

In the Matter of  
Gander Municipal Plan Amendment No. 18, 2007, and  
Development Regulations Amendment No. 24, 2007.

**Report of Commissioner**

Aidan B. Beresford, Q.C.  
Commissioner

January 30, 2008

## **Background**

For a number of years, the Town Council of the Town of Gander has experienced a pressing need to construct a new fire hall in the Town to better serve the needs of the Town. It is accepted by the Town Council, and by the firefighters who serve the Town, that the present building has outlived its usefulness and there is a need for a larger and more modern facility.

In 2007, the Town Council decided that the erection of a new fire hall had become a priority and, by motion in Council, the Town approved budget expenditures for its share of construction costs. Funds are also being solicited at present from the Government of Newfoundland and Labrador to complete the project.

With construction planned to begin in the near future, the Town engaged the services of A.E. Consulting Ltd. as Design Engineers for the project. This firm has been involved in the planning and erection of fire halls throughout the provinces of Nova Scotia and Newfoundland and Labrador. A design plan for the fire hall is presently in the possession of the Town and is available for inspection at the Town Hall.

Having budgeted its own funds, solicited funds from the province and obtained a set of plans, the Town continued its quest for a suitable location upon which to erect a fire hall. Several sites were examined. The Council and the fire department, as well as Town officials, looked at sites with a view to land availability, suitability for the purpose, traffic patterns, quickness of response time to fire calls and overall long-term town planning with respect to population and town growth.

Based on internal recommendations and its own deliberations, the Town Council accepted the proposal that a parcel of land on the Raynham Avenue extension/Cooper Blvd. intersection be designated as the site for the new fire hall. This parcel of land, located on the north side of Raynham Avenue extension, west of Cooper Blvd., consists of 6500 m<sup>2</sup> of land.

The land in question is presently owned by the province and is zoned as Open Space Recreational (OSR) land pursuant to the Town's Municipal Plan 2000. To accommodate the erection of a fire hall, the Town Council decided, in September 2007, to rezone the land from Open Space Recreational (OSR) to Commercial Light Industrial (CLI). Under this classification, the erection of a fire hall will be a permitted use.

Notices of an open forum concerning the proposed amendment were circulated, both by local newspaper and specifically by letter to residents in the immediate area of Raynham Avenue, Corrigan Street and Morgan Drive. A public information session was held on October 9, 2007, at which time five interested parties attended. Objections were raised and discussed. A draft of the proposed plan was sent to the Municipal and Provincial Affairs Department and was approved in principle by that Department on October 24, 2007. The motion to proceed with rezoning was adopted by the Town Council in a meeting on November 14, 2007.

Subsequently, the proposed amendments were published by notices in the local paper on December 31, 2007 and January 7, 2008. These notices advised the public that if written objections to the proposed amendment were received on or before January 14, 2008, a public hearing would be held at Council Chambers, in Gander on January 16, 2008, at 7 p.m. If no written objections were received by that time, the meeting could be canceled. By January 14, 2008, three (3) written objections were received and accepted by Town Council. The Hearing was scheduled to proceed on January 16, 2008. The undersigned, Aidan B. Beresford, Q.C., was appointed Commissioner and conducted the January 16, 2008, hearing. The following is the Commissioner's report and recommendations made after due consideration of the issues raised respecting the proposed amendments.

### **Jurisdiction**

Pursuant to the Urban and Rural Planning Act, S.N. 2000 c. U-8, as amended, (the Act) the Town Council has powers, rights and responsibilities with respect to amendments to the Town Plan, as per the following sections:

Section 25 - The Council can amend its Town Plan and Development Regulations registered under section 24 of the Act by using sections 14 to 24 of the Act, with necessary changes.

Section 14 - If Council wishes to amend its Plan, it shall provide an opportunity to interested parties to give input and information. Council can ask for written submissions.

Section 15 - After proper consultation, the Council may approve and complete the Plan and submit it to the Minister for review. The Department shall review the proposed changes and may itself recommend changes.

Section 16 - Following review, Council may adopt the Plan or adopt an amended Plan.

Section 17 - The notice of adoption of Plan shall be advertised for at least 14 days in the local paper. The Act stipulates the basic contents of this notice.

Section 18 - A public hearing can be set for the parties to make representation.

