement home on our property. When we requested right of way which had favorable response years ago from our neighboring property owners (Deobald/Shonfield), both rejected any notion of granting access. We lost our respective sales immediately at that point. See sale termination evidence.

12. We asked ourselves what had changed in a couple of years to make our neighbors who had been receptive to right of way have such a reversal. It is our understanding from the municipality that both property owners, Deobald and Shonfield built structures illegally without permits nor were they being taxed. See email exchange evidence.

(a) Oct. 5/2020 HRM compliance ticket number # 7637116 was opened for both properties not complying with building permits. The gentleman stated the process would be to check into the compliance. If found in violation, parties would be contacted to submit building applications. There was mention of road access to be in compliance but I am unclear if that applies in this situation or what the current status is of the compliance ticket.

(b) As per Steven Deobalds survey plan, (DeCoste Surveys, Plan 19-004-1) Steven encroached on the neighboring property to the north with a shed, garden and machine dug well. We feel these are reasons both owners did not want to be exposed by having right of way nearby. If indeed we have been denied right of way for fear the violations would have been discovered, we don't think it fair to be denied access based on that fear. See surveyor evidence.

(c) Also related to Steven Deobald's survey plan, please note the surveyor's Boundary Note denoting much activity in the area ascertained from the 1931 aerial photograph.

(d) Both Steven Deobald and Alex Shonfield are either members of or associated with a co-op of perhaps 6 members who have a desire to own the whole peninsula. Over the years, we have had multiple low ball offers from co-op member Geoff Sinfield. The neighboring property owned by Nicole Harris has had multiple low ball offers from Alex Shonfield. We've emphatically told them not interested over the years. Yet they continue to bother us.

(e) In the summer of 2020, just 2-3 days after ROW was denied, our sales contracts were terminated and our respective properties went back on the market. At that point Geoff Sinfield wrote to us and Alex Shonfield wrote to Nicole Harris's real estate broker asking if we were now ready to take their low ball offers. We believe denying access was a tactic employed by the co-op to pressure us into selling at low prices. See email evidence.

(f) Within days of learning our road permit was recently suspended (January 2021), but not realizing we were the ones who voluntarily suspended it, Geoff again harassed us with another email and when we expressed no interest, he told us to go smoke some pot and think about it. He no doubt believes he has us over a barrel and views this as sport. See email exchanges.

13. An abandoned K class public road starting at the end of Beaver Harbour road has been surveyed, flagged out, with 66 foot right of way cut and road building has been started via TIR permit. This recovered public road terminates at Steven Deobald's property line per multiple survey plans.

(a) Please note that due to our efforts thus far, two properties now have road access that they thought never existed. PID 00533257 and PID 00453803. Both were thought to be landlocked but now are road accessible. That is highly significant for those lucky landowners.

(b) As noted above, we have voluntarily asked for a permit suspension pending the results of this petition.

13. Oceans Canada is in the divestiture process for lighthouse parcel PID 00533307. Should it come on the market for public sale, any buyer of this property would benefit from formal right of way access. We are not clear on whether the expropriation 161 easement will be retained with this property. Regardless, that expropriation 161 easement meanders far from a direct route to the property and a ROW straight across will be best for that Oceans Canada lot. The selling price should potentially be higher with direct right of way access which will be of benefit to the public coffers. It seems to us, the government will have a vested interest in seeing the most efficient routing of any right of way to maximize a higher selling price.



(a) Oceans Canada is willing to grant right of way as soon as we have some means of right of way across the Deobald/Shonfield properties. Those 2 properties account for  $\approx 504$  feet separating us from access to our property. ( $\approx 273$  feet width of Deobald's Property and  $\approx 231$  width of Shonfield's property). The length of their properties is approx. 4000 feet. We are asking for a narrow corridor of 25 feet. Doesn't seem unreasonable. See email exchange evidence.

(b) per Steven Deobald's property deed schedule "A", he was aware he was subject to an easement as described in expropriation 161 dated July 5, 1887, yet chose to build his structures within the right of way or within feet of the easement. That will be highly problematic to any buyer of the Ocean's Canada property if the easement remains legal. See evidence.

