

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

<https://www.assembly.nl.ca/legislation/sr/statutes/u08.htm#40>

Page | 1

Appeal #: 15-006-087-044

Adjudicator: Paul Boundridge, MCIP

Appellant(s): Tony McCarthy

Respondent / Authority: Town of Harbour Grace

Date of Hearing: 29 May 2024

Start/End Time: 1:30 p.m. – 2:35 p.m.

In Attendance

Appellant: Tony McCarthy

Authority Representative(s): Don Coombs, Mayor
Amy Dwyer, Town Manager
Reg Garland, MCIP, Town's Planning Consultant

Appeal Officer: Robert Cotter, Departmental Program Coordinator,
Department of Municipal and Provincial Affairs

Technical Advisor: Faith Ford, Planner III, Department of Municipal and
Provincial Affairs

Adjudicator's Role

The role of the Adjudicator is to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Harbour Grace Municipal Plan and Development Regulations, 2010 when on January 30, 2024, it refused an application to take over a road at 339-351 Water Street, Harbour Grace.

HEARING PRESENTATIONS

The Adjudicator heard oral presentations from the following parties at the appeal hearing. The Adjudicator also received written presentations from the Planner/Technical Advisor, the Appellant and the Authority prior to the appeal hearing date. The Adjudicator also had access to the digital recording of the appeal hearing made by the Appeals Officer.

Page | 2

Planner's Presentation

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness.

Under the Section 10 (a) of the Rules of Procedure:

"there shall be a technical advisor to the Board who shall provide data relative to the Municipal Plan or other Scheme in effect and an interpretation on whether or not the proposal under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations.

The Planner from Municipal and Provincial Affairs shall provide the framework with respect to the appeals process under the Urban and Rural Planning Act, 2000 and provide an overview of how an application was received from a developer and processed by Council as prescribed in their roles and responsibilities."

The Adjudicator heard from the Planner/Technical Advisor that this appeal follows a series of interactions between the Appellant and the Town of Harbour Grace between October 17, 2021 and February 12, 2024 wherein:

- The Appellant wrote Council on **October 17, 2021** requesting that it grant Approval in Principle "for the development of a 10-lot subdivision to be located at 339-349 Water Street (formerly Stevenson property)... Along with the refurbishing of the Stevenson house, this development would allow for 11 new houses in Harbour Grace. It is understood that this is simply Approval in Principle... An engineering drawing is attached for your review and consideration..."
- The Authority granted Approval in Principle to the Appellant "to construct a development located at 339 Water Street as submitted by Tony McCarthy subject to All Town Development Standards and Government Regulations [for development of an 11-lot ("homestead lot" + 10 new lots) residential subdivision at 339-351 Water Street on **October 18, 2021**];
- The Appellant wrote an e-mail to Council on **February 21, 2022** (with the subject heading Development plans) stating that "...We plan to develop the site in two phases. The first will involve construction on the lots along Water Street. The second phase will include the construction of the road up through the land and development of the lots nearer the water...To help us with our planning, can you please confirm that the minimum right-of-way width for a town road is 6 metres?..."

