URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #:	15-006-091-019
Adjudicator:	John R. Whelan Q.Arb
Technical Advisor:	Satare Vafaei
Appellant(s):	Howard Howell
Respondent / Authority:	Town of Sandringham
Appearances:	
For the Appellant:	Patrick Cameron & Jeremy Gillam
For the Respondent:	Gregory Pittman, K.C.

Decision Dated: April 16, 2025

Re: Refusal of a permit for a pitch and Putt Golf Course at 47-51 White's Boulevard, Sandringham.

Procedural Background

On October 24, 2022, the Appellant attended Council meeting and presented plans for "Howell's Hideaway" at 47 – 51 White's Blvd (the subject property) included cabins, 10 RV sites, and recreational facilities such as, a pool & slide, climbing set, swings and mini golf.

On May 16, 2023, the Authority received a development application which included cabins, trailer lots, and a 9-hole, par 3 golf course. On June 13, 2023, the Authority received a revised development application for 4 duplex cabins, 20 trailer sites, and a par 3, 9-hole golf course.

On June 26, 2023, a group of concerned citizens presented at the Council meeting a petition with 114 signatures opposing the development due to various concerns (traffic concerns, noise concerns, environmental concern). Council passed Resolution#2023-044 to cease issuing commercial permits until a town plan was developed.

On November 20, 2023, at a Council Meeting, it was confirmed that "Howell's Hideaway" continued advertising the pitch and putt on social media without an official permit.

Consequently, Resolution #2023-091 was passed to issue a stop-work order due to the absence of council approval. However, discussions with Municipal Affairs revealed that Section 404(1) does

not consider landscaping activities like a pitch n' putt as requiring a stop-work order, so no order was issued.

On December 11, 2023, the Appellant emailed Council, indicating the pitch and putt was developing for private use until council approved its public operation. On June 26, 2024, the Appellant contacted Council requesting an appropriate application form for the pitch and putt.

On July 3, 2024, the Appellant submitted an application for the pitch and putt, indicating that Government Services required only a portable bathroom on site. On July 16, 2024, Council did not receive formal confirmation of this requirement from Government Services.

On July 17, 2024, Council contacted Government Services to clarify the requirements for operating the pitch and putt. An email response from Government Service confirmed that a pit privy was acceptable for basic operation, with portable washrooms suitable for special events. To date, no formal approvals have been issued by Government Services.

On July 22, 2024, Council passed Resolution#2024-076 to deny the development of operating pitch and putt, based on the fact that 70% of the community was against the development.

On July 23, 2024, Council notified the Appellant via email about the refusal decision. The Appellant was notified via email which stated:

> *Hi Howard,*
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> *Your request for a Permit for a pitch n' putt golf course was reviewed at last night's council meeting. The application was denied based on the fact that over 70% of the community is against it.*
>
> *As per our telephone conversation, I have spoken to Deputy Mayor Chris Bull and councilor Glenn Arnold and they would like to meet with you tomorrow at 4:30.*
>
> *Regards,*
>
> *Audrey*

On July 24, 2024 the Appellant filed the appeal herein.

Grounds of Appeal

The Appellant argues that the Town acted arbitrarily and without authority in denying the permit without reasoning or justification.

Further, the Appellant argues the absence of development regulations from the Town means there is no justification and/or authority for a permit denial.

Finally, the Appellant argues that the absence of rules or regulations means that the Town does not have the administrative capacity to arbitrarily deny Mr. Howell's permit outright.

Position of the Appellant

The Appellant noted that the Town does not have a municipal development plan or regulations in place.

The Appellant argued that absent municipal development regulations, the Town ought to have provided broad rights to the Appellant for the construction of his pitch and putt golf course. Counsel for the Appellant suggested that if the use of land for a pitch and putt was not denied by regulations, then the Council was obligated to approve the submitted application.

The Appellant noted that the Permit Application provided by the Town does not provide sufficient room for detailed information to be provided in relation to the application. The Appellant argued that the Application was completed to the best of his ability while complying with the space restrictions on the form.

