URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #:	15-006-091-014
Adjudicator:	Chris Forbes
Appellant:	Corner Brook Pulp & Paper Ltd.
Respondent/Authority:	City of Corner Brook
Date of Hearing:	March 6, 2025
Start/End Time:	10:00 a.m. – 12:15 p.m.

In Attendance

Appellant:	John MacLellan, Woodlands Manager Corner Brook Pulp & Paper Ltd.
	Kim Childs, Planning Corner Brook Pulp & Paper Ltd.
Appellant's Representative:	Jamie Merrigan
Respondent/Authority:	James King, Development Inspector City of Corner Brook
Respondent's Representative:	Lorilee Sharpe
Appeal Officer:	Synthia Tithy, Departmental Program Coordinator Municipal and Provincial Affairs
Technical Advisor:	Setare Vafaei, Planner II Municipal and Provincial Affairs

Adjudicator's Role

Part VI of the *Urban and Rural Planning Act, 2000* (the "Act") 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 City of Corner Brook *Development Regulations and Municipal Plan 2011-2021* (the "*Development Regulations*") when it refused the application of Corner Brook Pulp & Paper Ltd. ("CBPPL") for harvesting and road construction in the City of Corner Brook's Protected Water Supply Area located on the Lady Slipper

Resource Road in District 15, Zone 6, on June 10, 2024, pursuant to a decision made by majority vote at a meeting of council for the Authority (the "Council") on May 27, 2024.

Technical Advisor

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness as outlined in the Appeal Board (Rules of Procedure) Order, 1993. Section 10 of that Order reads:

> 10. The Hearing will proceed in the following manner:
>
> (a) 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 in effect, ...

At the hearing, the Technical Advisor outlined a report of the Department by Setare Vafaei dated January 10, 2025 (the "Technical Report").

The Technical Advisor began her evidence by summarizing the Chronology found at pages 7-8 of the Appeal Package (pp. 3-4 of the Technical Report).

She then reviewed the definition of "development" found at section 2(g) of the *Act*. She noted that the subject property is designated Protected Water Supply Area ("PWSA") and is zoned PWSA under the Development Regulations. The permitted and discretionary use classes for the PWSA zone are as listed in Schedule C of the Development Regulations.

The Technical Advisor referenced sections 26 and 128 of the Development Regulations and the requirements pertaining to public notice of an application. She referenced the fact that the Authority received 114 pieces of correspondence as a result of the public notice process and reviewed the primary areas of concern identified in that correspondence. She also indicated that CBPPL claimed that they did not receive a summary of the public feedback and were not provided with specific information about the number of concerns related to the reasons for rejection before Council made its decision on May 27, 2024.

The Technical Advisor then discussed section 4.13 of the *Municipal Plan*, as it pertains to the PWSA, and the *Corner Brook Sustainable Watershed Management Plan* as it applies to activities historically undertaken in that area by CBPPL.

She went on to confirm that, according to CBPPL's submission, CBPPL has obtained 5-year plan approval for Zone 6 from the Authority in the past to harvest in the PWSA and in November 2023 received a conditional approval from the Department of Environment and Climate Change (registration number 2256).

The Technical Advisor indicated that, according to the Appellant's submission, the proposed development included 337ha expected harvest within 2.75km of new road construction and the requested cut was about 2.7% of the PWSA, which is below the 10% allowable per guidelines.

It was the evidence of the Technical Advisor that the responsibility for protecting and managing the Corner Brook watershed is shared amongst various parties in accordance with the *Corner Brook Sustainable Watershed Management Plan*.

The Technical Advisor summarized the powers of the Council for the Authority in relation to discretionary uses in the PWSA and noted that the Authority's Watershed Management Committee recommended conditional approval of the CBPPL application. She then referenced the fact that Council refused the permit application at its regular council meeting on May 27, 2024.

The Technical Advisor noted section 25 of the Development Regulations, which requires that the Authority state its reasons for refusing to issue a permit.