14. There are many issues of safety. We have first hand experience running for our lives from multiple forest fire threats. They are terrifying! Road access on the peninsula gives firefighters a shot at dealing with a fire out there whether lightning induced, chimney or a campfire accidentally getting out of control. Any structural fire has the potential to take out the entire peninsula since there is currently no way for fire crews to deal with it.

15. Continuing on with the issue of safety, boat access is a bad choice except for an occasional, short visit and then only on the calmest, fairest of weather days. Access is limited to boating season only! Obviously boat access puts deep restrictions on what anyone can do with their land. Major construction, services, safe drinking water, septic are unavailable. Commuting to a job, lugging food and supplies in, accessibility and enjoyment as one gets older are just some of the issues in dealing with boat access.

(a) Fog, storms, treacherous navigational obstacles such as reefs and islands, rough seas, currents, tides and mechanical

issues are obvious hazards. There are no long term safe public places to launch a boat or to park a vehicle for an extended period of time. Although one can drive a small boat on to the beach or anchor it further out, one is a sitting duck subject to the mercy of tides, wind and weather.

(b) The recent heart breaking loss of the scallop boat the Chief William Saulis off Digby December 2020 proves even the most professional of seamen can lose their lives on the water. There's no safe place on our property to protect a boat if seas became unmanageable. How can we justify risking the lives of rescue personnel if there's an emergency while someone is either in transit to/from the property or actually on the property?

(c) Nicole Harris, owner of the southern most property at the point of the peninsula is exposed 100% to the open Atlantic ocean without any chance of safe boat access. Why should a property owner be exposed to all these dangers to enjoy their property?

(d) If you beach a boat and tide goes out, you are stuck till next high tide. Conversely, if one anchors a boat just off shore and tide comes in, one is faced with a swim. If it becomes windy, one is faced with the difficult choice of staying put or heading out to sea to navigate it. Hopefully the boat starts and doesn't have running issues while in/outbound.

(e) Our property is adjacent to the tip property (Nicole Harris) and is still exposed to the open ocean as seen from the maps. It has a cobblestone beach satisfactory as a launch for kayaks, canoe or inflatable boat that can be easily manhandled onto the beach without fear of being battered by waves. Judging from the seaweed level, debris and pile up of stone, there is little to no cobblestone beach in storms.

(f) Even if one managed to build a small camp, any building with contents will have a terrible time getting insurance now and in the future. That is a severe limitation for anybody considering the purchase and construction on any of these landlocked properties.

(g) Access to emergency services such as ambulance, fire and police would be a major challenge to any landowner who wishes to make their property home.

Given all of the above facts, we are praying Council grant us a simple right of way of 25 feet width from the end of the public road that currently sits at Mr Deobald's property line across Mr. Deobald and Mr Shonfield's properties, a distance of a mere 504 feet, and help formalize the easement across the Oceans Canada property which will give us access to our property. That in turn will ensure all property owners on the Beaver Harbour peninsula will forever have access to their land.

In respect to the Private Ways Act: 17 (2)(a) this proposed private way is the most practicable and reasonable means of access for Johanna and me who are petitioning for a road to our property and it is by far, the safest. We appeal to your sense of fairness to give us the help we seek. No property in the Province should be inaccessible year round without safe, secure access.

On behalf of my wife Johanna and me... Thank you!

# HALIFAX

## APPENDIX 3 - SITE PLAN







## Private Ways Act

CHAPTER 358

OF THE

REVISED STATUTES, 1989

amended 2011, c. 25

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### An Act Relating to Necessary Private Ways

#### Short title

1 This Act may be cited as the Private Ways Act. R.S., c. 358, s. 1.

#### PART I

#### AUTHORITY OF GOVERNOR IN COUNCIL

#### Petition for right of way

2 (1) Every owner or occupier of any mine, mill, quarry, farm or factory who is desirous of transporting the produce of such mine, mill, quarry, farm or factory to a railway or public way, or to tidal or other waters or elsewhere, and every owner or occupier of any timber lands who desires to enter upon such lands and cut the timber or wood thereon and remove the same to a mill, railway or public way, or tidal or other waters or elsewhere, and who is unable to agree for a right of way with the owner or owners of any lands which it is necessary to cross in order to effect such entry or transportation, may present a petition to the Governor in Council.

