

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-091-037

Adjudicator: Cliff Johnston

Appellant: Herbert Hedd

Respondent / Authority: Town of South River:

Date of Hearing: February 18, 2025

Hearing Location: Beothuk Building, St. John's

Start/End Time: 11am-12pm

In Attendance

Appellant: Herbert Hedd & Michelle Hedd

Respondent/Authority: Councillor David Pedden & Marjorie Dawson, Town Manager/Clerk

Appeal Officer: Synthia Tithi, Department of Municipal and Provincial Affairs

Technical Advisor: Setare Vafaei, Planner III, Department of Municipal and Provincial Affairs

Adjudicator's Role:

The role of the Adjudicator is to determine if the Authority, which in this case is the Town of South River, acted in accordance with the Urban and Rural Planning Act, 2000, the Town of South River Municipal Plan and Development Regulation and the Town of South River Fence Regulations when it approved a fence development at Civic No. 15 Hearns Road in South River on June 5, 2024.

Hearing Presentations

The following is a synopsis/summary of the verbal presentations made to the Adjudicator at the appeal hearing on this appeal which took place on February 18, 2024. In addition, the Technical Advisor prepared a Technical Report on this appeal which was provided to and reviewed by the Adjudicator prior to the appeal hearing. The Technical Report was also provided to the Appellant and the Authority prior to the appeal hearing.

Technical Advisor'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 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 the Town of South River Council as prescribed in their roles and responsibilities.

The Adjudicator heard from the Technical Advisor, Ms. Vafaei, that this appeal pertains to a third-party appeal filed by Herbert Hedd against a decision of the Town of South River made on June 5, 2024, to approve a permit for the property owner of Civic No. 15 Hearns Road for a fence.

The Technical Advisor advised that the appeal was filed by the Appellant on October 29, 2024, against the Town's decision of June 5, 2024, to approve a permit for a fence at the subject property.

Question Respecting the Validity of the Appeal

The Adjudicator had questions as to the validity of the appeal given that Section 41(3) of the Urban and Rural Planning Act provides that an appeal shall be filed with the Appeal Officer not more than fourteen (14) days after the person who made the original application receives the decision. In the case of this appeal, the permit for the subject fence was approved by the Town on June 5, 2024, while the appeal was filed on October 29, 2024, nearly five (5) months after the Town's decision for approval of the fence permit.

The Adjudicator verbally advised both the Appellants and the representatives from the Town of South River regarding his questions regarding the validity of the appeal at the beginning of the appeal hearing. He then asked both parties to speak to their positions of the timing of the filing of the appeal.

The Appellant, Mr. Hedd, verbally advised the Adjudicator that he attended the Town Council meeting on June 5, 2024, at which time the Council agreed to issue a permit for the construction of the proposed fence at the subject property. Mr. Hedd advised the Adjudicator that he had raised concerns with the Town before June 5, 2024, about potential visibility and snow clearing issues due to the proposed fence's proximity to Reid's Road. Mr. Hedd was apparently not

advised by the Town of his right to appeal the Town's decision to issue a permit for the fence. It is not clear if Mr. Hedd specifically posed this question of the right of appeal to Town Councillors or Town staff.

Mr. Hedd advised the Adjudicator that shortly after June 5, 2024, that he attempted to make contact with the Local Governance Division of the Department of Municipal and Provincial Affairs to discuss/complain about the Town's decision to issue the permit for the fence. He did not apparently hear back from Provincial officials until October 22, 2024, at which time he was advised by the Local Governance Division to file an appeal, and the appeal was officially filed with the Appeals Officer on October 29, 2024. It is the Adjudicator's understanding that Mr. Hedd did not make direct contact again with the Town after June 5, 2024.

The Town representatives at the appeal hearing advised the Adjudicator that it was the Town's position that the appeal had clearly been filed outside the fourteen (14) day period set out under Section 41(3) of the Urban and Rural Planning Act.

