

In the Matter of the Town of  
Gander Municipal Plan  
Amendment No.17, 2017, and  
Development Regulations Amendment  
No. 23, 2017.

**Report of Commissioner**

Aidan B. Beresford, Q.C.  
Commissioner

September 20, 2017

## **Background**

In April 2009 the Town of Gander formally adopted and passed into law a new Municipal Plan with accompanying Development Regulations to cover the period from 2009 to 2019. This Plan and Regulations were completed through a process of a needs assessment study by consultants wherein various background reports and suggestions were produced. From this study and other consultations/discussions a proposed Plan with accompanying Regulations was developed and posted on the Town's website. The Town held a series of Town Hall meetings to allow for comments and suggestions from the general public. The Town then followed the procedure as set down by the Urban and Rural Planning Act, SNL. 2000, c. U-8, as amended, (hereinafter called "the Act") which required a review and release by the Department of Municipal Affairs and a further public hearing to allow for objections from the citizens of the Town. That citizen's hearing took place on July 8, 2009 and a report from the Commissioner was filed on August 18, 2009. Following receipt of that report the Town proceeded to have the Municipal Plan and Development Regulations passed into law through publication in the Newfoundland and Labrador Gazette, with the Plan and Regulations being registered on April 15, 2010.

The present Amendments to the Plan and Regulations being recommended by the Town propose to rezone a parcel of land located at 151 Trans Canada Highway (known heretofore as 'The Airport Club') from its present zone use as **Commercial Highway** to the zone use of **Public/Institutional**. The Amendments are being sought to accommodate an application for the erection of a personal care home on the subject property. Under current Municipal zoning laws a personal care home cannot be approved for this location, and the proposed development cannot be passed by Council without rezoning the subject property from **Commercial Highway** to **Public/Institutional**.

The Town Council, in a meeting in January 2016, passed a motion of consent to rezone properties at 141, 151 and 161 Trans Canada Highway (TCH) to accommodate a proposed personal care facility, but that proposal was not acted upon at that time. The present proposal is for the development of the land at 151 TCH as a personal care home

and the application for the necessary rezoning of 151 Trans Canada Highway was made on June 7, 2017. Notices of an open forum concerning the proposed amendment were circulated to all parties holding properties along the Trans Canada Highway in the Town of Gander area. An open house and public information session was held on June 29, 2017 at which time the proposed rezoning was explained and comments were noted. Four Town Councillors and a number of Town Officials were present as well as seven interested parties/land owners in the TCH area.

As is required by law, a draft of the proposed amendments was sent to the Department of Municipal Affairs and was approved in principle and released. On August 10, 2017, the Town formally adopted a motion to give effect to the amendments as set out earlier. Subsequently the proposed amendments were published by notices in the local paper on August 24, 2017 and August 31, 2017. These notices advised the public that if written objections to the proposed amendment were received on or before Friday, September 8, 2017 at noon, a public hearing would be held in Council Chambers in Gander on Tuesday, September 12, 2017 at 7:00 p.m. If no written objections were received by that time the hearing could be cancelled. By September 8, 2017, one (1) written objection was received and accepted by Town Council. The undersigned, Aidan B. Beresford, Q.C., was appointed Commissioner, and conducted the hearing on September 12, 2017. The following is the Commissioner's report and recommendations made after due consideration of the issues and objections raised respecting the proposed amendments.

### **Jurisdiction**

At this stage I wish to outline the purpose of a public hearing as authorized and mandated under the Urban and Rural Planning Act, SNL 2000, c. U-8 (the Act) so that interested parties will understand the process and the limited powers exercised by a Commissioner in this process.

Pursuant to the Act, the Town Council has powers, rights and responsibilities with respect to amendments to the Municipal (Town) Plan and Regulations, 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 a 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 power 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 Council, 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.

Having considered the foregoing statutory conditions and processes, 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 has been properly constituted.

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

1. To rezone a parcel of land situate at 151 Trans Canada Highway, Gander from **Commercial Highway** to **Public/Institutional**.

### **Written Submissions**

Prior to the September 12, 2017 public hearing, a written submission was received from:

1. Mr. David Soucy

This written submission was reviewed in detail prior to the public hearing, and the submitting party also attended the public hearing and was invited to address the public in person with his concerns.

### **Public hearing**

A Town Councilor, some Town Hall officials, the landowners of the property at 151 Trans Canada Highway, as well as Mr. David Soucy, attended the hearing on September 12, 2017. Town Councilor, Mr. Gerry Parrott, opened the hearing and welcomed those attending. He briefly outlined the purpose of the hearing. It was, as stated earlier, to deal with a proposed amendment to the Town Plan which would permit the erection of a personal care facility at 151 Trans Canada Highway. The present the zoning and regulations do not allow Council to grant the personal care facility application. This hearing is for the purpose of hearing objections and comments respecting the Town's proposed amendment, Mr. Parrott then handed the meeting over to the Commissioner.

