

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Page | 1

Appeal #: 15-006-094-001
Adjudicator: Paul Boundridge, MCIP
Appellant(s): Cathy and Keith Kelly (Third Party)
Respondent / Authority: Town of Avondale
Issue: Appeal of March 18, 2025 Town of Avondale Decision to Approve in Principle an application to develop property at 35 Goat Shore Road as a Residential Building Lot. [Third Party Appeal]
Date of Hearing: 28 November 2025
Location of Hearing: 1st Floor, Beothuk Building, 20 Crosbie Place, St. John's, NL
Start - End Time: 9:05 a.m. – 11:20 a.m.

In Attendance

Appellant: Cathy and Keith Kelly
Appellant Legal Counsel: Keith Morgan, LL.B.
Hydrogeological Engineering Consultant: John. E. Gale, Ph.D., P.Eng., P. Geo.
Authority Representative(s): Ashley Hyde, Town Clerk/Manager
Justin Foote, Mayor
Authority Legal Representative: Josh Merrigan, LL.B.
Developer/Applicant: Michael Murphy and Deborah Murphy
Developer Legal Representative: Michael Duffy, LL.B.
Appeal Officer: Sarah Kimball, Department of Municipal and Community Affairs
Technical Advisor: Setare Vafaei, Planner III, Department of Municipal and Community Affairs

ADJUDICATOR'S ROLE

Part VI of the *Urban and Rural Planning Act, 2000* authorizes adjudicators to hear appeals and establishes the powers of adjudicators. 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 Avondale Municipal Plan and Development Regulations when it decision to Approve in Principle, with conditions, an application by Michael and Deborah Murphy to develop property at 35 Goat Shore Road, Avondale as a Residential Building Lot on March 18, 2025.

A Question Of Jurisdiction (Preliminary Objection)

On or about November 24, 2025 a written brief was received by the Appeal Officer, Department of Municipal and Community Affairs from the Town of Avondale Legal Representative, Josh Merrigan. The brief included the request that the appeal filed by Cathy and Keith Kelly be considered outside of the jurisdiction of the Adjudicator. Specifically, the Respondent stated that:

Page | 2

"8. Section 2.4.5 of the Development Regulations assigns discretionary powers to the Town when considering applications for approvals in principle. It specifically contemplates the Town "may" issue an Approval in Principle. The Town's decision to approve the Application constituted a valid exercise of discretion, which was legal and done in good faith. Pursuant to section 44(2) of the *Urban and Rural Planning Act, 2000* ("URPA"), an Adjudicator has no jurisdiction to alter or set aside the decision.

9. The Town therefore requests that this appeal be dismissed."

[Emphasis added by Adjudicator]

"31. Section 2.4.5 of the Development Regulations provides:

2.4.5 Approval in Principle

1. Council may grant an approval in principle if it determines that the proposed development complies generally with the intent and purposes of the Municipal Plan and these Regulations.
2. Council will attach to the approval in principle such conditions That it deems necessary to ensure the proposed development will be in accordance with the Plan and these Regulations. It will also outline such details that the applicant will be required to address before a final development permit will be granted.

"

"32. As stated above, section 2.4.5 of the Development Regulations clearly provides discretion to the Town to issue an Approval in Principle, as it did here:

33. The powers of this Board in respect of discretionary decisions of Council are set out in s.44(2) of URPA:

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

“34. The leading authority on the discretionary decisions of municipalities in this province is the decision of the Newfoundland and Labrador Court of Appeal in *Mount Pearl v. Mount Pearl Local Board of Appeal*.⁶ There, the Court of Appeal stated at paragraph 16 that “*it is not a matter of the Board agreeing or disagreeing with the Council's decision. That is not the test.*” The Court stated that the reviewing board is not “permitted to substitute the exercise of its own discretion for that of Council.”

