URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : **15-006-091-040**

Adjudicator: Garreth McGrath

Appellant(s): David Earle

Respondent / Authority: Town of Harbour Grace

Date of Hearing: 18 June 2025

Start/End Time : 9:00 – 9:30

In Attendance

Appellant: David Earle

Appellant Representative(s): Sarah Clarke

Respondent/Authority: Town of Harbour Grace

Respondent Representative(s): Robert Bradley, Don Coombs, Amy Dwyer

Interested Party: Kimberley Parsons

Appeal Officer: Sarah Kimball, Departmental Program Coordinator, Municipal and Provincial Affairs

Technical Advisor: Setare Vafaei

Board'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 Harbour Grace Municipal Plan and Development Regulations when it issued a removal order for the deck located at 15-21 Woodville Drive, Harbour Grace (hereinafter the 'Subject Property').

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 Board 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 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 a removal order issued by the Town of Harbour Grace with a requirement that the deck be removed within 6 months of the order from the Subject Property. The Planner outlined the extended history behind the permit that was issued that was then overturned as part of a decision on 19 September 2024 that found that the Authority in granting a permit for repairs on the Subject Property had acted improperly. It was found that the Authority at that time did not properly assess whether the property interests of a sewer and water easement were properly engaged when the application was made as the "general repairs" in the interpretation of the Adjudicator were not general repairs, but rather development as defined in the Urban and Rural Planning Act because of a change in intensity of use. This required under the Authority's Municipal Plan and Development Regulations it to be treated as a development, which gave rise to the property interest of the water and sewer easement as grounds for the Authority to rescind their general repairs permit and instead issue a Removal Order as the deck was now seen as development after the decision of the Adjudicator on 19 September 2024. The Appellant in this matter also asserts that this interpretation that the deck was a development is erroneous because this interpretation was based on the distinction that only 15% of the deck had been removed when it was stated in the previous hearing that 65% had been removed.

The Authority then issued a removal order on 21 October 2024. This decision is what gives rise to this appeal today. There are no procedural defects in this application identified by the Planner.

<u>The Appellant's Presentation and Grounds</u>

The presentation of the Appellant focused on the position that the removal order of the Authority was unfair. It is the position of the Appellant that the request to remove the deck is not a correct order because the deck had already been built and that an application for repair had been sought, but reversed in a decision of Adjudicator Forbes on 9 October 2024 that led to this work being viewed as a development which the Appellant disagrees with but felt they did not have a proper opportunity to speak. After the decision of Adjudicator Forbes, the Appellant was issued with a removal order and required to remove the deck located at the Subject Property, which gave rise to this appeal.

The Appellant has requested that the Adjudicator make orders as to the recovery of the cost of the deck in the instance that the Adjudicator find that the deck must be removed. Unfortunately, this is not a power that the Adjudicator has, and as such I cannot consider such a remedy, nor order one if I did consider such a remedy.

Authority's Presentation

The Authority's presentation focused on the fact that while there was previous approval for the project when the deck was originally constructed, this approval was based on incomplete information. When the deck was originally submitted for construction approval, the Appellant was unaware that there was a utility easement across the property. In 2023, when an adjacent property to the Subject Property had water issues, the deck was removed to allow the adjacent property owner to get access to water and sewer lines that run across the Subject Property. Once the deck was removed, the Appellant then worked to repair the area, but after a repair permit was issued, an appeal was filed by the easement owner, and the work was stopped and subsequently the decision of Adjudicator Forbes was written. The Authority is now stating that the decision to issue the removal order was on the basis not that this was a repair that was being denied because it was viewed as a development, but that the original grant to build the deck in 2017 was improper and they are exercising their authority under Section 21(5) and (6) of the Authority's development regulations to now issue this removal order. The argument in essence is that had the application for the deck been filed in 2017 properly, the issue of the easement would have lead to the permit being denied.

Adjudicator's Analysis

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

Question/Answer .

Q: Does the determination of whether the work done constituted repair or development give grounds for the Adjudicator to reverse the order of the Authority?

