

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : 15-006-091-017

Adjudicator: Lorilee A. Sharpe

Appellant(s): Thomas Wheeler

Respondent / Authority: Town of Humber Arm South

Date of Hearing: January 30, 2025

Start Time: 1:00 p.m.

In Attendance

Appellant: Thomas Wheeler

Appellant Representative(s): Self-Represented

Respondent/Authority: Town of Humber Arm South

Respondent Representative(s): Marion Evoy, Town Manager

Interested Parties: Nil

Appeal Officer: Synthia Tithi, Municipal and Provincial Affairs

Technical Advisor: Sean McGrath & Setare Vafaei

Adjudicators Role

Part VI of the *Urban and Rural Planning Act, 2000* authorizes adjudicators to hear appeals and establishes the powers of adjudicators. The role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Municipalities Act, 1999*, the *Town of Humber Arm South Municipal Plan and Development Regulations*, and the principles of natural justice when it ordered demolition of a house at 39 Shoreline Road, Benoit's Cove, Humber Arm South, NL.

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.

Rule 10 (a) of the Rules of Procedure provides that there shall be a technical advisor 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 provides the framework with respect to the appeals process under the *Urban and Rural Planning Act, 2000* and 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 an order issued under sections 178 and 404(1)(f) of the Municipalities Act, 1999 by the Town of Humber Arm South to the owner of property at 39 Shoreline Road in the Town of Humber Arm South to remove an existing dwelling on the basis that the dwelling is a public nuisance. The property is designated as residential and is located in a Residential Medium Density zone within the Town of Humber Arm South's Planning boundary and as such is subject to the Town of Humber Arm South municipal plan and development regulations.

The Appellant's Presentation and Grounds

The Appellants' grounds for appeal are set out in the written appeal and may be summarized as follows:

- The Authority did not conduct an internal inspection of the building;
- The building is not beyond repair;
- The property has potential to be used again as a residential home once the living room and dinette have been fixed as there is no damage in the rest of the home; and
- the appellant intends to either sell it or renovate it.

In support of his grounds of appeal, the Appellant appeared at the hearing, made oral submissions and provided photos of the interior and exterior of the residential building. The photos of the exterior show the residential home is covered with brick exterior, shingled roof, and intact windows and doors. The garden is overgrown. The appellant testified that he has never seen vermin in the building and there are no signs that vermin have ever been in there. He gave evidence that the building is secure and there is no garbage kept inside or outside of it.

He says he checks the building regularly and there is no smell, feces or other evidence of vermin. The Appellant testified that prior to suffering a heart attack he was a carpenter by trade and after he received the letter from the Town in 2003 advising him of complaints concerning the property he addressed all of their concerns by repairing the roof & bracing, reglueing shingles, repairing/securing the well, putting a lock on the door, and removing the patio. He says he did everything that was set out in the 2003 letter. He testified that there was some water damage to the living room/dining area from an old roof leak that he would fix but other than that the home was in the same condition that it was when it was occupied as his residential home. He testified that following the 2003 letter he did not hear anything further from the Town until he received the removal order that is the subject of this appeal. The Appellant confirmed that the building has been unoccupied for many years. He stated that there has been no power connected to the property for approximately 10 years.

Authority's Presentation

The Town of Halfway Point presented evidence through its Town Manager Marion Evoy. The Town Manager testified that the Town is of the view that the cost to repair and receive occupancy for the building would exceed its value. In order for the Town to issue an occupancy permit for the building to be occupied as a residential home again, the property owner could no longer utilize the wellwater but would need to connect to the Town water supply and incur the associated costs of installation of curbstop and asphalt cut in the road which would be approximately \$10,000.00. Ms. Evoy also testified that the Town is unable to provide sanitary sewer services to the property which currently has a septic system. She stated that both the power and septic system would require provincial approval which she believes would require costly upgrades, however she had no definitive information from the Province or otherwise to present on that point. Ms. Evoy confirmed that there had been no inspection of the property since the letter the Town had issued to the property owner in 2003 and that there had been no inspection or communication with the Appellant prior to issuance of the current order.

