

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : **15-006-087-043**

Adjudicator: Garreth McGrath

Appellant(s): Trevor Stagg

Respondent / Authority: Town of Stephenville

Date of Hearing: 17 September 2024

Start/End Time : 14:00-15:00

In Attendance

Appellant: Trevor Stagg

Appellant Representative(s): N/A

Respondent/Authority: Town of Stephenville

Respondent Representative(s): Jonathan Dale

Proponent/Developer: Joanne Rose

Developer Representative: N/A

Interested Party: N/A

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

Technical Advisor: Faith Ford

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 Stephenville Municipal Plan and Development Regulations when it approved an application for a subdivision with conditions at 45 Hillier Avenue, Stephenville, NL on 8 February 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 45 Hillier Avenue, Stephenville, NL. While the Planner's presentation and report focused on the original grounds of appeal as submitted by the Appellant, the terms of the appeal were narrowed to whether the Authority had the ability to approve the subdivision without a new appeal being filed.

The Appellant's Presentation and Grounds

The presentation of the Appellant focused on the approval for the subdivision was done without a new application and was brought forward by the Authority without a new application for subdivision being made in the form requested by the Authority as per the town bylaws. Also, due to changes of the town council, the application was not properly brought forward.

Authority's Presentation

The Authority's presentation focused on the existing case law that making an application by the proscribed form of the Authority is not a requirement, but rather that the legislation was directory rather than mandatory and requests are not required to be made solely by form. As such, the Authority did not bring this matter back before the council *sua sponte*, but rather that it was an application made orally by Joanne Rose to reconsider the previously filed application, rather than a new application made by the outlined form.

Adjudicator's Analysis

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

- 1) Is a request for reconsideration required to be in the proscribed form for the Authority to reconsider the application?

In considering the application, initially a question arose as to how the matter had been brought back before the Authority. In testimony, it became clear that the application had been brought back before the Authority by way of a request by Joanne Rose to have the Authority reconsider the application that was made to approve a subdivision of the Subject Property that had previously been denied by the Authority. No new changes were made to the request and no changes had been made to the Subject Property since the original application.

To apply for a subdivision, the Authority's development regulations outline at section 17:

"1) An application for a development permit or for Approval in Principle shall be made only by the owner or by a person authorized by the owner to the Town on such form as may be prescribed by the Town, and every application shall include such plans, specifications and drawings as the Town may require, and be accompanied by the permit fee required by the Town."

We then must look to the jurisprudence when it comes to interpretation of "shall." As outlined in the submissions of the Authority, there are two ways that "shall" is to be interpreted. It is either a mandatory requirement without which an application will fail, or a directory requirement telling an applicant in which way they could make an application if they should wish to have their application heard.

On reading the development regulations in their totality, it is clear that this section is directory rather than mandatory. The entire section outlines that the application shall be made "on such form as may be prescribed by the Town." It is clear that the Authority has contemplated that there may be applications made to the town that are not in the form of a prescribed form of the Authority. This may be because an Applicant is looking to make an application for something the town has not considered and made forms to authorize, or in this case because an Applicant is seeking to bring an application forward where the plans, specifications and drawings for the subdivision were already before the Authority. The legislation does not prohibit the Authority from hearing an application in another form, but rather allows the Authority discretionary to reject an application if it is not made in the proper prescribed form. In this case, the Authority did not exercise its discretion to deny the application, but rather brought it forward on motion before the council.

As such, it is the finding of the Adjudicator that the application for the subdivision of 45 Hillier Avenue was properly reconsidered by the Authority when they brought forward their motion on 8 February 2024.

Finally, as the matter was raised by the Appellant, the Adjudicator must determine the issue of costs. While the Appellant has sought to request costs on a solicitor client basis for this application, upon review of the Urban and Rural Planning Act, the Adjudicator can find no provisions relating specifically to the hearings held by an Adjudicator to award costs. As such,

costs cannot be awarded to either party as the Adjudicator does not have the authority to make cost awards.

Question/Answer .

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 granted the permit to subdivide 45 Hillier Avenue. As such the Adjudicator must confirm the decision of the Authority.

That is to say that the Authority has the power to accept an application to subdivide property made in a form other than those prescribed by the Authority. This is to say that the powers in Section 17 of the Town of Stephenville's Development Regulations grant the Authority the discretionary power to deny an application where it is made in a form other than those prescribed by the Authority, a discretion that they decided to not exercise on this application.

Order

The Adjudicator orders that the decision of the Town of Stephenville 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 21 October 2024.

Garreth McGrath

Adjudicator

Urban and Rural Planning Act, 2000