

URBAN AND RURAL PLANNING ACT, 2000**Section 40-46**

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

Appeal #: 15-006-091-048
Adjudicator: Chris Forbes
Appellant: Farrell's Excavating Ltd.
Respondent/Authority: Town of Conception Bay South
Date of Hearing: October 10, 2025
Start/End Time: 9:00 a.m. – 12:00 p.m.

In Attendance

Appellant: William Farrell, Farrell's Excavating Ltd.
Kyle Thibeault, Farrell's Excavating Ltd.
Counsel for the Appellant: Sarah Clarke
Respondent/Authority: Corey Davis, Director of Planning and Development
Town of Conception Bay South
Counsel for the Authority: Alex Templeton
Interested Party: Roland Anthony
Appeal Officer: Sarah Kimball
Local Governance and Land Use Planning
Municipal and Provincial Affairs
Technical Advisor: Setare Vafaei, Planner III
Municipal and Provincial Affairs

Adjudicator's Role

Part VI of the *Urban and Rural Planning Act, 2000* (the “Act”) 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* and the *Town of Conception Bay South Municipal Plan and Development Regulations 2011-2021* (the “Development Regulations”) when it refused the development application of the Appellant to develop a quarry at the southern end of Red Bridge Road on December 17, 2024, pursuant to Resolution #24-522.

Technical Advisor

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness as outlined in the *Appeal Board (Rules of Procedure) Order, 1993*. Section 10 of that Order reads:

10. The Hearing will proceed in the following manner:

- (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 in effect, ...

At the hearing, the Technical Advisor outlined a report she authored dated August 18, 2025 (the “Technical Report”).

The Technical Advisor began her presentation by reviewing the chronology set out at pages 4-5 of the Technical Report.

She then noted the definition of “development” found in section 2(g) of the *Act*. She confirmed that the Property was designated “Rural” under the Authority’s *Municipal Plan* and zoned “Rural (R)” under the *Development Regulations*. The proposed quarry is classified as a discretionary use under the “R” zone.

Policy 5.6.3 of the *Municipal Plan* outlines that pits and quarries can be allowed in rural zones, but only in small scale and only if they do not turn into large open pit sites, unless the land is zoned specifically for mineral working. The Technical Advisor noted that, according to the Authority’s submissions, the proposed quarry will increase open pit quarrying in the general area which is contrary to the intent of the *Municipal Plan* Policy set out in Section 5.6.3(1).

The Technical Advisor went on to state that section 10.7 of the *Development Regulations* sets out the requirements for the Authority to consider discretionary uses. The development must generally meet the intent and purpose of the *Municipal Plan* and *Development Regulations* and must not be contrary to the public interest and the Authority must advertise the application and consider any objections or representations received on the matter. She also reviewed the requirements in the *Development Regulations* for public notice.

The Technical Advisor confirmed that, during the public notice period, the Authority received several written submissions and a petition signed by residents in response to the proposed quarry. The feedback reflected community opposition, with various concerns raised by members of the public including increased heavy equipment traffic, pedestrian safety, dust and noise, road damage, and proximity to recreational facilities and schools.

The Technical Advisor referenced section 10.27.5 of the *Development Regulations*, which outlines specific requirements for mineral workings within the Rural (R) Land Use Zone. In this regard, according to the submission materials, the proposed quarry (which is comprised of bedrock) is located approximately 875m from Red Bridge Road and 880m from the nearest residential property, which is

less than 1,000 metres from the existing residential development. The Technical Advisor noted that, as such, the proposed quarry does not meet the minimum separation distance required for bedrock quarries involving drilling and blasting.

The Technical Advisor also referred to sections 4.1 and 4.2 of the *Development Regulations*, which prohibit development except in accordance with those *Regulations*. The Authority has the discretion to refuse a development application under section 4.6 of those *Regulations*.

According to the submission materials, the Authority's Planning and Development Committee, in a meeting held on December 9, 2024, recommended to refuse the Appellant's application. On December 17, 2024, Council for the Authority adopted resolution #24-522 to refuse the development application. The Authority notified the Appellant of the decision to refuse the development application on December 20, 2024.

The Technical Advisor stated that the refusal letter from the Authority cited Section 10.7 and 10.27.5 (b) of the *Development Regulations* as the reason for refusal stating that "the proposal is contrary to public interest and is proposed to be located within 1,000m of existing residential development".