- The Appellant wrote an e-mail to Council on **January 30, 2023**(with the subject heading Building Permit Application) stating that “...I have submitted an application for a building permit for our new home [received by the Town on January 26,2023]... A second application should be submitted soon by our daughter...and her husband...”
- At the Regular Meeting of Council of **January 30, 2023** Council passed a Motion(#23-037) “to approve as per application for building and development permit as submitted by Tony McCarthy at 345 Water Street. This approval is subject to all town and government regulations and guidelines.” At the same Meeting, by a second Motion (#23-038), Council amended the previous Motion “...in that the developer of 345 Water Street must ensure that the roadway is up to town standards before it is taken over by the Town of Harbour Grace.”
- In response to a **June 23, 2023** e-mail query from the Appellant stating “Amy – Can you please send me details on “town standards” of roads allowing the Town to take over a road?”, the Town Manager wrote a reply e-mail to the Appellant on June 23, 2023 (with the subject heading “Town standards for roads stating that “...There are no actual road standards...but the norm is a 20 ft road brought up to Class A standards or as specified by Council. You will need to put a letter in to council and we will reply based on the need and the condition of the area.”
- On **March 22, 2023** the Appellant’s daughter and son-in-law submitted to the Town an Application for a Building and Development Permit to construct a house on property identified as 343 Water Street.
- On **March 30, 2023** the Appellant met with Town representatives to discuss the development of the subject property, with the total number of building lots and water and sewer services being the prime subjects.
- At the Regular Meeting of Council of **April 3, 2023** Council passed a Motion(#23-105) “to approve a building permit as submitted... (the Appellant’s daughter and son-in-law) to construct a 75’ by 56’ located at 343 Water Street [lot 5] subject to: **1.** All town development standards. **2.** Connect to town services at owner’s cost. **3.** Town will not maintain the road as it is a driveway to a single dwelling.”
- On **April 21, 2023** the Town issued Permit # 12126 to the Appellant to construct a residential dwelling at 345 Water Street [lot 6] with the stipulation “Approved at Regular Meeting of Council of Jan. 30, 2023, subject to all town development regulations & guidelines (2100 sq feet)”.
- On **June 28, 2023**, after the building permits were issued for the construction of dwellings at 343 Water Street and 345 Water Street, the Town became aware that part of the subject property (lots # 5 and 6 where the lots were being developed and houses were being built) were in the Industrial Zone which did not allow dwellings, not the Town Zone which did. By Motion 23-230, Council agreed to compel the Appellant to pay “all costs related to the rezoning...when the zoning is complete...” The rezoning came into effect on November 10, 2023.
- On **January 15, 2024** the Appellant e-mailed the Authority stating they have completed construction of the dwelling at 345 Water Street and are ready to continue the process of turning over the road to the Town. The Appellant indicated they have completed considerable work on the road but anticipate further work will be required.

- At the Regular Meeting of Council of **January 30, 2024** Council considered the Appellant's request. Council discussed the original proposal for 8 building lots on the parcel of land and plan for the Town to take over the road when it was brought up to standard. Council passed Motion #24-008 to write a letter advising the Appellant that only two dwellings with driveways have been constructed and the initial development plan has not come to fruition; therefore, the Town will not be taking over the road.
- On **February 12, 2024** the Authority sent a letter to the Appellant informing them that Council denied the request due to changes in the original development plan. The letter stated the approval for the Town to take over the road was based on the development of 8 building lots and the roadway being brought up to Town standard.
- On **February 21, 2024** the Appellant filed an Appeal

The Planner noted that based on the information included in the submissions, the Appellant commenced development and construction of the road with the understanding the road would be conveyed to the Authority at no cost upon completion. It is unclear from the submitted documents whether there was a written development approval or development agreement in place for the road. Furthermore, based on the submission materials, the Authority did not process the Appellant's request for the Town to take over the road as a separate development application.

The Authority written decision stated the reason for the refusal and did not inform the Appellant of his right to file an Appeal to the Department of Municipal Affairs (DMAA) within 14 days of the date of receiving the written decision.

The written appeal was submitted within the required timeframe, and was accompanied by the requisite processing fee and supporting information,

Appellant's Presentation and Grounds

The Appellant is appealing the refusal based on the following stated grounds:

- "In October, 2021, Council granted approval in principle for a residential development at 339-351 Water Street.
- In January, 2023, Council approved an application for a building and development permit at 345 Water Street. In the letter from council granting approval, it is stated that I must ensure that the roadway is up to Town standards before it is taken over by the Town of Harbour Grace.
- In April, 2023, council approved an application from Joel and Jessica Brennan to construct a house on the property.
- On June 6, 2023 and January 15, 2024, I emailed Amy Dwyer, Town Manager, requesting details on Town standards and details of handing road over to the Town. Her January 16 reply to my latest email stated that Council would be in touch on this matter.

- On February 20, 2024, I received a letter in the mail from the Town stating that... my request to have the road taken over by the Town was denied.
- To date one house has been completed and a second has been started. It is our intention to build additional housing on the property. Without a public road, any further construction is impossible as all development must be on a public road."

At the appeal hearing, the applicant stated that he had relied on Council's advice, and apparently it was to his detriment to have done so; that he believed the Town had failed to complete due diligence in the handling of his applications; that he remains flexible on the number of residential lots to be developed in consideration of the issue of storm water management; that he never indicated to Council that he was not going to proceed with the further subdivision of lots; and, that Council is being arbitrary and inconsistent in its "policy" towards the Town taking over private roads (30 of which he visited that have 2 or fewer dwellings and are not built to the contemporary standard of a 15 metres right-of-way).