According to the Technical Advisor, the Authority notified CBPPL of the refusal decision in writing on June 10, 2024, stating that this development application received correspondence from the general public expressing various concerns with the proposed development.

Appellant's Presentation and Grounds

Mr. Merrigan began his presentation by indicating that the main issue for decision concerned the remedy appropriate to a breach by the Authority of section 25 of the *Development Regulations*. In this regard, he indicated that the appropriate remedy, and the only one within my authority as adjudicator, was to remit the matter back to Council for reconsideration.

He referenced paragraph 44 of *Petty Harbour-Maddox Cove (Town) v. Eastern Newfoundland Regional Appeal Board*, 2015 CanLII 52747 (NLSC), and submitted that the case was authority for what is supposed to happen in the event of a breach by the Authority in relation to inadequate reasons. His submission was that, in the event the Authority did not follow the appropriate process as outlined in the *Development Regulations*, the decision must be re-visited by the Authority.

Mr. Merrigan also referenced paragraph 65 of the above decision and indicated it was not within the authority of an adjudicator to substitute their decision for that of a discretionary decision of the Authority, but rather the adjudicator must remit the matter back to the Authority if the adjudicator finds that the Authority did not follow its regulations.

Reference was also made to *58663 Newfoundland & Labrador Ltd. v. West Newfoundland Regional Appeal Board*, 2018 NLSC 208. Counsel referred me to paragraph 4 of that decision and indicated that this case is support for the position that improper or inadequate reasons requires that the decision be referred back to the Authority for reconsideration. Reference was also made by counsel to paragraph 26 of the above decision.

Counsel for CBPPL submitted it was not within the authority of an adjudicator to direct the Authority to provide reasons in hindsight.

In referring to section 25 of the *Development Regulations*, counsel submitted that, in its letter to CBPPL of June 10, 2024, no reasons were given for the refusal of CBPPL's application for a permit. He argued it would be improper for the refusal to be made and then reasons to be provided months after the fact. Section 25, he submitted, was mandatory, and he argued that reasons must be given and they must be given when the refusal is made.

Counsel indicated that the Authority had recently provided a link to its Facebook page which featured a recording of the Council meeting at which CBPPL's permit application was refused. He indicated that this was insufficient to meet the requirement imposed by section 25 of the *Development Regulations*. He submitted that the reasons for the decision must be attached to the decision letter itself.

In reference to the June 10, 2024 letter, counsel submitted that the indication in the letter that concerns were "expressed" by members of the public does not constitute a valid reason. "Concerns" may be in support of or against the application, and may involve matters that are not within the power of the Authority to even consider. The purpose of reasons, according to counsel, is to allow an applicant to address concerns that are raised, to determine whether considerations taken by the Authority were proper and whether an appeal is warranted and to allow for meaningful appellate review. He contends that the letter did not contain anything that satisfied these purposes.

Authority's Presentation

Counsel for the Authority began her submission by noting that, had CBPPL requested information following the refusal of its application for a permit, the Authority would have provided it. Likewise, the Authority would have agreed to set the appeal over had CBPPL wished to review the correspondence received by the Authority following the public notice. In response, counsel for CBPPL indicated that this information was actually requested by CBPPL as part of its appeal and, regardless, the obligation was not on CBPPL to ask for further particulars regarding the Authority's reasons but rather the obligation is on the Authority to provide its reasons.

Evidence was provided by Mr. King on behalf of the Authority. He reviewed the chronology of the application as it had proceeded through the Authority's consideration process, including the public notice process. He confirmed that the Watershed Management Committee for the Authority recommended approval to Council. The package provided to Council for their review included the application, a map outlining the area in which the proposed work was to be undertaken and a memo discussing the application and related procedural matters (including a summary of correspondence received from the public). He confirmed that the document at p. 52 of the Appeal Package (Request for Decision) went to Council together with the application, CBPPL's amended application and related documents.