35. The Court then summarized the test for when a board may interfere with a discretionary decision of council as follows:

17 *The powers of courts to interfere with discretionary decisions of municipal authorities has been set forth clearly in the case of the City of Regina v. Cunningham (1994), M.P.L.R. (2d) 14 (Sask. C.A.) which admonitions would be needless to say, as stated above, apply equally to review by appeal boards. In that case, Lane, J.A., quoting from various other cases on the subject, stated:*

The Courts are loathe to interfere with decisions made in good faith by statutory bodies, the members of which are voted or appointed to office because others have confidence in their experience and integrity. But when such bodies err by acting in excess of their statutory powers, the Courts will control them.

.....

The Courts have in recent years shown an increasing disposition to avoid interference with the legislative functions of municipal councils except in cases where there has been a clear excess or abuse of statutory authority or a disregard of some statutory condition upon which the right to exercise such authority is based.

.....

What is in the public interest is for Council to decide and when there is no evidence of misconduct its action is not open to review by the Court,

In my opinion, a municipal council is a legislative body having a very limited and delegated jurisdiction. Within the limits of its delegated jurisdiction and subject to the terms of the delegation, its power is plenary and absolute and in no way subject to criticism or investigation by the Courts.

18 *The above quotes make it very clear that before a court, or a review board, may overturn the actions of a municipal authority acting in the exercise of its discretionary power, it must be*

demonstrated that without question the municipal authority has acted in excess of those powers. [Emphasis added.]”

“39. More recently, the Supreme Court of Newfoundland and Labrador summarized the applicable principles in *Paradise (Town Council) v. Newfoundland and Labrador (Eastern Regional Appeal Board)*,¹² where our Court summarized the high level of deference owed to municipalities making discretionary decisions:

Page | 4

[30] *The Board, in future, may wish to consider the items enumerated hereafter, in its review of discretionary decisions made by town councils and/or municipal authorities:*

- 1) *Show a high level of deference to the decision of the it is not a matter of agreeing or disagreeing with council’s decision.*
- 2) *The Board is not permitted to substitute the exercise of its own discretion for that of the council.*
- 3) *3) A decision of a town council and/or municipal authority may be overturned in instances where the Board finds the town council and/or municipal authority:*
 - (i) *acted in clear abuse of statutory authority or disregarded a statutory condition upon which a right to exercise such authority is based....”* [Emphasis added by adjudicator]

I have reviewed the Brief containing the written request received by the Appeal Officer, Department of Municipal and Community Affairs and subsequently referred to me as the appointed Adjudicator. I have also reviewed the material that the Development Authority submitted to the Department of Municipal and Community Affairs and after it was informed on this appeal, and the Town of Avondale Municipal Plan and Development Regulations and verbal statements made by the Town Clerk/Manager in response to questions raised about the process ordinarily followed by the Town in processing development applications.

The request for dismissal without a Hearing is denied. My reasons follow.

- Section 2.4.13 of the Town’s Development Regulations (**2.4.13 Discretionary Decision-making Powers of Council**) provides the following instruction to Council:

In considering an application for a permit to carry out development, Council 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, Council 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. [Emphasis added]

Other than consideration of the requirements for minimum lot area and minimum lot frontage, there is nothing in the Town’s written or verbal submission which indicates that the Council fulfilled its duty to “take into account the policies expressed in the Municipal Plan and any further scheme, plan or Regulations pursuant thereto”.

- Section 2.4.5 of the Development Regulations concerns the subject of the I decision to grant Approval in Principle. provides:

2.4.5 Approval in Principle

1. *Council may grant an approval in principle if it determines that the proposed development complies generally with the intent and purposes of the Municipal Plan and these Regulations.*
2. *Council will attach to the approval in principle such conditions that it deems necessary to ensure the proposed development will be in accordance with the Plan and these Regulations. [Emphasis added]It will also outline such details that the applicant will be required to address before a final development permit will be granted.*

There is nothing in the Town’s written or verbal submission which indicates that the Council fulfilled its duty to “attach to the approval in principle such conditions that it deems necessary to ensure the proposed development will be in accordance with the Plan and these Regulations..”