Appellant's Presentation and Grounds

Counsel for the Appellant noted the two grounds upon which the Authority had based its refusal for the proposed quarry – namely, that the proposed quarry would violate section 10.27.5 of the *Development Regulations* by being less than 1,000 metres from an existing residential development, and would not be in the public interest. She submitted, however, that another construction company received approval from the Authority for a quarry in the same general area despite being even closer to an existing residential development.

During his testimony, Mr. Thibeault confirmed he acted as office administrator for the Appellant company, working with permits, doing job costings, etc. He was involved with the permit process in issue. He confirmed that the proposed quarry would operate on Crown land and it was proposed that the new quarry would operate for more than ten years. He indicated that the quarry would be in relation to sand and gravel and the operation would involve drilling and blasting.

Mr. Thibeault discussed "normal practice" involving referral agencies when a quarry is anticipated to be too close to existing residential developments and how they usually work with the proposed developer and request a re-submission that is consistent with required boundaries. In this case, there was no such discussion.

He discussed the fact that, subsequent to the rejection of the Appellant's application, approval was given to a company named Platinum Construction to operate a quarry in the same general area. The quarry operated by this company already exists and has been operated for many years (whereas the Appellant's quarry would be "new").

On cross-examination, Mr. Thibeault confirmed that, if the proposed quarry proceeded, it would involve excavation using heavy equipment, grubbing, clearing, etc. and that access to the site would be needed via Red Bridge Road. This would be in addition to use of the road that is already occurring due to the existing quarry.

Mr. Farrell also testified. He is the sole owner of the Appellant company. He discussed the quarry (not owned by the Appellant) that exists between the area in which the Appellant proposes to develop its quarry and the closest residential development, to the north of the existing quarry. He commented that quarry permits must be renewed annually and that the operator of the existing quarry (Sun Construction) must have forgotten to renew the permit for that quarry, which lapsed. This had the effect of requiring the operator to go through the permit application process again anew. Sun Construction, though, did not bring an application to the Authority; instead, the application was brought by a different company, Platinum Construction. He understands that the principals behind the two companies involved with the existing quarry are family members.

Mr. Farrell confirmed that there are times when no one goes into or uses the existing quarry, but there are other times when that quarry will be used for weeks at a time (depending if the company operating the quarry has a job).

He indicated that Sun Construction was not permitted to assign or transfer its permit to another company. Platinum Construction had to apply itself.

Mr. Farrell discussed the fact that the time between when Platinum Construction applied for its permit and had the matter referred out to "referral agencies" was less than a month (according to an online provincial database), whereas it took eight months for this to occur with the Appellant company.

He indicated that, when Platinum Construction's permit application came up for consideration by Council for the Authority, nine letters of opposition had been received in relation to it, as well as a petition opposed to it. Council approved Platinum Construction's permit all the same.

Mr. Farrell discussed the fact that Deputy Mayor Gosse abstained from the vote at Council, as her husband owns Platinum Construction.

He indicated that, had the Authority worked with the Appellant, the Appellant could have revised its application to accommodate the boundary issues.

On cross-examination, Mr. Farrell clarified that the shorter timeline followed by Platinum Construction in obtaining its permit was in relation to its dealings with the Province rather than the Authority. He also agreed that Platinum Construction's process was in relation to an existing quarry, whereas the Appellant's process was in relation to a new quarry.

He confirmed that the boundaries of the proposed quarry for the Appellant were within the 1,000 metres, as outlined by the Technical Advisor. He also confirmed that, even if the Appellant revised its proposal for the quarry to accommodate the boundary requirements, it would still have to use Red Bridge Road to access the quarry.

In relation to the involvement of Deputy Mayor Gosse, Mr. Farrell indicated that she did not recuse herself from discussions regarding the Appellant's development application. However, when presented with the minutes of the meeting of Council at which the application was considered, he noted the statement in those minutes confirming that Deputy Mayor Gosse declared a conflict with the application on the basis she was involved with a company that held a quarry license near the one proposed by the Appellant.

Mr. Farrell indicated that, notwithstanding the minutes, he was aware Deputy Mayor Gosse had had discussions with other Councilors in relation to the Appellant's application. He also stated that the minutes were inaccurate because the application of Platinum Construction came up two weeks later for consideration.

During her closing presentation, counsel for the Appellant indicated that municipal discretionary decisions must be within the bounds of the law, that is they must be made in good faith and without discrimination. Municipal powers must be applied in a consistent and non-arbitrary manner. When two entities seek the same or substantially similar relief in materially similar circumstances, they are entitled to be treated similarly unless there is a legally valid distinction between them. The subsequent approval of the Platinum Construction quarry, which is more proximate to a residential development, directly undermines the stated reasons for refusal in the Appellant's case. Bias and appearance of bias must be avoided. She submitted that, in this case, the Authority had not offered a coherent reason for the different treatment afforded the Appellant as compared with Platinum Construction.