(2) Such petition shall set forth

(a) the nature of the business which such owner or occupier is desirous of carrying on;

(b) a description of the property over which it is sought to obtain a right of way;

(c) the width of such right of way;

(d) the nature and extent of the right required; and

(e) the amount which such owner or occupier has offered to pay the owner or owners of the lands sought to be crossed for a right of way across the same,

and shall pray that proceedings be taken under this Part to enable the petitioner to acquire a right of way across such land. *R.S., c. 358, s. 2.*

### **Commissioner and powers on inquiry**

3 (1) Upon the presentation of the petition the Governor in Council may appoint a commissioner who, for the purposes of the inquiry herein provided, has power to summon before him any persons and to require them to give evidence on oath or affirmation and produce such documents and things as such commissioner deems requisite.

(2) Upon such presentation, the Attorney General shall forthwith, at the expense of the petitioner, cause the owner of the land over which it is sought to obtain a right of way to be served with a copy of the petition, together with a notice that a commissioner appointed by the Governor in Council will, at a time and place to be named in such notice, hear the application for such right of way and any objections thereto, and the petition and notice shall be so served not less than twenty days before the day so appointed.

(3) If such owner is absent from the Province, service on him of such petition and notice may be made by publishing the same in a newspaper published in the county in which such lands lie for at least four issues of such newspaper. *R.S., c. 358, s. 3.*

### **Hearing and orders**

4 (1) At the time and place so named, such commissioner shall hear such application and all objections thereto and report the evidence taken by him to the Governor in Council.

(2) The Governor in Council, if satisfied that the right of way sought to be obtained is actually necessary for the purposes for which it is sought and that it is otherwise just and reasonable that the same should be obtained, shall thereupon by order in council declare that the petitioner is entitled to acquire under this Part a right of way over the lands mentioned in the petition or a part thereof.

(3) Such order shall define the boundaries of such right of way and shall specify the nature and extent of the right and whether the right is to be acquired in perpetuity or for a term of years. *R.S., c. 358, s. 4.*

### **No right of way through building or orchard**

5 Where the commissioner finds on examination that the proposed right of way runs through any house, building, orchard or garden, he shall, without further inquiry, so report to the Governor in Council and no further proceeding shall take place on such petition. *R.S., c. 358, s. 5.*

### **Remuneration of commissioner**

6 The petitioner shall pay such commissioner for his services such sum as is determined by the Governor in Council and the Governor in Council may make the payment of such sum a condition precedent to the making of the order in council declaring the petitioner entitled to acquire a right of way. *R.S., c. 358, s. 6.*

### **Costs**

7 Where the application of the petitioner is refused, the Governor in Council may order such petitioner to pay to the owner of the land, to defray the expenses incurred by such owner in opposing the application, such sum as the Governor in Council determines. *R.S., c. 358, s. 7.*

### **Deposit**

8 Before such commissioner is appointed, the petitioner shall deposit with the Attorney General the sum of one hundred dollars, towards the payment of the commissioner for his services, and of any expenses incurred by the Governor in Council in connection with such petition, and of any sum ordered to be paid by the petitioner to the owner of the lands over which the right of way is sought in case of the application being refused. *R.S., c. 358, s. 8.*

### **Notice to appoint arbitrator**

9 Within thirty days after the making of such order in council, the petitioner shall serve a notice on the owner of the land over which it is sought to acquire a right of way, stating the name of one arbitrator, and requiring such owner to name another arbitrator, for the purpose of assessing the compensation and damages to be paid to the owner of such lands on account of the right of way sought to be acquired and, if such owner refuses or fails to notify the petitioner of the appointment of an arbitrator within ten days after service of such notice, a judge of the Trial Division of the Supreme Court or of a county court may appoint such arbitrator. *R.S., c. 358, s. 9.*