- Section 4 of the Town’s Development Regulations (**4.0 LAND USE DEFINITIONS AND DEVELOPMENT CONDITIONS**) contains the following information for Council:

4.1 GENERAL CONDITIONS APPLICABLE TO ALL DEVELOPMENT

These following sections contain standards and conditions that may be relevant in any zone for any development subject to the site location and proposed use or development.

4.7.1 Nuisance

No building or land shall be used for any purpose which may be dangerous by causing or promoting fires or other hazards or which may emit noxious, offensive

or dangerous fumes, smoke, gases, radiation, smells, ash, dust or grit, excessive noise or vibration, or create any nuisance that has an unpleasant effect on the senses unless its use is authorized by Council and any other authority having jurisdiction.

DEFINITIONS

*“**NUISANCE** means anything that is obnoxious, offensive or interferes with the use or enjoyment of property, endangers personal health or safety, or is offensive to the senses. This could include that which creates or is liable to create a nuisance through emission of noise, smoke, dust, odour, heat, light, fumes, fire or explosive hazard; results in the unsightly or unsafe storage of goods, salvage, junk, waste or other materials; poses a hazard to health and safety; or adversely affects the amenities of the neighbourhood or interferes with the rights of neighbours to the normal use and enjoyment of any land or building;”*

[Emphasis added by Adjudicator]

There is nothing in the Town’s written or verbal submission which indicates that the Council was aware of the definition for and regulation concerning Nuisance in spite of repeated representations made to the Town by the Appellants, nor that the Council considered the regulation in Section 4.7 when it decided to grant Approval in Principle to the owners of property at 35 Goat Shore Road.

- The Town’s Municipal Plan contains policies to provide guidance to Council when it is considering an application for development within the municipal planning area. Of concern to the matter under appeal are the following:

Section 2.5.3. (Sustainable Governance – Policies):

“8. In considering an application for a permit to carry out development, Council 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, Council 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;”

There is nothing in the Town's written or verbal submission which indicates that the Council fulfilled its duty to *"take into account the policies expressed in the Municipal Plan and any further scheme, plan or Regulations pursuant thereto...."*.

Section 3.1 (GENERAL LAND USE AND DEVELOPMENT POLICIES)

Page | 7

The following policies apply to all land use classes throughout the Municipal Planning Area for the Town of Avondale.

"3.1.1 Compliance

1. *Ensure compliance of land use and development within the Municipal Planning Area boundary with the policies of the Municipal Plan and designations on the Future Land Use Map, and the conditions and standards set out in the Development Regulations and the zones set out on the Land Use zoning map;"*

There is nothing in the Town's written or verbal submission which indicates that the Council fulfilled its duty to *"Ensure compliance of land use and development within the Municipal Planning Area boundary with the policies of the Municipal Plan and designations on the Future Land Use Map, and the conditions and standards set out in the Development Regulations and the zones set out on the Land Use zoning map"*. The Town's focus was fixed on minimum lot area and lot frontage requirements and that the onsite well and septic systems be referred to the Provincial Government for technical approval of the design and location of the water and sewer systems.

The Town of Avondale Council in its decision of March 18, 2025 to Approve in Principle an application to develop property at 35 Goat Shore Road as a Residential Building has been determined to have disregarded a statutory condition upon which a right to exercise such authority is based. On this basis, the Adjudicator has determined that he has the jurisdiction to hear this appeal.

HEARING PRESENTATIONS

The Adjudicator heard oral presentations from the following parties at the appeal hearing and the owner/developer of the subject property. 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 | 8

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 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 preceding events dating back to the July 18, 2023 decision of the Town to Approve in Principle an application to develop the subject property as a residential building which was as the subject of an appeal [Appeal File # 15-006-087-028]. The appeal was successful in that it was determined by the Adjudicator on August 30, 2024 that the Town had not acted in accordance with the Town's Municipal Plan and Development Regulations and the Urban and Rural Planning Act, 2000 (URPA) when it approved a lot that did not meet the minimum requirements for lot area and lot frontage. The Adjudicator ordered the Town's decision to issue an Approval in Principle be reversed.
- On February 25, 2025 the owners of the subject property submitted a preliminary application to develop land at the subject property with the intent to purchase a portion of neighbouring land as was indicated on the form *"purchase agreement in place for additional portion of neighbouring land"*.
- On March 17, 2025 the Appellant submitted a letter to the Town outlining concerns of the potential impact of neighbouring development on their well system, water quality, and long-term access to a safe and reliable water source.