She asked that the decision of the Authority be remitted back to it for reconsideration in accordance with applicable legal principles.

Authority's Presentation

Mr. Davis testified on behalf of the Authority. He has been the Director of Planning and Development with the Authority since 2017.

In relation to the Appellant's development application, Mr. Davis confirmed that a public notice was properly issued and published for the application. Normal practice would have been to mail a notice to residents within 100 metres of the boundary of the proposed development; however, there were no residents within that distance. Regardless, it did mail the notice to some local residents all the same.

Various responses were received from the members of the public citing various concerns and indicating opposition to the proposed quarry. As a result, a Direction Note was prepared by the Authority that summarized the input from residents. The specific concerns are referenced in the Appeal Package for this particular matter.

He confirmed the designation of the area in question as "Rural" and that operation of a quarry in the area is designated a discretionary use. Mr. Davis reviewed the analysis undertaken by his Department in relation to the Appellant's application. He confirmed the Authority's understanding that, if either of the issues raised (contrary to the public interest or within 1,000 metres) were upheld, the development application of the Appellant would fail.

According to Mr. Davis, at the Development and Planning Committee meeting on December 9, 2024, Deputy Mayor Gosse declared a conflict and left the meeting during discussion of the Appellant's application. The application was subsequently brought to Council for approval and again, Deputy Mayor Gosse recused herself. He also confirmed that the minutes of the Council meeting accurately reflected what occurred at that meeting.

On cross-examination, Mr. Davis indicated that once the Authority approves a quarry, that approval remains indefinitely. He indicated Council has an ongoing concern regarding quarry development in the area and has requested that the Province undertake a study of the issue, but this has not occurred.

When asked why Council had viewed Platinum Construction's application as not being contrary to the public interest, Mr. Davis indicated that Council had viewed the quarry that was the subject of that application as having existed for many years and that the application was in essence one merely to recognize a change in ownership.

In his closing submissions, counsel for the Authority referenced the extensive case law in this Province with respect to discretionary decisions of municipal bodies. He referenced sections 4 and 10.7 of the *Development Regulations*, which granted the Authority the discretion to decide the Appellant's development application. He also referenced the fact that the application did not meet the minimum separation distance specified by section 10.27.5(b).

Lastly, I note the Authority's written submissions that were provided prior to the hearing. I have reviewed those submissions in preparing this decision.

Interested Parties' Presentations

Mr. Anthony lives in the neighbourhood of the area that is the subject of the proposed query. He raised a variety of concerns with the proposal, many of which were similar to the general concerns submitted by local residents to the Authority as part of its consideration of the Appellant's development application, but these were irrelevant to the issues before me.

Analysis

Did the Authority Have the Discretion to Refuse the Application of the Appellant?

Yes.

As the Technical Advisor noted, the subject property at Red Bridge Road is designated "Rural" under the *Municipal Plan* and is zoned "Rural (R)" by the *Development Regulations*. The permitted and discretionary uses for that zone are found in section 10.27 of the *Development Regulations*. In the "R" zone, the proposed quarry is classified as a discretionary use under "mineral working."

Section 10.7 of the *Development Regulations* sets out the requirements for the Authority to consider discretionary uses. I note in particular that such uses may be permitted "if the Authority is satisfied that the development would not be contrary to the general intent and purpose of [the] Regulations [or] the Municipal Plan ... and to the public interest ..."

It is therefore clear the Authority had the discretion to refuse the Appellant's development application. The question is therefore whether this discretion was exercised in accordance with its *Municipal Plan*, *Development Regulations* and applicable law.

Was the Discretion of the Authority Exercised Properly?

Yes.

In *Paradise (Town Council) v. Newfoundland and Labrador (Eastern Regional Appeal Board)*, 2010 NLTD 116, the Supreme Court of Newfoundland Trial Division said that “deference is to be shown to decisions of municipal authorities, and this would be particularly so where the authority is exercising its discretionary powers.” The Court went on to say that a decision of a municipal authority, when it is “acting in the exercise of its discretionary powers,” can only be overturned “where it is demonstrated that without question the municipal authority acted in excess of those powers” (see para. 27). The *Paradise* case sets out a variety of situations in which a municipal authority will be deemed to have exceeded its powers, including where there is evidence of misconduct on the part of the town council, when there is evidence of improper motive or illegality on the part of a council, or where there is a failure on the part of the council to understand a request.

