

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-087-008

Adjudicator: Cliff Johnston

Appellant(s): Keith Drover and Sonya Drover

Respondent / Authority: Digital Government and Service NL

Date of Hearing: June 27, 2024

Hearing Location: Beothuk Building, St. John's

Start/End Time: 11am/11:50am

In Attendance

Appellant: Sonya Drover and Keith Drover

Respondent/Authority:

Karen Tucker, Regional Supervisor, Digital Government and Service NL

Michael Duke, Manager of Operations, Digital Government and Service NL

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

Technical Advisor: Faith Ford, Planner III, Municipal and Provincial Affairs

Adjudicator's Role:

The role of the Adjudicator is to determine if the Authority, which in this case, is Digital Government and Service NL, acted in accordance with the Urban and Rural Planning Act, 2000 and the Protected Road Zoning Regulations when it sent a letter on July 13, 2023 to the Appellants, Sonya Drover and Keith Drover, to advise them that their application to develop a cottage and garage on property located on property located on Old Hodgewater Line near the Exit 30 WB on ramp to the Trans Canada Highway ("TCH"), was refused.

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 June 27, 2024. In addition, the Planner/Technical Advisor prepared a Technical Report on this appeal which was provided to and reviewed by the Adjudicator prior to the appeal hearing. As well, both the Appellants and the Authority-Digital Government and Service NL provided written background materials to the Appeal Officer which materials were referred to and reviewed by the Adjudicator prior to 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 Planner, Ms. Ford, that this appeal relates to an application received by Digital Government and Service NL from Sonya Drover and Keith Drover on June 2, 2023 to develop a cottage and garage on Old Hodgewater Line near the Exit 30 WB on ramp to the Trans Canada Highway. As the administrative approval authority for this geographic area, Digital Government and Service NL distributed the application to a number of government referral agencies for comment on June 8, 2023. Digital Government and Service NL received responses from all the referral agencies and as part of the referral process, received a recommendation from the Planning Division of the Department of Municipal and Provincial Affairs on July 6, 2023 and again on July 7, 2023, to refuse the application. Digital Government and Service NL notified the Appellants-the Drovers on July 13, 2023 that their application had been refused and of their right to appeal the decision which the Drovers subsequently did.

The Planner advised the property which is subject of this appeal is not located within a municipal boundary or within an established municipal planning area. The subject property is located near the Exit 30 WB on ramp to the TCH. This portion of the TCH is a Class 1 protected road as established under Schedule B of the Protected Road Zoning Regulations.

Digital Government and Service NL is the authority responsible for administering development permits under the Protected Road and Zoning Regulations. Under Section 4 of these Regulations,

all development within building control lines requires a permit from Digital Government and Service NL and the development of land must adhere to these Regulations.

The Appellant's Presentation and Grounds

- There are existing cottages on either side of the Appellants' property and there are many existing cottages located near the Trans Canada Highway across the province.
- The Appellants did receive initial approval from Digital Government and Service NL for the design of their proposed septic system that they had originally intended to install on their property to accommodate their proposed cottage. The Appellants had engaged a qualified septic system designer to do this work. When they later applied to modify the design of their already approved septic system, they were advised by Digital Government Service NL that their application to construct a cottage and garage would need to go through a referral process to applicable government agencies/departments.
- Their property was created from the subdivision of a new building lot from the adjoining property owned by a family relative on which there is an existing cottage.
- Given that they had received approval from Digital Government Service NL for their original septic system design, they proceeded to clear their property in preparation for construction. There was "implied acceptance" they would receive approval to construct the cottage and garage.
- The Appellants wish to be treated fairly by Digital Government and Service NL as other cottages near the Trans Canada Highway across the province appear to have been allowed to build and to remain in place.
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Authority's Presentation

- The review of the Appellants' original design for their septic system did not require referral to other government agencies.
- The decision on July 13, 2023 by Digital Government and Service NL to reject the application for the proposed cottage and garage was based on comments received from the Planning Division of the Department of Municipal and Provincial Affairs who had received a referral on the application. The Planning Division advised that the application should be rejected based on the provisions and requirements of the Protected Road Zoning Regulations vis a vis the proximity of the subject property to the Trans Canada Highway.

Adjudicator's Analysis

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 and the Protected Road Zoning Regulations and determined the following:

Q. Does the construction of a new cottage and an accompanying garage on the subject property require a permit before construction can commence?

R. Yes. Given that the subject property is located outside of a municipality or a municipal planning area, the property in question is subject to the Protected Road Zoning Regulations which are administered by Digital and Government Service NL. Under Section 4 of these Regulations, all development within building control lines requires a permit from Digital Government and Service NL, and the development of land must adhere to these Regulations.

Q. Do the Protected Road Zoning Regulations allow the construction of a cottage and garage on the subject property?

R. No. Section 5 of these Regulations establishes the building control lines for protected roads. Outside of a municipal boundary or municipal planning area, the building control line is 400 metres on each side of the protected road. The Adjudicator has been advised that the subject property is within 400 metres of the Trans Canada Highway and falls within the protected road building control lines as per Section 5 of the Regulations. Section 6 of the Protected Road Zoning Regulations specifies what types of land uses may be permitted within the building control lines of a protected road. Under Section 6(1) of the Regulations, cottage uses and private residential garages are not listed as a permitted land use.

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, Digital Government and Service NL were correct in making their decision of July 13, 2023 to reject the application from Sonya Drover and Keith Drover to construct a cottage and a garage on vacant land located at Old Hodgewater Line, near Exit 30 to the Trans Canada Highway. The Authority correctly applied Sections 5 and 6 of these Regulations in making their decision to reject the application. Under the current provisions of these Regulations, the Authority had no authority to approve the proposed development.

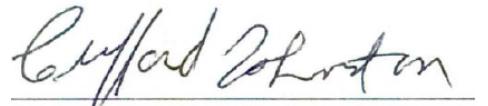
ORDER

The Adjudicator orders that the decision of Digital Government and Service NL of July 13, 2023 to reject the application from Sonya Drover and Keith Drover to construct a cottage and garage on vacant property located on Old Hodgewater Line near the Exit 30 WB on ramp to the Trans Canada Highway, **be confirmed. The appeal is thereby rejected.**

The Authority and the Appellants 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 2nd day of July, 2024.

A handwritten signature in blue ink, appearing to read "Clifford Johnston". The signature is written in a cursive style with a horizontal line underneath it.

Adjudicator,

Cliff Johnston

Urban and Rural Planning Act, 2000