- On March 18, 2025, at a Regular Public Council Meeting, the Town of Avondale Council decided to issue an Approval in Principle to the preliminary development application for the subject property contingent on the purchase of additional land and approval from the Service NL/Government Services Centre/Department of Health for the associated private water and sewer systems, “along with development being compliant with Town of Avondale Development Regulations 2019-2029”..
- On April 4, 2025 Cathy and Keith Kelly filed an Appeal of the March 18, 2025 Council decision.
- On May 21, 2025 the Appellant submitted supplementary information to the Appeals Officer, a Technical Memorandum prepared by John Gale of Fracflow Consultants Inc. relating to the assessment of the dug well on the Appellant’s property and the possibility of impacts upon the well from the proposed development of the subject property.
- The Technical Advisor also informed the Adjudicator that the appeal was valid in terms of its conformity with Section 41. (3) and (4) which state:
 - 41. (3) An appeal made under this section shall be filed with an appeal officer not more than 14 days after the person who made the original application receives the decision.
 - 41. (4) An appeal shall be made in writing and shall include
 - (a) a summary of the decision being appealed;
 - (b) the grounds for the appeal; and
 - (c) the required fee.

According to the documents provided, the appeal was formally filed within the 14-day timeframe established under Section 41(3) of URPA.

Appellant’s Presentation and Grounds

This appeal is based on Section 41(1) (b) of the URPA with respect to an application to undertake a development.

- “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:
 - (i) **an application to undertake a development**, [emphasis added]...”

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

- “We are submitting this appeal against the Town of Avondale's decision to issue an "approved in principle permit" for a residential development at 35 Goat Shore Road. The town regulations for an unserviced lot as per the town plan 2019-2029 state 30m frontage and 20,000sq ft of usable space. The property in question currently only has 20m of frontage and the owners are reportedly in the process of purchasing an additional 10m to meet the requirement, however, at the time of this appeal, they do not meet the requirements so we believe “approved in principle” should not have been granted. Further to that, even with the additional 10m, the usable square footage requirement is not met based on the topography of the property.”
- “...we have legitimate concerns regarding the distance (of the proposed septic system to our well) and potential damage to our surface well and have been raising the concerns since April 2023... and we feel because of the previous contamination that there should be some type of additional testing required outside of the 30m regulation... the Town of Avondale continues to ignore our concerns, not follow any rules and regulations...”
- “... we are deeply concerned that this development will leave our family without drinking water which could leave our home potentially at a constructive loss.”

At the Appeal Hearing, the Appellant expressed how he had dealt with earlier (2023) contamination to his well when work on the subject property had been commenced without a Permit from the Town; that he had made the Town aware of his concerns by visiting the Town Hall and speaking with Town officials; reiterated that when the Town continued to not respond to his concerns that he had felt compelled to engage John Gale/*Fracflow Consultants Inc.* to visit his property to assess onsite conditions and measures which could be taken to mitigate potential adverse impacts from development of the subject property. He also related a conversation he had with a Service NL/Government Services Centre/ Department of Health inspector for well and septic systems and the Town's Regulation concerning adverse impacts on a neighbouring property (“Nuisance”) and was told that it was up to the Town to apply and enforce its own Regulations. The Appellant's legal counsel remarked that it would seem that the Town was attempting to avoid its responsibility and pass it on to another body.

Under questioning by the Appellant's legal counsel, John Gale explained his qualifications and the methodology used in preparing his technical report. Mr. Gale responded to questions from the Owner/Developer of the subject property about separation distances between wells and septic systems and the significance of changes in site grade/elevation.

