

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : **15-006-087-051**

Adjudicator: Gareth McGrath

Appellant(s): Roberte Diemer

Respondent / Authority: Town of Pasadena

Date of Hearing: 14 June 2024

Start/End Time : 09:00-10:00

In Attendance

Appellant: Roberte Diemer

Appellant Representative(s): N/A

Respondent/Authority: Town of Pasadena

Respondent Representative(s): Christopher Goodridge; Counsel

Proponent/Developer: N/A

Developer Representative: N/A

Interested Party: N/A

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

Technical Advisor: Faith Ford

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 Town of Pasadena Municipal Plan and Development Regulations when it approved an application for a subdivision with conditions at 97 Main Street, Pasadena, on 22 March 2024.

Hearing Presentations

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 Rules of Procedure:

(a) there shall be a technical advisor to the Adjudicator who shall provide data relative to the Municipal Plan or other Scheme in effect and an interpretation on whether 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 that this appeal relates to the approval of a subdivision permit with conditions by the Town of Pasadena at 97 Main Street, Pasadena. The planner outlined the Appellant's grounds for appeal at page 8 of the appeals package as:

- 1) The Appellant is not a subdivision developer.
- 2) The 20 ft Right of Way that abuts the property is not owned by the Appellant.
- 3) The Appellant wishes to sell only two parcels of land.
- 4) The requirement to build and pave a new road is neither logical nor necessary. The existing road (a country lane) is fine.
- 5) The construction of a road would be expensive and would damage the property and landscaping.
- 6) The conditions would make the road 20 ft from the Appellant's house; and
- 7) The Town's request does not contribute to the Town and will devalue the Appellant's property.

The Appellant's Presentation and Grounds

The presentation of the Appellant focused on the grounds as outlined in their written application and the planner's report. The focus of their arguments was on the fact that the actions of Council were, in their opinion, unreasonable restrictions as the Appellant only wished to divide up the part of the property that she was using and not change the character of the property. The Appellant also emphasized their position that they are not a developer.

Authority's Presentation

The Authority's presentation focused on the fact that the Authority acted within the scope of their power and within the requirements of the Urban and Rural Planning Act 2000 as well as the Town of Pasadena Municipal Plans and Development Regulations. More specifically, the presentation of the Authority relied upon the fact that while the Appellant has applied for a subdivision of 4 or fewer lots, there is still the requirement for the property to comply with the Municipal Plans and Development Regulations when subdividing the property. Specifically this meant a 15m Right of Way with 9m of Asphalt, ditching, a relocation of power poles, septic design and approval from Service Newfoundland and Labrador, and adherence to all other conditions of the Municipal Plan and Development Regulations.

Adjudicator's Analysis

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 as well as the Town of Pasadena Municipal Plan and Development Regulations and determined the following:

- 1) Is the Appellant a subdivision developer?

Whether or not the Appellant is a developer does not impact this decision. The Appellant made an application to subdivide the property. From the technical report at Page 11 of the appeal package:

SUBDIVISION means the dividing of land, whether in single or joint ownership into 2 or more pieces for the purpose of development;
The subdivision of land, or the creation of new lots, is development.

Further to this, at page 31 of the appeal package, the Appellant stated "As of now I would like to sell Two parcels of the land for interested people to build Dwellings (only two)." It is clear that both the definition of subdivision from page 11 of the report, as well as the admissions of the Appellant indicate that the subdivision is in and of itself development, and further to this the Appellant stated that they were planning to sell the land for dwellings to be constructed on the land. As such, the Urban and Rural Planning act, as well as the Town of Pasadena Municipal Plan and Development Regulations apply to the subdivision.

- 2) Is the condition to grant a neighboring right of way valid?

The Adjudicator cannot find reference in the approval by the Authority to a requirement to grant the existing right of way to the Authority. In their approval, there is a requirement to a 15m right of way being on the property, one which is required under the Town of Pasadena Municipal Plan and Development Regulations. This would accommodate the 9m of asphalt as well as the ditching on both sides of the road. As such, there is no ground of appeal to address.