### **Appointment of third arbitrator**

10 The two arbitrators so appointed shall be notified by the petitioner of their appointment and within twenty days after such notice choose a third arbitrator and, if they fail to choose such third arbitrator within twenty days after such notice to them, such third arbitrator shall be appointed by the Governor in Council. *R.S., c. 358, s. 10.*

### **Duty of arbitrators**

11 Such arbitrators shall, without delay, proceed to assess the compensation to be paid with respect to the lands over which such right of way is acquired, and for the damages, if any, occasioned by the acquisition of such right of way, and shall file their award with the Attorney General. *R.S., c. 358, s. 11.*

### **Vesting of right of way**

12 On payment to such owner of the amount so awarded, a right of way as in the said order in council defined shall vest in the petitioner. *R.S., c. 358, s. 12.*

### **Registration of copy of order and award**

13 (1) A copy of the order in council and of the award, certified under the hand of the Attorney General, shall be registered in the registry of deeds for the registration district in which is situated the land over which the right of way is acquired.

(2) The fees for such registration shall be those provided for the registration of deeds and shall be paid by the petitioner. *R.S., c. 358, s. 13.*

### **Insufficient deposit**

14 If the amount deposited by the petitioner with the Attorney General is insufficient for the purposes for which the same is required to be deposited, he shall pay any deficiency before any award is made by the arbitrators. *R.S., c. 358, s. 14.*

## **Application of Part to sluice**

15 This Part shall apply to a right of way for and a right to build a sluice by which to convey, transport, or remove the produce, timber and wood mentioned in Section 2 by water or otherwise. *R.S., c. 358, s. 15.*

## **PART II**

### **AUTHORITY OF MUNICIPAL COUNCIL**

#### **Interpretation**

16 In this Part,

- (a) "commissioner" means the person appointed by the council under this Part;
- (b) "council" means the council for the municipality in which the road, alteration, landing or work is situated;
- (c) "land" includes any easement or right in land;
- (d) "owner" includes any person having an interest in land or in an easement or right in land;
- (e) "road" includes a bridge or approach to a bridge, except in the provision prescribing the width of a road;
- (f) "warden" means the warden for the municipality in which the road, alteration, landing or work is situated. *R.S., c. 358, s. 16.*

#### **Petition for private way or road**

17 (1) Any freeholder or freeholders of any municipality may present a petition to the council praying for the obtaining and laying out of a private way or road, either open or pent.

(2) Where the council is satisfied that the application should be granted, it shall order a precept to be issued to a competent person as a commissioner, directing him, within a convenient time, to

- (a) examine whether the proposed private way or road is the most practicable and reasonable means of access for the person or persons petitioning for the way or road to his or their lands or property or rights;
- (b) if satisfied with respect thereto, lay out the same in the manner most advantageous to the person or persons applying for the way or road and least detrimental to the owner or owners of the land through which the same shall pass; and
- (c) mark out the same on the land. *R.S., c. 358, s. 17.*

#### **Further duties of commissioner**

18 (1) If the commissioner considers that the proposed way or road is reasonable and practicable and requisite for the purposes of the person or persons applying therefor, he may lay out and mark the same and make plans thereof, in duplicate, and if he considers otherwise he shall so report to the council.

(2) Such way or road shall be not more than twenty-five feet in width. *R.S., c. 358, s. 18.*

#### **Agreement for compensation**



19 (1) The commissioner may make an agreement in writing as to the compensation therefor with the owners of the land, the use of which is required for the purposes of the proposed private way or road.

(2) Such agreement shall contain a description of such land, a reference to the plan and the amount agreed upon for compensation.