Appearing on behalf of the Town were Mr. Gerry Parrott, Town Councilor; Mr. John Boland, Town Planning and Control Technician; and Mr. James Blackwood, Director of Engineering.

Appearing on behalf of the owners of the property at 151 Trans Canada Highway, P-Four Holdings, were Ms. Michelle Penney and Ms. Tara Dickey.

The Commissioner then explained the procedure as set forth in the legislation and advised of the proposed method for conducting the hearing. The hearing was opened to the public for comments.

The following persons were heard from at the hearing

Mr. David Soucy

Resident of the Town of Gander

Ms. Michelle Penney

Landlord

Mr. Gerry Parrott

Town Councillor

Before opening the meeting to the floor, the Commissioner spoke to the parties present. He advised that the purpose of this meeting was very specific. He pointed to a diagram posted in the room which delineated the area on the Trans Canada Highway which is the subject of the present hearing. The area is presently zoned as **Commercial Highway**. The land uses, both permitted and discretionary, do not allow for the erection of a personal care facility. The proposed change to the Town Plan has to follow the set-down procedure for implementation. At the end of the day, if the change is okayed by the Provincial Government after passage by the Town, the landlord will be required to apply for the permit asking the Town to grant the application to rezone the land at 151 TCH to allow a personal care home to be erected on the property.

The Commissioner briefly outlined how the Town has developed a ten-year plan to which a number of amendments have already been made. There is a continual tension between the security of a long term plan and the need to answer requests for changes to the plan that arise from time to time. While plans are developed with the professional expertise of consultants, there are always matters that are never within the contemplation of planners at every stage. The need is to provide security for those who plan and invest long-term and, at the same time, have a living plan that will answer to the needs of a growing community. All citizens need the protection and cooperation of the Town in that process.

Mr. David Soucy provided a two-page written submission which he then read into the record. He acknowledged that he clearly understands the limits of the Town's control over the development of the land at 151 TCH, and stated that he would prefer the planned personal care home, on the site which is close to the James Paton Hospital, over a restaurant or hotel development, which entities are allowed under the present zone use table. Essentially his objection is against any further development whatsoever on the south side of the Trans Canada Highway. The existing facilities on the south side of the Highway:-the Hospital, the Golf Club, the Aviation Museum and the Chamber of

Commerce Building- are more than enough for this area, from a safety, economical, and aesthetic point of view. The property at 151 TCH has been dormant for almost 30 years. During that period we have seen the demise of the railway and its replacement by tractor-trailer transportation of goods and vehicular transportation of people. The vehicle and traffic increases are well documented and an additional access to the TCH for a facility at 151 TCH will only serve to increase public safety issues. The access for 151 TCH was granted over 60 years ago, in a different age, with much lighter traffic requirements. If that access were being applied for today it would certainly be refused by the Department of Transportation. The Town needs to look at this situation from a long-term viewpoint. It is time to say “No” to further development on the south side of the Trans Canada Highway. Further development on that side of the TCH will undoubtedly lead to unwanted traffic control solutions such as a divided highway in the area or a diversion of the highway to an area adjacent to Gander Lake. Such solutions will jeopardize present businesses on the highway and will affect the Town in general. In the interim, public safety remains a constant challenge. Mr. Soucy suggested that a possible solution at present would be for the Town of Gander to buy the land and either leave it in a dormant state or restrict its use to activities that will not require access to and from the TCH.

Councillor Gerry Parrott questioned whether a right-turn only coming out of the property or establishment of a service road on the south side of the TCH with limited access to the TCH would help alleviate safety concerns.

Ms. Michelle Penney, on behalf of the present property owner, stated that she saw the personal care facility proposal as a logical and beneficial extension to the James Paton Memorial Hospital. Personal care patients are taking up acute care beds at the hospital as they wait for placement elsewhere. A personal care facility will help address that situation. She further noted that the process of rezoning is taking a considerable amount of time. That time could be better used by a developer in getting construction underway before the onset of winter. There is a risk that the developer will go elsewhere. If that happens the property may be sold to a hotel developer. Hotel development is a permitted use under the present zoning requirements. While the owner would prefer a personal care

development over a hotel development, the property has to move somehow and soon. With respect to the presence of traffic in the area, she felt that that was an issue for any municipality along the Trans Canada Highway.

## **Issues**

The issue to be considered in the analysis which follows can be stated as:

1. Should the proposed amendment to the Municipal Plan and the Development regulations be approved so as to rezone the land at 151 Trans Canada Highway from a **commercial highway** designation to **public/institutional** so as to accommodate the erection of a personal care facility?