In relation to the June 11, 2024 meeting of town council:

- The meeting was a public meeting;
- The property at 39 shoreline Road was not on Council's agenda for the meeting;
- There was no information with respect to the property at 39 Shoreline Road in councils meeting package;
- The issues respecting 39 Shoreline Road were raised by a neighbouring property owner (Vicki Newman) verbally at the council meeting;
- Ms Newman told council that in her opinion the property was unsafe, unkept, had a rat problem, and that she was concerned about an open well on the property; and

- On the basis of the verbal communications from the neighbour, Ms. Newman, at the Council meeting, Council brought forward and approved a motion to have an order issued to the Appellant for removal of the building (a residential home) on his property at 39 Shoreline Road.

Ms. Evoy testified that the Town would not have ordered removal solely on the basis of a rat problem, but rather it was the look of the exterior of the house being unsightly and impacting values of surrounding properties that the Town considered to be a public nuisance.

Interested parties

There were no other interested parties who participated in the hearing.

Adjudicators Analysis

I have reviewed the documents in the appeal package, the photos submitted by the Appellant, and submissions of all parties, as well as the applicable provisions of *The Urban and Rural Planning Act, 2000*, the *Municipalities Act, 1999*, and the *Town of Humber Arm South Development Regulations*.

The order of Humber Arm South Town Council was made under provisions of the *Municipalities Act, 1999* and as such jurisdiction to hear this appeal is pursuant to s.41(1)(a) of the *Urban and Rural Planning Act, 2000*:

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

It is clear on the evidence that the decision of council to issue the Removal Order that is the subject of this appeal was made at the June 11, 2024 public council meeting as an impromptu response to verbal complaints that were raised at that meeting by a neighboring property owner. The Town had not made any contact with the Appellant regarding the state of his property since 2003 when a letter had been issued to him to make certain repairs to the property which the Appellant completed at that time. The Town did not conduct any inspection of the property, provide the Appellant with any opportunity to respond to the complaints raised by the neighbor, or provide any notification to him that his property would be discussed/considered for demolition order at the public council meeting. The Town did not give the Appellant notice of the current issues and an opportunity to make any necessary repairs or improvements to the property. There was no other evidence presented to council prior to Council making the decision: for example photos, reports from staff members or professionals

such as a qualified inspector, engineer, appraiser, or public health authority with information for council to consider in relation to habitability or public nuisance. No information was presented from the Province respecting the requirements for the property regarding septic or power. While the meeting was a public council meeting, neither the Appellant nor the property were listed on the agenda so it would have been impossible for the Appellant to have known that he should attend the meeting.

There is a common law principal, the duty of procedural fairness, that applies to every exercise of statutory decision making power by a public authority that affects a persons rights, privileges or interests. The requirements for meeting the duty of procedural fairness varies depending on consideration of the following five factors prescribed by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship & Immigration)* [1999] S.C.J. No. 39 at Par. 23-27:

- 1) The nature of the decision being made and process followed in making it;
- 2) The nature of the statutory scheme and the terms of the statute pursuant to which the body operates. Greater procedural protections for example will be required when no appeal procedure is provided within the statute or when the decision is determinative of the issue and further requests cannot be submitted;
- 3) The importance of the decision to the individual affected. The more important the decision is to the lives of those affected and the greater its impact, the more stringent the procedural protections that will be mandated;
- 4) The legitimate expectations of the person challenging the decision; and
- 5) The choices of procedure made by the agency itself

In relation to consideration #1, as discussed in more detail above, the decision was to order demolition/removal of a residential home and the process was an off the cuff motion of council at a public meeting on the basis of a verbal complaint from a neighbouring property owner. The Appellant was given no opportunity to participate in any way, and there was no inspection, photos, reports or other information presented to council prior to making the decision.

