

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : **15-006-091-039**

Adjudicator: Garreth McGrath

Appellant(s): Kimberly Parsons

Respondent / Authority: Town of Harbour Grace

Date of Hearing: 18 June 2025

Start/End Time : 11:00 – 11:30

In Attendance

Appellant: Kimberly Parsons

Appellant Representative(s): N/A

Respondent/Authority: Town of Harbour Grace

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

Proponent/Developer: David Earle

Developer Representative: Sarah Clarke

Interested Party: David Earle

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, with the grounds for appeal being that the 6 month period granted to the Subject Property to remove the deck was unreasonable:

The Appellant's Presentation and Grounds

The presentation of the Appellant reiterated their written submission that they felt the 6 month period was unreasonable to have to wait to have the order enforced. It was their position that this period of time was causing them undue stress and hardship and that any order to remove this deck should have been immediately due to the possibility that they may need to again gain access to their utility easement for repair.

Authority's Presentation

The Authority's presentation presented that this was a discretionary decision of the Authority to decide what conditions to attach to a removal order. This also included discussion that the considerations that went into making this decision included such things as the time it took to construct the deck, as well as the time of year that the order was issued.

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: Is there any natural justice reason to override the decision of the Authority in making a discretionary decision as to uphold it would be unreasonable?

It is clear that it is not the position of the Adjudicator to substitute their own discretionary decisions with those of the Authority. From the Urban and Rural Planning Act, Section 44(2):

(2) Notwithstanding subsection (1), a decision of an adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator.

The only reason that an Adjudicator would have grounds would be in the case that there was some natural justice concern. In this case, the Authority attached a condition that the deck at the Subject Property was to be removed within 6 months. In oral submissions the Authority outlined various reasons for why they exercised their discretion to give a six month period for the order, including that it was issued right before the winter, and the time that it took to build the deck. It is not as though the Authority made a decision that the deck was to be removed within 100 years or some other period of time as to render their decision moot or patently unreasonable. Instead, the Authority outlined that they exercised their discretion to attach conditions to a removal order, a power granted to them by legislation, and one that is explicitly not to be interfered with by an Adjudicator under legislation. There is no ground for the Adjudicator to substitute their own decision and overturn the discretionary decision made by the Authority and I must confirm the discretionary 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 within their authority and issued a valid discretionary removal order. As such the decision of the Authority is confirmed.

Order

The Adjudicator orders that the decision of the Town of Harbour Grace to be confirmed. The appeal by Ms. Parsons 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 18 August 2025.

Garreth McGrath

Adjudicator

Urban and Rural Planning Act, 2000