Authority's Presentation

The Authority's written and verbal submissions can be summarized as follows:

- This is a straightforward matter about a decision by Council to give Approval in Principle to develop a property at 35 Goat Shore Road. **"The sole issue in this appeal is whether the Town properly exercised its discretion to approve the Application."** [Emphasis added]
- The Approval in Principle attached conditions which had to be met before Approval could be granted. Approval in Principle involves the use of Council's Discretionary Authority as provided for under Section 2.4.5 of the Development Regulations assigns discretionary powers to the Town when considering applications for approvals in principle. It specifically contemplates the Town "may" issue an Approval in Principle. The Town's decision to approve the Application constituted a valid exercise of discretion, which was legal and done in good faith.
- Once Council confirmed the Zone requirements/Development Standards which were applicable to the subject property (lot area and frontage) for an unserviced lot, Council was in a position to exercise its Discretionary Authority and give Approval in Principle to the preliminary development application. Council did not have to look beyond the Zone Requirements to other regulations which could be pertinent, or to look at the Avondale Municipal Plan and the policies it contained to guide Council decision-making.
- The Appellant's concerns about the negative impacts of development of 35 Goat Shore Road as a residential building lot on their own well system are of no concern to the Town and not the responsibility of the Town. **"Simply stated, these concerns should be addressed to Service NL, who is the provincial government authority responsible for approval of well and septic services in the province. The Town, as with most municipalities in the province, does not have the legal authority, or the technical capabilities to assess the appropriateness and safety of well and septic services."** That is why a provincial government entity, that has the technical capabilities and resources to assess applications and plans for well and septic services, is responsible for that approval."

- The Authority repeats that Approval in Principle is a Discretionary Decision of Council which is clearly provided for by Section 2.4.5 of the Development Regulations provides:

2.4.5 Approval in Principle

1. *Council may grant an approval in principle if it determines that the proposed development complies generally with the intent and purposes of the Municipal Plan and these Regulations.*
2. *Council will attach to the approval in principle such conditions that it deems necessary to ensure the proposed development will be in accordance with the Plan and these Regulations. It will also outline such details that the applicant will be required to address before a final development permit will be granted.* [Emphasis added by Adjudicator]

Page | 12

- The Town Clerk/Manager, under questioning about the process the Town follows when processing development applications, advised that site visits were conducted by a Town official who would verify conditions in the field with a site plan/site survey in hand and make notes on the site plan/site survey which would be passed on to the Town Clerk/Manager who would prepare a verbal report and recommendation to Council.
- The Town Clerk/Manager stated that she was not very familiar with the Avondale Municipal Plan and Development Regulations and that the focus was on meeting Zone Requirements (lot area, lot frontage, etc.). When asked if Council considered more than just the Zone Requirements and did take into account other sections of the Development Regulations and the policies set out in the Municipal Plan to aid in Council decision-making, she said that she “thought so”.
- The Town Clerk/Manager, when asked about the concept of “Nuisance” and the treatment of “Nuisance” as provided for in the Municipal Plan and Development Regulations, said that this had not been discussed by Council in the decision to Approve in Principle the subject application.
- When asked about the land owned by a Mr. Molloy which was to be subdivided into two with one part proposed to be consolidated with # 35 Goat Shore Road (The Murphy Property) and when the application to subdivide the property was received and approved by the Town, the Town Clerk/Manager advised that no such an application had been made and the Town had not approved its severance into two parcels.
- Lastly, Town representatives seem to have asserted that it was not reasonable to expect a small town with a small staff with no technical expertise to follow its Municipally Plan and Development Regulations as required by the Urban and rural Planning Act and the Municipal Plan and Development Regulations.

Developer's Presentation

The owner of the subject property said that he had acted in good faith in his dealings with the Town and that he appreciated the way that the Town had handled his application. He said that with an enlarged parcel of land there would be sufficient room to position his well and septic systems in such a manner so as not to adversely affect the Kelly property.

Page | 13

ADJUDICATOR'S ANALYSIS

These following questions arise from this appeal:

Q: Before it can exercise its discretionary authority, is the Town required to do anything?