The Appellant argues that the Town's reasons for denial, specifically that "70% of the community is against is" was improper. Specifically, the Appellant argues that he was provided no opportunity to address the alleged concerns of residents, was not provided an opportunity to review the information allegedly against him, and was not provided with the opportunity to address Council prior to the decision being made.

The Appellant argued that the Town required planning permission from provincial government entities, but the Appellant stated that he was unable to get those permissions without an approval-in-principle from the Authority. The Appellant essentially argued that the Authority had placed him into catch-22 scenario where they withheld approval pending receipt of permissions that could only be obtained when approval had been granted.

The Appellant noted that he was only provided a vague description of the rationale for the denial of his permit via email, and the notification did not include information regarding the right to appeal the decision.

In support of its position, the Appellant directed me to consider the decision of the NLCA in *St. John's Roman Catholic School Board v. Wabana (Town).*[1] In *Wabana,* the NLCA was considering an appeal on a Trial Decision dismissing an application for mandamus where the Town of Wabana had denied the School Board's permit request to build an addition on the school.

In 1979 the School Board submitted a permit application to expand the local school. The Town replied to the application stating that it required additional information and wanted to meet with multiple stakeholders prior to granting a permit.[2] After some back and forth between the parties, the Town denied the application "due in part to the adverse public reaction…to the proposed extension."[3]

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[1] 1982 CarswellNfld 35 (*Wabana)*.
[2] *Wabana*, at para 2-3.
[3] *Ibid.,* at para 12.

Mifflin C.J.N. characterized the essential issue on appeal as "whether or not the Council's refual to issue the building permit was in accordance with its powers through regulations properly made under the provisions of the Local Government Act."[4]

Mifflin C.J.N., eventual concluded that

> *With respect, I do not agree that the Council properly exercised its legislative powers. Indeed, its legislative powers were to make general rules and regulations in accordance with The Local Government Act 1949 and it did not do. It has no regulations and, without them could not act in an administrative capacity to deny the permit.*[5]

Mifflin C.J.N. further noted:

> *It is undoubtedly commendable that Council tried to find out if individuals would be adversely affected by the extension of this building, but the actions of Council cannot be determined by public reaction unless it is relevant to Council's obligations and powers. There can be little doubt that public reaction is what caused Council to reassess its position, and was the governing factor in motivating Council to reject the application for a permit. Council sought to justify this rejection on the basis of a presumed discretion…*[6]

The Appellant also directed me to consider the decision of Goodridge J. in *Clarke's Trucking and Excavating Ltd. v. Paradise (Town)*.[7] In *Clarke's Trucking*, Goodridge J. was considering whether a Regional Appeal Board had erred in declaring an appeal invalid because of technical deficiencies in the appeal form. Clarke's Trucking had submitted an appeal form with the grounds of the appeal form being incomplete. The Town had waived the requirement to provide grounds of appeal in advance of the hearing, but the Regional Appeal Board ruled that the appeal was dismissed because the appellant had not properly completed the form by failing to include its grounds of appeal.

After reviewing the statute, the general *de facto* practice expectations of administrative bodies in the province, and cases involving post filing amendment to grounds of appeal, Goodridge J. concluded that:

> *[26] The statutory requirement under section 42(5)(b) of the URPA, requiring an appellant to set out grounds of appeal within the 14-day initial filing period, exists for the sole benefit of the responding party. It can be waived by the responding party without impacting the Board's jurisdiction to hear an appeal. The Town waived compliance with section 42(5)(b) and under the circumstances the filing of the Appeal Summary Form with the required fee was adequate compliance with the URPA. Section 6(5) of the Development Regulations is not engaged.*

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[4] *Ibid.,* at para 17.
[5] *Ibid.,* at para 28.
[6] *Ibid.,* at para 37.
[7] 2015 NLTD(G) 51, 2015 CanLII 20033 (NLSC) (*Clarke's Trucking*)

[27] Pursuant to section 46 (4) of the URPA, I find that the Board erred in declaring the appeal to be invalid. The order of the Board is vacated and the Board shall proceed with a hearing of the appeal.

Position of the Authority

The Authority acknowledged that it had no development regulations but argued that the absence of development regulations does not negate its discretionary authority.