Adjudicator's Analysis on the Validity of the Appeal

The Adjudicator notes from his own experience having worked for a long period of time with municipal government, that the filing of third-party appeals can be a complex issue. How does the third party become aware of the decision that they may wish to appeal? What are the responsibilities of a municipal authority in making its decision on an appealable development matter public information? How is the municipal authority's decision set out for information to the public?

Section 27 ("Notice of Right to Appeal") of the Town of South River Development Regulations stipulates that where the Town Council makes a decision that may be appealed under Section 42 of the Urban and Rural Planning Act, 2000, that Council shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the:

- (1) Person's right to appeal the decision to the appeal board,
- (2) Time by which an appeal is to be made,
- (3) Right of other interested persons to the appeal the decision, and
- (4) Manner of making an appeal and the address for the filing of the appeal.

In the Adjudicator's opinion, Section 27 of the Town's Development Regulations as noted above applies to correspondence between the Town of South River and a development applicant; it is the Adjudicator's view that it does place a responsibility on the Town to directly and individually advise interested parties who ultimately may decide that they wish to appeal a decision of the Town respecting a matter that may be appealed under Section 42 of the Urban and Rural Planning Act, 2000. That responsibility seems to fall upon the individual(s) themselves who may be interested in and ultimately decide to file an appeal on a specific development matter.

In the case of this appeal, the Appellant was apparently made aware of the Town Council's decision of June 5, 2024, to approve a permit for the subject fence since he apparently attended

that Council meeting. Circumstances of the matter apparently did not lead to the Appellant directly asking the Town if the approval for the permit could be appealed; further, neither did the Appellant's attempt to contact staff with the Department of Municipal and Provincial Affairs on the matter lead him to being provided with information on the appeal process by Provincial staff until the appeal period had well expired.

It is the Adjudicator's view that a development applicant should have a reasonable expectation that they should be able to safely proceed with their particular development application which has been approved by a municipal authority once the fourteen (14) day appeal period set out in Section 41(3) of the Urban and Rural Planning Act, 2000 has passed, without the concern that an appeal can be filed by a third party and the appeal allowed to be heard except in very exceptional circumstances. In the case of this appeal, the appeal was filed nearly five (5) months after the Town Council agreed to issue a permit for the subject fence. It is the Adjudicator's understanding that the construction of the fence has been completed by the applicant.

Adjudicator's Conclusion/ Decision on the Validity of the Appeal

After reviewing the written and verbal information provided to the Adjudicator by the Technical Advisor, the Appellant and the Authority prior to and at the appeal hearing held on February 18, 2025, the Adjudicator concludes and decides that he does not have the jurisdiction/authority to hear the appeal filed by Herbert Hedd against the Town Council of South River's decision of June 5, 2024 to allow a fence to be constructed at Civic No. 15 Hearn's Road as the appeal was filed well beyond the fourteen (14) day filing period set out under Section 41(3) of the Urban and Rural Planning Act. The Adjudicator finds there are no exceptional circumstances in respect to this appeal that warrant extending the filing period for this appeal which would enable the appeal to be heard by the Adjudicator. **The Adjudicator has thereby decided that he will not hear the Appellant's appeal.**

It should be noted that in making his determination that he does not have jurisdiction/authority to hear this appeal, the Adjudicator has made no analysis, conclusions or decisions with respect to the merits of the Appellant's appeal.

The Authority and the Appellant are bound by this decision of the Adjudicator not to hear the Appellant's appeal.

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.

DATED at St. John's, Newfoundland and Labrador, this 20th day of February 2025.

Clifford Johnston

Adjudicator,
Cliff Johnston
Urban and Rural Planning Act, 2000

Supplementary Note: Based on comments made by the Town of South River representatives who attended the February 18, 2025 appeal hearing, the Adjudicator believes it would be helpful for members of the Town Council and Town staff to have some training/reminders from the Local Governance Division of the Department of Municipal and Provincial Affairs respecting the provisions of the Urban and Rural Planning Act, 2000 and the Town of South River Development Regulations regarding the appeal process for development matters and the responsibilities of the Town respecting the appeal process.