Members of Council did request to review the public correspondence and this was provided by Mr. King to his manager.

Under questioning from counsel for CBPPL, Mr. King confirmed that the June 10, 2024 letter did not refer to "concerns" of Council for the Authority but rather the letter simply referenced "concerns" received by Council.

During the meeting of Council, Council members did provide reasons for their respective votes, but none of these particular "concerns" raised by the individual Council members was included in the June 10, 2024 letter.

Under questioning from counsel for CBPPL, Mr. King confirmed five particular concerns were summarized by him from the 114 pieces of correspondence, and these were provided to Council prior to its vote, but those were not included in the June 10, 2024 letter.

Mr. Merrigan referenced the case of *Trak Developers Inc. v. Eastern Newfoundland Regional Appeal Board* and in particular para. 11 thereof. He indicated this is an example of a letter that properly outlines conditions that attach to a permit approval. Under questioning, Mr. King confirmed that approval letters from the Authority do not usually set out why specific conditions are imposed. With a development permit, the Authority would ordinarily provide an approval letter that contains conditions, but not an explanation as to why the conditions are imposed.

Mr. King could not recall if the summary of five concerns provided to Council in advance of the vote was provided to CBPPL in any fashion.

The Authority's position is that the time at which reasons are to be given per section 25 of the *Development Regulations* is when Council makes its refusal decision – in this case, at the regular meeting of Council.

Gloria Manning, Legislative Assistant for the Authority, also provided evidence during the hearing. Ms. Manning testified as to the process followed with respect to packages provided to Council. She indicated that the practice is to upload the full package to the Authority's website before noon on the day of the Council meeting. She further confirmed that Mr. King emailed the 114 pieces of correspondence to the City Manager, Darren Charters. An email in Ms. Manning's possession confirmed that Mr. Charters sent this information along to members of Council by email dated May 22, 2024. She indicated as well that the 114 pieces of correspondence were not included in the package that was provided to Council in advance of the vote.

Ms. Sharpe then proceeded with her submissions. She indicated there was nothing wrong with the process followed by Council in making its discretionary decision. She referenced section 44 of the *Act* with respect to discretionary decisions. In her submission, if the reasons were not sufficiently detailed, the remedy would have been for CBPPL to request further information. CBPPL could have watched the meeting of Council online live and it would put an unreasonable burden on staff to summarize those views. Ms. Sharpe discussed the specific views put forward by the individual councilors at that meeting. She also indicated that, if the decision was made that the motion had to be reconsidered, guidance would be needed as to what must be included in the written letter.

She emphasized that, when Council is making a decision, the decision is actually made at the time of the vote, not in a subsequent letter. She confirmed that, in her submission, where a decision is a discretionary one of Council, it is not necessary for reasons to be set out in writing subsequent to the meeting. She indicated that the refusal letter was only provided to ensure compliance with section 40 of the *Development Regulations* as opposed to section 25 of the *Development Regulations*.

She further indicated that, even if the reasons contained in the letter were insufficient, the adjudicator has the authority to require the Authority to confirm the decision of the Authority but require the Authority to provide another letter or documentation to CBPPL, thereby restarting the 14-day appeal period.

Ms. Sharpe argued that the case law cited by Mr. Merrigan (*58663*) could be distinguished because the meeting at issue in that case was a private meeting without reasons being provided publicly.

In reply to Ms. Sharpe's submissions, Mr. Merrigan submitted that the duty to give reasons cannot mean that it is up to the person entitled to reasons to figure out what the reasons were or make inquiries as to

what those reasons are. Mr. Merrigan disagreed that the burden on staff of providing written reasons would be unreasonable and, regardless, a statutory obligation is just that, regardless of the inconvenience involved.

He indicated reasons were insufficient if they were not stated but were simply ascertainable.