Section 19 - The Town can appoint a Commissioner who has the powers set forth in The Public Inquiries Act.

Section 20 - At least two (2) clear days prior to a Hearing, any objections or representations to the planned amendments should be filed with the Town.

Section 21 - If there are no objections, the Council will cancel the Hearing. If there are objections, Council shall hold a Hearing and hear all interested parties.

Section 22 - When the Hearing is completed, the Commissioner shall prepare a written report to Council, detailing recommendations respecting objections and representations that were considered and those that were not considered.

Section 23 - Once Council receives the report, it shall consider it and change the plan, if necessary. If the Plan is changed, the whole process outlined herein could be repeated. If Council deems it appropriate not to make any change to the Plan as proposed and advertised, it may consider the Plan and approve it.

Section 24 - Once approved by the Town, after the above process is duly followed, the Plan will go to the Minister, who, if he/she deems the Plan to be in order, shall approve it. After approval, the Plan is to be gazetted and published in the local paper.

In considering the foregoing statutory conditions, the Commissioner wishes initially to highlight the language of section 14 of the Urban and Rural Planning Act. As set forth in that section, there is a "shall" provision that requires the Town to provide interested parties with an opportunity to give input and information with respect to the proposed amendment. Council has the discretion to seek written submissions.

The Commissioner has reviewed the input that was received by Council from interested parties at the time of the public information session in October, 2007. While this input was not repeated in total at the Hearing on January 16, 2008, a number of the issues raised were, in fact, canvassed at that time. The Commissioner chose to review the earlier representations because the legislation states that the Council "shall" seek input and information from interested parties about the proposed Town Plan amendments.

The Commissioner had an initial concern as to whether the Town had followed the Act at that stage. Normally "shall" is a mandatory and imperative word, which, when used in a statute, means it must be done. Case law, however, has established that the use of the word "shall" in section 14 of the Urban and Rural Planning Act is simply directory. The Town is directed by the Act to solicit views and to advise the public of its intended amendments at the initial stages of such a process. Being directory in nature, failure to observe the direction does not nullify the process from that point onwards.

The Commissioner is satisfied, on the basis of the materials reviewed, that the Town has followed the process as set down by statute. At the early stages of this amendment process, the Council did seek input from interested parties and considered that input. They have duly informed the residents of the extent and nature of the proposed amendments. It is the finding of the Commissioner that the amendments to the Town Plan and Development Regulations have been properly adopted and published by Council, that interested parties have been informed by various processes, that objections have been received, and a public hearing with the commissioner was properly constituted.

## **Proposed specific change to the Town Plan and Development Regulations**

1. To rezone 6500 m<sup>2</sup> of land at the intersection of Raynham Avenue Extension and Cooper Blvd., presently zoned as Open Space Recreational to Commercial Light Industrial.

### **Written submissions**

Prior to the January 16, 2008 public hearing, written submissions were received from:

- a) John and Krista Hinchey
- b) Tracey Wiseman
- c) Tim and Arlene Goodyear

These submissions were reviewed in detail prior to the public hearing and the three parties were invited to address the public hearing in person, which they did.

### **Public hearing**

A number of Town Councilors, Town Hall officials, Town firefighters and several residents of the Raynham Avenue area attended the Hearing. Town Councilor, Mr. David Blundon, opened the Hearing and welcomed those attending. He briefly outlined the purpose of the Hearing, and advised those present that a package outlining the proposed changes was available at the door for review, and also that a number of technical staff were available at the Hearing for clarification of any matters raised.

The Commissioner then explained the procedure as set forth in the legislation and advised how he proposed to conduct the Hearing. The Hearing was opened to the public for comments.

The following persons were heard from at the Hearing:

Grant Horwood	Town of Gander
Carl Smith	Town Councilor
David Blundon	Town Councilor
Dave Brett	Town Fire Chief
John Hinchey	Town Resident
Tim Goodyear	Town Resident
Glen Barnes	Design Engineer
John Boland	Town of Gander
Tracey Wiseman	Town Resident
Shawn Tiller	Town Resident
Pat Woodford	Town Resident
Wilson Hoffe	Town Councilor
Don O'Brien	Town Resident

At the start of the Hearing, the Commissioner referred to the posted diagram, which outlined in red the area that was to be rezoned from Open Space Recreational to Commercial Light Industrial. The area in question measured some 6500 m<sup>2</sup> and was to be used for the construction of a new fire hall. The rezoning would change the available and permitted uses for the land. The changes were noted in the available handout that listed the permitted and discretionary uses for land in the two different classes.

