

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : **15-006-091-005**

Adjudicator: Gareth McGrath

Appellant(s): Juliana Dawe

Respondent / Authority: Town of Conception Bay South (CBS)

Date of Hearing: 20 September 2024

Start/End Time : 09:00-11:00

In Attendance

Appellant: Juliana Dawe

Appellant Representative(s): N/A

Respondent/Authority: Town of CBS

Respondent Representative(s): Alex Templeton, Cory Davis

Proponent/Developer: Regal Enterprises Ltd.

Developer Representative: Johnathan Dale

Interested Party: N/A

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

Technical Advisor: Setare Vafaei

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 CBS Municipal Plan and Development Regulations when it approved an application for a subdivision with conditions at 163-177A Main Road, Conception Bay South, NL on 26 April 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 163-177A Main Road, Conception Bay South. The planner outlined the Appellant's grounds for appeal at page 8 of the appeals package as:

- 1) The Appellant states that the development could not have permitted the work that was done.
- 2) There was no jurisdiction to rezone the land.
- 3) There was inadequate notice of the work being done.
- 4) A stop work order was in place but there was still work ongoing.
- 5) There are impacts from the project that have not been addressed.

With regard to submissions of intimidation and inappropriate behavior, the Adjudicator cannot find that any such behavior took place. No threats were made other than to take someone to court, and the only information submitted during the hearing was that developers had conversations at the Applicant's home address. This is not and cannot be seen as intimidation.

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 regarding the already ongoing complaints that residents had to the development of the subdivision at the subject property. The Appellant outlined how they felt that legislation had been breached in the development of the property, as well as other issues that have arisen since development had occurred, including allegations that work was being performed while stop work orders were in place.

Authority's Presentation

The Authority's presentation focused on the fact that the permit granted by the Authority was brought within the powers of the municipality and that there were no procedural defects to the application. More specifically, it was their position that the problems that the Appellant had were not problems with the approval of Development Permit No-24-m-025, but rather problems they had with the approval of the underlying permits that were required as part of the authorization for Development Permit No-24-m-025.

Adjudicator's Analysis

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

- 1) Does the Authority have permission to grant permits for the work that has been done?

There is no question to the Adjudicator that the Authority has the powers necessary to grant Development Permit No-24-m-025. While the Appellant has concerns that the underlying permits that back Development Permit No-24-m-025 may not be followed, that is not a question as to whether or not the Authority had permission to grant Development Permit No-24-m-025.

At the time of granting Development Permit No-24-m-025, all underlying permits and authorizations were still in place. While there may have been stop work orders issued, the work being performed prior to the stop work order was within the authorization granted by the Authority to perform the work that was ongoing. While the work may have been within the boundaries of the T'Railway or the buffer belonging there to, there were also conditions that once development was finished that the property was to be returned to the condition that it was found in. Further to this were permits from the Provincial Department of Tourism, Culture and Recreation authorizing the ongoing construction and work in the area.

It is clear to the Adjudicator that the work being performed under Development Permit No-24-m-025 was authorized and that none of the permits that underly the permit had been revoked. The Authority had permission to grant the permits for this work.

- 2) Did the town rezone the land?

Based on the submissions at the hearing, as well as a review of the available zoning maps online available publicly through the Government of Newfoundland and Labrador, there was no evidence provided to show that the Town rezoned the area that includes the T'Railway or buffer zone. The zoning for those areas remains and the zoning can still be found on zoning maps for the area. As no evidence has been shown to indicate the land had been rezoned, the Adjudicator cannot find that the Authority erred in any way when granting Development Permit No-24-m-025.

- 3) Did the Authority give adequate notice of the development?

The position of the Appellant is not that any specific rule or regulation was improperly followed, but rather that the entire process of the Authority and how they disseminate their materials is flawed and does not allow persons adequate information to determine whether they will be impacted by a development.