(3) The commissioner shall transmit to the municipal clerk, to be laid before the council with his precept, such agreement and a full report of his proceedings thereon. *R.S., c. 358, s. 19.*

### **Appointment of arbitrators**

20 Where no agreement for compensation is made, arbitrators to appraise the same shall be appointed in the following manner:

(a) one arbitrator shall be appointed by the commissioner, another by the owner of the land and a third by the warden;

(b) the county court judge for the district in which the dispute arises may appoint an arbitrator to act on behalf of any owner, who is under disability, or absent from the Province, or who fails to appoint an arbitrator in his own behalf, after three days notice to him when he is within the municipality and fifteen days notice when he is not within the municipality but is within the Province;

(c) such notice may be given by the commissioner and may be served by delivering the same to the owner or, if he is not within the municipality, by mailing the same to his last known address, postage prepaid;

(d) no notice shall be necessary in the case of the disability of the owner or of his absence from the Province. *R.S., c. 358, s. 20.*

### **Joint appointment of arbitrator and failure to appoint**

21 (1) Where the land of more than one owner is required, the owners with whom no agreement has been made, instead of each appointing an arbitrator, may join in the appointment of one arbitrator to act with the two arbitrators appointed as hereinbefore provided in appraising the amount of the compensation to be paid to each of the owners represented by such arbitrator.

2) If any of the owners fails to join in making such appointment after seven days notice by the commissioner to do so, the county court judge for the district in which the dispute arises shall appoint an arbitrator to act on behalf of those who do not so join, and such appointment is as valid as if they had joined in making such appointment. *R.S., c. 358, s. 21.*

### **Oath**

22 The three arbitrators, before entering upon their duties, shall take an oath before a justice of the peace that they will faithfully and impartially discharge the same. *R.S., c. 358, s. 22.*

### **Appraisal by arbitrators**

23 (1) The arbitrators shall enter upon the land and appraise the compensation payable to the owner in respect thereto.

(2) The award of the majority of such arbitrators is valid and binding.

(3) The precept, with the report of the commissioner and the award, accompanied by a plan and containing or referring to a description of the land, shall be transmitted to the municipal clerk to be laid before the council. *R.S., c. 358, s. 23.*

### **Notice to interested person**

24 After the report of the commissioner, with an agreement or award for compensation, is transmitted to the clerk, he shall, not less than thirty days previous to the next meeting of the council, serve a notice containing the substance of such report, agreement or award, upon each of the persons interested in the lands through which the way or road is proposed to be laid out, and service of such notice may be effected by mailing the same to the last known address of each of the persons, postage prepaid and registered. *R.S., c. 358, s. 24.*

### **Consideration of report**

25 At the meeting of the council next after the receipt of the report, or at any subsequent meeting to which the consideration of the same is adjourned, the report, with the agreement or award for compensation, and any objections thereto shall be considered. *R.S., c. 358, s. 25.*

### **Decision of council**

26 (1) The council may confirm or disallow the report and, if it is satisfied that the amount of the compensation is either insufficient or excessive, it may disallow and set aside the agreement or award and direct a new appraisal of the compensation to be made, unless an agreement is entered into in respect thereto, and may delay action on the precept until a new agreement or award is made and transmitted.

(2) The council may also either confirm or disallow the new agreement or award. *R.S., c. 358, s. 26.*

### **Filing of documents**

27 If any agreement or award is confirmed, the municipal clerk shall file the same, and the papers in connection therewith, and shall enter the fact of such confirmation in a book to be kept by him for that purpose. *R.S., c. 358, s. 27.*

### **Calculation of compensation**

28 The compensation to which an owner shall be entitled shall include the value of the use of the land so taken, if any, and the damages to the land of the owner directly caused by such private way or road. *R.S., c. 358, s. 28.*

### **Payment of compensation and expenses**

29 The compensation ascertained by the agreement or by the appraisal of the arbitrators, and the expenses incurred in respect thereto, shall be paid by the council, and may be charged against and recovered from any polling district in which such private way or road is made, or in whole or in part from the applicant or applicants therefor, as the council may direct. *R.S., c. 358, s. 29.*

### **Council by-laws**

29A (1) The council may make by-laws respecting the payment of compensation charged against the polling district in which a private way or road is made, or in whole or in part against the applicant or applicants therefor.