The land to be rezoned abuts Raynham Avenue, which is being extended to meet Cooper Blvd.. The extension has been part of the Town Plan since the Plan's inception in 2000. The actual position of that road has been determined by the engineering department and is in place at present. There are issues of traffic congestion that are associated with Raynham Avenue extension which are different from the traffic congestion issues associated with the erection of the fire hall. The Commissioner expressed an interest in hearing views on all the issues affecting the area, but noted that the matter of Raynham Avenue extension is not before this Hearing at present. The actual location of the road is never specifically located on the Town Plan. The Town Plan is more of a conceptual plan that becomes specific as development takes place.

Parties at the Hearing questioned the position of Raynham Avenue extension, particularly in view of the fact that a proposed lot layout for Raynham Avenue extension and Hornell Street/Cheshire Crescent indicated that there would be residential lots directly across Raynham Avenue from the fire hall. The diagram supplied by the Town indicated that the land across Raynham Avenue from the fire hall was zoned Open Space Recreational, and there were no changes or amendments contemplated for that area. Specific surveys will need to be carried out to establish the exact location for residential lots in the area, but the consensus is that the land across Raynham Avenue from the fire hall will remain as Open Space Recreational. The fire hall access is planned to be off Raynham Avenue.

The Commissioner then opened the floor to anyone wishing to make representation. He specifically invited those who had made written representations to address the Hearing.

Mr. John Hinchey, resident of Raynham Avenue, had cosigned a written objection with his wife, Krista. In his written submission, he had objected to the proposed amendment. He felt that the Open Space Recreational land should be left open for that purpose and that the land should be used for children's programs and promotion of an active lifestyle. He also felt that the rezoning and erection of a fire hall would contribute immensely to increased traffic in the area. Raynham Avenue already experiences a significant traffic increase from people living in the adjacent Spruce Court development. That development is only 25% filled at present. The traffic will only increase more as the area is further developed.

The street has two bus stops on it. Erecting a fire hall in the area could make it unsafe for children living in that area. There are alternate sites, which are just as good or better, such as Magee Road by the Power substation, McCurdy Drive and elsewhere off Cooper Blvd.. He wondered if anyone had spoken to the Airport Authority or to Irving Oil Limited about other parcels of land. He also questioned whether a proper traffic study had been done in relation to the proposed amendment.

He also noted that Raynham Avenue is 5 feet narrower than Airport Blvd.. The presence of emergency vehicles with other traffic on this street creates safety issues for him. Raynham Avenue is, he stated, a residential area, so why is it going commercial? The safety of the children and traffic studies were his prime considerations.

Fire Chief Dave Brett addressed the Hearing and advised that the fire hall answers, on average, 154 calls per year. In doing a response analysis of these calls, he stated that 34% would go through Raynham Avenue to report to a fire, while 66% of the calls would go via Cooper Blvd. He further advised that presently 17 firefighters would go to the fire hall to answer a call and one-half of these would go via Raynham Avenue. On average, then, Raynham Avenue would have one fire truck per week.

Additionally, there are two training sessions per week involving 15 to 20 firefighters, one-half of whom travel via Raynham Avenue. With respect to staffing considerations, there are only one to two persons on site at any time. Also, the Fire Commissioner operates out of the building and residents dealing with the Commissioner will have to go to the fire hall. Emergency vehicles, when responding to a call, must use audio and light signals in operation. He stated that six to seven sites had been reviewed and this site was, to his mind, the best location to serve the department's needs.

Mr. Hinchey also questioned whether or not the Town had actively considered the alternate sites that had been suggested at the October, 2007, meeting. The suggested areas were already zoned commercial and did not need to be rezoned. Town Councilor David Blundon advised that the Town Council had left these considerations with administration so that they could consider the feasibility of the various sites. The Hearing was also advised that the fire department had, as a result of its research around the Town, suggested certain locations. The proposed location at Raynham Avenue extension met their requirements. The area close to the school bus depot on McCurdy Drive had been ruled out because of safety issues involving access to Airport Blvd.