In oral arguments and written submissions, the Appellant outlined that the matter decided by Adjudicator Forbes was incorrectly decided based on an incorrect statement of facts. Only 15% of the deck had to be repaired when it was the decision of Adjudicator Forbes was based on the information that 65% of the deck that had to be repaired, which then made the application not an application for a repair, but rather an application for a development in the opinion of Adjudicator Forbes. It is clear in the decision of Adjudicator Forbes, this played a key role. From page 6 of the decision of Adjudicator Forbes:

> In any event, and regardless of whether the work to the deck is to be characterized as a "repair" or a "replacement," it was of sufficient magnitude to constitute "the carrying out of operations on land" and/or "a material change in the use, or the intensity of use of land, buildings or premises." As such,

> it constitutes a “development” per the definition in section 2(g) of the Act and in the Development Regulations.

In determining whether this has an impact on the current decision, we must first consider whether the clarification of the amount of the property to be repaired will be determinative in this decision or will be a reason for the Adjudicator to interfere with the decision of the Authority.

First, the Adjudicator while not bound by the decision of Adjudicator Forbes, does not have authority to override the decisions made by another Adjudicator under the Urban and Rural Planning Act. An Adjudicator only has those powers granted to them under the act and the ability to appeal the decision of another Adjudicator is not a power granted to an Adjudicator. Had there been an appealable issue on an overriding error of fact such as there was only 15% instead of 65% of the property that had been repaired and thus this was properly a repair and not a material change in use that constituted a development, that would have to be heard by the Supreme Court of Newfoundland and Labrador on Judicial review. If such a review were granted, it would then give rise to Adjudicator Forbes to rehear the matter and issue a new decision on whether the determination of 15% or 65% would impact their decision. As such, the Adjudicator finds there is authority to differ on that factual finding of Adjudicator Forbes.

However, even if I were to accept that 15% was the proper percentage of the property to be repaired, and this is not a development, the appeal must fail for a second reason. When we look at the legislation that the Authority derives their power from, they are not pointing 2024 permit application as the reason why they are now issuing this removal order. The removal order and the 2024 application to repair essentially derive from two different sets of reasoning for their decision and why it matters. The 2024 application was denied as the decision from Adjudicator Forbes was that there was a material change to the Subject Property, and as such this should have properly been an application for development. The Removal Order derives its authority from Section 21(5) and (6) of the Authority’s development regulations:

> (5) The approval of any application and plans or drawings or the issue of a permit shall not prevent the Town from thereafter requiring the correction of errors, or from ordering the cessation, removal of, or remedial work on any development being carried out in the event that the same is in violation of this or any other regulations or statute.
>
> (6) The Town may revoke a permit for failure by the holder of it to comply with these Regulations or any condition attached to the permit or where the permit was issued in error or was issued on the basis of incorrect information.

The Authority, and it appears the Appellant from the record and oral argument, did not know in 2017 that the property adjacent to the Subject Property had an easement that ran across the

Subject Property and under the land that was the proposed location of the deck that would become a problem in 2023 for their neighbor. It was only at this time that the Authority would have a full picture of the property and the property interests that ran under the land. Because of this new information, the Authority issued a removal order, as the original permit to build in 2017 had become invalid because it was granted on the basis of incorrect information. It is unclear from the record if or when an easement agreement was put into place or made between the owners of the Subject Property and the adjacent property, but based on the lack of information the Appellant had of this easement, it is likely that it pre-dated the 2017 application to build the pool.

As such, the degree of repair to the property, and whether there was material change in intensity such as to make it development rather than repair, is moot for the purposes of this removal order. The Authority is enabled, as per their development regulations, to find that when incorrect information is submitted they are allowed to go back and revisit the permits that were incorrectly issued because of the incorrect information supplied. As well, from Section 5 of the development regulations, the Authority has authority to issue a removal order for any work that is completed that later is found to have been granted erroneously or on the basis of incorrect information.

As such I must find that the Authority had the power to issue the removal order, and their actions must be confirmed.

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 their authority and issued a valid discretionary removal order. As such the decision of the Authority is confirmed.

That is to say, the order as written can continue to be enforced and the Appellant must remove the deck in accordance with the Removal Order.

Order

The Adjudicator orders that the decision of the Town of Harbour Grace to be confirmed. The appeal by Mr. Earle is denied.

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 St. John's, Newfoundland and Labrador, this 21 August 2025.

Garreth McGrath

Adjudicator

Urban and Rural Planning Act, 2000