R: Section 2.4.13 of the Town's Development Regulations (**2.4.13 Discretionary Decision-making Powers of Council**) provides the following instruction to Council:

In considering an application for a permit to carry out development, Council 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, Council 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. [Emphasis added]

These instructions apply to applications involving the use of Discretionary Authority plus applications which do not involve the use of Discretionary Authority. It is clear that Council is required to be cognizant of and give consideration to policies contained in the Municipal Plan and the Development Regulations which are used to implement the Municipal Plan..

The above regulation echoes one of the Town's Municipal Plan's policies to provide guidance to Council when it is considering an application for development within the municipal planning area. Of concern to the matter under appeal are the following:

Section 2.5.3. (Sustainable Governance – Policies):

"8. In considering an application for a permit to carry out development, Council 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, Council 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;”

Q: Are there any specific municipal policies or regulations pertinent to the application decision under appeal that should have been taken into account by Council?

R: The Appellants’ concerns about well contamination believed to be associated with unpermitted development on the subject property were brought to Council’s attention in 2023 and were raised at an Appeal Hearing in 2024. The 2024 Appeal resulted in a previous Council decision to approve development of the subject property as a residential building lot being reversed due to it being non-compliant with the Avondale Development Regulations and Municipal Plan. These concerns were again brought to Council’s attention before it made a decision on March 18, 2025 to grant Approval in Principle to develop the subject property.

This should have caused Council to Section 4 of the Town’s Development Regulations (**4.0 LAND USE DEFINITIONS AND DEVELOPMENT CONDITIONS**), which contains the following information for Council:

4.1 GENERAL CONDITIONS APPLICABLE TO ALL DEVELOPMENT

These following sections contain standards and conditions that may be relevant in any zone for any development subject to the site location and proposed use or development.

4.7.1 Nuisance

No building or land shall be used for any purpose which may be dangerous by causing or promoting fires or other hazards or which may emit noxious, offensive or dangerous fumes, smoke, gases, radiation, smells, ash, dust or grit, excessive noise or vibration, or create any nuisance that has an unpleasant effect on the senses unless its use is authorized by Council and any other authority having jurisdiction.

DEFINITIONS

“NUISANCE means anything that is obnoxious, offensive or interferes with the use or enjoyment of property, endangers personal health or safety, or is offensive to the senses. This could include that which creates or is liable to create a nuisance through emission of noise, smoke, dust, odour, heat, light, fumes, fire or explosive hazard; results in the unsightly or unsafe storage of goods, salvage, junk, waste or other materials; poses a hazard to health and safety; or adversely affects the amenities of the neighbourhood or interferes with the rights of neighbours to the normal use and enjoyment of any land or building;”

Page | 15

[Emphasis added by Adjudicator]

From the evidence presented by the Town, it is clear that the subject of the Appellant’s fears of well contamination as a Nuisance which could interfere with their right to the normal use and enjoyment of their residential property was not consciously considered by Council before it made a decision on March 18, 2025 to grant Approval in Principle to develop the subject property.

Q: Does condition # iii of Council’s March 18, 2025 Approval in Principle satisfy the duty of Council to make decisions that are in compliance with the Town’s Municipal Plan and Development Regulations, as is suggested by Town representatives?

“Appropriate approvals must be maintained prior to any development permit being issued by Department of Health for septic and well.”

“The Appellant asserts that construction of a residential development with a well and septic system may cause negative impacts on their own well system. Simply stated, these concerns should be addressed to ServiceNL, who is the provincial government authority responsible for approval of well and septic services in the province. The Town, as with most municipalities in the province, does not have the legal authority, or the technical capabilities to assess the appropriateness and safety of well and septic services. That is why a provincial government entity, that has the technical capabilities and resources to assess applications and plans for well and septic services, is responsible for that approval.”

R: No. The authority and the duty to exercise it responsibly to regulate development rests with Council. The Department of Health/Service NL is not responsible for interpreting and administering the Town of Avondale Municipal Plan and Development Regulations, it is responsible for approving the design and installation of well and septic systems.