Authority's Presentation

The Authority's position is succinctly stated in its March 1, 2024 cover letter to the Appeals Officer which contains the statement from the Town Manager that "Our 2010 Municipal Plan and Development Regulations allow us to make decisions concerning developments. The Municipal Plan is derived from the Rural Planning Act."

At the hearing, the Mayor stated that this was Council dealing with a request to take over responsibility for maintenance and upkeep of a private driveway/road. The Town frequently received such requests. The Mayor and the Town Manager both agreed that the Town had not granted final approval for the overall subdivision, for all the proposed lots.

Reg Garland, the Town's Planning Consultant, said that the Town does have road standards in its Development Regulations (Section 83), and that he was not aware of any other road standards that the Town would be using. He agreed that Section 83 requires plans to be prepared and/or approved by the Town Engineer that meet the standards contained in Section 83 before the Town can approve/"sign off" on a subdivision development application, and that this would include the underground infrastructure (piped municipal water and sewer services). Mr. Garland also stated that he did not hear that the Town would not take over the road if it was brought up to Town standards ... the question now is who is going to bear the cost of upgrading the road to the Town standard set out in Section 83?.... It's going to be very expensive. When asked by the Adjudicator, Mr. Garland said that he was not consulted by the Town when the Appellant applied for Approval in Principle for his subdivision development, his involvement began when the presence of the Industrial zoning of the back of the subject property became known.

ADJUDICATOR'S ANALYSIS

Q: Is the Appellant's development of "a 20 ft road brought up to Class A standards or as specified by Council" associated with an application to subdivide land at 339-351 Water Street into multiple lots?

Page | 6

R: Yes, On October 18, 2021 the Authority, on the basis of a preliminary subdivision lotting plan, granted Approval in Principle to the Appellant "to construct a development located at 339 Water Street as submitted by Tony McCarthy subject to All Town Development Standards and Government Regulations [for development of an 11-lot ("homestead lot" + 10 new lots) residential subdivision at 339-351 Water Street with a road running down the middle of the property from Water Street towards the rear of the property. In response to a June 23, 2023 e-mail query from the Appellant stating "Amy – Can you please send me details on "town standards" of roads allowing the Town to take over a road?", the Town Manager wrote a reply e-mail to the Appellant on June 23, 2023 (with the subject heading "Town standards for roads) stating that "...There are no actual road standards...but the norm is a 20 ft road brought up to Class A standards or as specified by Council. You will need to put a letter in to council and we will reply based on the need and the condition of the area." On the basis of the information provided by the Town Manager, development of the 20 foot wide road occurred.

Q: Does the Town of Harbour Grace have standards for the development of roads when a subdivision of land is occurring?

R: Yes. Part IV, Section 83 of the Harbour Grace Development Regulations contains standards for the design and width of streets which are to be adhered to when developing a subdivision and which the Town is required to enforce.

83. Subdivision Design Standards

Except as otherwise specified in a Subdivision Policy adopted by the Town, no permit shall be issued for the development of a subdivision under these Regulations unless the design of the subdivision conforms to the standards below.

- 1) The finished grade of streets shall not exceed 10 percent, up to 12 percent at the discretion of the Town where it would otherwise be impossible to develop the site, or compliance with the 10 percent requirement would entail excessive cutting and filling.
- 2) Every cul de sac shall be provided with a turning circle of a diameter of not less than 30 m.
- 3) The maximum length of any cul de sac shall be 250 m where no emergency access is provided; or 300 m where emergency access is provided; and/or more than 300 m where the cul de sac is connected to an arterial or collector road.
- 4) Emergency vehicle access to a cul de sac shall be not less than 3 m wide and shall connect the head of the cul de sac with an adjacent street.

- 5) No cul de sac shall be located so as to appear to terminate a collector street.
- 6) New subdivisions shall have street connections with an existing street or streets.
- 7) All street intersections shall be constructed within 5 degrees of a right angle and this alignment shall be maintained for 30 m from the intersection.
- 8) No street intersection shall be closer than 60 m to any other street intersection.
- 9) No more than four streets shall join at any street intersection.
- 10) No residential street block shall be longer than 490 m between street intersections.
- 11) Streets in subdivisions shall be designed in accordance with the Subdivision Policy adopted by the Town, but in the absence of such standards, shall conform to the following minimum standards: [emphasis added]

Type of Street	Street Reservation	Pavement Width	Walkway Width and Design	Walkway Number
Arterial Streets	30 m	15 m	Minimum – 1.5 m	2
Collector Streets	20 m	9 m	Minimum – 1.5 m	2
Local Streets	15 m	7 m	Minimum – 1.5 m	2

- 12) No lot intended for residential purposes shall have a depth exceeding four times the frontage except as otherwise approved by the Town.
- 13) Residential lots shall not be permitted which abut a local street at both front and rear lot lines except as otherwise approved by the Town.