## **Analysis**

### **Should the proposed amendment be approved?**

The scope of the present hearing is narrow. The jurisdiction given by the Act is to examine the issue as outlined above. The rezoning request deals with the commercial highway designation being changed to public/institutional.

It is useful in this context to review the present permitted uses for commercial highway properties. The permitted classes of use include commercial residential (hotels/motels), conservation and passenger assembly, while the discretionary uses include antenna, apartment building, catering, collective residential, communications, offices (for serving the travelling public), service station, shop ( limited to car sales), taxi stand, takeout food service and utilities. Looking at these permitted and discretionary uses it is evident that the current status of the property at 151 TCH allows for a number of undertakings that would create a fair degree of traffic, both pedestrian and vehicular. Any of these undertakings can be authorized without any change to existing zoning laws. With an application for development of any of these types of undertakings Council would not be

able to refuse a development permit without a serious just cause and explanation for such a refusal.

In comparison with the present zoning status, the change to public/institutional status would bring a different style of allowable undertakings. The permitted uses in this category include child care, conservation, culture and civic, educational, general assembly, medical treatment and special care, and place of worship. The discretionary uses include antenna, catering, club and lodge, collective residential, correctional detention, indoor assembly, manse, medical and professional, office, passenger assembly, police station, recreational open space, shop, theatre, and utilities. It could be argued that a number of these public/institutional uses could be much more restrictive than the allowable uses under the present commercial highway designation. It is also conceivable that a number of these listed possible uses could also create higher traffic volumes. Whichever undertaking is eventually chosen will bring a great deal more traffic than what has been witnessed for a number of years given the continued dormant nature of the property at 151 TCH. It is a given that any use of the property, other than its current activity or lack thereof, will increase traffic in the area.

If we accept the premise that any use of the subject property will bring increased traffic, it follows logically that we should address the question that Mr. Soucy has posed: under the pretext of public safety and future avoidance of stop-gap transportation remedies, should the Town Council take action to prevent any further development on the south side of the Trans Canada Highway? This approach involves a shift in governing principles and challenges the Town Council to go in a new direction. It would call for an outlay of capital from the Town to purchase the land from its present owners. That outlay of cash would be for conservation purposes, with little hope of return on the investment. Such a venture would have to be examined by Council in accordance with the principle of the most prudent use of the taxpayers' money. That decision is for Council to consider if it so chooses and is totally outside the ambit of this hearing and therefore no recommendation is being made in that regard.

Barring any action by the Town Council to purchase the land and restrict activity thereon as suggested by Mr. Soucy, it is certainly the property owner's right to seek a re-zoning of the land at 151 TCH so that the property can be sold to an interested buyer for the purposes of the erection of a personal care home. We note the owner's comments made at the hearing suggesting that if the proposed use is not made possible by re-zoning, then the land may very well go to development of another enterprise that will entail as much, if not more, traffic in the area.

A question emerges as to whether or not the access to the TCH at 151 TCH can simply be closed off at this stage. It is acknowledged that the access was granted many years ago, under different circumstances and in a different time. The passage of time is not a sufficient reason to close off the access. It would be foolhardy to suggest that the present owners might simply close up shop and forget about their investment. That will not and should not happen. A shutdown of access to the property can only be done by either the Town Council or the transportation department of the government of the province. Without purchase of the property by either or both of these bodies, the present owner is within its right to promote the sale of the land in the most beneficial manner possible to it. At present that option appears best served by re-zoning the land to Public/Institutional.

### **Subsidiary Issue**

It is noted for the record that the James Paton Memorial Hospital contacted the Town prior to the hearing expressing concern that any development in the area would take into account the presence of the helicopter landing pad on the easterly side of the Hospital property. All parties recognize that activity and agree that any development of the property at 151 TCH will be subject to height restrictions in place for airport and associated activities.

## **Conclusion and Recommendations**

Having reviewed the terms of my appointment, the specific objections to the proposed Municipal Plan Amendment No. 17, 2017, and Development Regulations Amendment No. 23, 2017, and having listened to and carefully considered the recommendations and objections presented, both orally and in writing, I respectfully recommend that the Municipal Plan Amendment No. 17, 2017 and Development Regulations Amendment No. 23, 2017 be accepted as presently proposed. On the basis of the evidence heard and considered, I hold that there have not been valid objections raised to the proposed amendments that would constitute a sufficient basis to refuse to recommend the adoption of the proposed amendments as set forth. I accept the right of the property owner to use its land in its best interests and also the right of the Town Council to determine the use of land under its control.

I enclose herewith the following:

- a) Copy of letter of appointment as Commissioner
- b) Copies of the letter of objection and written presentation for the hearing filed by Mr. David Soucy

I trust that this is satisfactory.

Yours very truly,

Aidan B. Beresford, Q.C.

Encls.