

## URBAN AND RURAL PLANNING ACT, 2000

### Section 40-46

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

Appeal #: 15-006-083-001

Adjudicator: John R. Whelan Q.Arbitrator

Appellant(s): Alantra Leasing Inc

Respondent / Authority: Town of Placentia

Decision Dated: January 15, 2024

Re: Appeal of Alantra Leasing Inc. against an Order to remove a building from 7 Bog Avenue by the Town of Placentia

Appearances:

On Behalf of the Appellant: Dean Porter, Poole Althouse

On Behalf of the Respondent: Gerry Hynes, CAO, Town of Placentia

### Procedural Background

On or about March 23, 2023 the Town of Placentia (“the Town”) issued a Removal Order for a modular home at 7 Bog Avenue. The Town relied on s.102(1) of the *Urban & Rural Planning Act* for its authority to order the removal of the building. The Order was signed by Jonathan Galgay who was, at that time, the Chief Administrative Officer (“CAO”) for the Town. The Appellant filed its appeal on April 4, 2023.

The Parties appeared before me on January 10, 2024.

At the outset of the hearing, Counsel for the Appellant made a preliminary objection based on jurisdiction. Specifically, that the undersigned had no jurisdiction to hear the matter since the Order was cancelled by statute as it was not confirmed by the Town Council of the Town of Placentia at its next meeting.

### Preliminary Objection – Jurisdiction – Cancelled Order

Section 43(4) of the *Urban and Rural Planning Act, 2000* (“the Act”) states:

43. (4) *Where an adjudicator determines that the subject matter of an appeal is not within the jurisdiction of the adjudicator under section 41, the adjudicator may dismiss the appeal without holding a hearing.*

The relevant provisions of Section 41 of the Act state:

41. (1) A person or a group of persons aggrieved by a decision may appeal the decision to an adjudicator where

(a) the decision is permitted to be appealed to an adjudicator under this Act or another Act; or

(b) the decision is permitted to be appealed under the regulations and the decision relates to one or more of the following:

(i) an application to undertake a development,

(ii) a revocation of an approval or a permit to undertake a development, or

(iii) the issuance of a stop work order.

(2) A decision of a council, regional authority or authorized administrator to adopt, approve or proceed with a plan, a scheme, development regulations and amendments and revisions of them is final and not subject to an appeal.

The former CAO issued the Town's Removal Order under s.102(1) of the *Act*, which states:

102. (1) Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where the minister considers it necessary, may order that the person 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 Parties agreed that the Removal Order would ordinarily be properly before me under s.41 of the *Act*. Consequently, I will proceed on the basis that this appeal would be generally under my jurisdiction by operation of s.41(b) of the *Act*.

### Was the Order Cancelled?

The ability of the former CAO to issue an Order under s.102 is confirmed by s.109(3) of the *Act*:

(3) An employee of a council or regional authority may issue an order under section 102.

However, s.109(4) restricts the ability of an employee by requiring confirmation of the Order by Council. Section 109(4) states:

(4) An order made by an employee referred to in subsection (3) shall be confirmed by a majority vote of the members of the council or regional authority present at the next meeting of that council or regional authority after the order is made and if the order is not confirmed in this manner, it shall be considered to be cancelled.

**Emphasis added**

Mr. Hynes, on behalf of the Town of Placentia, confirmed that the March 23, 2023 Order executed by then CAO Galgay was not confirmed by a motion of Council. It is my understanding that the failure to confirm the decision was based on a mistaken procedural belief by the Town. Be that as it may, confirmation by Council is a necessary requirement for the enforcement of an Order executed by a Town employee.

When the March 23, 2023 Order was not confirmed by Council at its next meeting, the Order was cancelled by operation of s.109(4).

As I noted in *Atlantic Sandblasting & Painting Ltd. v. Town of Conception Bay South*<sup>1</sup> jurisdiction may be lost by an Adjudicator when the matter is moot. The Order by the Town was cancelled by operation of s.109(4) of the *Act*. The statutory cancellation of the Order means that there is no longer a “controversy which affects or may affect the rights of the parties.”<sup>2</sup>

### **Is the Appellant Entitled to Reimbursement of its Fee?**

Section 45(2) of the *Act* states that:

(2) *Where an appeal under section 41 is successful, the council, regional authority or authorized administrator that made the decision that was appealed shall pay the person or group of persons who brought the appeal an amount of money equal to the fee paid under subsection 41(4).*

The *Act* does not define the term “successful.” However, by any plain language interpretation of the term the Appellant has won its argument that the Town was not in a position to enforce the Order the Appellant was appealing. That, by any reasonable interpretation, constitutes success.

### **Order**

Having found that the March 23, 2023 Order of CAO Galgay was cancelled by operation of s.109(4) of the *Act*, I dismiss the appeal for lack of jurisdiction as per s.43(4) of the *Act*.

The Town shall reimburse the Appellant for the filing fee within thirty (30) days of this decision.

DATED at St. John’s, Newfoundland and Labrador, this 15<sup>th</sup> day of January, 2024.



John R. Whelan Q.Arb

Adjudicator

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<sup>1</sup> Appeal 15-006-072-058, October 20, 2023.

<sup>2</sup> *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342 at p. 353.