

**URBAN AND RURAL PLANNING ACT, 2000**

**Section 40-46**

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

Appeal # : **15-006-091-027**

Adjudicator: Garreth McGrath

Appellant(s): Dwayne Sturge

Respondent / Authority: Town of Portugal Cove – St. Philip’s

Date of Hearing: 7 November 2024

Start/End Time : 11:00-12:00

**In Attendance**

Appellant: Dwayne Sturge

Appellant Representative(s): Angela Sturge

Respondent/Authority: Town of Portugal Cove – St. Philip’s

Respondent Representative(s): Les Spurrell, Ashley Linehan, Brian Peach

Proponent/Developer: N/A

Developer Representative: N/A

Interested Party: N/A

Appeal Officer: Synthia Tithi, 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 Portugal Cove – St. Philip’s Municipal Plan and Development Regulations when it denied an application for a subdivision and permit to construct a Townhouse dwelling at 117 Beachy Cove Road, Portugal Cove – St. Philip’s, NL on 3 September 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 denied application for a subdivision and permit to construct a townhouse at 117 Beachy Cove Road, Portugal Cove – St. Philip's, NL.

The Planner's outlined that the position of the Appellant is that the Authority did not provide clear, specific reasons for their rejection and should have to provide clear and specific reasons for their rejection. Further the Appellant states that the proposed development meets the Town's Regulations and as such should be approved by the Authority.

The technical report of the planner outlines that the subject property is in a Residential Medium Density (RMD) zone. As per the Regulations, a RMD zone allows the building of townhouses as a Discretionary Use as per Schedule C of the Development Regulations. Discretionary Uses are allowed in RMD zones where "Council is satisfied that the development would not be contrary to the general intent and purpose of these Regulations, the Municipal Plan, or any further scheme or plan or regulation pursuant thereto, and to the public interest, and if Council has given notice of the application in accordance with Regulation 33 and has considered any objections or representations which may have been received on the matter." As well, the technical report reviews *Policy GL-6* and *Plan Policy SD-6* of the Municipal Plan which was cited by the Authority as a reason for denying the application.

### **The Appellant's Presentation and Grounds**

The presentation of the Appellant focused on the position that the decision of the Authority was done without providing sufficiently clear reasons for why the proposed development was incompatible with the existing character of the neighborhood and that it was contrary to public interest.

As well the Appellant stated a process error in that the Authority accepted submissions beyond a deadline for correspondence regarding the application of 6 August 2024. However, as this was not listed as a ground for appeal on the application, nor was it outlined as a ground for appeal by the Technical Advisor, the Adjudicator cannot consider this ground of appeal. However, should this decision be appealed and the court finds that the Adjudicator should have considered this matter, the decision to impose a deadline was discretionary and not mandatory. This deadline enabled the Authority to reject any correspondence after the deadline, however it did not impose an obligation on the Authority to reject any correspondence that came after the deadline. As such, the Adjudicator would find no breach of natural justice, nor any regulation, by the Authority accepting correspondence after the deadline of 6 August 2024.

### Authority's Presentation

The Authority's presentation focused on the decision of the Authority being a discretionary one. The application to subdivide the property and allow the townhouse was not one that was automatically allowed in the RMD, but rather the Authority had the discretion to deny any application to build a townhouse in the RMD based on the various policies and regulations of the Town, as well as commentary and correspondence of the community which may be in line with those policies and regulations when making a decision on whether to allow a Discretionary Use.

### **Adjudicator's Analysis**

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 as well as the Town of Town of Portugal Cove – St. Philip's Municipal Plan and Development Regulations and determined the following:

- 1) Did the Authority provide sufficient reasons for their denial of the application to construct a townhouse?

In the letter issued to the Appellant on 7 August 2024, the Authority outlined two major reasons why they deemed that the proposed 6-unit townhouse was unsuitable for the location. Those are Plan Policy GL-6 of the Municipal Plan and Plan Policy SD-6 which can be found on page 14 of the Appeal Package. To summarize, the Authority rejected the application because they felt that it was incompatible with the existing character of the neighborhood, and that it was unsuitable for the location.

To overturn a discretionary decision is a very high bar to meet. In making their decision, the Authority was required to provide a reason for the denial so that the denial is not capricious or arbitrary. However, this does not establish a standard for how much explanation must be given by the Authority in making their decision, rather that the decision is reasonable given the Town Plan and Development regulations, as well as URPA.

On reviewing the information provided by the technical report, this decision was neither capricious nor arbitrary. The Council had been in back-and-forth discussions with the Committee

of the Whole and the Planning and Development Committee on and off since the application on 1 April 2024. When the Authority eventually made their decision following the 23 July 2024 motion of the Committee of the Whole, the reason was due to considerations regarding *Plan Policy GL-6* and *Plan Policy SD-6*. Further the Authority also outlined that they were in talks with the public when they were deciding on whether or not to approve the townhouse and the Authority outlines having spoke with many members of the neighborhood who felt that the townhouse was incompatible with the existing character of the neighborhood or unsuitable for the location.

The specific reasons why each member who voted against the development felt that the development was incompatible with the existing character of the neighborhood or unsuitable for the location is not a requirement in making that discretionary decision. Nowhere in the Municipal Plan or Development Regulations are each of the voting members required to provide their individual reasons. It may be many reasons, or as the case here, it may be simply that the Authority felt the townhouse would be incompatible with the existing character of the neighborhood or unsuitable for the location in their discretion. Instead is a requirement that the Authority provide reasons for their decision, which in this case were that the Authority felt the development was incompatible with the existing character of the neighborhood, and that it was unsuitable for the location as per *Plan Policy GL-6* and *Plan Policy SD-6*. As this is a reasonable decision, in line with the discretionary authority of the Authority, the Adjudicator cannot find that the Authority acted unreasonably in refusing the application and is unable to overturn the decision of the Authority.

#### 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 acted reasonably and within the scope of their authority when they denied the permit to construct a townhouse at 117 Beachy Cove Road, Portugal Cove – St. Philip's, NL. As such the Adjudicator must confirm the decision of the Authority.

That is to say that the Authority provided a reason with reference to regulation as to why it was denying the application. It was not an arbitrary decision, and there were no further reasons required to be provided by the Authority.

#### Order

The Adjudicator orders that the decision of the Town of Portugal Cove – St. Philip's 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 2 December 2024.

Garreth McGrath

Adjudicator

Urban and Rural Planning Act, 2000