Q: Does the Town of Harbour Grace have standards for plans for roads and infrastructure when a subdivision of land is proposed to occur?

R: Yes. Part IV, Section 84 of the Harbour Grace Development Regulations contains standards for plans for roads and infrastructure when developing a subdivision and which the Town is required to enforce and apply.

84. Engineer to Design Works and Certify Construction Layout

- (1) Plans and specifications for all water mains, hydrants, sanitary sewers, storm sewers and all appurtenances thereto and all streets, paving, curbs, gutters and catch basins and all other utilities deemed necessary by the Town to service the area proposed to be developed or subdivided shall be designed and prepared by or approved by the Engineer. Such designs and specifications shall, upon approval by the Town, be incorporated in the plan of subdivision. [emphasis added].
- (2) Upon approval by the Town of the proposed subdivision, the Engineer shall certify all work of construction layout preliminary to the construction of the works and thereupon the developer shall proceed to the construction and installation, at his own cost and in accordance with the approved designs and specifications and the construction layout certified by the Engineer, of all such water mains, hydrants,

sanitary sewers and all appurtenances and of all such streets and other works deemed necessary by the Town to service the said area [emphasis added].

Page | 8

Q: After the Appellant received Approval in Principle for his subdivision development, was he informed of the minimum Street Reservation requirement of 15 metres and was he instructed by the Town to have engineering plans prepared to satisfy the requirements of Sections 83 and 84 of the Development Regulations?

R: The Town did not inform the Appellant of the requirements of Section 83 and 84 of the Development Regulations. He was, in fact, given information contrary to what the Development Regulations require.

Q: The two lots for which Council gave a Building and Development Permit to the Appellant and his daughter to develop as building lots do not have frontage on a public street, but as private access/road. Is this in compliance with the Town's Development Regulations?

R: Part II, Section 46 of the Harbour Grace Development Regulations states:

46. Lot Frontage

Except where specifically provided for in the Use Zone Tables in Schedule C of these Regulations, no residential or commercial building shall be erected unless the lot on which it is situated fronts directly onto a publicly owned and maintained street or forms part of a Comprehensive Development Scheme.

The two lots which are under development do not front directly onto a publicly owned and maintained street or forms part of a Comprehensive Development Scheme. Their existence is in conflict with the Development Regulations.

Q: Did the Town issue a Permit for the development of the subdivision (give Final Approval) as required by Part IV (Subdivision of Land) of the Development Regulations, Sections 73 and 74 in particular?

73. Permit Required and Sureties

- (1) No land in the Planning Area shall be subdivided into two or more lots unless a permit for the development of the subdivision is first obtained from the Town.
- (2) Before an Approval in Principle or permit is issued for a subdivision requiring the construction and/or upgrading of roads and municipal water and/or sewer services the Town shall require the deposit of surety in a form satisfactory to the Town to ensure the completion of the work in accordance with the approval. The requirements for surety, along with other matters, shall be set out in the Subdivision Policy adopted by the Town and any agreements pursuant to that policy.

74. Services to be Provided

No permit shall be issued for the development of a subdivision unless provisions satisfactory to the Town have been made in the application for a supply of drinking

water, a properly designed sewage disposal system, and a properly designed storm drainage system

R: No information has been presented by either party indicating that a permit for the development of the subdivision was first obtained from the Town before the Town “allowed the land to be subdivided”. The Town’s representatives’ oral representation at the hearing, when asked if a Final Approval/Development Permit had been given for the overall subdivision, confirms this (no permit for the development of the overall subdivision of the subject property).

Page | 9

Q: Did the Town have the authority to approve the Appellant’s development application?

R: Part I, Sections 7 and 8 of the Development Regulations establish the requirement for all development to comply with the Regulations and the requirement to obtain a permit prior to carrying out development:

7. Compliance with Regulations

No development shall be carried out within the Planning Area except in accordance with these Regulations.

8. Permit Required

No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Town.