The Authority's position is that reasons were given at the time the decision was made, which was the regular council meeting, similar to a judge issuing a verbal decision. Mr. Merrigan indicated that this is not an analogous situation, since parties are required to attend court, whereas there is no requirement on an applicant to attend a Council meeting and no notice of the meeting is specifically provided. He also indicated that the reasons are the decision.

Mr. Merrigan raised a concern in relation to some of the reasons raised by councilors at the Council meeting, notably disagreement with the current development plans and "political considerations." He indicated that these particular reasons would not be considered legally appropriate.

Mr. Merrigan indicated that perhaps the process should be that the reasons discussed at Council go back before Council, but that is not what happened here.

Analysis

Did the Authority Comply with Section 25 of its *Development Regulations*?

No.

For the sake of convenience, I reiterate the wording of section 25:

> "25. REASONS FOR REFUSING PERMIT
>
> The Authority shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing."

The Authority submitted that the discussion of Council at its regular meeting on May 27, 2024 and its vote to refuse the application of CBPPL for a permit met the obligation of the Authority under section 25. In other words, the Authority argued that the reasons for Council's decision were readily apparent to those watching the Council meeting and thus met its legal obligation. I do not agree.

An analysis of this issue first requires an understanding of why reasons must be stated when a permit is refused.

In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, the Supreme Court of Canada reiterated, from its earlier decision in *Dunsmuir v. New Brunswick*, 2008 SCC 9, that the purpose of reasons is to demonstrate "justification, transparency and intelligibility" (para. 1). In the lower court decision in *Newfoundland and Labrador Nurses' Union*, the Newfoundland and Labrador Court of Appeal stated:

> ". . . reasons must be sufficient to permit the parties to understand why the tribunal made the decision and to enable judicial review of that decision. The reasons should be read as a whole and in context, and must be such as to satisfy the reviewing court that the tribunal grappled with the substantive live issues necessary to dispose of the matter."

In referring to *Dunsmuir*, the Supreme Court of Canada stated in *Newfoundland and Labrador Nurses' Union* that reasons must "allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (para. 16).

I find that the letter of June 10, 2024 did not contain sufficient reasons. Specifically, I agree that the vague reference to "concerns" was inadequate.

The Authority contends that the discussion that took place at the regular meeting of Council on May 27, 2024 constituted its reasons for the refusal of the permit application. I have watched a recording of that meeting. A variety of concerns were raised by councilors during the meeting, including environmental concerns and concerns with contamination of the water supply; however, some discussion related to matters that may have been beyond the bounds of the specifics of the CBPPL application.

For example, there was repeated mention and discussion of the *Corner Brook Sustainable Watershed Management Plan* and the possibility it was out of date (dating as it does back to 2009). That *Plan* is noteworthy because it includes certain statements, such as that the entire Corner Brook lake watershed is included in long term forest management plans prepared by CBPPL, harvesting has been ongoing within the watershed since the early 1920's, and "logging within the Corner Brook Lake watershed will continue into the future."

At least one councilor also indicated during the Council meeting that she had concerns about the "political ramifications" of approving the CBPPL permit application.

I point these statements out because, in my view, based on these statements, the possibility arises that improper factors were taken into consideration by Council in refusing the application. For example, Council must act in accordance with the *Corner Brook Sustainable Watershed Management Plan*, regardless of whether particular councilors agree with it as written. Condition 1 of section 157 (Schedule C) of the *Development Regulations* mandates that activities undertaken within designated protected water supply areas must conform to that *Plan*. The *Plan* is binding on Council per section 12 of the *Act* and is also referenced in the Authority's *Municipal Plan* (section 4.13). While it is not clear from a review of the Council meeting that the vote of particular councilors hinged on whether or not the *Plan* should be adhered to, the fact that concerns were repeatedly raised about the *Plan* leads me to believe it was possible.

Likewise, the phrase "political ramifications," while used by only one councilor, is sufficiently vague to lead me to question whether some motive was entertained in considering CBPPL's application that was perhaps improper insofar as it may not have been directed at the specifics of the application under consideration.

