

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : 15-006-091-023

Adjudicator: Cliff Johnston

Appellant: Bernard Connors

Respondent / Authority: Town of Pouch Cove

Date of Hearing: February 18, 2025

Hearing Location: Beothuk Building, St. John's

Start/End Time: 9am-10am

In Attendance

Appellant: Bernard Connors

Respondent/Authority: Rod Hynes, Chief Administrative Officer, Town of Pouch Cove

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 Pouch Cove, acted in accordance with the Urban and Rural Planning Act, 2000, and the Town of Pouch Cove Municipal Plan and Development Regulation when it issued a Stop Work Order on July 30, 2024 to the Appellant pertaining to the property at Civic No. 21-23 Gully Pond, Pouch Cove.

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. As well, both the Appellant and the Authority,

provided written background materials to the Appeal Officer which materials were referred to and reviewed by the Adjudicator prior to the appeal hearing. The Appellant also submitted printed materials at the appeal hearing.

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 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 Technical Advisor, Ms. Vafaei, that this appeal pertains to a Stop Work Order issued by the Town of Pouch Cove to the Appellant on July 30, 2024, respecting property owned by the Appellant at Civic No. 21-23 Gully Road in Pouch Cove.

The Technical Advisor has advised that in May of 2024 the Authority received concerns/complaints about rock, soil and gravel being placed too close to the Gully Road and within the 15-metre protected zone. The Authority also received complaints in mid-July 2024 respecting the placing of soil, rock and gravel on the property.

On July 24, 2024, the Authority agreed to issue a Stop Work regarding the placing of the materials on the subject property. The Appellant advised that he did not receive the Stop Work Order which was sent by registered mail. The Authority then decided to post a Stop Work Order on the subject property. The Appellant subsequently filed an appeal against the Authority's decision to issue the Stop Work Order.

The subject property is zoned both Residential (R-1) and Conservation (CON) under the Town of Pouch Cove Development Regulations and Land Use Zone Map. According to the Town's Development Regulations, the storage of fill, rock and gravel may fall under "General Industry" for outdoor storage as defined under the Development Regulations.

The Technical Advisor has noted that the dumping of soil, rock and fill on a property is considered "Development" based on the definition of "Development" as contained in the Urban and Rural Planning Act, 2000.

The Appellant's Presentation and Grounds

- The Appellant does not agree with the Town's interpretation of "Development"; he does not believe the placing and levelling of fill on his property is "Development".
- He previously had a building permit from the Town to build a replacement home on his property which permit has expired. There was previously a house on the property.
- He believes he has an understanding with the Town that if he tore down the previous house on the property, he would receive approval to build another house on the property.
- He does not feel the placing of fill on the property presents any environmental concerns, and the fill has been placed and levelled so as not be an eyesore.
- Neary neighbours hope that a new house will eventually be built on the subject property to stop loitering/vandalism currently taking place on the property.

Authority's Presentation

- The placing of the fill on the subject property by the Appellant is an authorized development. The Appellant presently does not have any approvals/permits from the Town to do this work.
- There are no records with the Town of any prior approvals from the Town to allow any placing of fill on the property.

Adjudicator's Analysis

The Adjudicator has reviewed the Urban and Rural Planning Act, 2000 and the Town of Pouch Cove Municipal Plan and Development Regulations and has determined the following:

Q. Does the placing of fill on the subject property by the Appellant constitute "Development" as defined under the Urban and Rural Planning Act, 2000?

R. Yes. Section 2(g) of the Urban and Rural Planning Act, 2000 provides a definition of "Development". The definition is quite comprehensive and includes the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises. In the Adjudicator's determination, the placing of fill on the subject property by the Appellant is "Development" as defined under the Act.

Q. Does the placing of fill on a property require a permit from the Town of Pouch Cove?

R. Yes. Section 7 of the Town's Development Regulations ("Permit Required") stipulates that no person shall carry out any development within the Planning Area of the Town except where otherwise provided in the Regulations unless a permit for the development has been issued by the Town of Pouch Cove.

Q. Did the Appellant have a permit from the Town of Pouch Cove to place fill on the subject property.

R. No. The Town has advised the Adjudicator that the Appellant does not currently have a permit from the Town to place fill on the subject property.

Q. Does the Town of Pouch Cove have the authority to issue a Stop Work Order where development is being undertaken without a valid permit from the Town.

R. Yes. Section 102 of the Urban and Rural Planning Act, 2000 provides that where a person has undertaken or commenced a building or other development contrary to a municipal plan or development regulations, the applicable municipal council or regional authority or authorized administrator for that subject property where the unauthorized development is taking place, may order the person to pull down, remove, stop construction, fill in or destroy that building or development and may order that the person restore the site or area to its original state.

The Adjudicator has also been advised by the Technical Advisor that the Stop Work Order issued by the Town was also issued pursuant to Section 178 (“Removal of Waste”) and Section 404(1)(j)(l) (“Council Orders”) of the Municipalities Act, 1999. These sections of this Act authorize a municipal council to order the removal of solid waste, noxious substances and anything that poses a hazard to public health and safety or adversely affects the amenities of surrounding properties.

Adjudicator’s Conclusion

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 Authority, the Town of Pouch Cove, had the authority under the Urban and Rural Planning Act, 2000, and the Municipalities Act, 1999, and the Town of Pouch Cove Municipal Plan and Development Regulations, and applied this authority appropriately, when it made its decision on July 30, 2024 to issue a Stop Work Order to the Appellant to cease placing soil, gravel and fill on the subject property.

ORDER

The Adjudicator orders that the decision of the Town of Pouch Cove made on July 30, 2024, to issue a Stop Work Order to the Appellant, Bernard Connors, to stop the placing of gravel, soil and fill on his property at Civic No. 21-23 Gully Road located in the Town of Pouch Cove, be confirmed. The appeal is thereby, rejected.

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 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.

A handwritten signature in dark ink, reading "Clifford Johnston", is written over two horizontal lines.

Adjudicator,

Cliff Johnston

Urban and Rural Planning Act, 2000