The essence of the Appellant’s argument appears to be that like cases should be treated alike, and that the approval by Council for the Authority of the subsequent application of Platinum Construction to operate a quarry in the general area of the subject property is, in and of itself, evidence the Authority “acted in excess of [its] powers.” Further, Mr. Farrell seems to imply some impropriety on the part of Council in the way it considered the Appellant’s application that is rooted in the fact that Deputy Mayor Gosse has connections with Platinum Construction. I will deal with each of these two arguments in turn.

With respect to the first argument, I do not agree that the two cases are alike, for several reasons. First, the development application of the Appellant relates to a new quarry, while the application of Platinum Construction relates to an existing quarry. It is clear from the evidence of Mr. Davis that this was taken into consideration by the Authority, which treated the application of Platinum Construction as a transfer of ownership as opposed to an application to develop a new quarry. I appreciate that, as pointed out by Mr. Farrell, legally speaking the Platinum Construction application was a “new” one insofar as the permit of the previous owner had lapsed. The fact remains however that it is reasonable for Council to view a new quarry at least somewhat differently than an existing quarry, and consider different factors as a result (for example, much was made during the hearing of the extra traffic and heavy equipment that would use Red Bridge Road as a result of the development of the new quarry, which would be in addition to the current level of use of the road for existing quarries).

Second, the argument that like cases should be treated alike ignores, in this particular case, the impact of a quarry development in a general area where another quarry or quarries already exist. This concern is reflected in Policy 5.6.3 of the *Municipal Plan*, which states that quarries can be permitted in rural zones, but only “on a limited scale where they will not lead to the development of extensive open pit areas.” In other words, it is not offside the *Development Regulations* for Council to consider the impact to an area of adding new quarries where other quarries already exist. In fact, the combined effect of Policy 5.6.3 and section 10.7 of the *Development Regulations* is, in my view, that the Authority is required to at least consider the fact quarries already exist when determining whether or not to permit new quarries in the same general area.

Third, even if the Appellant’s application and the application of Platinum Construction could be regarded as being “similar,” and I do not find this to be the case, the fact remains that the Authority must exercise its discretion based on the facts before it within the context of a specific application and cannot simply

approve or refuse applications based on what it has done before or what it might do after. Each application must be considered on its own merits. To that end, the discussion around the Platinum Construction application is not relevant. There is no evidence before me in relation to how Council reached its decision in that case and I cannot infer impropriety simply because the outcome of that application was different than in the Appellant's case.

With respect to the issue of Deputy Mayor Gosse's involvement, I do not find any impropriety occurred. The documents supplied by the Authority, and the testimony of Mr. Davis, confirm that Deputy Mayor Gosse recused herself from discussions of the Development and Planning Committee in relation to the Appellant's application and later also recused herself from the Council vote on that application. Mr. Farrell indicated during his evidence that he had heard Ms. Gosse had had discussions with other Councilors about the Appellant's application, and also indicated that the minutes of the Council meeting in question were wrong; however, on this particular issue I prefer the evidence of Mr. Davis as it is consistent with the documentation provided. If the minutes were in fact incorrect, or if Deputy Mayor Gosse had been involved with the Appellant's application to the extent argued by Mr. Farrell, I would have expected some corroborating evidence in that regard.

Lastly, I note no evidence was put forward indicating that the Authority's actions fell within any of the types of excesses of authority listed in the *Paradise* case (such as illegality on the part of Council or a failure on the part of Council to understand the request).

The Authority was permitted to refuse the Appellant's development application if it determined that the proposed development was not "in the public interest." It was reasonable for the Authority to conclude it was not in the public interest, particularly in light of community opposition to the development. The Authority was also permitted to refuse the development application if it determined that the proposed development was inconsistent with the intent and purpose of the *Development Regulations*. Since the proposed development would have been contrary to section 10.27.5 of those *Regulations*, it was reasonable for the Authority to base its refusal on this ground.

For all of these reasons, I find the exercise by the Authority of its discretion to refuse the Appellant's development application was reasonable and within its discretionary powers.

Decision of the Adjudicator

As Adjudicator, I am bound by section 44 of the Act, which states:

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.

Order

The Adjudicator orders that the decision of the Authority to refuse the development application of the Appellant to develop a quarry at the southern end of Red Bridge Road on December 17, 2024, pursuant to Resolution #24-522, be confirmed.

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 the 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.

DATED at St. John's, Newfoundland and Labrador, this 31 day of October, 2025.

Christopher Forbes
Adjudicator
Urban and Rural Planning Act, 2000