Q: When making a decision on an application, Council has the authority to approve, conditionally approve or refuse an application. Section 11 of the Town’s Development Regulations establishes the Authority’s discretionary powers and directs the Authority to take into account the policies of the Municipal Plan and consider the criteria outlined below when making a decision on an application. Did Council use its Discretionary Powers in the way its handled the Appellants subdivision and development applications and the way it responded to the issue of the roadways standard and its conveyance to the Town?

11. Discretionary Powers of Town

In considering an application for a permit or for approval in principle to carry out development, the Town shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Town may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application. However, the exercise of this discretionary power does not enable the Town to allow a

permitted use or discretionary use which is not permitted under Schedule C or other Regulation.

There has been nothing presented to suggest that the Town exercised its Discretionary Powers in the handling of the Appellant's applications. In consideration of the foregoing, it is observed that the Town had no authority to approve the Appellant's subdivision development application (per Sections 20 and 21 of the Development Regulations), as it was presented, and was compelled by the *Urban and Rural Planning Act, 2000* (URPA) and the Town's Municipal Plan and Development Regulations to reject it.

Page | 10

Q: Do the Development Regulations speak directly to the subject of the transfer of streets and utilities (infrastructure) to the Town?

R: Yes, Part IV, Section (Transfer of Streets and Utilities to the Town) specifies the conditions which must exist before the Town can accept the transfer of a street and utilities.

87. Transfer of Streets and Utilities to Town

- (1) The developer shall, following the approval of the subdivision of land and upon request of the Town, transfer to the Town, at no cost to the Town, and clear of all liens and encumbrances:
 - a) all lands in the area proposed to be developed or subdivided which are approved and designated by the Town for public uses as streets, or other rights-of-way, or for other public use;
 - b) all services or public works including streets, water supply and distribution and sanitary and storm drainage systems installed in the subdivision that are normally owned and operated by the Town.
- (2) Before the Town shall accept the transfer of lands, services or public works of any subdivision, the Engineer shall, at the cost to the developer, test the streets, services and public works installed in the subdivision and certify his satisfaction with their installation.
- (3) The Town shall not provide maintenance for any street, service or public work in any subdivision until such time as such street, service or public work has been transferred to and accepted by the Town.

Q: Could the Town have accepted the transfer of the 20-foot-wide street and utilities as requested by the Appellant?

R: The Appellant has not received subdivision approval or developed a road and utilities in accordance with Part IV of the Development Regulations. The Town Engineer has not tested the streets, services and public works installed in the subdivision and certified to his satisfaction their installation. Therefore, the Town could not have accepted the transfer of the street as requested.

Q: Are the *Urban and Rural Planning Act, 2000* and the Harbour Grace Municipal Plan and Development Regulations to be applied when the Town is considering applications for development within the municipal planning area? Were they applied by the Town?

R: Section 12 of the *Urban and Rural Planning Act, 2000* requires municipalities and councils as well as anyone undertaking a development to adhere to the plan and development regulations in effect for the planning area:

Page | 11

Application of plan

12. A plan and development regulations are binding upon municipalities and councils within the planning area governed by that plan or those regulations; and a person undertaking a development in the area governed by that plan or those regulations.

The Town of Harbour Grace Municipal Plan and Development Regulations 2010 came into legal effect on November 5, 2010. When the Town of Harbour Grace received and considered the October 2021 development application for a subdivision of the subject property into residential lots, and within 24 hours issued an Approval in Principle for the development, the Town did not appear to have considered the requirements of the Municipal Plan and Development Regulations. The Approval in Principle did not specify the specific conditions which would have to be satisfied (such as detailed engineering drawings approved by the Town Engineer) before the application could be considered for approval and a Permit issued, it did not state that the Approval in Principle was valid for a period of 2 years from the date of the Approval in Principle, and it did not state that the decision was appealable by himself or a third party within 14 days of the date of the decision.

The issuance of permits to develop individual building lots in an unapproved subdivision development the and the advice to the Appellant that "...There are no actual road standards...but the norm is a 20 ft road brought up to Class A standards or as specified by Council. You will need to put a letter in to council and we will reply based on the need and the condition of the area.", upon which the Appellant relied, demonstrates a detachment from the considerations required by the Municipal Plan and Development Regulations.

It is the view of the Adjudicator that the Municipal Plan and Development Regulations were not adhered to by the Town.

Q: Is it within the jurisdiction of the Adjudicator to hear this appeal and render a decision and order?