- Q:** Is, as the Town’s legal representative has stated in his brief, “The sole issue in this appeal is whether the Town properly exercised its discretion to approve the Application”?
- R:** Based upon the information available to the Adjudicator, it has been determined that the Town of Avondale Council in its decision of March 18, 2025 to Approve in Principle an application to develop property at 35 Goat Shore Road as a Residential Building has been made without regard to a statutory condition upon which a right to exercise such authority is based.
- Q:** The Developer’s proposal involved acquisition of part of an adjoining parcel of land from a neighbour (Molloy) and joining it with his property. This involved severance of the land into two parcels. Do the Avondale Development Regulations require a Permit to be obtained in order to subdivide land?
- R:** Yes, Sections 2.1 and 2.12 of the Avondale Development Regulations are clear on this.

2.1 WHEN IS A PERMIT REQUIRED

All development and all subdivision (severance) of land carried out within the Planning Area must have a permit issued by Council in accordance with these Regulations and any other by-law or regulation enacted by Council. These are defined in the Urban and Rural Planning Act, 2000 as follows:

2.1.2 Subdivision:

"Subdivision means the dividing of land, whether in single or joint ownership into 2 or more pieces for the purpose of development". The requirements for subdivision development can be found in Section 8.

- Q:** At the time of the March 18, 2025 Council decision, did the land the Developer seeks approval to develop meet municipal requirements for approval?
- R:** The Town Clerk/Manager has stated that the subdivision of the adjoining property and its consolidation with the Murphy land had not been approved by the Town on the date of Council’s decision. Acquisition occurred at a later date. Evidence presented indicates that there was no consideration of policies expressed in the Municipal Plan and any further scheme, plan or Regulations pursuant thereto...”

- Q:** Can Council make decisions on land use development applications without regard to the Municipal Plan and Development Regulations if they have a small population and staff?
- R:** No. Section 12 of the URPA requires all municipalities and councils, as well as any person carrying out development within the planning area, to adhere to the plan and development regulations in effect for the planning area:

Application of plan

12. A plan and development regulations are binding upon

- (a) municipalities and councils within the planning area governed by that plan or those regulations; and*
- (b) a person undertaking a development in the area governed by that plan or those regulations.*

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 | 18

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 Avondale was not within its authority under the Town of Avondale Municipal Plan and Development Regulations, and the *Urban and Rural Planning Act, 2000*, to make its decision on March 18, 2025 to grant Approval in Principle for the development of the subject property

The Town of Avondale Council has not fulfilled its duty to ensure its decisions are made with due consideration of Town planning policies and development regulations. Its decision of March 18, 2025 was also premature.

ADJUDICATOR'S ORDER

Concerning Appeal # 15-006-094-001 - the Adjudicator orders that the Council Decision of March 18, 2025 to give Approval in Principle for development of land for a single detached dwelling at 35 Goat Shore Road, Town of Avondale a be reversed. That is to say that the Approval in Principle issued on March 19, 2025 shall be rescinded.

Page | 19

Further, the Adjudicator orders the Town to address the related issue of the subdivision of the Molloy land in accordance with the Avondale Municipal Plan and Development Regulations; and that the revised development application which the Developer/Owner of the subject property indicated that he would make, be reviewed and processed by the Town in consideration of policies expressed in the Municipal Plan and any further scheme, plan or Regulations pursuant thereto, with particular attention to Section 4.7 of the Avondale Development Regulations.

And further, the Adjudicator orders the Town of Avondale to pay the Appellants an amount of money equal to appeal fee in accordance with Section 45(2) of *the Urban and Rural Planning Act, 2000*.

The Authority and the Appellant are bound by this decision.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of the Adjudicator may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Adjudicator's decision has been received by the Appellant(s).

DATED at St. John's, Newfoundland and Labrador, this 10th day of December, 2025.



Paul Boundridge, MCIP
Adjudicator
Urban and Rural Planning Act, 2000