Dr. Shawn Tiller questioned whether the Emergency Response Team at the James Paton Memorial Hospital had been consulted on this rezoning issue. He was advised that this consultation did not occur.

Mr. Glenn Barnes, design engineer, advised that his company had not been involved in actual site selection. In his experience, the present site is quite typical, being at the edge of a road artery and adjacent to residential areas. Developments grow up around fire halls in many cases. It was his experience that residents eventually get used to such changes.

Fire Chief Dave Brett stated that the fire department studied five to six different sites around the Town. The department's main concern was getting access to major road arteries. The location of a fire hall is tied to acceptable response times and must consider future town expansion. The construction of a new fire hall envisages a 30 or so year plan. Realistically, we have to look at, at least, a 15-year town expansion plan.

The suggested sites on Magee and McCurdy were not part of the five or six sites that the fire department looked at in great detail. The Magee Road site was too close to two schools. The McCurdy Drive site was not a prime spot for a fire hall, specifically because of response time issues. The fire department had reviewed these sites with other municipal departments in trying to determine what was acceptable and what was not acceptable.

Ms. Tracey Wiseman addressed the Hearing. She lives on Raynham Avenue, at the end of the road where the extension has now occurred. For a long time, the area was only a turnaround area. She had looked forward to the development and extension of Raynham Avenue. She has small children and is concerned for their safety. The intersection at Corrigan Street/Raynham Avenue is dangerous, especially during the wintertime. Two bus stops are located there and this means that there are many young children in the area, during lunch periods particularly. Since Raynham Avenue has been extended, the presence of big trucks speeding down the road is a constant concern for her and her family. The present rezoning proposal is not for residential. This arrangement is heading commercial. The Town should seriously consider what it is doing here. What enterprises are going to be placed on the rezoned land? Is it only a fire hall?

The Hearing was advised that the land is being rezoned solely for a fire hall. The specific parcel is only big enough for that purpose. On further questioning as to whether or not other businesses will be allowed in the area, Councilors present advised that no other rezoning is planned for that area.

In a written submission, Ms. Wiseman confirmed that she was opposed to the present rezoning proposal. She suggested that Roe Avenue or Airport Blvd. might be better locations. Traffic increase and safety are major considerations that should be seriously considered and canvassed before such a change is made.

Mr. Tim Goodyear spoke at the Hearing. He reiterated the point that no one argues with the concept of a new fire hall. The problem is the placement of the building. When Mr. Goodyear purchased his property, he had a green belt behind his land. He knew Raynham Avenue would be extended, but he expected that the character of a residential neighborhood would be maintained. The erection of a fire hall, he feared, was but the start of a change from residential and open space to commercial zoning. He reiterated the issues of traffic, encroaching businesses and reduction of recreational areas. He posed the basic question, would any member of Council want a fire hall on his street.

In his written submission, Mr. Goodyear also referred to the issue of rezoning a neighborhood that is already developed. He had purchased in a residential area and felt it should remain that way. The fire hall was but the "thin edge of the wedge" and other commercial enterprises would surely follow. He also expressed concern about children's safety with the traffic increase from both emergency response mode and fire training. The width of Raynham Avenue will not stand high-traffic. He also expressed the view that Magee Road would probably be a more logical location to serve the growing population of Gander with the quickest and best response times. He further suggested that the Town should take note of the number of objections to the rezoning proposal. Surely, this indicates that people do not want the project to proceed as planned.

Mr. Pat Woodford, resident of Raynham Avenue, also spoke at the Hearing. He had concerns about speeding vehicles using Raynham Avenue to respond to emergencies. As a shift worker, he had serious concerns about sirens and lights going on a regular basis. He questioned whether the Town had looked at other areas in the Town that would meet the desired specifications for a fire hall.

Councilor Carl Smith advised that the Public Safety Committee had considered the Raynham Avenue site and felt that it was the best location. If Council were to decide otherwise, the Committee will have to explore alternate sites.

Councilor Wilson Hoffe advised that three other sites had been looked at, including the softball field area on Elizabeth Drive. While this property met specifications, it was not desirable to change the present recreational nature of that area. An area near Lakeside Homes was also considered, however, the land was not for sale. An area on McCurdy Drive was considered, but the logistics of access and response times were not present.