R: Section 41(1)(b)(i) of the URPA identifies the type of decisions which may be appealed and subject to consideration by an authorized Adjudicator, each are:

41.(1) A person or a group of persons aggrieved by a decision may appeal the decision to an adjudicator where

(a) the decision is permitted to be appealed to an adjudicator under this Act or another Act; or

(b) the decision is permitted to be appealed under the regulations and the decision relates to one or more of the following:

Page | 12

- (i) an application to undertake a development,
- (ii) a revocation of an approval or a permit to undertake a development,
or
- (iii) the issuance of a stop work order.

In the case being brought forward to the Adjudicator, the subject being appealed is not with respect to a decision relating to an application to undertake a development, described in the above excerpt from the URPA, but a request to the Town. Therefore, even after considering the information presented by each of the parties, and the demonstrated failures of the development authority to recognize and follow its responsibilities under the URPA and the Harbour Grace Municipal Plan and Development Regulations, this Adjudicator is without jurisdiction and unable to make an Order on this matter of a request to the Town for a private access/roadway to be conveyed to the Town.

ADJUDICATOR'S CONCLUSION

In arriving at his conclusion, the Adjudicator has reviewed the submissions and evidence presented by all parties, along with technical information and planning advice.

Page | 13

The Adjudicator is bound by Section 44 of the Urban and Rural Planning Act, 2000 and must therefore make a decision that complies with the applicable legislation, policy and regulations.

Urban and Rural Planning Act, 2000.

“Decisions of adjudicator

44. (1) *In deciding an appeal, an adjudicator may do one or more of the following:*

(a) confirm, reverse or vary the decision that is the subject of the appeal;

(b) impose conditions that the adjudicator considers appropriate in the circumstances; and

(c) direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have the adjudicator's decision implemented.

(2) Notwithstanding subsection (1), a decision of an adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator.

(3) An adjudicator shall not make a decision that does not comply with

(a) this Act;

(b) a plan and development regulations registered under section 24 that apply to the matter being appealed; and

(c) a scheme, where adopted under section 29.

(4) An adjudicator shall, in writing, notify the person or group of persons who brought the appeal and the council, regional authority or authorized administrator of the adjudicator's decision.”

After reviewing the information presented, the Adjudicator concludes that the Town of Harbour Grace was within its authority under the Urban and Rural Planning Act, 2000, the Town of Harbour Grace Municipal Plan, and Town of Harbour Grace Development Regulations to make its decision on January 30, 2024 to refuse the request by Tony McCarthy to take over the access road/driveway located on property located at civic #339-351 Water Street, Harbour Grace. But not for the reasons stated in the letter – “request has been denied due to changes to the original plan. The approval for the Town to take over the road was based on the property being developed into eight building lots as well as the roadway being brought up to Town standard. However, there are only two houses with driveways on your property, and for that reason, the road is considered a driveway.” Rather, the development that Council permitted to occur was not in conformity with The Municipal Plan and Development Regulations - the requirements of Part IV of the Development Regulations, in particular. And because the Council decision made was with respect to a request and not a development application.

ADJUDICATOR'S OBSERVATION

Because the Adjudicator lacks jurisdiction under the URPA, he therefore cannot therefore order that the decision of the Town of Harbour Grace of January 30, 2024 to refuse/reject the request to refuse the application/request by Tony McCarthy to take over the access road/driveway located on property located at civic #339-351 Water Street, Harbour Grace be confirmed.

Page | 14

Nor can the Adjudicator further orders that in consideration of the facts and circumstances associated with the subject of the appeal, that the Appellant, if he chooses as he indicated that he would, should prepare and submit a revised application for Approval/Approval in Principle to develop a residential subdivision on property located at civic #339-351 Water Street; and that the Town process the application in conformity with the requirements of the Urban and Rural Planning Act, 2000, the Town of Harbour Grace Municipal Plan, and the Town of Harbour Grace Development Regulations.

Lastly, in closing the Adjudicator suggests that the officials of the Town of Harbour Grace should make a reasonable effort to better acquaint themselves with the Urban and Rural Planning Act, the Harbour Grace Municipal Plan and Development Regulations, and the Municipalities Act in order to better fulfill their fiduciary duties and better serve the citizens of Harbor Grace in the foreseeable future.

DATED at St. John's, Newfoundland and Labrador, this 18th day of June, 2024.



Paul Boundridge, MCIP

Adjudicator

Urban and Rural Planning Act, 2000