

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : 15-006-091-049

Adjudicator: Clifford Johnston

Appellant(s): Shamus Traverse

Respondent / Authority: Town of Conception Bay South

Date of Hearing: October 10, 2025

Location of Hearing: Capital Hotel, Kenmount Road, St. John's

Start/End Time: 2pm to 4pm

In Attendance

Appellant: Shamus Traverse

Representative for Appellant: Daniel M. Glover, Solicitor/Partner, Law firm of Curtis Dawe

Respondent/Authority: Corrie Davis, MCIP, Director of Planning and Development, Melane Power, Development Control Coordinator, John Whelan, Planning and Development Manager

Interested Party: Laura Traverse

Appeal Officer: Sarah Kimball, Municipal Affairs and Community Engagement

Technical Advisor: Setare Vafaei, Planner, Municipal Affairs and Community Engagement

Adjudicator's Role

The role of the Adjudicator is to determine if the Authority, in the case of this appeal, the Town of Conception Bay South, acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Conception Bay South Municipal Plan and Development Regulations and the Conception Bay South Waste Disposal and Property Regulations, when it made a decision on January 21, 2025 to rescind the approval the Town had previously granted to the Appellant to operate a home based business from his property located at Civic No. 139 Tilley's Road. South, Conception Bay South.

Hearing Presentations

The following is a synopsis/summary of the verbal presentations made to the Adjudicator at the appeal hearing.

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 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 Affairs and Community Engagement 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.

At the appeal hearing, the Adjudicator heard the following verbal summary points from the Planner from the information included in the Technical Report prepared for the appeal prior to the appeal hearing. This Technical Report was distributed by the Appeal Officer to the Adjudicator, the Appellant and the Authority prior to the appeal hearing. The Technical Report is on file with the Appeal Officer.

*The property which is the subject of the appeal is zoned as Residential Medium Density (R2) under the Town's Development Regulations.

*In the Residential Medium Density (R2) Zone, the use of Home Occupations is listed as a discretionary use and Home Office falls under the broader category of Home Occupations based on the Town's Development Regulations.

*The Town of Conception Bay South has advised that the subject Home Based Business is intended to operate as an office for a contracting business. It was also noted that an accessory building and/or garage on the subject property would be used for the business.

*Section 10.9 of the Town's Development Regulations ("Classifications of Land Uses and Buildings") allows the Authority to interpret the classifications of land uses and determine whether the use is permitted, discretionary or prohibited in the applicable land use zone.

*On December 9, 2021, the Authority issued an approval-in-principle for the Appellant's Home Based Business subject to complying with conditions and subsequently, the Authority issued a permit on April 12, 2022 to the Appellant to operate a Home Office.

*The Planner's Technical Report provided a detailed chronology of the history of the Home Office prior to and subsequent to the issuance of the permit from the Town on April 12, 2022.

*The Town Council made a decision on January 21, 2025 to rescind the approval of the Appellant's Home Based Business in consideration of the non-compliance with conditions of approval regarding storage on construction materials and parking of commercial vehicles.

*The Technical Report report cited in detail,, the relevant sections of the Town's applicable planning legislation as it pertains to the subject property and the Appellant's appeal.

The Appellant's Presentation and Grounds

Prior to the appeal hearing, both the Appellant and his solicitor, provided detailed written submissions on the appeal. These submissions were provided to both the Adjudicator and the Authority prior to the appeal hearing and are on file with the Appeal Officer.

*At the appeal hearing, Mr. Glover led his client, Mr. Traverse, through a series of questions respecting his Home Office and Mr. Traverse's dealings with the Town of Conception Bay South prior to receiving the Town's approval for his Home Office and subsequent to the issuance of the approval and corresponding Permit.

*In summary, Mr. Traverse, verbally noted the following:

- (a) There are no business activities operated from the property.
- (b) His operations are primarily construction contracting off site.
- (c) There are five (5) adult drivers living at the property.
- (d) There is only one commercial vehicle on the property which requires a commercial inspection.
- (e) He never had an opportunity to speak to the Town Council before his approval was rescinded.
- (f) He is not sure how his business can comply with the Town's Permit and still operate.
- (g) Material stored on site is his own personal property and not related to the contractor business.
- (h) There are a number of non-residential activities taking place at other properties near his home.
- (i) He feels he is almost being "harassed" by the Town as there are always drive-by inspections.

*Mr. Glover then spoke to the appeal and summarized the key points in the written brief that he had filed with the Appeal Officer. He noted the following key points.