I am <u>not</u> making a finding that improper factors <u>did</u> in fact form part of Council's decision on the CBPPL permit application. However, if the discussion at the meeting constitutes the decision of Council, then I find it is unclear from that discussion whether or not such factors actually played a role in Council's decision on the motion. This ambiguity is enough for me to find that the discussion at the Council meeting cannot form the basis of reasons sufficient to meet the *Dunsmuir* test. In and of itself, the discussion at Council's meeting does not allow me to determine whether the conclusion reached by Council "is within the range of acceptable outcomes."

I note that much of the discussion that took place during the Council meeting was framed as a series of questions that needed to be addressed in order for particular councilors to support the motion. It may have been that the proper way to proceed would have been for a motion to be brought to defer consideration of the application pending investigation of such matters. A deferral is permitted under the Authority's *Development Regulations.* This would have avoided putting the Appellant in the position of trying to discern which aspects of the discussion actually formed the bases for the rejection of its application.

Counsel for the Authority indicated that, in the event I found that the Council discussion did not constitute sufficient reasons for the purpose of section 25 of the *Development Regulations*, some guidance as to how such reasons should be prepared would be beneficial going forward. At a minimum, some effort should be made in writing to communicate to a permit applicant such as CBPPL the specific factors taken into account by Council when the decision was made to refuse its permit. A summary of concerns such as that prepared and provided to Councilors prior to the meeting would be beneficial. It may be that such a summary needs to be prepared following the meeting at which Council discusses a particular application and then brought back before Council for subsequent approval. While I acknowledge this places more of an administrative burden on Council staff, I think a written statement to that effect setting out the general factors that led to Council's decision is legally required.

What Remedy is Appropriate?

The permit application should be reconsidered at a regular meeting of Council.

Mr. Merrigan referenced the decision of *58663 Newfoundland & Labrador Ltd.* in support of the submission that the CBPPL permit application should be reconsidered by Council. The primary issue in that case as reported was not reconsideration of an application where reasons have been found wanting but rather the manner in which the reconsideration was carried out. As such, it is of minimal precedential value.

Notwithstanding this, I agree that a reconsideration is appropriate. As pointed out above, I am concerned improper factors may have been taken into account by councilors during the May 27, 2024 meeting. If that was the case, then the decision taken by Council as a whole may be legally questionable. As such, a reconsideration would be the fair way to proceed.

Further, a reconsideration would also allow Council, should they so choose, to seek answers to the multitude of questions that were raised during the May 27, 2024 meeting.

I also have concerns about allowing the vote of May 27, 2024 to stand but simply asking Council now to state its reasons, especially in light of the fact it is apparent improper factors may have played a role in that vote.

First, doing so seems to fly in the face of section 25 of the *Development Regulations*, which requires that reasons be stated at the time the refusal of the permit application is made (as opposed to months later).

Second, courts have generally regarded an administrative decision and its reasons as being part of an organic whole, and have looked with concern upon any effort to review reasons and/or outcomes separately (see for example para. 14 of *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62).

I therefore find reconsideration at a regular meeting of Council would be appropriate.

Decision of the Adjudicator

As Adjudicator, I am bound by section 44 of the Act, which states:

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.

Order

The Adjudicator orders that the Council for the Authority reconsider the permit application of CBPPL for harvesting and road construction in the City of Corner Brook's Protected Water Supply Area located on the Lady Slipper Resource Road in District 15, Zone 6, at a regular meeting of Council and provide reasons for any resulting refusal in accordance with this decision and section 25 of the *Development Regulations.*

The Adjudicator further orders that the Authority pay to the Appellant the amount of $230.00, representing the fee paid by the Appellant to file the appeal herein.

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.

DATED at St. John's, Newfoundland and Labrador, this 18th day of April, 2025.

Chris Forbes

Christopher Forbes
Adjudicator
Urban and Rural Planning Act, 2000