

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-091-002

Adjudicator: John R. Whelan Q.Arb

Appellant(s): Matthew Lawlor

Respondent / Authority: Department of Digital Government and Service NL

Decision Dated: September 19, 2024

Date of Hearing: August 22, 2024 & September 17, 2024

Appearances:

No appearance – For the Appellant

Karen Tucker – For the Respondent

Re: Appeal of Matthew Lawlor against the Department of Digital Government and Service NL regarding the refusal of an application to develop a 12-unit apartment building.

I confirm the decision of Digital Government and Service NL. My reasons follow.

Procedural History

The Respondent received a preliminary development application to construct a 12-unit apartment building on the subject property which is located on the Southern Shore Highway (Route 10) on or about February 2, 2024. The Respondent forwarded the application to 10 referral agencies for recommendation and comment. Based on the recommendations received from referral agencies, the Authority refused the application and notified the Appellant of the refusal in writing on March 22, 2024.

On March 25, 2024 the Appellant remailed the Respondent about the decision to refuse.

On March 26, 2024, the Respondent advised the Appellant, among other things, that the information regarding the appeal process was outline in the decision letter that had been provided on March 22, 2024.

On April 11, 2024 the Appeal was received by the Secretary for the Regional Appeal Boards.

On August 22, 2024 at 0900 the Appeal was called by the undersigned. The Appellant did not appear at the hearing. Calls were made to the Appellant by both the undersigned and Robert Cotter to see if the Appellant would be attending. No response was received.

The decision was made to postpone the appeal until September 17, 2024 to ensure that the Appellant had the ability to participate. Additional correspondence was transmitted to the Appellant via email and registered mail. No response was received from the Appellant.

This matter was called at 0930 on September 17, 2024. The Respondent was represented at the hearing. The Appellant did not attend the hearing. The matter was adjourned, and I reserved decision based on the written submissions of the parties.

Grounds of Appeal

In his appeal submission, the Appellant relied on the following grounds of appeal:

- A) *Will build the housing and it will have its approved septic field and artesian well. There are currently housing units for affordable homes have the same setup in the Town of Bay Bulls. Many buildings have this type of setup.*
- B) *Will move the housing unit outside of the wetland area. The land had been already approved in the past by gov't to build a building on it. We need to remove "red tape" and allow this affordable house development to proceed.*
- C) *Land approved for a building.*

Basis for Refusal

In its refusal letter of March 22, 2024 the Respondent noted:

- a) *The proposed site is within the building control lines of the Southern Shore Highway Protected Road Plan in a mixed zone. Apartment buildings may only be permitted where both municipal septic and water supply are in place...*
- b) *The proposed site is within a wetland area (see attached image for reference)....*
- c) *The grant issued to you for CL 1237855 specifies that it can only be used for storage as you originally proposed.*

Analysis

Technical Impediment to the Appeal

Section 41(3) of the *Urban & Rural Planning Act, 2000* states:

(3) An appeal made under this section shall be filed with an appeal officer not more than 14 days after the person who made the original application receives the decision.¹

The Respondent advised the Appellant of its decision on March 22, 2024. The Appellant wrote the Respondent at 903am on March 25, 2024 stating:

Government has approved the 12 unit affordable housing and this red tape is ridiculous.

I am planning on spending a million dollars to provide 12 affordable housing units and all of this is a way to make this more difficult.

This needs to be overturned and approved asap. Can you please provide the minister name responsible?

Thanks

Matthew Lawlor

However, on the appeal filing, the Appellant states that he became aware of the decision on April 2, 2024.² I can find no basis within the materials provided by the Appellant to ground this claim. The Appellant had responded in writing to the March 22, 2024 notification. Based on a March 22, 2024 notification date, the Appellant's April 11, 2024 filing date is outside of the timeline established by s.41(3) of the Act.

I find that I would have the authority under s.43(4) of the Act to dismiss this appeal. Section 43(4) of the Act states:

(4) Where an adjudicator determines that the subject matter of an appeal is not within the jurisdiction of the adjudicator under section 41, the adjudicator may dismiss the appeal without holding a hearing.³

Accordingly, I find that I do not have jurisdiction to hear this matter as the Appellant failed to file his appeal on a timely basis.

However, I will continue my analysis in the event that I have made an incorrect calculation of time under s.41(3).

Failure to Articulate a Ground of Appeal

The Appellant relied on three grounds of appeal. First, that the adjacent municipality had allowed similar developments without water/sewer service. Second, that he would move the proposed building away from the wetland area. Third, that the subject property had already been approved for a building to be built. I will quickly deal with each ground.

The Appellant provided no evidence to support his assertion that an adjacent municipality allowed a similar development. Further, even if such evidence was provided, it is not relevant to his appeal. The requirement for the site to have water/sewer service is clearly articulated by the Province and does not

¹ *Urban and Rural Planning Act, 2000*, SNL2000 c. U-8, at s.41(3).

² See Appeal Package at page 22.

³ *Supra*, at note 1 at s.43(4).

exist at the subject property. The first ground of appeal is not relevant to the determination of whether the Respondent properly exercised its authority to refuse the application. Consequently, I dismiss it.

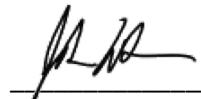
The Appellant's second ground of appeal is essentially a tacit admission that his application was non-compliant. It does not articulate any basis upon which the Respondent failed to properly consider the Appellant's application. The argument may well form the basis upon which the Appellant submits a fresh application for consideration by the Respondent, but it does not support the appeal of the decision currently at issue. Consequently, I dismiss it.

The Appellant's third ground of appeal is that he already received approval to erect a building on the subject property. As noted in the March 22, 2024 refusal letter, the Appellant was authorized to construct a storage building on the property. I take the distinction between a storage building and a 12-unit apartment building as self-evident. Approval for one does not equate to approval for the other. The third ground of appeal does not establish any basis upon which the Respondent failed to properly consider the Appellant's application.

Accordingly, I find that the Appellant failed to establish any basis upon which I am required to assess the legitimacy of the Respondent's March 22, 2024 refusal. Accordingly, the Respondent's decision is confirmed.

The Appellant was not successful in his appeal. Therefore, he is not entitled to repayment of his filing fee under s.45(2) of the Act.

Signed at City of St. John's, this 25th day of September, 2024.



John R. Whelan Q.Arbitrator