*The only commercial vehicle that Mr. Traverse regularly parks at his home is an industrial cube van. It is the only vehicle that requires a commercial inspection. This is allowed by the Town's Permit. All other vehicles featured in photographs provided by the Town are personal vehicles for the Appellant and his family members.

*Mr. Traverse has explained to the Town that he does not store roofing materials outside at his home.

*Mr. Traverse was not provided with the opportunity to make submissions to the Town Council contradicting the allegations against him prior to the revocation by the Town of his approval. The rules of natural justice and the duty of procedural fairness should apply in this case as the Town's actions have a serious impact on the Appellant's ability to earn a livelihood.

*The Appellant is left wondering how he can possibly comply with the restrictions that are being placed on him, which go beyond the requirements of the Town's own Development Regulations. The result is an unlawful prohibition rather than regulation.

*The Town has not adequately demonstrated that the conditions of the Permit have been violated in order to justify the revocation of the Town's approval and corresponding Permit.

Authority's Presentation

Prior to the appeal hearing, the Town of Conception Bay South submitted detailed information on the Appellant's application to operate a Home Based Business from the subject property and the events that occurred prior to and subsequent to the Town's decision to issue a Permit to the Appellant on April 21, 2022. This information was provided to the Adjudicator and the Appellant and his solicitor and the Adjudicator prior to the appeal hearing and is in file with the Appeal Officer.

Mr. Davis spoke on behalf of the Town. The following is a summary of his verbal comments to the Adjudicator.

*The Town issued an approval-in-principle for the Appellant's Home Office on December 7, 2021 with the conditions that only one (1) commercial vehicle could be parked at the property and that there would be no storage of construction materials at the property.

*The Permit for the Home Office was not issued by the Town until April 12, 2022. During that period between the Town Council's decision to grant approval-in-principle to the application and the issuance of the Permit, the Town explained to the Appellant what was required of him and the condition the subject property was required to meet before a Permit would be issued. On April 12, 2022, the Town visited the property and determined that the home based business operations did not contravene the Town Council's conditional approval. The Permit was then issued. The Town regards April 12, 2022 as a "baseline date" for the condition of and activities taking place at the subject property after the issuance of the Permit to the Appellant.

*Prior to the Town Council's decision of January 21, 2025 to rescind the approval, the Town staff were in ongoing contact with the Appellant to advise of complaints the Town had received about the property and business operations. The Town advised the Appellant that the subject home based business was in contravention of Town regulations and the conditions of his Permit. The Town sought compliance from the Appellant on an ongoing basis.

*The Town issued an Order on October 16, 2024 to the Appellant requiring all goods, materials and equipment be removed from the property within 14 days.

*The Appellant did not appeal the Town's decision of October 16, 2024 for the issuance of the Order.

*The Appellant did not request an opportunity to meet with the Town Council after the issuance of the October 16, 2024 Order.

*The Appellant has been given ample opportunity to dialogue with the Town prior to the Town Council's decision of January 21, 2025 to rescind the approval.

*The Town was not required to issue notice to the Appellant prior to the Town Council's decision of January 21, 2025 to rescind the approval.

-Section 4.12 of the Town of Conception Bay South Development Regulations authorizes the Town to revoke approvals/permits. This is a discretionary authority of the Town Council. There is no evidence to indicate that the Town Council has acted in abuse of this discretionary authority in making its decision to rescind the Appellant's approval.

*Under the provisions of Section 44(2) of the Urban and Rural Planning Act, 2000, an Adjudicator shall not overrule a discretionary decision of a municipal council.

Adjudicator's Analysis

In my role as the appointed Adjudicator, I have reviewed the Urban and Rural Planning Act, 2000, the Town of Conception Bay South Municipal Plan and Development Regulations and the Conception Bay South Waste Disposal and Property Regulations and have determined the following:

Question/Answer .

Q. Did the Town Council have the authority to issue a Permit to the Appellant for a Home Office at the subject property?

R. Yes. The subject property is zoned as Residential Medium Density (R2) under the Town's Development Regulations. In the R2 Zone, the use of "Home Occupation" is listed as a Discretionary Use and Home Office falls under the broader category of Home Occupation based on the Town's Development Regulations. Section 10.9 ("Classification of Land Uses and Buildings") authorizes the Town to interpret a proposed use and determine whether it is permitted, discretionary or prohibited in the applicable use zone.

Q. Did the Town have the authority to impose conditions for the operation of the Appellant's Home Office?

R. Yes. Section 4.6 of the Town's Development Regulations ("Discretionary Powers") provides that the Town may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse an application. This would apply to the Appellant's application including a restriction on storage on-site of contractor materials and the number of commercial vehicles allowed to park on the site.