- 3) Does only wishing to sell two parcels grant an exemption from the Town of Pasadena Municipal Plan and Development Regulations?

When it comes to the number of parcels of land that are required for land to go ahead with subdivision. Under section 8.1.2 subsection 5, a minor subdivision of 4 or fewer lots which do not require new public or private road construction or the installation of utility infrastructure or water and sewer services are exempt from the greater body of subdivision standards. It is clear however, from the conditions of the Authority, that there was a need for a public or private road construction on this property were it to be subdivided. As such, the Adjudicator must find that the authority was within their power to impose this condition on the application for subdivision.

- 4) Does the existence of a country road meet the requirements of the road for the property?

From the Town of Pasadena Municipal Plan and Development Regulations, it is clear what is required for a public roadway on a property. Those conditions are those outlined in the approval of a subdivision and can be found at page 75 of the appeals package. The road is required to be 15m wide, with 9m of pavement, and ditching on the side. It is clear that the country road does not meet the requirements for a road on a subdivision.

- 5) Does the fact that “The construction of a road would be expensive and would damage the property and landscaping” impact the approval conditions?

The answer to this question must be no. The decisions of an Authority to require specific standards for development are a clear authority that municipalities have in the legal regime of the Urban and Rural Planning Act and the greater powers of the Authority. It is not the position of the adjudicator to find that the requirements of the Town of Pasadena Municipal Plan and Development Regulations would affect property values and landscaping and therefore should not apply. Those are questions that are to be determined by the democratically elected Authority to determine, so long as they comply with the Urban and Rural Planning act and do not contradict any other legislation of the Province. As such, the Adjudicator does not have the authority to make a decision on this question and must accept the decision of the Authority to impose this condition.

- 6) Is a condition that would make the road 20 ft from the Appellant’s house valid?

Again, as per the above answer, the Adjudicator does not have the authority to impose their own discretion over road requirements in place of those of the Authority. The Authority acting in their democratically elected powers have made conditions that they see as fit and necessary for the safe subdivision of property. As mentioned by counsel for the Authority, some of these conditions, specifically those in reference to the width of the road and requirements to pave, are put in place to allow for emergency services to access property. To allow development otherwise would mean that in a medical emergency or case of a fire on the new subdivided lots, emergency services would not be able to access those properties, leading to potentially life-threatening incidents for the residents of those lots and possibly any first responders. As such, the Adjudicator does not have the authority to make a decision on this question and must accept the decision of the Authority to impose this condition.

7) Can the Town impose a condition that does not contribute to the Town and will devalue the Appellant's property?

This is a purely speculative question that cannot be answered by the Adjudicator. The impact to the value of a property is not a valid consideration for an appeal under the Urban and Rural Planning Act. There is no natural law case to state that persons are entitled to have the value of their property decrease. Municipalities often make decisions that may impact resale value of an individual's property, but are found to be in the greater interest of the community. These actions are completely valid, discretionary decisions made by elected officials. It is not the position of the Adjudicator to impose their own discretionary regulations on those of the Authority. As such, the Adjudicator does not have the authority to make a decision on this question and must accept the decision of the Authority to impose this condition.

Question/Answer .

Adjudicator's Conclusion

Urban and Rural Planning Act, 2000Decisions 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 Authority acted within the scope of their authority when they attached conditions to the application to subdivide the property. As such the Adjudicator must confirm the decision of the Authority.

That is to say that the conditions imposed by the Authority are valid, and that should the Appellant wish to subdivide their property as submitted, they must comply with the requirements imposed by the Authority. The Appellant can make any new applications should they so wish

regarding the subdivision of the property should they wish, however if they intend to move forward with subdivision as outlined in their application, they must comply with the conditions imposed by the Authority.

Order

The Adjudicator orders that the decision of the Town of Pasadena to be confirmed.

The Authority and the Appellant(s) are bound by this decision.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this 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 5 July 2024.

Garrett McGrath

Adjudicator

Urban and Rural Planning Act, 2000