Simply put, the Adjudicator does not have the authority to determine this question. Whether or not a provision or procedure of an authority provides sufficiently easy to navigate access to notices of developments that may be happening near their property is not a power that I as an Adjudicator empowered under the Urban and Rural Planning Act can determine. The discretion for the Authority to make decisions regarding how and where they will disseminate information is not something that can be determined by an Adjudicator under the Urban and Rural Planning Act. Instead, what can be determined is whether or not the Authority acted within the scope of their authority under applicable legislation and policy including the act and the Town's development regulations.

Questions of what constitutes adequate notice for a type of application are questions for the Authority through their rules and by laws or the Supreme Court of Newfoundland and Labrador to determine. As such, the Adjudicator cannot find that the Authority acted contrary to their rules and policies.

- 4) Does a breach of a stop work order halt the approval of Development Permit No-24-m-025?

The Appellant has submitted not authority on the matter as to whether a stop work order would halt the approval of a development permit and approved work on the property. Indeed, there is no language under the Urban and Rural Planning Act that would indicate that should a developer decide to continue with work where a stop work order is in place that there will be no approvals on the property until the problem is resolved.

Instead, when stop work orders are in place, it triggers powers of the Authority to then, in their sole discretion, act under their authority to impose fines and other actions allowed under the order granted. It is clear from judicial consideration in *Newhook v. Colliers (Town)*, 2020 NLSC 88 at para 44 “a private citizen has no right to bring an action seeking damages or an injunction against another private citizen to enforce a contravention of a planning by-law unless the by-law expressly confers such a right.” More specifically, this section of the decision by Justice Boone shows that the courts cannot interfere with the discretion of an Authority on whether to enforce their bylaws. If a Court of competent jurisdiction does not have this authority, then neither can an Adjudicator under the Urban and Rural Planning Act without explicitly delegated authority under the act.

As such, I must find that any breaches of a stop work order cannot impact the decision to authorize Development Permit No-24-m-025 barring the Authority exercising their sole discretion. Even if the work has damaged any property of the surrounding area, that would then give rise to an action in law for damage, a question to be answered by the Supreme Court of Newfoundland and Labrador and not the Adjudicator.

5) Are there any unaddressed impacts to nearby property that would stop the authorization of Development Permit No-24-m-025?

During the hearings, many people were heard with problems that they believed had been caused by the actions of the Developer in developing the property. As well the Appellant submits that because these issues were not adequately addressed that the authorization for Development Permit No-24-m-025 should not have been granted.

As with the question of notice, how in depth the Authority addresses the complaints of their constituents in any permit is a discretionary question for the Authority. An Adjudicator does not have the authority to interfere and set a standard of review that requires the Authority to ensure all problems any person may have with a development are addressed. While there is no question that there are many parties who are upset by the decision of the Authority to approve the subdivision 163-177A Main Road, Conception Bay South, Newfoundland and Labrador, it is not the job of the Adjudicator to ensure that all parties go home happy. If residents of the Authority are upset by their decisions, then the remedy is through democratic means of municipal elections and changes to town regulations. As it stands, the actions of the Authority to grant the permit based on consultations they had done to date have not been shown to be in contravention to the Urban and Rural Planning Act, nor the municipal bylaws and rules of the Authority.

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 granted Development Permit No-24-m-025. As such the Adjudicator must confirm the decision of the Authority.

That is to say that the actions of the Authority in issuing this permit were within their powers and that any issues that the Appellant may have had with underlying permits that support Development Permit No-24-m-025 are matters that would have to either have been addressed at the time those underlying permits were granted, or through application to court. The Adjudicator does not find that the Authority erred when they granted Development Permit No-24-m-025 under the Urban and Rural Planning Act or the Authority's development regulations or plan.

Order

The Adjudicator orders that the decision of the Town of CBS 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 7 October 2024.

Garreth McGrath

Adjudicator

Urban and Rural Planning Act, 2000