Mr. Donald O'Brien, resident of Raynham Avenue, also spoke at the Hearing. He felt that the planned rezoning was shortsighted and that there were better locations around town for the erection of a fire hall.

There was some general discussion with some comments from other participants that may be briefly summarized as follows:

- The future development of the town is in the area of Spruce Court and the Old Navy site. The proposed fire hall location is closer to these sites.
- The land off Cooper Blvd. by Roe Avenue is owned by the Federal Government. This land could be leased, however, it is a high-volume traffic area.
- Will the Raynham Avenue Cooper Blvd. intersection have a traffic light? Town officials advised that this would depend on the traffic volume.

## **Issues**

1) **Increased traffic:** With the continued development of Spruce Court, it is accepted that there will be increased vehicle traffic seeking access through Raynham Avenue to Cooper Blvd. That increased traffic has been anticipated and accepted through the designation of Raynham Avenue as a collector road from the inception of the Town Plan. While the traffic increase is noted by the Commissioner as a concern for citizens, that part of the increased traffic is outside the scope of the Commissioner's mandate for this Hearing and is not being considered.

The increase in traffic caused by the erection of a fire hall, with response calls by the department, travel to and from the fire hall by firefighters for fires and for training, and travel to and from the fire hall by residents to do business with the fire commissioner is indeed a real issue. It constitutes a change in expected traffic volumes and the nature of such traffic for the

local residents. I accept the Fire Chief's analysis that roughly one-third of all anticipated fire hall business will use the Raynham Avenue route. This will cause an increase, but it does not appear to be an increase of such a degree that it would significantly affect the traffic flow in the area.

In considering the issue of increased traffic, I do not feel that this issue, on its own merits, would constitute an objection to the rezoning plan that would militate against proceeding.

I do have, however, real concerns about the flow of traffic onto Cooper Blvd. from Raynham Avenue without the presence of a traffic light. At present, it is a high-speed zone. Council should seriously consider the traffic flow issue in that area and ensure that access from Raynham Avenue to Cooper Blvd. and vice versa is safe. The Town may very well argue that this consideration is outside the terms of my appointment for this Hearing. However, I feel that if the Town is using long-range Town-planning and safety issues as a basis for the present amendment, that basis should also extend to a full consideration of all safety and traffic flow issues in the area.

2) **Safety issues:** The issue of children's safety in a residential area that will now see the increased presence of emergency vehicles is noted and needs to be considered. The Open-Space Recreational area between Raynham Avenue and Cooper Blvd. invites young children in all seasons. At present, children from neighboring streets also converge on the area for recreational purposes. Vehicles traveling in excess of posted speed limits have to be dealt with and require the vigilance of the Town Police under existing regulations. Residents have a right to feel protected.

I am also concerned about the presence of two school bus stops on Raynham Avenue. These buses, under present arrangements, make four stops per day from each of two streams of Gander schools, primary/elementary and junior high/high school. These runs are scheduled, but fire outbreaks are not. Consideration needs to be given to bus stop sites so as to eliminate as far as possible the possible danger of buses and emergency vehicles, together with other traffic, using the same road space.

3) **Consideration of other sites:** There was an expressed concern that Council did not consider all other available sites for a new fire hall, and that the sites suggested that the information session had not been considered. The Hearing produced information with respect to a number of sites that the Town had considered and turned down for one reason or another. These sites, and the reasons respecting their rejection, have been alluded to earlier in this report. Has the Council done enough research on the sites? Have they considered seriously the input of residents in the Raynham Avenue area? There is, I believe, an onus on the Town to justify an amendment to its Town Plan, when it is perceived that the amendment essentially changes the nature of an area and especially when that change affects a residential area.

In light of the above, I would have preferred that Council or Administration would have addressed individually each of the alternate sites suggested by the residents in the area. This would have provided some solace for residents, confirming that they had been listened to and appreciated. While that specific approach did not occur, the Hearing did, in fact, confirm that sites on Magee Road, McCurdy Drive, Cooper Blvd. at Roe Avenue, Elizabeth Drive at Memorial Drive, and the Memorial Drive at Lakeside Homes area had all been considered and found wanting for one reason or another.