(2) A by-law passed pursuant to subsection (1) may provide

- (a) that the charges may be chargeable according to a plan or method set out in the by-law;
- (b) when the charges are payable;
- (c) that the charges are first liens on the real property in the polling district or belonging to the applicant or applicants, and may be collected in the same manner as other taxes;
- (d) that the charges be collectable in the same manner as taxes and, at the option of the Treasurer, be collectable at the same time, and by the same proceedings, as taxes;
- (e) a means of determining when the lien becomes effective or when the charges become due and payable;
- (f) that the amount payable may, at the option of the owner of the property, be paid in the number of annual instalments set out in the by-law and, upon default of payment of any instalment, the balance becomes due and payable; and
- (g) that interest is payable annually on the entire amount outstanding and unpaid, regardless of whether the owner has elected to pay by instalments, at a rate and beginning on a date fixed by the by-law. *2011, c. 25, s. 1.*

### **Entry on land**

- 30 (1) No ascertainment or tender of the amount of compensation is necessary before entering upon land required for a private way or road.
- (2) When the amount is ascertained, the municipal clerk shall, under his hand, give such owner notice in writing that such amount is subject to his order in the hands of the municipal treasurer.
- (3) Such notice may be mailed to his last known address, postage prepaid, and, if he resides out of the Province and his address is not known, no notice or tender shall be necessary. *R.S., c. 358, s. 30.*

### **Registration of documents and effect**

31 One of the plans and the agreement or, if there is no agreement, a copy of the award shall be registered in the registry of deeds for the registration district in which the land lies, and such registration shall be held to vest the title as an easement to the land or rights of the person or persons applying for such private way or road. *R.S., c. 358, s. 31.*

### **Appeal**

- 32 (1) Any person petitioning for a private way or road, and any person who is interested in the lands through or over which such way or road is to be laid out, may, within ten days after the decision of the council, appeal from the decision of the council to the county court in the county wherein it is proposed to lay out such way or road, by giving notice thereof to the warden or municipal clerk, in writing, stating the grounds of appeal.
- (2) The municipal clerk shall thereupon transmit the proceedings to the clerk of such court.
- (3) The appeal shall be heard at the next sittings of the court in the said county or, if it sits in more than one place in the county, then at the next sittings held at the place nearest by the usual route of travel to the proposed private way or road.
- (4) After hearing the appellant, the other parties interested and the municipal council, and any witnesses produced, the court shall finally determine the questions raised, and either allow the appeal and quash, set aside or reverse the decision of the council, or confirm the same, either with or without costs, in the discretion of the court. *R.S., c. 358, s. 32.*

### **Gate on private way or road**

33 (1) The council may direct gates to be placed on private ways or roads, and make regulations respecting the placing and keeping thereof.

(2) Every person guilty of a breach of such regulations shall, for every offence, be liable to a penalty of not less than one dollar and not more than eight dollars. *R.S., c. 358, s. 33.*

### **Remuneration of commissioner**

34 The commissioner shall, for his services, receive such remuneration as the council allows. *R.S., c. 358, s. 34.*

### **Petition to shut up altered or abandoned way or road**

35 (1) Where a private way or road or any part thereof has been altered or abandoned, any person interested therein or any of the owners of land adjoining the same may, by petition stating the facts and the names of all persons interested in the way or road and in the lands on either side thereof, apply to the council to shut up or otherwise dispose of the same.

(2) At least thirty days previous notice in writing of the application shall be given to the persons interested and posted up on two conspicuous places near the way or road and the petition shall be accompanied by an affidavit proving that such notice has been so given and posted.

(3) The council shall hear the person or persons making the application, the persons who have been notified and any witnesses produced on behalf of any such persons and shall make an order either dismissing the application or granting the same in whole or in part. *R.S., c. 358, s. 35.*

## PART III

## GENERAL

### **Expropriation Act does not apply**

36 For greater certainty,

(a) an order, award or decision made or any other action taken pursuant to this Act is not an expropriation for the purpose of the Expropriation Act or at common law or otherwise; and

(b) the Expropriation Act does not apply to this Act or to any order, award, decision or any other action made or taken pursuant to this Act. *2011, c. 25, s. 2.*



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