Q. Did the Town have the authority to rescind its approval for the Appellant's Home Office?

R. Yes. Section 4.1 of the Town's Development Regulations ("Development Approval Required") stipulates that no person shall carry out any development within the Planning Area of the Town except as otherwise provided in the Regulations unless Development Approval for the development has been issued by the Authority. Section 4.1.2 of the Town's Development Regulations ("Compliance with Regulations") provides that development shall be carried out and maintained within the Planning Area in accordance with the Town's Municipal Plan, conditions stated in a Development Approval, and any other by-law or regulation enacted by the Authority.

Section 4.12 of the Town's Development Regulations ("Revoke Development Approval and Permit") provides that the Authority may revoke an approval and any subsequent permits for failure by the applicant or developer to comply with the Development Regulations or any condition attached to the permit or where the permit was issued in error or contrary to the applicable regulations, or was issued on the basis of incorrect information.

In reviewing the Town Council's decision of April 21, 2025 to rescind the Appellant's approval, it is noted by the Adjudicator that the Town Council had previously noted to the Appellant in its Order issued on October 16, 2024 to the Appellant to clear up his property and remove equipment, that Section 6.7.1(c) ("Home Occupations-General") of the Town's Development Regulation, notes that a home occupation is to be clearly subsidiary to the residential use, does not alter the residential character of the property and does not detract from the residential character of the neighborhood. Also, the Town in

its Order of October 16, 2024, noted that Section 6.72(c) ('Home Occupations in Accessory Buildings") of the Town's Development Regulations provides that activities associated with a home occupation carried out inside an accessory building, are to be not hazardous, to not cause a noticeable increase in noise, odour, dust or fumes, nor cause electrical interference or in any other way result in a nuisance to the occupants of surrounding residences. The references to these sections of the Town's Development Regulations in the October 16, 2024 Order issued to the Appellant, demonstrate that the Town had concerns respecting the apparent failure of the Appellant to abide by the conditions of his April 21, 2022 Permit.

The Town Council subsequently made a determination under Section 4.12 of the Development Regulations that the Appellant was not in compliance with the approval and corresponding Permit issued to him by the Town in respect to storage of materials on the site and the number of commercial vehicles parked on the site. Section 4.12 of the Development Regulations did not require the Town to notify the Appellant of Council's intention to discuss the possible rescinding of his approval for his Home Office at an upcoming meeting of the Council prior to having this Council discussion.

Q. What are the responsibilities of an Adjudicator respecting an appeal involving the discretionary authority of a municipal authority?

R. Section 44(2) of the Urban and Rural Planning Act, 2000 provides that notwithstanding Section 44(1) of the Act, that an Adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator.

Decisions of Adjudicator per the Urban and Rural Planning Act, 2000

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 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.

Adjudicator's Conclusion

After having reviewed the written and verbal information and representations presented to me by the Technical Advisor, the Appellant and his solicitor and the Town of Conception Bay South, as well as the applicable legislation, , I conclude in my role as the appointed Adjudicator for this appeal, that the Town of Conception Bay South had the authority under Section 4.12 of the Town's Development Regulations ("Revoke Development Approval and Permit") to rescind the approval for the Appellant's Home Office located at Civic No. 139 Tilley's Road South, Conception Bay South.

The Town determined in its discretion, that the Appellant was in non-compliance with the Town's conditions of approval regarding storage of construction materials and parking of commercial vehicles. The Town has demonstrated to the Adjudicator that it made a series of ongoing efforts to work with the Appellant to try to resolve the Town's concerns respecting the operation of the Appellant's Home Office prior to making its decision of January 21, 2025 to rescind the Appellant's approval.

The Town had the discretionary authority to rescind the Appellant's approval and has satisfactorily demonstrated to me that it applied this authority in a reasonable and proper fashion.

ORDER

The Adjudicator orders that the decision of the Town of Conception Bay South made on January 21, 2025 to rescind the approval previously granted to the Appellant on December 7, 2021 to operate a home based business at Civic No. 139 Tilley's Road South, Conception Bay South in consideration of the non-compliance with the conditions of approval regarding storage of construction materials and parking of commercial vehicles, be confirmed. The Appellant's appeal is thereby denied.

The Authority and the Appellant 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 and the Authority.

DATED at St. John's, Newfoundland and Labrador, this 14th day of October, 2025.

A handwritten signature in blue ink, reading "Clifford Johnston", is written over a horizontal line.

Clifford Johnston, Adjudicator

Urban and Rural Planning Act, 2000