

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-091-046
Adjudicator: John R. Whelan Q.Arbitrator
Technical Advisor: Satara 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 to construct and operate a seasonal trailer park at 47-51 White's Boulevard, Sandringham. Also: Refusal to permit construction of a storage shed at 47-51 White's Boulevard, Sandringham.

Procedural Background

On October 24, 2022, the Appellant submitted a proposal for a development project at 47-51 White's Blvd, Sandringham (subject property). The proposal included the construction of eight cabins and an area for ten recreational vehicle (RV) sites. The Town Council raised concerns regarding access and existing requirements for the proposed RV park, as well as potential noise disturbances.

On November 21, 2022, the Appellant submitted a revised proposal, which removed the RV park and proposed adding six cabins. Council passed Resolution#2022-082, which approved the proposal in principle, subject to the acquisition of all required permits, leases, and approvals from applicable federal and provincial agencies.

On May 15, 2023, the Appellant submitted a building permit application for the construction of cabins, a trailer park, and a golf course. The proposed site access was via Chaytor's Lane, with an attached site plan.

On May 23, 2023, the Appellant's latest development application was reviewed at the Council regular meeting, which included duplex cabins, a trailer park, and a golf course.

Council determined the application to be incomplete.

On May 25, 2023, during a special meeting, the Appellant provided photographs of the ongoing development and stated that the trailer sites would initially be unserviced while awaiting government approvals.

On June 13, 2023, the Appellant submitted a revised building permit application that proposed a change in the location of the trailer park.

On August 27, 2024, during a Council meeting, the permit application for a trailer park at the subject property was reviewed, along with the attached plot plan. Council passed Resolution #2024-084, which authorized the issuance of a public notice regarding the proposed development.

On September 25, 2024, Council passed Resolution #2023-091 to refuse the trailer park permit. However, this information was not communicated to the Appellant.

On November 8, 2024 a letter was transmitted to the Appellant by counsel for the Authority indicating that the application had been denied and that an official response would be provided in the near term.

On December 23, 2024

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 noted that the failure of the Authority to communicate a formal refusal of its decision to the Appellant is demonstrative of bias and I should consider the conduct of the Authority when issuing my 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

Mifflin C.J.N. characterized the essential issue on appeal as "whether or not the Council's refusal 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., eventually 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

¹ 1982 CarswellNfld 35 (*Wabana*).

² *Wabana*, at para 2-3.

³ *Ibid.*, at para 12.

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*)

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.

[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.

[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.

[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

⁸ 2019 NLSC 151.

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

*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

[Emphasis Added]

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.*

[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](#)).*

[27] *As described by Goodridge J., as he then was, in Young, at paragraph 28:*

[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*

¹⁰ Supra at note 8, paras 19-21.

¹¹ 2024 NLCA 32.

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.

[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 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 communicate its decision to the Appellant
- 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 distinguishable from my decision in Appeal File 15-006-091-046, I cannot stress the significance of the Authority's failure to articulate its rationale in writing.

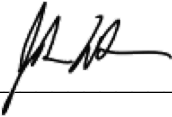
The failure of the Authority to formalize its decision in this instance is inexcusable. Given my limited remedial authority, I will simply state that the conduct is worthy of denouncement and deterrence.

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