I accept the position given by the Fire Chief who advocated quick response time and long-term planning as the basis for his recommendation. In his position, he has canvassed the town for a long time, looking at and considering suitable locations. He states that the planned location on Raynham Avenue is the most suitable for the task. That opinion does indeed bear weight.

4) **Other possible land uses once the land is rezoned:** This is a valid concern as expressed by a number of residents. Council members present at the Hearing were univocal in their position that the only land to be rezoned in the area was 6500 m<sup>2</sup>, solely for the purposes of the fire hall. The rest of the land remains as Open-Space Recreational.

Residents are rightly concerned that this is but the beginning of commercial endeavors in the area. It must be noted that this Hearing deals with Town Plan Amendment No. 17. There have been a host of changes to the Town Plan since 2000. While the Town Council has a right and an obligation to develop the Town in an orderly and planned fashion, there needs to be a certain security within the minds of residents that a plan will not be changed on a whim. Residents who invest their earnings in a home should not be subjected to substantial changes unless there is good reason for doing so.

None of the residents expressed negative concerns about a new fire hall. Their concern was that the Council is changing its plan when, they feel, there is no good reason for doing so. Ultimately, while I empathize with the residents of Raynham Avenue in this matter, I find that the Town has done its research into this project. The Town Committees, Administration and Council have considered the options and have put forward a recommendation for the most suitable site in light of response time issues and long-range town planning.

#### **Other issues:**

a. **Decreased property values:** This concern was raised in correspondence. The Hearing did not produce any substantial considerations that would indicate that the planned fire hall would result in decreased property values, and therefore this issue is not a consideration in this report.

b. **Noise:** This issue was raised in correspondence and was addressed at the Hearing in the context of the effect of sirens and lights of emergency vehicles on shift workers residing in the area. While I know this is a concern of residents, it is not a substantial consideration in the present circumstance, particularly for residents of a Town that boasts the presence of a major regional Hospital and an International Airport, all of which institutions produce associated noises. As explained at the Hearing, the presence of fire sirens on an average of once per week would not constitute a major nuisance.

c. **Reduction of Open Space Land:** This issue was raised in both written and oral objections. While it is a valid concern, it is my finding that the small parcel to be rezoned does not significantly affect the nature of the remaining open space land in the area. Also, the Plan allows for access to the open space land to the west of the proposed fire hall.

## **Conclusion and recommendations:**

Having reviewed the terms of appointment and the specific changes proposed for rezoning, and having listened to and carefully considered the recommendations and objections presented orally and in writing, I respectfully recommend that the Town of Gander Municipal Plan Amendment No. 17, 2007, and Development Regulations Amendment No. 24, 2007, be approved as proposed.

On the basis of the evidence heard and considered, I hold that there have not been valid objections raised to the amendments that would constitute a sufficient basis to refuse to recommend the amendments as set forth. The area selected for the fire hall appears to best meet the needs of that municipal service.

In making the above recommendation, I would also recommend that Council first deal with concerns of the residents of Raynham Avenue and area as follows:

- 1) Immediately investigate the need for a traffic light at the Raynham Avenue/Cooper Blvd. intersection, or alternatively address the safety issues by lowering the speed limit on Cooper Blvd. at that intersection to allow for safe entrances and exits at this location.
- 2) Revisit the issue of bus stop locations on Raynham Avenue to ensure the safety of students when fire vehicles are responding to emergencies.
- 3) Increase policing in the Raynham Avenue area with a view to reducing speeding vehicles.
- 4) Confirm, through survey and engineering work, that only the 6500 m<sup>2</sup> parcel of land will be deducted from the Open-Space Recreational land in the area. Confirm that there will be no other infringements on the Open Space Recreational land by proposed residential developments in the Hornell Drive area and take all steps available to ensure that no other land in the area is rezoned.
- 5) In the event that the fire hall is not built as planned on the subject land, the Town should maintain the land as a future site for a fire hall and not allow its use for other purposes or, alternatively, rezone it back to Open-Space Recreational.

I enclose herewith the following:

- a) Copy of the letter of appointment as Commissioner;
- b) Copy of three (3) written objections;
- c) Copy of proposed residential lot layout for Hornell Drive;
- d) Copy of maps;
- e) Copy of Hearing handout; and
- f) Two tapes with audio recording of the Hearing.

I trust this is satisfactory.

Yours very truly,  
Aidan B. Beresford, Q., C.