

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-087-019

Adjudicator: Lorilee A. Sharpe

Appellant(s): Joseph Keats v. Digital Government and Service NL

Respondent / Authority: Digital Government and Service NL

Date of Hearing: June 13th, 2024

Start Time: 2:00 p.m.

In Attendance

Appellant: Joseph Keats

Appellant Representative(s): Self Represented

Respondent/Authority: Digital Government and Service NL (DGSNL)

Respondent Representative(s): Kimberly Perry, Manager of Operations – DGSNL

Christopher Gillam, Design Approval Technician- DGSNL

Peter Cook, Design Approval Technician, DGSNL

Interested Parties: Nancy Keats, wife of Appellant

Appeal Officer: Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs

Technical Advisor: Faith Ford

Adjudicators Role

Part VI of the *Urban and Rural Planning Act, 2000* 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, Development*

Regulations, Protected Road Zoning Regulations, and the Great Northern Peninsula Highway Protected Road Zoning Plan when DGSNL refused permission for the development of a commercial sawmill on the Appellants property located off of Route 430 near the Griquet Branch intersection.

Hearing Presentations

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.

Rule 10 (a) of the Rules of Procedure provides that there shall be a technical advisor 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 and Provincial Affairs provides the framework with respect to the appeals process under the *Urban and Rural Planning Act, 2000* and an overview of how the order was processed by Council as prescribed in their roles and responsibilities.

The Adjudicator heard from the planner that this appeal relates to refusal of DGSNL to grant permission to the Appellant to develop a commercial sawmill on his property located adjacent to Route 430 near the Griquet Branch intersection as the proposed development does not meet the minimum separation distance requirements for the Rural Conservation Zone in which the property is located.

The Appellant's Presentation and Grounds

The Appellants' grounds for appeal are set out in the written appeal and were summarized in the technical advisors' report as follows:

- The Appellant does not feel proper consideration has been given to the application. The Appellant owns the road, and others that use the road have no issues with the proposed use.

In support of his grounds of appeal, the Appellant and his wife Nancy Keats appeared at the hearing, provided testimony and made oral submissions. The Appellant takes the position that he has already operated a sawmill on his property for personal use for many years and states that it is a private piece of land that he inherited from his grandfather and that they built the road off route 430 themselves as a private road. Other users of the road have no issue with it and he received approval from all other government departments.

Authority's Presentation

DGSNL took the position that the proposed use involves processing of timber and not harvesting of timber and as such it is an industrial use that must meet the required setback from Route 430, that being 100 meters. The current proposed location for the commercial sawmill does not meet the 100 meter setback requirement from Route 430.

Adjudicators Analysis

I have reviewed the documents in the appeal package and submissions of all parties, as well as the technical report and applicable provisions of *The Urban and Rural Planning Act, 2000*, the ministerial *Development Regulations*, the *Protected Road Zoning Regulations* and the *Great Northern Peninsula Highway Protected Road Zoning Plan*.

The property that is the subject of this appeal is located in the Rural Conservation zone of the Great Northern Peninsula Highway Protected Road Zoning plan. Commercial sawmills are Industrial uses which are permitted in the Rural Conservation zone, subject however to condition 7(2) of the Rural Conservation Zone. Section 7(2) requires a setback of 100 meters from the centreline of the highway which in this case would be Route 430. The proposed location for the commercial sawmill in the Appellants development proposal does not meet this setback requirement from Route 430 to the location of the proposed sawmill.

The powers of an adjudicator in deciding an appeal are set out in s.44 of the *Urban and Rural Planning Act*:

Decisions of adjudicator

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

As the proposed development does not meet the required setback from the highway known as Route 430, the Adjudicator confirms the decision of DGSNL to refuse to grant permission to the Appellant to develop a commercial sawmill on his property located adjacent to Route 430 near the Griquet Branch intersection.

The Authority and the Appellant(s) are bound by this decision.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Regional Appeal Board 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(s).

DATED at Corner Brook, Newfoundland and Labrador, this 8th day of July, 2024.



Lorilee A. Sharpe, Adjudicator

Urban and Rural Planning Act, 2000