In relation to consideration #2 the powers of an adjudicator in deciding an appeal are set out in s.44 of the Urban and Rural Planning Act. While the decision of Council is appealable in some respects, for example with regard to procedural errors, a discretionary decision of Council cannot be overturned pursuant to s.44(2). As such, greater procedural protections should be required prior to the rendering of the discretionary decision.

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.

In relation to consideration #3, an order to demolish a building is usually of significant importance to a property owner as it has an irreversible effect. In situations where the building has been a residential home, the building would likely have even greater significance to the owner. In this matter, the Appellant described the high importance of the property to him; that he built it himself and it was where he lived as a family home until he had to move out West for work, and that he hoped to give it to his son for use as a summer home.

In relation to consideration #4, the Appellant expressed his concern that he had not been contacted by the Town since the letter of 2003 nor had he been given any opportunity to address the concerns raised in the complaint and there had not been any inspection of the property by the Town. These expectations of the Appellant are quite legitimate in the circumstances.

In relation to consideration #5, as indicated previously, the Town does not seem to have any process or procedure in place for making removal/demolition orders as this was an off the cuff decision made at a public meeting on a matter that was not on Council's agenda.

Justice Deborah J. Paquette in the Supreme Court of Newfoundland and Labrador decision *Yates v. Springdale (Town)* 2021 NLSC 3 (CanLII) reviewed the high level of procedural fairness required in demolition of a warehouse property. She quoted favorably from the *Saskatchewan Court of Appeal* decision *Markwart v. Prince Albert (City)*, 2006 SKCA 122 wherein the Saskatchewan Court of Appeal had similarly considered breach of procedural fairness in relation to a demolition order. At par 14 of her decision, citing par 35 of the Saskatchewan decision it reads:

35 *The importance of the decision cannot be understated. That is the importance not only to the City but also to the appellants. The City is proposing to demolish a building owned by the appellants. This, in my view, is tantamount to expropriation without compensation. The appellants will not only lose an asset for which they will not be compensated, they must pay for the demolition at their own expense. These circumstances require strict compliance with the rules and the duty of fairness. Given the importance of the matter to the appellants and the importance of the decision itself, in my view, the obligation on the City to ensure procedural fairness was high.*

Similarly, in a more recent decision from the Supreme Court of Nova Scotia, *Rector v. Colchester (Municipality)* [2023] N.S.J. No.718 the court considered procedural fairness in relation to an order for demolition of a mobile home. In reviewing the five criteria set forth by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship & Immigration)* [1999] S.C.J. No. 39, the court found that a high level of procedural fairness to be required and stated at par 33:

Given the stakes involved in a demolition order scenario, the property owner is entitled to expect a high degree of procedural fairness with full statutory compliance and due care paid to the notice requirements. There must be a full opportunity for the impacted party to make meaningful submissions to unbiased decision makers.

The Town of Humber Arm South in making its decision to issue the Order for removal of the Appellants residential home from his property failed to provide any level of procedural fairness to the Appellant. The Appellant had not been provided with any notice of the issues with his property or that a decision would be made with respect to his property and he was not provided any opportunity to be heard or to make submissions to the Town prior to the Town making its motion make the Order. As such, I am unable to confirm the Town's Order and the matter is hereby referred back to the Town Council of Humber Arm South for establishment of a fair procedure and reconsideration of this matter.

Order

As such, the Adjudicator orders that:

- 1) the Order for removal of the residential home from 39 Shoreline Road is hereby referred back to Humber Arm South Town Council for consideration and decision following establishment of a fair procedure for the Appellant to be heard and to make submissions to Council.

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 Regional Appeal Board 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 Corner Brook, Newfoundland and Labrador, this 19th day of February, 2025.



Lorilee A. Sharpe, Adjudicator

Urban and Rural Planning Act, 2000