The Authority argued that while the provided refusals were admittedly somewhat sparse, the Appellant would have been aware of the concerns with the developments given the correspondence and discussions that had occurred between the Town, members of Council, and the Appellant.

The Authority noted that through the application process, the Appellant changed the overall site plans on multiple occasions. The Authority described the information received by the Town from the Appellant as unclear, lacking specifics on water, exits, sewer, etc.

The Authority notes that while the Appellant was not provided with expanded reasons in the notification of permit refusal, the Authority did have counsel draft an extensive letter to the Appellant outlining the nature of the concerns held by Council. The Authority acknowledged that this letter was transmitted Without Prejudice and several months after the July decision was made by the Town to reject the application.

Analysis

I will note at the outset that the Town of Sandringham is only of the many municipalities in the province of Newfoundland & Labrador with a very small population of residents. Information provided at the hearing suggested that the Town numbers fewer than 150 full-time residents. It is understandable that some of the municipal functions of a Town would be difficult to meet with such a small tax base. However, scarcity does not equate to exemption and the Town of Sandringham is not absolved from its obligations to meet both the legislative requirements placed on municipalities in the Province, nor the legal obligations placed on the discretionary decisions of public bodies.

During the hearing, I asked counsel for both parties to consider whether the process followed by the Authority was compliant with its procedural fairness obligations to the Appellant. The Appellant argued that the Town had failed in its duties to comply with the obligations of procedural fairness. I concur.

While not cited by the parties, I am guided by the analysis of Chaytor J., in *CareGivers Inc. (Blue Sky Family Care) v. Newfoundland and Labrador (Central Newfoundland Regional Appeal*

Board).[8],[9] In that case, Chaytor J. was considering the refusal by a Regional Appeal Board to consider whether the Town of Grand Falls Windsor had complied with its procedural fairness obligations when making a decision to revoke a permit. Chaytor J. noted:

> *[19]* ***It is correct that, pursuant to the Act, if the decision appealed from is a discretionary one the Board cannot make another decision that overrules the Town's decision. The Act does not go so far, however, to preclude the Board from considering and ruling upon whether the process followed in reaching a discretionary decision was in accordance with the principles of natural justice.*** *As noted in Moreau-Bérubé v. New Brunswick (Judicial Council), 2002 SCC 11, the duty to comply with the rules of natural justice and to follow rules of procedural fairness extend to all administrative bodies acting under statutory authority. In my view, it was incumbent on the Board to ensure that the Town's process was such that procedural fairness was afforded to both parties.*
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> *[20]* ***Absent clear statutory direction, deference is not owed to the Town on issues of procedural fairness. The discretion bestowed upon the Town regarding its process, does not relieve it from abiding by the principles of natural justice.*** *The Board had the authority to review the process adopted by the Town for procedural fairness and should have done so.* ***It was not sufficient for the Board to simply take the position that because the regulations were silent as to how a permit may be revoked that the Town had discretion to determine its own procedure and therefore the Board could not interfere. The Board would be expected to conduct an analysis to determine whether the procedure invoked by the Town, in exercising its discretion, was procedurally fair.*** *Since the Board did not address the issue of the content of any duty of procedural fairness owed by the Town to Blue Sky, and as it is for the Board to express its views on this issue, I will not comment further on the point.*
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> *[21] Pursuant to subsection 46(3) of the Act, the Court shall confirm or vacate the order of the Board and where vacated, the Court shall refer the matter back to the Board with the Court's opinion as to the error in law or jurisdiction and the Board shall deal with the matter in accordance with that opinion. I have already stated the error of law committed.* ***It may also be appropriate to offer my opinion that should the Board, after considering the matter, find that the Town breached procedural fairness in the process surrounding its decision, the proper course of action would be for the Board to quash the revocation and refer it back to the Town for reconsideration in accordance with procedural fairness****. The Town would then consider anew whether or not it should exercise its discretion to revoke the permit.*[10]
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> [Emphasis Added]

[8] 2019 NLSC 151.

[9] NOTE: The undersigned was in-house counsel for the appellant in 2019 NLSC 151.

