

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 : 14:00-15:00

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 construct of a single family 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 single family dwelling at 117 Beachy Cove Road, Portugal Cove – St. Philip's, NL. The Planner's outlined that the position of the Appellant is that this was not a final permit, rather a request for a conditional approval and that this approval could be granted with conditions that the matter before the Adjudicator in Appeal File # 15-006-091-021 be handled before the conditional approval. As well, the Appellant outlined that the Authority did not provide reasons for their decision.

The Appellant's Presentation and Grounds

The presentation of the Appellant focused on the above stated grounds outlined by the planner regarding why council should have considered their application and not rejected it, being that this was not a final permit, rather a request for a conditional approval and that this approval could be granted with conditions that the matter before the Adjudicator in Appeal File # 15-006-091-021 be handled before the conditional approval. As well, the Appellant stated that the Authority did not provide reasons for their decision.

Authority's Presentation

The Authority's presentation focused on their position regarding Section 8 of the Minister's regulations as outlined in the Town's Development Regulations and Section 27 of the Town's Development Regulations. The Authority then relies upon the fact that this is a reasonable interpretation of the legislation and as such the Adjudicator has no grounds to overturn the decision of the Authority.

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 err in their decision to deny the permit on the basis of their interpretation of Section 8 of the Minister's regulations as outlined in the Town's Development Regulations and Section 27 of the Town's Development Regulations?

In answering this question we must turn to the text of the regulations. As per the technical report, Section 8 of the Minister's regulations as outlined in the Town's Development Regulations state "Immediately upon notice of the registration of an appeal the appropriate authority shall ensure that any development upon the property that is the subject of the appeal ceases." Section 27 of the Town's Development Regulations state "Immediately upon notice of the registration of an appeal, Council shall ensure that any development upon the property that is the subject of the appeal ceases."

It is clear on reading of these sections that a reasonable interpretation of these sections is that the Authority must stop any development from moving forward. The clearest way to illustrate how the decision reached by the Authority was reasonable is to ask, would the Authority have been able to issue the permit? If this application had been approved while the appeal was still being heard in Appeal File # 15-006-091-021, it would be clear that the Authority had acted contrary to the intention of Section 8 of the Minister's regulations as outlined in the Town's Development Regulations and Section 27 of the Town's Development Regulations by agreeing to allow development to proceed on the property.

Instead, the Adjudicator agrees that the Authority was reasonable in their decision to deny any permits to be issued for the subject property until the appeal ceases.

- 2) Did the Authority provide their reasons to the Appellant?

From the technical report of the planner, "The Authority's refusal letter also cites Section 27 of the Town's Development Regulations as one of the reasons for denying the development application." It is clear to the Adjudicator that reasons for their decision were given to the Appellant and as such there is no denial of natural justice to the Appellant.

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 within the scope of their authority when they denied the permit to construct a single family dwelling 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 was reasonable in their interpretation of their legislation that they cannot permit development on a property subject to appeal, as per Section 8 of the Minister's regulations as outlined in the Town's Development Regulations and Section 27 of the Town's Development Regulations, and that their denial of the permit was reasonable. As well the Authority has provided sufficient reasons as to their decision.

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