[10] Supra at note 8, paras 19-21.

The Newfoundland and Labrador Court of Appeal recently considered the elements of procedural fairness in *Kennedy v. Central Regional Integrated Health Authority (Board of Trustees)*.[11] F.J. Knickle J.A. stated:

> *[25] The principles governing whether there has been a denial of procedural fairness are well established.* ***Where an administrative decision by a delegated authority affects the legal rights, privileges, or interests of an individual, that decision will attract a duty of procedural fairness towards that individual.***
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> *[26] The scope or content of that duty will depend on several considerations: the nature of the decision made, the legitimate expectation of the parties, the statutory scheme under which the decision was made, the importance of the decision to those affected, and the choices made by the decision maker about the procedures to be used, especially where the governing legislation allows for discretion on the part of the decision maker as to what procedures they will use (Baker v. Canada (Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, at paras. 23-27). The list of considerations is not exhaustive. All of the circumstances must be taken into account and the analysis of the circumstances must recognize that the duty of fairness is "flexible and variable" and "depends on an appreciation of the context of the particular statute and the rights affected" (Baker, at para. 22).*
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> *[27] As described by Goodridge J., as he then was, in Young, at paragraph 28:*
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> > *[28] Procedural fairness, in simplest terms, refers to the right to a fair hearing by an unbiased decision maker, where a decision affects the individual's rights or legitimate expectations. There can be a wide range on the spectrum of 'procedural fairness' and the level will vary depending on the particular context in which the administrative decision was made. The variable level ensures that "administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker" (para. 22 of Baker). There cannot be a full hearing with witnesses and lawyers every time an individual right or privilege is being decided. But occasionally the context may require a full hearing with witnesses and lawyers. It always depends on the circumstances. A simple matter, such as application for beginner driver's permit, may attract only a minimal level of procedural fairness, while complex matter, such as discipline hearing that could end one's career, may attract a very high level of procedural fairness.*
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> *[28] An open and fair procedure will be a procedure that is "appropriate to the decision being made" (Baker, at para. 22). The greater the impact of the decision on the individual, the greater the extent of the duty of procedural fairness (Baker, at para. 25). For example, what may be required to ensure fairness in the context of*

[11] 2024 NLCA 32.

> *possible deportation, as was the issue in Baker, may not require the same extent of procedural fairness as deciding whether someone should be issued a permit.*

It is clear from the evidence that the Authority is a delegated decision maker under the *Municipalities Act, 1999.* It owed the Appellant a duty of procedural fairness and natural justice.

The facts of this case do not require substantial analysis. The failure of the Authority to accord with the requirements of natural justice and procedural fairness are readily apparent. I note the following:

- the Authority had no prescribed procedure for the assessment of commercial developments and proceeded on an ad hoc basis;
- the Authority failed to exercise its discretionary ability to seek more information from the applicant under s.407(2) of the *Municipalities Act, 1999*
- the Authority failed to provide the Appellant with the ability to address adverse information that was relied upon by the Authority, notably the alleged petition demonstrating 70% opposition
- that the reliance upon the alleged petition does not accord with the proper exercise of discretionary authority under the *Municipalities Act, 1999*,
- the Authority failed to advise the Appellant of his right to appeal the permit refusal under s.409 of the *Municipalities Act, 1999.*

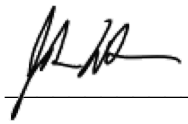
Based on the above, I conclude that the Authority exercised its discretion in a procedurally unfair manner and did not exercise its authority in a manner consistent with the principles of natural justice.

As per the analysis of Chaytor J., in *CareGivers Inc. (Blue Sky Family Care) v. Newfoundland and Labrador (Central Newfoundland Regional Appeal Board)*, it is appropriate for this matter to be referred back to the Authority for proper consideration consistent with natural justice and procedural fairness.

Order

1. The Appeal is upheld;
2. The Permit Application is returned back to the Authority for proper consideration; and,
3. The Appellant is entitled to a reimbursement of the appeal fee by the Authority.

DATED at St. John's, Newfoundland and Labrador, this 16th day of April, 2025.



John R. Whelan Q.Arb

Adjudicator